

## WHEN REGULATION BECOMES A RESTRICTION: EXAMINING ZAINAL ABIDIN BAGIR'S THOUGHTS ON RELIGIOUS FREEDOM AND BELIEF IN INDONESIA

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### Abstrak:

*Penelitian ini mengeksplorasi pemikiran Zainal Abidin Bagir — salah seorang dosen di Center for Religious and Cross-Cultural Studies (CRCS) dan Direktur Indonesian Consortium for Religious Studies (ICRS) Sekolah Pascasarjana, Universitas Gadjah Mada, Yogyakarta — terhadap dinamika kebebasan beragama di Indonesia. Untuk menjelaskan dinamika tersebut, penelitian ini menggunakan metode kualitatif yang diimbangi dengan wawancara langsung dengan Bagir serta diperkaya dengan literatur-literatur lain yang relevan. Pendekatan historis dan sosiologis berguna untuk memperjelas, mengevaluasi dan menganalisis faktor-faktor yang menyebabkan peraturan kebebasan beragama dianggap penting untuk diterapkan di Indonesia. Hasil penelitian ini menunjukkan bahwa, pertama, implementasi peraturan kebebasan beragama di Indonesia seringkali berbenturan dengan dinamika sosial, budaya, dan politik yang berlaku di negara ini, sehingga menyebabkan sebagian kelompok menilai 'kebebasan beragama' tidak relevan untuk diimplementasikan di Indonesia. Dalam beberapa kasus yang terjadi, anggapan ketidaksesuaian ini berkonsekuensi pada terjadinya diskriminasi dan restriksi terhadap kebebasan beragama kelompok minoritas seperti Ahmadiyah dan Syiah. Namun demikian, dalam lanskap secara umum, Bagir menyebut bahwa kebebasan beragama di negara ini masih tampak baik dan terus mengalami progres, meski dengan catatan tidak sepenuhnya ideal dan menyisakan banyak problem yang bercokol di dalamnya.*

**Kata Kunci:** Kebebasan Beragama, Zainal Abidin Bagir, Non-Ortodoks dan Restriksi

### Abstract:

*This research would explore the analysis of Zainal Abidin Bagir — Lecturer at the Center for Religious and Cross-Cultural Studies (CRCS) and Director of the Indonesian Consortium for Religious Studies (ICRS), Gadjah Mada University, Yogyakarta — on the dynamics of religious freedom in Indonesia. In order to explain these dynamics, this study uses qualitative methods. These are balanced by direct interviews with Bagir and enriched by other relevant literature. Historical and sociological approaches are useful in clarifying, evaluating and*

*analysing the factors that cause religious freedom and religious blasphemy regulations to be considered important to implement in Indonesia. The results of this research show that, firstly, the implementation of religious freedom regulations in Indonesia often clashes with the social, cultural and political dynamics prevailing in the country, leading some groups to believe that 'religious freedom' is not suitable for implementation in Indonesia. In some instances, this perceived incompatibility has resulted in the rights of minority groups such as Ahmadiyah and Shia being violated and restricted. Second, Bagir is not in a hurry to judge the state of religious freedom in Indonesia as terrible. In terms of the overall landscape, Bagir said that the religious freedom situation in Indonesia continues to appear relatively well developed and continues to make progress, although it is not totally unproblematic.*

**Keywords:** Religious Freedom, Zainal Abidin Bagir, Non-Orthodox, and Restriction

## **Introduction**

The right of “freedom of religion or belief,” sometimes called religious freedom or KBB, is enshrined in international human rights documents and in the constitutions of many countries. However, its adoption in non-Western cultures often sparks complex and controversial debates. One of the criticisms leveled against applying KBB to Muslim-majority or Muslim-populated countries is that religious freedom shows a strong bias toward Protestant doctrine. Another contentious debate, still part of KBB, revolves around the regulation of “religious blasphemy.” If the KBB ensures the freedom of religious adherents to express their religious beliefs according to certain criteria, then blasphemy is often linked to regulations that contradict freedom. Such regulations tend to restrict a person’s “religious freedom” with very strict criteria and provisions that tend to be unclear.

However, the cases of violations of KBB that have occurred in Indonesia, which were mainly caused by excessive government intervention in several religious groups that are less quantifiable than others, such as Shia, Ahmadiyah, followers of religious beliefs, and followers of ancestral religions (indigenous religions), show that religious freedom in Indonesia is still far from ideal. In Indonesia’s diverse religious context, state regulation of religion is required in order to guarantee freedom of religion or belief for all citizens. Following the 1998 Reformation, the state has enhanced its commitment to actualizing KBB by amending the 1945 Constitution and enacting laws to uphold human rights.<sup>1</sup>

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<sup>1</sup> Zainal Abidin Bagir, “Kajian tentang Kebebasan Beragama dan Berkeyakinan dan Implikasinya untuk Kebijakan,” in Ihsan Ali Fauzi et.al., (ed.) *Kebebasan, Toleransi dan Terorisme: Riset dan Kebijakan Agama di Indonesia* (Jakarta: Pusat Studi Agama dan Demokrasi Yayasan Paramadina, 2017), p. 50.

The aforementioned ideal of regulations has faced many challenges and oppositions from various groups, which is caused by the contrast between the objectives of these regulations and the facts that occur on the ground. Many instances demonstrate that the state does not fully manage, regulate, and take responsibility for its citizens' religious lives. These matters operate on a solid legal foundation that includes laws, regulations, and Surat Keputusan Bersama/the Joint Decree of two or more Ministerial Offices (SKB). These regulations have a significant impact on religious freedom conditions and other aspects, including education and civil registration. Examples of the latter include identity cards (KTP), birth certificates, marriage certificates, and funerals. It is important to assess these impacts when considering the effectiveness of the regulations.<sup>2</sup>

The regulation mandating a religious column on the KTP, as specified by TAP MPR No. IV/1978, poses a distinct issue in the management of religion in Indonesia. Individuals whose religion has not been officially recognized by the state, including those practicing ancestral or indigenous religions, are required to select one of the six state-recognized religions like Hinduism, Buddhism, Islam, and others.<sup>3</sup> To prevent coercion in the aforementioned administrative issues, the government has reissued Population Administration Law (Adminduk) Number 24/2013, which permits individuals of different religions to leave the religion field on their family card (KK) or resident identity card (KTP) blank. However, despite its apparent progress in eliminating coercion, the Administering Law still possesses issues. The issue at hand concerns the fulfillment of citizenship rights for minority groups, including individuals with religious beliefs, practitioners of local religions, and followers of new religious movements. This proves challenging, and most members of these communities do not receive the necessary services.<sup>4</sup>

Zainal Abidin Bagir, a scholar at the Center for Religious and Cross-Cultural Studies (CRCS) and the Indonesian Consortium for Religious Studies (ICRS),<sup>5</sup> Gadjah Mada University (UGM) Yogyakarta, through his publications gives much attention to state policies towards religion, including religious

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<sup>2</sup> Trisno Sutanto, "Diskriminasi Terhadap Penghayat: Sampai Kapan?," in Ahmad Najib Burhani et. al., *Dilema Minoritas di Indonesia: Ragam, Dinamika, dan Kontroversi* (Jakarta: PT Gramedia Pustaka Utama, 2020), p. 36.

<sup>3</sup> Samsul Maarif, "Meninjau Ulang Definisi Agama, Agama Dunia, dan Agama Leluhur," in Ihsan Ali Fauzi et. al., (ed.) *Kebebasan, Toleransi dan Terorisme: Riset dan Kebijakan Agama di Indonesia...*, p. 14.

<sup>4</sup> Samsul Maarif, "Meninjau Ulang Definisi Agama, Agama Dunia, dan Agama Leluhur,"..., p. 14.

<sup>5</sup> Read more <https://www.icrs.or.id/person-profile/zainal-abidin-bagir>, accessed on Tuesday, 29 October 2023 at 22.41 WIB.

freedom. Bagir's analysis of the controversies surrounding the KBB, his critique of the state's policy towards religious communities, along with his proposed solutions to find a common ground, "*kalimatun sawā*", related to the issue of religious liberty. The selection of Bagir as the primary subject of this research is based on his involvement in advocating for the limitation of the religious freedom rights of non-Orthodox and nonconformist groups, such as Ahmadiyah and Shia, in the judicial review hearing of the blasphemy law at the Constitutional Court in 2017, in addition to studying state and religious regulations as one of his academic focuses. This research aims to answer two questions: (1) What are the regulations governing religious freedom and blasphemy in Indonesia? and (2) What is Zainal Abidin Bagir's view on the state of religious freedom in Indonesia?

### **Conceptual Framework**

Elizabeth Shakman Hurd (2015), describes the religious freedom complex structure, derived from its conceptual framework and political objectives. Specifically, the KBB seeks to launch global political initiatives for religion, creating what Hurd terms the "new global politics of religion." The proliferation of the KBB, promoted by the United States, Canada, and several European nations, is the primary effort in global religious politics discussed by Hurd and inferred by Bagir. Hurd's evaluation of the KBB regime highlights its lack of neutrality, with America's concept of freedom of religion designed to protect its own interpretation of "religion" above all others.<sup>6</sup> To illustrate, Hurd employs three classifications of the meaning of religion, namely religion constructed by political power (governed religion), religion constructed by scholars (expert religion), and religion practiced daily by adherents (lived religion).<sup>7</sup>

Among the mentioned classifications, the KBB regime favors governed religion over lived religion. As a political agreement, the KBB, as envisioned by Hurd, aims to safeguard self-constructed religions, particularly world religions. Accordingly, the definition of religion within the KBB framework excludes other forms of religion that have non-conforming religious foundations and practices. The KBB emphasizes the main characteristics of world religions pertaining to belief rather than their religious practices. Thus, Hurd contends that the KBB is not a neutral universal ideal that guarantees freedom of space

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<sup>6</sup> Zainal Abidin Bagir, "Kajian tentang Kebebasan Beragama dan Berkeyakinan dan Implikasinya untuk Kebijakan,"..., p. 74.

<sup>7</sup> Elizabeth Shakman Hurd, *Beyond Religious Freedom: The New Global Politics of Religion* (Princeton & Oxford: Princeton University Press, 2015), p. 23.

for all religious groups, but rather partial and specific to only certain religious groups, namely world religions.<sup>8</sup>

### Literature Review

Arvind Sharma (2011) in *Problematizing Religious Freedom* similarly criticized the KBB concept, aligning with Hurd's conceptualization that it is problematic. According to Sharma, the meaning of religious freedom is dependent on an individual's interpretation and understanding of religion. He suggested that a formal definition of religion is unnecessary in addressing KBB concerns arising from the law.<sup>9</sup> However, this ideal conflicts with the reality in the field. If a case involving the violation of religious freedom requires court involvement, the court decision will rely on the concept or definition of religion selected by the court. Consequently, the promotion of the KBB concept in America, Canada, and European countries means that the definition of religion cannot be separated from the concept of religious freedom.

The KBB concept's complexity poses challenges for various countries, such as Saudi Arabia. Saudi Arabia disagrees with the concept promoted by the KBB due to its guarantee of freedom to change religions. For Saudi Arabia, which is predominantly based on Islamic teachings, the concept of religious conversion is considered apostasy.<sup>10</sup> Islam encourages believers to defend their religion and avoid such acts. Based on this analysis, Sharma argues that Saudi Arabia has dismissed the KBB concept and its related ideas, as they are seen as confrontational in the Islamic socio-cultural context. In his conclusion, Sharma asserts that the discourse on the right to freedom of religion frequently lacks objectivity and fails to protect the rights of religious communities. Although recognition of religious rights is a prevalent theoretical concept, it often lacks practical implementation, and KBB tends to disregard individual rights. Sharma contends that these cases reflect the secular trend towards prioritizing individual rights to practice religious freedom. Sharma recommends positioning religious freedom as a dynamic concept that requires ongoing negotiation.<sup>11</sup> To illustrate this dynamism, Sharma cites the diverse religious practices of Asian people in comparison to those of Western Europeans. Hence, the manifestation of the KBB in Western and Asian countries generates distinct notions of religious freedom. The Western notion of religion, which is founded on human rights, fosters a distinct idea of religious liberty and is connected with a conception of

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<sup>8</sup> Further explanation of Hurd's criticism of the KBB can be found in Zainal Abidin Bagir's review titled, "Beyond Religious Freedom?". The review was accessed on October 29, 2023 at 20.54 WIB, on the page <https://crcs.ugm.ac.id/melampau-kebebasan-beragama/>

<sup>9</sup> Arvind Sharma, *Problematizing Religious Freedom* (New York: Springer, 2011), p. 87

<sup>10</sup> Arvind Sharma, *Problematizing Religious Freedom ...*, p. 86.

<sup>11</sup> Arvind Sharma, *Problematizing Religious Freedom ...*, p. 256-257.

religion that entails a singular religious identity. Moreover, it embodies the viewpoint of global religions.<sup>12</sup> Meanwhile, Asian religious practices, distinct from world religions, offer a different interpretation of religious freedom that allows for multiple religious identities and aligns with non-proselytizing viewpoints.<sup>13</sup> This concept of religious freedom, influenced by both Western and Asian religious cultures, shares some similarities and diverges in other ways. Both concepts of religious freedom converge in recognizing the freedom of individuals to choose and practice their religion. The difference lies in whether the right to manifest religion includes the right to preach or not.<sup>14</sup>

Winnifred Fallers Sullivan dismisses the concept of religious freedom in *the Impossibility of Religious Freedom*. Through *The Impossibility of Religious Freedom*, Sullivan explains the impossibility and incompatibility of implementing the KBB in several regions.<sup>15</sup> Many atheists believe that these laws are inappropriate for Europe, where new religious movements are being persecuted. Applying the KBB to Muslims would be challenging to enforce. Compliance with Islam is directly enforced by ruling regimes, and non-Muslims living in these countries experience discrimination. Additionally, China presents a unique challenge as all religions are suspected and have limited access to public space.

Although religious freedom is widely accepted as a fundamental aspect of modern political identity and recognized as a shining achievement of the United States, there are limitations to its realization. This is exemplified by the difficulty in defining religion, as discussed by Sharma. Furthermore, Sharma determined that the implementation of religious freedom in a country has perpetuated the political efforts of the state to intervene, restrict, and discriminate against a particular religion, whether consciously or not. By embodying America's construct of "religious freedom" and disregarding the interests of any particular religion, Sharma argues that the state has set a trap for religion to be defined solely in a functionalist manner. This means that religion is not permitted to exercise its own authority, but must instead adhere to the accommodation mechanisms established by the state.<sup>16</sup> If such is the case, the

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<sup>12</sup> Arvind Sharma, *Problematizing Religious Freedom ...*, p. 255.

<sup>13</sup> Nonproselytizing religions are those that do not emphasize actively spreading their teachings, as seen in Jewish teachings. For more information, please see: Reuven Firestone, "Jewish Proselytizing; Why Jews Don't Proselytize," *Renovatio: The Journal of Zaytuna College* (June, 2019): p. 1-9. Accessed via <https://proselytize.com/why-jews-dont-proselytize/> on November 29, 2023 at 18.33 WIB.

<sup>14</sup> Arvind Sharma, *Problematizing Religious Freedom ...*, p. 255.

<sup>15</sup> Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton and Oxford: Princeton University Press, 2005), p. 6.

<sup>16</sup> Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom ...*, p. 155.

state has weakened beliefs and restricted religious practices or rituals without explicitly stating so, through granting the government significant authority over determining religious authenticity.

Sharma observes that the terminology of religious freedom contains inadequate concepts. Although religious freedom is commonly recognized as a fundamental human right in democratic societies and enshrined in legal and political documentation such as the Universal Declaration of Human Rights (UDHR),<sup>17</sup> Sharma's use of the term "free" appears to be restricted to a certain category and limited by the boundaries imposed by a particular system.<sup>18</sup> In the end, this mechanism will ultimately limit an individual's ability to make personal choices. State control and systems of governance constrain individuals, and at its peak, true religious freedom is non-existent; only an illusion of freedom that conforms to the criteria, rules, and systems established by the "freedom" regime itself remains.

Collective critiques of religious freedom can also be found in *the Politics of Religious Freedom*, which was produced by leading scholars from postcolonial circles such as Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood, Peter G. Danchin, and others. One of the articles, titled "Varieties of Religious Freedom and Governance", examines the range of approaches to religious freedom. "A Practical Perspective," which is written by Robert W. Hefner, examines the variations in religious freedom policies and criticizes their oversimplified content. Hefner acknowledges that religious freedom policies are not inherently problematic, but warns that oversimplification of complex sociological conditions can lead to incorrect prescriptions for pluralist religious freedom.<sup>19</sup> Hefner identified a flaw in the commonly accepted model of religious freedom, specifically its failure to recognize that the consolidation of electoral democracy in the West during the nineteenth and twentieth centuries occurred not under one, but under several different governmental regimes. To support his argument, Hefner observes that the majority of Western European religious governments do not embody

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<sup>17</sup> See Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Case, Materials, and Commentary*, 3<sup>rd</sup> Edition (Oxford: Oxford University Press, 2005), p. 562-589.

<sup>18</sup> Other legal documents relevant to ensuring religious freedom include Article 18 of the ICCPR and the Universal Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

<sup>19</sup> Robert W. Hefner, "Varieties of Religious Freedom and Governance: A Practical Perspective," in Winnifred Fallers Sullivan et al., (ed.) *Politics of Religious Freedom* (Chicago: The University of Chicago Press, 2015), p. 127-134.

political liberalism.<sup>20</sup> Consequently, rather than religious freedom being essential to modern democratic politics, Hefner claims that Europe has instead experienced religious governance. The Western perspective is underrepresented in plural discourse. Hefner's analysis argues for an inclusive and sustainable religious freedom that prioritizes the constitutional affirmation of individual liberty and promotes an open public culture, including the recognition of the identity and interests of each religious group while emphasizing the ethics of public community.

Zainal Abidin Bagir's views and perspectives on government regulation of religion, especially in the field of religious studies, have not been studied in previous studies. In addition, this article aims to examine the extent to which Bagir's readings can provide constructive and accommodating contributions to the lives, freedoms, and regulations of religious groups in Indonesia. This original research aims to address gaps in current literature. If the author discovers any additional references with a coherent discussion during the research process, they will be included as a source of reference and evidence in a footnote.

## **Research Methods**

In order to collect the necessary data for this article, this study collects a wide range of international documents, books, journals, reports and laws related to the discussed topic. The article explores the discussions on both the subject and the object of the topic. The research uses a qualitative approach which is classified as a library research method.

The use of written sources, including international documents, books, and journals, is crucial in the study of the meaning and scope of blasphemy laws. The presented literature-based data adheres to John W. Creswell's explanation of qualitative research, which involves reporting data obtained through various sources such as oral and written sources or observations of people's behavior. This information is then detailed in a research report format.<sup>21</sup> Meanwhile, this research falls under the category of descriptive research. In this context, descriptive research aims to explain Zainal Abidin Bagir's interpretation of religious freedom and blasphemy in a comprehensive and holistic manner, while analytic research aims to critique Bagir's interpretation along with other arguments.<sup>22</sup>

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<sup>20</sup> Robert W. Hefner, "Varieties of Religious Freedom and Governance: A Practical Perspective"..., p. 127-134.

<sup>21</sup> John W. Creswell, *Research Design: Pendekatan Kualitatif, Kuantitatif, dan Mixed*, (Yogyakarta: Pustaka Pelajar, 2017), p. 34

<sup>22</sup> V. Wiratna Sujarweni, *Metodologi Penelitian* (Yogyakarta: Pustaka Press, 2014), p. 19.



### **Biography of Zainal Abidin Bagir**

Zainal Abidin Bagir started his early education in 1984 by enrolling in the Department of Mathematics, now the Department of Mathematics and Science/FMIPA, at the Bandung Institute of Technology (ITB), and graduated in 1991. A year after earning his bachelor's degree (1992), Bagir pursued his master's studies at the International Institute of Islamic Thought and Civilization (ISTAC), which is situated in the neighboring country. He achieved a Master of Arts (MA) degree in Islamic Philosophy (1994) from the International Islamic University in Kuala Lumpur, Malaysia. Bagir completed his doctoral program at the Department of History and Philosophy of Science, Indiana University, specializing in the history and philosophy of science (1994-2005) and earning a Ph.D in Religious Studies (2005). Bagir's academic history is notable for his shift in focus from Bachelor's to Master's studies. During his time at ITB, Bagir concentrated on exact sciences. Therefore, one could argue that he did not devote much attention to the study of religion and related matters at this stage.

The origins of Bagir's interest in religious studies were only evident after he pursued his master's and doctoral degrees. Subsequently, he participated in the field, taking on various roles such as researcher, teacher or activist. The impact of his interests and contributions can be observed in the research programs he has conducted and continues to conduct. Since 2002, Bagir has served as a member of the staff at the Center for Religious and Cross-Cultural Studies (CRCS), Graduate School, Gadjah Mada University/UGM in Yogyakarta, following the completion of his studies at Indiana University.

Bagir's research interests, particularly in the field of KBB studies, were influenced by his collaboration with Robert W. Hefner (2013), during which he had the chance to write and conduct research. This program is part of the Religious Freedom Project launched by the Berkley Center for Religion, Peace, and World Affairs at Georgetown University. Bagir and Hefner conducted research on Christianity and religious freedom in Indonesia. In 2014, Bagir had the chance to further examine the state of freedom of religion and belief across Indonesia through the Human Rights Research Center. The research orientation is set to contribute to the Baseline Study on Freedom of Religion or Belief (FORB) in ASEAN countries. In 2015, the individual assumed the role of Co-Principal Investigator for a collaborative project on pluralist coexistence in contemporary Indonesia. This undertaking occurred at the Contending Modernities Program located at the Kroc Institute at Notre Dame.

In 2006, Bagir played a pivotal role in the establishment of the Indonesian Consortium for Religious Studies (ICRS), along with three Yogyakarta-based rectors, Professor Dr. Sofian Effendi, the rector of UGM, Professor Dr. Amin Abdullah, the rector of Sunan Kalijaga State Islamic University (UIN),

Yogyakarta, and Professor Dr. Budyanto, the rector of Universitas Kristen Duta Wacana/UKDW.<sup>23</sup> Bagir was later elected as the third ICRS Director in 2009 and was the first to represent UGM, serving in this capacity until 2022. He replaced Dr. Siti Syamsiyatun, the former ICRS Director from UIN Yogyakarta, who was elected for two terms - the first from 2010 to 2014, and the second from 2014 to 2019. ICRS's first director, Prof. Dr. Bernard Adeney-Risakotta from UKDW, led the organization directly. As an agency that offers international standard Doctoral Study Programs (S3), ICRS concentrates on Inter-Religious Studies as its primary program. ICRS uses an interdisciplinary scientific approach, incorporating theology, social sciences, humanities, and hermeneutics to investigate topics such as the history of religions, cross-religious hermeneutics, and contemporary issues in religion.<sup>24</sup> Before assuming the role of Director at ICRS, Bagir held the position of Director of the Religious and Cross-Cultural Studies Program (CRCS) Masters Program (S2) from 2014-2019.

Bagir's contribution to the field of religious studies, especially those related to religious freedom, is quite diverse, for example, in an anthology book entitled *Routledge Handbook of Contemporary Indonesia*, Bagir specifically wrote about "The Politics and Law of Religious Governance". In this article, Bagir examines the post-reform period changes (1998) to religious governance in Indonesia. Bagir's criticism of religious governance in Indonesia is centered around the conflict between the governance system and the principle of religious freedom.<sup>25</sup> Bagir contends that recognition of religious diversity in Indonesia is limited and discriminatory. In support of this claim, Bagir cites the continued use of Law No.1/PNPS/1965 as a reference for religious governance which he believes raises complex issues. There is an element of justification for acts of violence against minority groups in this text. Additionally, Bagir identified a misinterpretation of the definition of religion. According to the PNPS Law, religion is restricted to groups that are officially registered as "recognized" religions by the government. As a result, for religious groups that do not comply with government regulations, their citizenship rights are often disregarded.

*Alternative Voices in Muslim Southeast Asia: Discourse and Struggles* is an anthology book that features Bagir as one of the authors. Bagir and Azis Anwar Fachrudin co-wrote a chapter titled "Democracy and the 'Conservative Turn' in

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<sup>23</sup> For more complete history and information regarding ICRS can be accessed on the website, <https://www.icrs.or.id/>.

<sup>24</sup>For further information, see, <https://www.icrs.or.id/icrs-history> accessed on 29 October 2023 at 21.35 WIB.

<sup>25</sup> Zainal Abidin Bagir, "The Politics and Law of Religious Governance," in Robert W. Hefner, (ed.) *Routledge Handbook of Contemporary Indonesia* (New York: Routledge, 2018), p. 286 -290.

Indonesia.” They discuss the increasing occurrence of the conservative turn phenomenon in Indonesian Islamic organizations.<sup>26</sup> Conservative turn is a term coined by Martin van Bruinessen to describe the rise of conservative discourses in public life. In general, the conservative turn encompasses two primary aspects in Indonesian Muslim organizations. Firstly, conservative figures are gaining prominence while liberal and modernist Muslims are losing influence. Secondly, the current trend of democratization is enabling new Muslim groups, particularly transnational ones, to share and propagate their teachings. The Defend Islam 212 action exemplifies a conservative shift identified by Bagir and Fachrudin. In their analysis, they note that the rise of conservatism in Indonesia is not exclusively due to conservatism, but is linked to changes in the political arena, which have enabled conservatives to voice their opinions more prominently in public spheres.<sup>27</sup>

Zainal Abidin Bagir, in his article entitled “Resolusi Melawan Intoleransi dan Prospek untuk Merevisi Peraturan tentang Penodaan Agama,” in the book *HAM dan Syariat: Sebuah Kajian*, discusses the controversy surrounding religious blasphemy regulations. Bagir highlights Law No.1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy of Religion as one of the main topics of his writing, in line with the chosen subject matter. Bagir's analysis reveals that the provisions of the Indonesian's Blasphemy Law primarily safeguard the conventional beliefs of mainstream factions, but also impose limitations on syncretic religious movements. The laws are often biased and unclear. Therefore, instead of attempting to regulate blasphemy, which remains ambiguous, Bagir suggested that all parties, particularly the government, concentrate on amplifying resolutions against intolerance. Bagir reckons that violations of religious rights in Indonesia mainly emerge from intolerance, which takes the shape of hate speech or incitement to violence, rather than blasphemy.<sup>28</sup>

## Results and Discussion

In evaluating religious freedom in Indonesia, it is essential that we understand the guarantee of the right of freedom of religion or belief set forth in the International Covenant on Civil and Political Rights and the United Nations

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<sup>26</sup> Zainal Abidin Bagir and Azis Anwar Fachrudin, “Democracy and the ‘Conservative Turn’ in Indonesia,” in Norshahril Saat and Azhar Ibrahim, (ed.) *Alternative Voices in Muslim Southeast Asia: Discourse and Struggles* (Singapore: ISEAS Publishing, 2020), p. 141-142.

<sup>27</sup> Zainal Abidin Bagir and Azis Anwar Fachrudin, “Democracy and the ‘Conservative Turn’ in Indonesia”..., p. 143.

<sup>28</sup> Zainal Abidin Bagir, “Resolusi Melawan Intoleransi dan Prospek untuk Merevisi Peraturan tentang Penodaan Agama,” in Lena Larsen et. al., *HAM dan Syariat: Sebuah Pengantar*, trans. Reni Indardini (Bandung: Mizan, 2021), p. 369-370.

Human Rights Council Resolution 22 of 1993. The documents and instruments state that the right to choose, change choices, or not choose is an absolute right that cannot be limited by anyone (non-derogable). The concept of freedom serves as a guarantee for an individual's personal freedom rights (forum internum) to believe in accordance with their conscience. Due to its personal extent, the freedom at this stage is a constituent of autonomous individual rights, and once again, it cannot be restricted by any institution.<sup>29</sup>

However, it is important to recognize and distinguish that religious freedom at the individual level only pertains to the individual's personal beliefs and practices. It cannot be automatically extended to communal spaces. Furthermore, the right to express and manifest one's religion or beliefs is subject to certain limits and criteria. According to Article 18 of the ICCPR, limitations on external forums are permissible if they meet three conditions: (1) they are based on law; (2) they relate to and are necessary to protect public safety, public order, public health, public morals, as well as the fundamental rights and freedoms of others; and (3) the limitation is necessary to achieve the intended purpose.

In contrast to internal forums, which do not permit intervention or restrictions from individuals or institutions, external forums implicitly endorse and necessitate the involvement of the state in carrying out restrictive measures. Because the state has the political and legal authority with the full constitutional right to address societal issues in external forums, its presence is necessary.<sup>30</sup> More importantly, the State needed to take a role here, especially to eliminate the frequent interference of dominant institutions or groups which are not entitled to be restrictive. It should be noted that while the state has the authority to regulate and restrict external forums, there are circumstances under which the legitimacy of such limitations can be challenged. In this regard, the state frequently disregards, if not outright disregards, the requisites that must be satisfied prior to the implementation of regulatory limits.

The implementation of religious freedom regulations by the Indonesian government has different restrictions under different regimes. This research adapts to the context of Article 18 of the ICCPR, which mandates the Indonesian government to impose necessary restrictions, particularly for the purpose of maintaining public order. In this article, implementation of restrictions is explained under the condition that they conform to two requirements — namely, they are “written in the law” and “necessary” for

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<sup>29</sup> John H. Garvey. “An Anti-Liberal Arguments for Religious Freedom,” *Journal of Cotemporary Legal Issues* 7 (1996): p. 276-292.

<sup>30</sup> Ismatu Ropi, “Konstitusi dan Nomenklatur Kebebasan Beragama: Pengalaman Berbagai Negara”, *Ilmu Ushuluddin*, Vol. 7, Nomor 1, (Januari: 2020): p. 62.

public order protection. Bagir claims that simply being stated in the law is insufficient in terms of applying restrictions. He believes that it is important to consider whether restrictions on external forums are indeed necessary.<sup>31</sup> The necessity of restrictions serves as a measure for the implementation and protection of human rights in a given country. If restrictions are deemed increasingly unnecessary, it can be inferred that the country is relatively safe in terms of implementing and protecting human rights, without any major issues.

In the Indonesian context, Article 28J of the 1945 Constitution and several other laws serve as the primary parameters for external forum restrictions. An example of such limitations includes Articles 154-181 of the Criminal Code Law in Chapter V, which pertains to Crimes against Public Order. These regulations address matters that are deemed to threaten public order, such as religious blasphemy, incitement, hate crimes, and similar offenses. Additionally, according to General Comment No. 22 of the United Nations Human Rights Council in 1993, restrictions can be imposed for specific purposes and must be directly proportional to the underlying needs. If a restriction is applied in a discriminatory way, its validity cannot be acknowledged. The conclusion drawn by Bagir as to the validity of state-imposed restrictions must adhere to the four elements outlined in Article 18 of the ICCPR: (1) legality, (2) necessity, (3) proportionality, and (4) non-discrimination.<sup>32</sup>

Martin Scheinin's analysis, as mentioned by Ismatu Ropi, also requires the validity of state regulations on external forums in four main aspects, which are generally more or less the same as those required by Bagir. Firstly, state regulations should be based on non-discriminatory laws. Secondly, the regulation must not be selectively applied and should extend equally to all religious and belief groups and individuals. Thirdly, the restrictions must be proportionate to the underlying needs. Fourth, there is a clear connection between the demands of the public and limitations on religious beliefs.<sup>33</sup>

In Indonesia, the constraints on individuals' and groups' religious freedoms seem to be excessively restrictive. While it is undeniable that freedom, including the freedom of religion, has limitations, religious freedom has particular criteria within which it can be restricted, particularly in the external forum aspect. The Indonesian government often limits religious freedom without considering the conditions of permissible restrictions. According to Zainal Abidin Bagir, the implemented religious freedom regulations in

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<sup>31</sup> Zainal Abidin Bagir et al, *Membatasi Tanpa Melanggar: Hak Kebebasan Beragama atau Berkeyakinan*, (Yogyakarta: CRCS, 2019), h. 11.

<sup>32</sup> Zainal Abidin Bagir et al, *Membatasi Tanpa Melanggar: Hak Kebebasan Beragama atau Berkeyakinan...*, p. 12.

<sup>33</sup> Martin Scheinin, "Freedom of Thought, Conscience and Religion" *Studia Theologia*, Vol. 54, (July, 2000): p. 5-18

Indonesia are paradoxical. They restrict things that are completely impermissible to limit and often fail to limit things that should be restricted.

“Liberty has limits and constraints. The matter concerns the legal restrictions placed on freedom, rather than the debate on whether they should exist. Some freedoms are needlessly restricted, while others that could be restricted are not. The Indonesian government often cites public order as a reason to justify overly restrictive measures. The interpretation of public order is overly broad. This interpretation is exemplified by the Ahmadiyah case”.<sup>34</sup>

A flawed process of restricting religious freedom in Indonesia is revealed in the interview with Bagir. This issue, which is not widely known, has become a significant problem for Bagir. Restrictions are not imposed equitably across religious groups and beliefs, but rather impact those who have less numerical and societal power. Consequently, Ahmadiyah is one of the many victims of the Indonesian government’s unequal restrictions. In general, limitations on the ability to practice religious freedom against the Ahmadiyah group stem from their classification as a heretical group that deviates from traditional Islamic teachings. The group is accused of having the potential to disrupt public order due to their beliefs which do not align with mainstream Islamic groups. In detail, the restrictions imposed on the Ahmadiyah group are delineated in the Joint Decree (SKB) issued by the Minister of Religion, Attorney General, and Minister of Home Affairs of the Republic of Indonesia under No. 3 of 2008/No. KEP-003/A/JA/6/2008/No. 199 of 2008. The decree pertains to Warnings and Orders directed towards the adherents, members, and/or management members of the Indonesian Ahmadiyah Congregation (JAI) and Community Members. The decision stated in the second point of the SKB is unequivocal.

“To warn and instruct the followers, members and/or administrators of the Indonesian Ahmadiyah (JAI), who claim to be Muslim, to cease and desist from propagating interpretations and activities that deviate from the basic tenets of the Islamic religion, particularly from propagating an ideology that recognizes the existence of Prophets with their respective teachings following the Prophet Muhammad SAW”.<sup>35</sup>

According to the SKB’s statement, the state violates unequal restrictions. Additionally, it intentionally excludes discussing its indifference to the limitations outlined in Article 18 of the ICCPR. The state regulations implemented via the SKB are founded upon discriminatory laws, indirectly

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<sup>34</sup> Zainal Abidin Bagir, interviewed by Abd. Rasyid, Jakarta, August 5 2022, at 13.34 WIB.

<sup>35</sup> The Joint Decree (SKB) of the Ministry of Religious Affairs, the Attorney General, and the Minister of Home Affairs of the Republic of Indonesia is available in full on the website <https://ahmadiyah.org/wp-content/uploads/2012/12/SKB-3-Mentri-tangan-Ahmadiyah.pdf>

legitimizing or even promoting discriminatory actions against Ahmadiyah from intolerant groups. The Setara Institute's annual report published in 2013 corroborates the prevalence of freedom violations in Indonesia, with the Ahmadiyah Congregation being the most heavily affected. Out of the 292 forms of action that comprised the total 222 incidents of infringements on freedom of religion or belief across 20 provinces, the Ahmadiyah Congregation was subject to 59 instances of various violations.<sup>36</sup>

It shows that the enforcement and implementation of prototype religious regulations in Indonesia is excessive and exceeds existing limits. Limitations on external forums are not rooted in legal statutes, but rather derive from statutory regulations and even non-binding regulations or decrees, such as the SKB of the three state institutions mentioned earlier. In light of this case, Bagir cautioned that the state is not obligated to protect or intervene in particular religious interpretations. Rather, the state should safeguard each citizen's right to choose their own religious interpretation, regardless of the religion, sect, or interpretation's form, and understanding (moderate, conservative, fundamentalist, progressive, or others). The state must refrain from interfering in evaluating religious interpretations or behavior that are considered appropriate (orthopraxy).

The proposed clarifying statement by Bagir is in line with what is implied in the briefing of international documents such as the International Covenant on Civil and Political Rights (ICCPR) regarding freedom of religion, namely the protection of the right of a person or group to adhere or not to adhere to a religion/belief, regardless of what and how a religion or belief is believed and manifested. KBB protects and defends individuals based on their humanity, rather than subjective evaluations such as personal understanding, group affiliations, interpretations, or religious beliefs. It is important to note that states frequently disregard restrictive measures as outlined in Article 18 of the ICCPR. It is important to note that states frequently disregard restrictive measures as outlined in Article 18 of the ICCPR.<sup>37</sup> Article 18 (3) ICCPR, as ratified under Law Number 12 of 2005, specifies the legitimate conditions for limitations and must be cited accordingly.

"Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect **'public**

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<sup>36</sup> Halili and Bonar Tigor Naipospos, *Stagnasi Kebebasan Beragama: Laporan Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia Tahun 2013* (Jakarta: Pustaka Masyarakat Setara, 2014), p. 37.

<sup>37</sup> Maufur, "Menakar Moderasi Beragama dari Perspektif Kebebasan Beragama atau Berkeyakinan", in Zainal Abidin Bagir and Jimmy MI Sormin, (ed.) *Politik Moderasi dan Kebebasan Beragama: Suatu Tinjauan Kritis* (Jakarta: PT Elex Media Komputindo, 2022), p. 152.

**safety**',<sup>38</sup> order, health, or morals or the fundamental rights and freedoms of others".<sup>39</sup>

Infringements of religious freedom restrictions in Indonesia are not only related to selective logging or excessive discrimination in implemented regulations. As Heiner Bielefeldt and Michael Wiener emphasized, the government does not seem to fully comprehend the term "only" in the regulation. Specifically, the word "only" denotes that the state cannot impose restrictions arbitrarily, without general and comprehensive permission. States may only implement restrictions once the conditions for those restrictions have been met.<sup>40</sup> Article 18 (3) of the ICCPR is a standard reference that cannot be negotiated or eliminated in an attempt to impose restrictions, regardless of the reason.

The regulatory restrictions on the KBB are focused solely on achieving legitimate goals, such as protecting essential elements and needs. These restrictions demand conformity with the law and ensure that any action taken is genuinely necessary. Bagir contends that the current situation of the Indonesian KBB is affected not only by excessive limitations but also by the historical legacy and atmosphere of the independence era.<sup>41</sup>

Bagir's assessment appears to be based on the early history of the establishment of constitutional guarantees for the right to religious freedom in Indonesia, particularly those contained in Article 29 of the 1945 Constitution (before amendments). The guarantee of the KBB emerged three years prior to

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<sup>38</sup> It should be noted that the official ICCPR ratification document (UU No. 12/2005) incorrectly translates the term "public safety" as "security," which can have a connotation beyond the intended meaning "safety" as "security," which can carry a connotation beyond the intended meaning of safety. The correct interpretation of "safety" refers to protection against threats to life, which differs from "national [public] security" as mentioned in Article 19 (3). "Security" refers to potential harm to a nation, its territory, and political autonomy from any armed force or threat. "Safety," on the other hand, does not involve armed forces. This distinction has significance beyond mistranslations and can influence various approaches to addressing human rights concerns, causing considerable confusion.. For further information, see Zainal Abidin Bagir et al, *Membatasi Tanpa Melanggar: Hak Kebebasan Beragama atau Berkeyakinan...*, p. 34-39.

<sup>39</sup> The result of the ratification of the ICCPR documents in the Indonesian context, especially the ratification of article 18 ICCPR, can be found on the page <https://www.dpr.go.id/doksetjen/document/-Regulasi-UU-No.-12- Tahun- 2005-On-Radiation-of-the-International-Covenant-On-Civil-and-Political-Rights-1552380410.pdf>.

<sup>40</sup> Heiner Bielefeldt and Michael Wiener, *Menelisik Kebebasan Beragama Prinsip-Prinsip dan Kontroversinya*, trans. Trisno Sutanto (Bandung: Mizan, 2021), p. 91-92.

<sup>41</sup> Zainal Abidin Bagir, "Kajian tentang Kebebasan Beragama dan Berkeyakinan dan Implikasinya untuk Kebijakan.", in Ihsan Ali Fauzi et al., (ed.) *Kebebasan, Toleransi dan Terorisme: Riset dan Kebijakan Agama di Indonesia* (Jakarta: Pusat Studi Agama dan Demokrasi Yayasan Paramadina, 2017), p. 59-64.



the strengthening of the Universal Declaration of Human Rights (UDHR) by the UN in 1948. Bagir viewed the content of the 1945 Constitution as aspiring for Indonesia to become an integralistic nation. According to Bagir's citation of Lindsey's team, this aspiration has implications for the state's treatment of its citizens, as the state prioritizes obligating citizens over securing their civil and political rights. In accordance with Bagir's argument, Ismatu Ropi asserts that the 1945 Constitution served as a unifying instrument that reconciled two divergent ideological camps — integralistic state ideology (advanced by Soekarno and Soepomo) and non-integralistic ideology encompassing individualism and liberalism (espoused by Muhammad Hatta and Muhammad Yamin) — that envisioned the formation of the Indonesian state in the future.<sup>42</sup>

Bagir's comments on the state of the KBB in Indonesia, as measured by the constitutional guarantees contained in Article 29 of the 1945 Constitution, lead to the understanding that the KBB in force in Indonesia is not really aimed at guaranteeing religious freedom. The existence of political negotiations over integralistic and non-integralistic perspectives further supports this conclusion. Bagir's evaluation of the 1945 Constitution pertains to its role as a unifying instrument, as explained by Ropi. The Constitution does not sufficiently ensure freedom of religion as a human right, due to its integralistic interpretation, which remains prevalent despite numerous amendments.

The flawed implementation of an integristic system within a framework of religious freedom leads to significant implications, notably the disregarding of individuals' rights and freedoms.<sup>43</sup> The core principle of the integristic system rests upon a sense of familiarity and relies on it to address all obstacles. This approach differs from non-integralism, which emphasizes freedom and individualism. The proponents of integralism aimed to avoid such principles. Additionally, integralism presupposes a unity between the leader and the people (*jumbuhing kawula ing gusti*), leading to the notion that the leader's actions are inherently correct and not subject to accountability. This system became a shield for the New Order Era (Orba), providing apologists with a justification for every regulation enacted.<sup>44</sup>

Moreover, Bagir suggests that the universality of the KBB in the international realm conflicts with the cultural relativism prevalent in Indonesia's regional context, which makes efforts to implement it challenging and limited. To substantiate this argument, Winnifred Fallers Sullivan raises doubts.

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<sup>42</sup> Ismatu Ropi, "Konstitusi dan Nomenklatur Kebebasan Beragama: Pengalaman Berbagai Negara"..., p. 74.

<sup>43</sup> Marsillam Simandjuntak, *Pandangan Negara Integralistik: Sumber, Unsur, dan Riwayatnya dalam Persiapan UUD 1945*, Cet. II (Jakarta: Grafiti Press, 1997).

<sup>44</sup> Ihsan Ali Fauzi et al., *Mengelola Keragaman: Pemolisian Kebebasan Beragama di Indonesia*, (Jakarta: Paramadina and MPRK UGM, 2012), p. 68.

Religious freedom, as a universally applicable concept, is not feasible according to the author. In certain countries, what is referred to as religious freedom was previously restricted to recognized religions and was closely tied to government interests. Religions that align with the government are privileged over those that do not receive the same treatment.<sup>45</sup> Sullivan's observations demonstrate a clear trend towards limiting and prohibiting the practice of religious beliefs in both private and public spheres.

Without fully agreeing with Sullivan's argument, it is clear that religious freedom in Indonesia differs from its conceptualization in international human rights instruments like UDHR, ICCPR, General Comments, ADHR, and others. At this point, Bagir concurred with Sullivan's evaluation that the Indonesian government exhibited an imbalance, inaccuracy, and lack of understanding in defining religion. Furthermore, defining religion appeared to be mostly influenced by the developing political framework.<sup>46</sup> To explain this construction, Bagir examines negotiations between Muslim and Christian groups that influenced the first principle of Pancasila: Belief in the one and only God. These precepts are the product of a compromise resulting from the deletion of the seven words "Islamic law" in the Preamble to the 1945 Constitution.<sup>47</sup> The definition of religion in Indonesia was derived by referencing criteria required by monotheistic religions, which mandates all religions to adhere to regulated religious criteria. Bagir pointed out the state's attempt to intimidate religion by citing the forced monotheistic conversion of Hinduism and Buddhism as evidence. Additionally, indigenous religious groups are not exempt from engaging in acts of intimidation.

Bagir's conceptualization of religion as a product of political construction highlights two aspects that have a direct impact on its definition, specifically (1) the state's regulation of religion since Indonesia's independence and (2) the practice of imperialism by Western countries against their colonies. Referring to Willfred Cantwell Smith, Bagir observes that the "West" has reified the complex reality of religion in an effort to democratize it; imposing their own concepts and standards onto religious groups.<sup>48</sup> An example of this simplification is the case of Hinduism, where British colonialism added the suffix "-ism" in an attempt to simplify India's intricate religious traditions. This politically-driven state regulation of religion is a significant factor contributing

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<sup>45</sup> Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton: Princeton University Press, 2005), p. 154.

<sup>46</sup> Zainal Abidin Bagir, interviewed by Abd. Rasyid, Jakarta, August 5 2022, at 13.41 WIB

<sup>47</sup> Zainal Abidin Bagir, "Mengkaji Agama di Indonesia", in Samsul Maarif, (ed.) *Studi Agama di Indonesia: Refleksi Pengalaman* (Yogyakarta: CRCS, 2015), p. 8

<sup>48</sup> Zainal Abidin Bagir, "Mengkaji Agama di Indonesia"... , p. 11.

to numerous violations against the religious freedom, particularly targeting non-conformist religious groups that are on the rise in Indonesia.

Violations of freedom of religion in Indonesia extend beyond intimidating government regulations targeting certain religious groups. Zainal Abidin Bagir highlights that civil society also contributes to these violations, which are worsened by the state's efforts to provide facilities and the existence of legitimacy through the aforementioned regulations. Bagir demonstrated numerous instances of religious freedom violations, including their perpetrators and underlying causes. He primarily presented this evidence through the CRCs UGM annual report on the state of religious freedom in Indonesia. One example he cited was the discrimination faced by non-orthodox groups like Ahmadiyah and Shia.

According to him, the discrimination against the non-Orthodox communities results mainly from the frequent application of regulations that contradict and are not supportive of the right to freedom of religion, in particular, Act No. 1/PNPS/1965, hereafter referred to as the "blasphemy act". According to Bagir's observations, the creation of the law did not intend to target Ahmadiyah and Shia groups, but instead targeted religious and spiritual beliefs. However, various groups have used the law as justification to view Ahmadiyah and Shiites as problematic since the reform period. Bagir's statement can be connected to derivative regulations stemming from the Blasphemy Law, specifically Joint Decree (SKB) 3 of the Minister of Religion No. 3 of 2008, which explicitly prohibits the Ahmadiyah Community from disseminating their religious beliefs. Meanwhile, the fatwa issued by the Indonesian Council of *Ulama*/Majelis Ulama Indonesia (MUI) for the East Java region, as stated in regulation No.1 Kep-01/SKF-MUI/JTM/I/2012, provides insight into the Shia case and their teaching considered as heretical.

Accusing Shi'a of heresy cannot be considered a legal rule, but merely a recommendation made by a political institution, which is not necessarily authoritative, and it is generally violated by state actors such as the MUI. Violations within Shia cases tend to be enacted by non-state actors, such as the MUI. However, it is evident that the creation of these two regulations is closely linked to Bagir's statement that the Blasphemy Law forms the foundation and origin of prejudiced derivative regulations against minorities.

Bagir played a significant role in advocating for the Ahmadiyah and Shia groups who suffered violations. His testimony as an expert witness during the trial for the judicial review of Law No.1/PNPS/1965 at the Constitutional Court in 2017 exemplified his impact. During the trial, Bagir aligned with the Ahmadiyah and Shiites by suggesting that the Constitutional Court present a conditional interpretation of the law holding it entirely accountable for violating the rights of particular citizens or groups. It must also be recognized that

Bagir's attention to incidents of KBB violations in Indonesia wasn't solely based on numerical reports.<sup>49</sup> However, it is crucial to note the infringements on the freedom of religion of the Indonesian Ahmadiyah Congregation (JAI) and Shia groups. The annual religious freedom report issued by the Setara Institute (from 2007 to date) clearly highlights these violations. This report serves as valuable data to support Bagir's claim that the Ahmadiyah and Shia are the groups with the highest susceptibility to having their freedom rights suppressed.

**Table 1.**

Setara Institute Annual Report on Religious Freedom Violations against Ahmadiyah and Shia Groups

No.	Year	Number of Incidents	
		Ahmadiyah	Shia
1.	2007	15 incidents	-
2.	2008	238 incidents	2 incidents
3.	2009	33 incidents	7 incidents
4.	2010	50 incidents	-
5.	2011	114 incidents	10 incidents
6.	2012	31 incidents	34 incidents
7.	2013	59 incidents	23 incidents
8.	2014	11 incidents	15 incidents
9.	2015	13 incidents	31 incidents
10.	2016	27 incidents	23 incidents
11.	2017	8 incidents	10 incidents
12.	2018	5 incidents	7 incidents
13.	2019	6 incidents	8 incidents
14.	2020	8 incidents	7 incidents

**Source:** Annual Report on the Condition of Religious Freedom, Setara Institute (2007-2020).

Setara's data show that there has been an uneven increase and decrease in religious freedom violations against the Ahmadiyah and Shia groups. The JAI group experienced the most violations of their freedom of religion with a cumulative total of 618 cases, while the Ahmadiyah group faced 177 cases of religious freedom violations. These findings demonstrate the need for continued efforts to protect religious freedoms for all individuals. In 2008, the Ahmadiyah group faced a severe violation of their freedom of religion, with a total of 238 reported cases.

<sup>49</sup> For further information, see "[Before 1998, Ahmadiyah and Shia were not said to have committed blasphemy.](#)", accessed on 28 October 2023 at 10.12 WIB.

Violations took many forms, including acts of intolerance, state indifference, state repression, and criminal acts committed by community groups or individuals. The Minister of Religion, the Minister of Home Affairs, and the Attorney General are the primary actors responsible for violations within the Ahmadiyah group. A further investigation may be necessary to address any additional violations. However, it should be noted that these institutions have only been recorded as committing one violation, which was issuing SKB No. 3 of 2008/No. KEP-003/A/JA/6/2008/No. In 2008, the Indonesian government issued a warning and orders document (SKB) aimed at Adherents, Members, and/or Management Members of the Indonesian Ahmadiyah Congregation (JAI) and Community Members. The SKB marked the beginning of massive violations against Ahmadiyah, which were reported in several areas.<sup>50</sup>

The effects of the SKB have prompted several other regions to enact similar regulations restricting the existence of the Ahmadiyah group in order to prevent the spread of its religious beliefs, which the SKB considers to be contrary to mainstream religious interpretations. The Governor of South Sumatra enacted Decree No. 563/KPTS/BAN.KESBANGPOL&LINMAS/2008, which is derived from the SKB and restricts the Ahmadiyah group. After the issuance of the Governor's Decree, South Sumatra ranked second among the three provinces with the highest number of violations against the Ahmadiyah group, accumulating a total of 49 cases of violations. West Java came in first place with 57 cases, followed by Jakarta in third place with 34 cases. This outcome is regrettable.<sup>51</sup>

In addition to the Ahmadiyah group, the Shia group has also experienced violations of its right to freedom of religion, with a total of 34 violations. Consistent with the aforementioned Setara report, these 34 instances are primarily concentrated in 2012. The most devastating of these violations against the Shia group transpired in Nangkrenang Hamlet, Karang Gayam, Omben, Sampang Regency, Madura, located in East Java Province. For two years in a row, the Ahmadiyah group faced oppressive treatment from locals following a similar pattern of incidents, with the initial tragedy taking place on December 29th, 2011 and the second on August 26th, 2012. Furthermore, the Shia groups continue to face deliberate acts of intimidation, terrorization, and criminalization from the dominant *Ahl al-Sunnah wa al-Jamā'ah*/Sunni group.<sup>52</sup> The case of the

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<sup>50</sup> Ismail Hasani, (ed.) *Berpihak dan Bertindak Intoleran: Intoleransi Masyarakat dan Restriksi Negara dalam Kebebasan Beragama/Berkeyakinan di Indonesia* (Jakarta: Setara Institute Publication, 2009), pp. 36-39.

<sup>51</sup> Ismail Hasani, (ed.) *Berpihak dan Bertindak Intoleran: Intoleransi Masyarakat dan Restriksi Negara dalam Kebebasan Beragama/Berkeyakinan di Indonesia...*, p. 40.

<sup>52</sup> Halili et al., *Kepemimpinan Tanpa Prakarsa: Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia 2012* (Jakarta: Pustaka Masyarakat Setara, 2013), p. 75.

Ahmadiyah and Shia groups is one of many religious freedom violations that have surfaced in Indonesia. Bagir classified the Ahmadiyah and Shia cases as persecution, citing their systematic mistreatment as violating fundamental rights, namely religious freedom.<sup>53</sup>

Bagir raised concerns regarding Joint Decree (SKB) No. 3 of 2008/No. KEP-003/A/JA/6/2008/No. 199 of 2008, which pertains to Warnings and Orders given to members and/or management members of the Indonesian Ahmadiyah Congregation (JAI) and its community members. Bagir suggests that the decree does not explicitly prohibit the Ahmadiyah group, but it does restrict their religious rights from being made manifest to the public.<sup>54</sup> The SKB content states that the restrictions imposed on Ahmadiyah were intended to preserve public order, in response to the extensive allegations that Ahmadiyah was disseminating religious interpretations that clashed with those held by Islamic communities in general. In terms of religious freedom, limitations can be sanctioned only to the extent that they conform with the law and are indispensable. However, limitations on Ahmadiyah seem to be excessive and conflicting with the allowed restrictions, which aim to safeguard public safety, public order, public health, public morals, and fundamental rights and freedoms of others.

In order to determine the need for regulation, Ismatu Ropi emphasizes the importance of ensuring that the rights of minority groups are fulfilled, accommodations are made, and conflicts are minimized.<sup>55</sup> However, momentous events display the contrary outcome, with marginalization occurring rather than the guaranteeing of the aspirations and entitlements of minorities. This regulation does not minimize the risk of conflict; instead, it prolongs conflict. As discussed earlier in this chapter, Bagir cautioned the state against implementing regulations that conflict with the specified guidelines. While the state is not responsible for safeguarding any particular religious interpretation, it is obligated to ensure that each citizen can practice their chosen religion and interpretation without interference. State regulations, such as the SKB for the Ahmadiyah group, present a challenge for managing religion in Indonesia. Following the issuance of the three Ministerial Decrees prohibiting activities of the Indonesian Ahmadiyah Congregation, acts of persecution and violence

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<sup>53</sup> Zainal Abidin Bagir, *Kajian tentang Kebebasan Beragama dan Berkeyakinan dan Implikasinya untuk Kebijakan*..., p. 70-71.

<sup>54</sup> Zainal Abidin Bagir et al., *Laporan Tahunan Kehidupan Beragama 2011* (Yogyakarta: CRCS UGM, 2013), p. 36.

<sup>55</sup> Ismatu Ropi, *Religion and Regulation in Indonesia* (Singapore: Palgrave MacMillan, 2017), p. 29.

against them have become more widespread and severe.<sup>56</sup> The aforementioned displays that the safeguarding of the well-being of Ahmadiyah members, previously mentioned in the SKB, has not been genuinely actualized. It has instead evolved into a tool utilized by intolerant factions to carry out oppressive and discriminatory actions, which are directly affirmed by the government.

In the case of the Shia community in Sampang, Bagir observed a discrepancy between the religious institutions at the central and regional levels. Mainstream groups in Sampang, particularly the Nahdlatul Ulama' (NU) community organization, keep pointing to the fatwa issued by the East Java MUI, which considers the Shia faction led by Tajul Muluk to be heretical and non-conforming, and which can be found in the East Java MUI's Decision No. 1, and which serves as the basis for accusing the Shia community in Sampang of alleged heresy.<sup>57</sup> Kep-01/SKF-MUI/JTM/I/2012 addresses the topic of Shia teachings being labeled as heretical.<sup>58</sup> The regional administrators of MUI and NU have made such claims, but there is no consensus at the central level that Shiites are a heretical group. Rather, the Central MUI acknowledges that Shia has main teachings which differ from Sunni. The emphasis is on caution rather than outright condemnation of Shia as a heretical teaching.<sup>59</sup> Bagir thinks that this abrupt interruption has significantly affected instances of infringement on the freedom of religion and belief that aim at minority communities.

Although critical of Indonesia's religious freedom laws and environment, he avoids being dismissive. According to Bagir's assessment of the general landscape, religious freedom laws in Indonesia seem to be in good shape, despite the existence of many problems that still need to be addressed. To demonstrate that the KBB regulations are not entirely deficient, Bagir compares Indonesia's religious freedom conditions with those of Malaysia. Although the Indonesian government tends to limit the religious freedom of minority groups like Ahmadiyah and Shia, their existence is not directly prohibited. In contrast to Malaysia, the Shia group has no right to freedom of religion, neither in internal nor external forums. The Malaysian government prohibits all activities related to

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<sup>56</sup> Mahaarum Kusuma Pertiwi, *Membatasi Tidak Melindungi: Analisis Sosio-Legal SKB 3 Menteri No.3/2008 dan Peraturan Gubernur Jawa Barat No.12/2011 tentang Ahmadiyah* (Yogyakarta: CRCS UGM, 2021), p. 9.

<sup>57</sup> Zainal Abidin Bagir et. al., *Laporan Tahunan Kehidupan Beragama 2012* (Yogyakarta: CRCS UGM, 2013), p. 16.

<sup>58</sup> For further information, see <https://www.republika.co.id/berita/nykugi334/fatwa-mui-jatim-ajaran-syiah-sesat>, accessed on October 28 2022 at 19.27 WIB.

<sup>59</sup> See Direktorat Kementerian Agama RI Ditjen Bimas Islam dan MUI, *Himpunan Fatwa MUI tentang Paham Keagamaan di Indonesia* (Jakarta: Ditjen Bimas Islam Kementerian Agama RI, 2011), pp. 60-61. The MUI's official fatwa on Shia Islam is available for reading on the <https://mui.or.id/wp-content/uploads/files/fatwa/06.-Faham-Syiah.pdf>. This source was accessed October 27th, 2023, at 21:32 WIB.

the Shia, including the publication of books, the giving of lectures, and other types of activities.

Bagir's analysis of the state of religious freedom in Indonesia parallels Tamir Moustafa's ethnographic research on the Malaysian constitution. In *Constituting Religion: Islam, Liberal Rights, and the Malaysian State*, Moustafa argues that religious controversies in a region cannot be divorced from the court decision-making process. He claims this is due to the state's frequent and excessive intervention in religious matters during the decision process. The state asserts its authority to determine the veracity of religious teachings. Moustafa specifically cited the Malaysian model of judicializing religious matters, in which the court assumes the role of arbiter in determining the validity of a controversial faith. In this way, the state positions itself as the ultimate determiner of right and wrong in religious matters.<sup>60</sup>

## Conclusion

Although Zainal Abidin Bagir does not specifically argue that the regulation of religious freedom in Indonesia for minority groups is not too bad, there is one thing that can be understood from Bagir's seemingly metaphorical assessment; state intervention, which seems excessive and often triggers repeated violations of religious freedom every year, indirectly shows that the dark side of implementing religious freedom regulations in Indonesia still exists and in some moments, although not always automatically, is more massive than the good side. The numerous regulations that curtail the activities of minority groups, such as the Blasphemy Law, contribute to the limited access to religious freedom for these groups. The existence of these restrictions not only highlights the persistence of freedom-related issues in Indonesia but also oversimplifies the complexity of each group's understanding of religion, thereby infringing on their personal freedom in unacceptable ways.

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<sup>60</sup> See Tamir Moustafa, *Constituting Religion: Islam, Liberal Rights, and the Malaysian State* (Cambridge: Cambridge University Press, 2018), p. 63.



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