

The Role of the State in Creating a Non-Discriminatory Life

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Abstract. *Conflict, war and bloodshed are impossible to avoid as long as the root of the problem is closely related to the existence of different human beings who cannot be understood by other groups who feel stronger, so that they feel that the presence of different groups must be eliminated, then discriminatory treatment arises, even though the purpose of differences and diversity is actually to respect and appreciate the differences themselves, so what is needed is not a system that tends to eliminate or suppress differences into uniformity, but a system that is able to appreciate and manage differences will be a blessing for all humans. During the New Order era, the government tended to eliminate differences in society by issuing various regulations to create uniformity in social behavior, such as the most prominent ones in the regulation of regional autonomy, political parties and mass organizations, so what happened was a false peace, because society was silenced and there was no access to different opinions, let alone criticize. The confinement of society is not only carried out in the political, legal and economic realms, but also reaches the very sacred area of religion. Religion becomes an area that functions as a tool to perpetuate the power of a regime (status quo), religion does not function as liberation and siding with or protecting the weak, but only as a justification for the legal stamp of the state's desires that are forced on the people. As a result, when the reformation occurred and democratic life began to be opened by President Habibie, it began to appear that friction had occurred in the lives of Indonesian society and violence arose in society with different backgrounds, both ethnicities, groups, classes and even religions which continue to occur until now. The reformation that began rolling in 1998 which wanted a democratic, elegant, civilized, peaceful order of national and state life was only limited to discourse, because what happened was the opposite: ethics and morals were no longer paid attention to, civilization declined, corruption occurred in all lines of life, even to institutions that were considered to be guardians of moral ethics, namely the world of education.*

Keywords: *Creating; Life; Non-Discriminatory; State.*

1. Introduction

Many blame the rise in religiously motivated violence on the state's inability to protect its citizens' human rights. The state seems to allow groups of people in the name of religion to terrorize, destroy, injure, and even kill those with differing views. Anis Baswedan believes that religiously motivated riots are the result of the state's lack of decisiveness. He worries that if the riots are ignored, they could tear apart the fabric of the nation. (Anis Baswedan; 2011) Religion as a belief and outlook on life for its adherents is an important factor in providing encouragement and motivation in carrying out pious deeds, defined by various religious experts as a belief system and a means to achieve happiness. (Ahmad Munir; 2008). However, in the reality of social life, religion can cause conflict and, as recorded in history, even cause war.

Conflict, war and bloodshed are impossible to avoid as long as the root of the problem is closely related to the existence of different human beings who cannot be understood by other groups who feel stronger, so that they feel that the presence of different groups must be eliminated, then discriminatory treatment arises, even though the purpose of differences and diversity is actually to respect and appreciate the differences themselves, so what is needed is not a system that tends to eliminate or suppress differences into uniformity, but a system that is able to appreciate and manage differences will be a blessing for all humans. (Rifyal Ka'bah; 2001). During the New Order era, the government tended to eliminate differences in society by issuing various regulations to create uniformity in social behavior, such as the most prominent ones in the regulation of regional autonomy, political parties and mass organizations, so what happened was a false peace, because society was silenced and there was no access to different opinions, let alone criticize.

The confinement of society is not only carried out in the political, legal and economic realms, but also reaches the very sacred area of religion. Religion becomes an area that functions as a tool to perpetuate the power of a regime (status quo), religion does not function as liberation and siding with or protecting the weak, but only as a justification for the legal stamp of the state's desires that are forced on the people. As a result, when the reformation occurred and democratic life began to be opened by President Habibie, it began to appear that friction had occurred in the lives of Indonesian society and violence arose in society with different backgrounds, both ethnicities, groups, classes and even religions which continue to occur until now. The reformation that began rolling in 1998 which wanted a democratic, elegant, civilized, peaceful order of national and state life was only limited to discourse, because what happened was the opposite: ethics and morals were no longer paid attention to, civilization declined, corruption occurred in all lines of life, even to institutions that were considered to be guardians of moral ethics, namely the world of education.

As a solution to the problems above, a positive responsive attitude that must be taken as soon as possible is the study of new paradigms or according to Prof. Amin Abdullah, it is a high imagination that is autonomous in nature that can overcome fundamental problems for communal life, so that we do not get caught up in heteronomous problems such as ethnicity, class, skin color, socio-economic status, even religion. (Amin Abdullah; 2011). At the beginning of the reformation, Muslim scholars had already provided discourse on how the future state would be built, namely civil society, a society built in order to realize a peaceful and civilized state life, without discrimination.

2. Research Methods

This research is a descriptive analytical research, which will provide an overview of how the principle of political justice is in the perspective of legal philosophy and Islamic legal philosophy. The approach method used is the comparative legal method, according to Munir Fuady, (Munir Fuady; 2010). Comparative law is a knowledge and method of studying legal science by first reviewing a legal system by reviewing the legal rules/or regulations and/or jurisprudence as well as the opinions of competent experts in various legal systems, to find similarities and differences, so that certain conclusions and concepts can be drawn and then the causes of the emergence of similarities and differences can be sought historically, sociologically, analytically and normatively. The type of data used in this paper is secondary data in the form of data sourced from literature, both in books, journals and scientific works as well as in documents.

3. Results and Discussion

3.1. The Existence of Human Life

The question to be answered in this problem is the life and humanity that exists in humans in living together in realizing peace and tranquility. Finnis said the fundamental question that must be answered by every human being is what is the most fundamental aspect of humanity, to answer this question each person tries on their own with their intellectual abilities to understand the principles of practical thinking. (Abdullah; 2004). For Finnis the answer to this question is the basic nature of human goodness, the basic values of goodness are as follows:

1. Life, which marks every aspect of vitality that puts humans in good shape to determine their own destiny (Self-determination)
2. Knowledge/Truth which is a pure desire to know, to find the truth out of interest or concern for the truth, and a desire to avoid ignorance or error.
3. Playing, that is, engaging in a performance that has no purpose other than the performance itself'

4. Aesthetic Experience, that is, seeking and judging for its own sake, is the active creation and/or appreciation of a work that is significant and satisfying.
5. Sociality/Friendship, which is realized with a minimum of peace and harmony between humans, until it reaches the strongest form in fostering complete friendship.
6. Practical Reasoning, namely being able to utilize one's own intelligence to focus on problems of choosing actions and styles.
7. Religion, which is particularly important for thinking rationally about the origins of the cosmic order.

The Republic of Indonesia as a democratic state based on constitutional law, which is based on constitutional law in managing the state, strongly protects the dignity and honor of humans as citizens as stated in the articles of the 1945 Constitution of the Republic of Indonesia, including the following: (UUD Negara RI Tahun 1945 Pasal 28, 31).

1. Everyone has the right to live and to defend their life and livelihood,
2. Everyone has the right to form a family and offspring,
3. Everyone for recognition, guarantee and protection,
4. Everyone has the right to equal treatment before the law,
5. Every person has the right to freedom of religion,
6. Everyone has the right to communicate and obtain information,
7. The right to protection of oneself, family, honor, dignity, property, the right to a sense of security and protection from threats, fear of doing or not doing anything,
8. The right to be free from torture or treatment that degrades human dignity,
9. The right to be free from discriminatory treatment on any basis,
10. The right to obtain education.

In the principles of Islam, the Qur'an and Assunah, as sources of law for Muslims, also strongly protect human rights, as stated in the Qur'an which means "And indeed We have honored the children of Adam, and We spread them on land and sea and We have given them good things and We have preferred them with a perfect excellence over most of the other creatures We have created." (Q,S. Al-Isra: 70). The basic rights according to Islam include:

1. The right to life, "And do not kill a soul which is forbidden by Allah, except for a just reason, and whoever is killed in an unjust manner, Allah has indeed given his heir power (to prosecute the perpetrator), but do not let the heir exceed the limit in killing, indeed he is a person who receives Allah's help. (QS Al-Isro: 33)
2. The right to earn a living, 'When the Friday prayer has been performed then spread out on the face of the earth and seek the grace of Allah, and remember Allah as much as possible so that you will be successful.' (QS Al-Isro: 10).
3. The right to opinion and association, "And let there be among you a group of people who call for virtue, enjoin what is good and prevent evil, they are the lucky ones." (QS Ali Imron: 104).
4. The right to freedom of religion and tolerance, "There is no compulsion in religion (Islam), indeed the right path and the wrong path are clear (QS Al-Baqoroh)

256), while what is related to tolerance is "Allah does not forbid you to do good and act fairly towards those who do not fight you because of religion, nor do they expel you from your country, indeed Allah SWT loves those who do justice." (QS Mumtahanah: 8).

5. The right to be free from persecution, "Say, my Lord has forbidden abominable acts, both visible and hidden, and sinful acts that violate human rights without a valid reason" (QS Al-A'rof: 33).

1. The right to equality before the law, "Indeed, those before you perish

Because, if a respected figure steals, they let it go, but if a weak person steals, they enforce the law against him. By Allah, if Fatimah Bint Muhammad stole, I would definitely cut off her hand." (HR Ahmad).

In reality, in society, even though there are legal norms and religious norms that protect and guarantee human rights, violations and discrimination and violence still occur. This is where state institutions are needed that have instruments to protect their people, as institutions that have the power to enforce the law on citizens. In addition, the role of infrastructural institutions is also very much needed, such as NGOs and mass organizations, the press, including educational institutions, is very much expected to play a role in society in creating a peaceful life.

3.2. The Role of the State in Creating a Non-Discriminatory Life

According to the agreement theory about the emergence of a state, before the formation of a state

Humans live in a state of nature, Thomas Hobbes in his book *Laviatan* said that in a state of nature humans are hostile to each other, considering each other as opponents, so there is always resistance or war, one against another, one against all, this state is called *Bellum omnes contra omnes*. (Soehino; 1999). To create peace, society enters into a social agreement to form a state. Thomas Hobbes distinguishes between civil society and the state of nature. Civil society is where citizens enter into a social contract and establish a sovereignty that must be obeyed and protect their rights, while the state of nature is a war of every man against every man. (Thomas Hobbes; 2000).

By referring to the history of the development of civil society in the west, a number of experts in Indonesia use different terms for similar purposes, for example Nurcholis Madjid, M. Dawam Rahardjo using the term *Masyarakat Madani*, Dawam Rahardjo who quotes Anwar Ibrahim's opinion, that civil society is a fertile social system based on moral principles that guarantee a balance between individual freedom and social stability. (Dawam Rahardjo).

In terminology, the term *Madani society* was popularized by Naquib Alattas, which is a translation of the Arabic word *Madani*, which etymologically has two meanings, firstly "urban society", because *Madani* is a derivative of the Arabic word *Madinah* which means city, secondly it is a civilized society, because *Madani* is a derivative of the word *tamaddu* which means civilized. (Ahmad Hatta; 1999). The concept of civil society at the beginning of the reform was discussed again to realize good governance, to replace the New Order structure which gave birth to bad governance, but after ten years of reform, the building of a civilized society has not been realized, in fact it has gotten worse.

In Islamic circles, civil society is defined by attributing it to Islamic civility, which is equated with civil society, namely the *Medina society* built by the Prophet Muhammad (peace be upon him). This is to demonstrate that Islam is rich in ethical values that, when implemented, will form an ideal order of life. According to Nurcholis Madjid, the building of civil society must be based on principles including: (Norcholis Madjid).

1. Civil society stands on the foundation of justice, upholding justice is the mandate of God Almighty, as stated in QSAI-Nisa: 58, and the Prophet has set an example for us, he very faithfully carried out God's commands.
2. The Prophet never differentiated between the upper and lower classes,
3. Sincerity of commitment, a civilized society requires individuals who sincerely remind their souls of the insight of justice, is a real act of goodness in society in the form of pious deeds;
4. Openness is a consequence of humanity or a view that sees humans in a positive and optimistic way, namely the view that humans are basically good until proven otherwise.

5. Deliberation is essentially nothing other than positive interaction between various individuals in society who give each other the right to express opinions and acknowledge each other's obligation to listen to those opinions.
6. The upholding of noble social relations values, such as tolerance and pluralism, is the upholding of civilized values, because tolerance and pluralism are nothing other than manifestations of civilized bonds.

In line with Nurcholis Madjid, Azyumardy Azzra stated that in the framework of creating a quality and civilized life (Tamaddun/civility), civil society requires attitudes of tolerance, namely the willingness of individuals to accept various differences in political views among citizens. (Azyumardi Azzra). In relation to the role of the state in creating a civilized and peaceful life, there is no discrimination in all aspects of life and on any grounds, whether class, religion, race, economic status and so on, it is the state's duty to create conditions that can create a civilized and non-discriminatory state life, because the state has a coercive nature so that laws and regulations can be obeyed so that order in society can be achieved, and anarchic behavior can be prevented, because the state has the legal power to use physical force by using existing means such as: Police, Prosecutor's Office and so on. These conditions include the following:

1. Existence Free Public Space

A free public space as a means to express opinions, all citizens have the same position and rights to take action without fear and being threatened by greater powers, Habermas said that public space can be interpreted as a free area where all citizens have full access to public activities. (A. Ubaedillah and Aabdul Rozak; 2000). The state's duty through its legal regulations is to guarantee and protect the freedom of citizens in utilizing public space, for example the Law on Freedom of the Press, the Law on the Establishment of Political Parties, and the Law on the Establishment of Mass Organizations.

2. Creating a Life of Tolerance

Tolerance is an attitude of mutual respect and appreciation for differences of opinion, Khaled Abou El argues; The fact that God wants humans in different circumstances, illustrates God's respect for human free will and also reflects that humans recognize the beauty of tolerance. (Khaled Abou El; 2006). Al-Qordhawi in his book *Gahyr Al-muslimin fil al mujtama al islami*, said that four main factors cause unique tolerance to always dominate the behavior of Muslims towards non-Muslims, namely: (Al-Qordhowi; 2009).

1. Belief in the nobility of human beings regardless of their religion, nationality, or ethnicity. This nobility implies the right to be respected. In a Hadith, it is stated that Rasulullah SAW came across a corpse being carried, then he stood up, a friend said, "O Rasulullah, this is the corpse of a Jew," then he replied, "Isn't he a human being?"

2. The belief that human differences in religion and belief are a reality that is desired by Allah SWT, who has given freedom to choose faith or disbelief, Allah's will will certainly happen and contains extraordinary wisdom, therefore it is not justified to force them to convert to Islam.
3. A Muslim is not required to judge the disbelief of the infidels, or punish the misguidance of the misguided, Allah will judge them on the Day of Reckoning, thus the heart of a Muslim will be calm and there will be no inner conflict between doing good and being fair to them, and at the same time having to hold fast to the truth of one's own beliefs.
4. The belief that Allah SWT commands us to act justly and invites us to noble character even towards polytheists, and that Allah SWT also condemns acts of oppression even towards infidels.

Islam as a religion teaches its people to be tolerant with other people and can create mechanisms for living together in action, as in the Word of Allah which means "...And help you in virtue and piety, and do not help in acts of sin and enmity, (QS5:2)

The state is obliged to provide protection in maintaining an attitude of tolerance, Indonesia by making Pancasila the basis of the state with the first principle, Belief in the One Almighty God, containing the basic understanding that Indonesia was built not based on a particular religion, therefore the guarantee of freedom to embrace religion and belief is protected in the 1945 Constitution of the Republic of Indonesia. The existence of the Ministry of Religion is expected to be able to maintain harmony and religious tolerance, by providing the same rights and obligations for each community in practicing their religion and belief freely.

3. Recognition and Protection of Pluralism

Diversity or pluralism is not only understood as an attitude of having to acknowledge and accept diverse social realities, but must be accompanied by a sincere attitude to accept the reality of differences as something natural and a blessing from God. According to Nurcholis Majdjid, pluralism is a genuine engagement of diversities within the bonds of civility. In fact, according to him, pluralism is a necessity for the safety of humanity, among other things, through supervision and balance. Rasyid Ridho in his interpretation of Al-Manar explains that Allah wants ikhtilaf among humans by creating them in a condition ready to ikhtilaf, and differ in their knowledge, opinions and feelings as well, the consequences of which, such as their desires in the work they do, including religion, faith, obedience or committing sins. (Muhammad Rasyid Rhido).

In the Islamic concept, humans have freedoms that other creatures do not have. According to Bintusy Syati, there are four freedoms that humans have: freedom as the opposite of slavery, freedom of belief, freedom of thought and opinion, and finally freedom of will. (Aisyah Abdurrahman; 1997). The understanding of diversity or plurality is supported by the

Qur'an, such as QS Al-An'am: 99, Al-Ra'du: 3, Yassin: 36, Hud: 118-119, and also human reason and in reality in society confirms that pluralism is indeed desired by Allah SWT. The Qur'an also tells Muhammad to say that besides the Qur'an, he also believes in the Torah and the Gospel, the Zabur, as in His Word "I believe in every book revealed by Allah" (QS Assyuro: 15). According to Fazlur Rahman, the word Book is often used in the Qur'an not in the sense of a particular holy book, but as a general term ((generic) with the meaning of the entire revelation of Allah. (Fazlur Rahman; 1993).

Before the Qur'an was revealed, the local community had already followed several religions, both divine religions such as Judaism and Christianity, as well as other beliefs such as Magi, as stated by Amin Abdullah that pluralism is not only a characteristic of modern society, in Islamic history, a pluralistic society has been formed religiously since the era of the prophet Muhammad SAW and has become a common awareness at that time, this is natural because the Islamic religion emerged after being preceded by the development of Judaism, Christianity, Magi, Zoroastrianism, ancient Egypt and Hinduism, therefore interfaith dialogue is a central theme that colors the Qur'an. (Amin Abdullah; 1993). Farid Esack said that the expression that is often used in the Koran to refer to various types of people in general religious matters; Almu'minun. pious people, Muslims, Jews, Christians. People who associate partners with God Kafirun / Kuffar and Munafiqun. (Farid Esack; 2003).

Pluralism then developed into a political theory about how to manage together in a society that is plural in nature from political tendencies, religion, culture, interests and so on. Henry S Kariel mentioned six general positions that are integrated into politics (state); (Rifyal Kaaba).

1. Individuals are represented in small units of government which are their sole representatives,
2. The non-representative exercise of government power creates chaos,
3. Society consists of various independent religious, cultural, educational, professional and economic associations.
4. The association is voluntary in nature where there is no requirement that everyone be affiliated with only one association.
5. The general policies accepted as binding are the result of free interaction between those associations'
6. Public governments are obliged to recognize and act only on the basis of the common denominator of collective agreement.

The founders of the Indonesian state were very aware of the existence of plurality in society,

with its motto Bhineka Tunggal Ika and its true values already reflected in the 1945 Constitution of the Republic of Indonesia, which should also be reflected in the regulations below it, as regulated in Law no. 12 of 2011 concerning Procedures for the Formation of Legislation, that the principles for the formation of good legislation are:

1. Protection,
2. Humanity,
3. Nationality,
4. Family,
5. Archipelago,
6. Unity in Diversity,
7. Justice,
8. Equality of Position before the Law and: Government,
9. Order and Legal Certainty, and/or
10. Balance, harmony and alignment.

In practice, it really depends on the character, ability and willingness of legislators to realize this principle.

4. Same or Equal Treatment

The state must provide equal treatment to all citizens, the 1945 Constitution of the Republic of Indonesia guarantees equal standing before the law and government. (Article 27 of the 1945). According to Miriam Budiardjo, one of the characteristics of the state is that it is all-encompassing (all-encompassing, all-embracing), all laws and regulations (for example the obligation to pay taxes) apply to everyone without exception. (Miriam Budiardjo; 2009). The principle of equality is also reflected in the judicial process, namely that the judicial power is an independent power to uphold law and justice (Article 24 of the 1945 Constitution of the Republic of Indonesia).

In the Islamic concept, the principle of equality can be understood in QS Al-Hujrot: 13 that humans have the same position. Muslim scholar Ismail Al-Faruqi describes the same position of humans as creatures or servants of Allah, that all creatures created by Allah are one, even though each can be distinguished from the others, but before Allah they are all one and the

same. (Muhammad Thahir Azhary; 2003). There are three things to note about this expression:

1. All humans are Allah's caliphs on the face of the earth, meaning that anyone on the face of the earth is essentially a manager of the earth who has obtained this function in accordance with his nature or original character, this position is egalitarian, therefore seen from this aspect all humans are the same,
2. In terms of their obligations, humans have the same position, namely they are absolutely obliged to carry out Allah's will.
3. Because of Allah's nature as the Most Just, discrimination in Islam is rejected.

5. Social Justice

Social justice is the existence of balance and proportional distribution of the rights and obligations of every citizen that covers all aspects of life, in other words social justice is the loss of monopoly and centralization of one aspect of life carried out by a particular group or class or also the state, this is in accordance with the fourth principle of Pancasila, namely social justice for all Indonesian people, it is only natural that this value of justice will always be present in every legal regulation formed by the state and its implementation in society.

The 1945 Constitution of the Republic of Indonesia regulates the existence of three major branches of state power, namely, government power, legislative power and judicial power, plus the National Police as a state apparatus that maintains public security and order, tasked with protecting, serving, serving the community, and enforcing the law, must carry out its functions as well as possible in order to realize the noble ideals of this nation as stated in the Preamble to the Constitution.

4. Conclusion

Humans as perfect creatures, their dignity and honor must be protected to maintain their existence in the world. The state, as an institution that has the power and means to regulate the lives of its citizens, is obliged to provide protection and guarantees so that human rights can be properly implemented. In order for human rights to be upheld, The state must be able to realize the conditions of a civil society or civil society that guarantees the existence of a civilized society. These conditions include: the existence of free public space, recognition and protection of pluralism, equal treatment, tolerance and social justice.

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