

Minority Rights in a Multicultural Society in Indonesia

Muh. Zuhud Al Khaer Zahir¹, Muhammad Firdaus Rasyid², Muh. Fichriyadi Hastira³, Galank Pratama⁴

¹ Department of Law, Faculty of Law, Universitas Megarezky, Makassar, Indonesia.

Email: muhzuhudalkhaerzahir@unimerz.ac.id

² Department of Law, Faculty of Law, Universitas Andi Djemma, Palopo, Indonesia. Email: muhfirdausr93@gmail.com

³ Department of Government Science, Faculty of Social and Political Science, Universitas Mulawarman, Samarinda, Indonesia. Email: muhfichriyadihastira@fisip.unmul.ac.id

⁴ Department of Political Science, Faculty of Social and Political Science, Universitas Jambi, Jambi, Indonesia.

Email: galankpratama@unja.ac.id

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ABSTRACT

This paper discusses important issues relating to the protection of the rights of minority groups in pluralistic societies, with a particular focus on separatist groups. In the context of diverse societies, minority groups often face significant challenges, ranging from discrimination to violations of their human rights. This article examines these issues with an approach that combines international and national law and analyzes cases that reflect violations of minority rights. From an international law perspective, the protection of minority rights is regulated by various instruments, such as the Convention on Civil and Political Rights and the Declaration of Human Rights. However, its implementation is often hampered by inadequate or contradictory national policies. On the other hand, national laws that do not accommodate minority groups can worsen the situation, especially when it comes to separatist groups that are often seen as a threat to state sovereignty. This article also reviews the steps taken through international mediation and national policy reform to ensure separatist groups receive fair treatment. By reviewing a wide range of literature and case studies, this paper offers a deeper understanding of the importance of an inclusive approach to protecting the rights of minority groups and promoting harmony in pluralistic societies.

Keywords: Rights, Minority, Multicultural, Human Rights.

I. Introduction

In this global context, where interculturally diverse interactions are intensifying, protecting minority rights has become an international issue of particular concern. Minority rights include rights granted to groups that do not exercise dominance in any society, which include, but are not limited to, ethnic, religious, linguistic, and sexual orientation groups (Hastira & Patty, 2024). Protecting minority rights is an issue of moral and legal defense governed by several international criteria and internal instruments (Nasution, 2013). Human rights issues are not new to the international community or Indonesia. Extraordinary events have occurred regarding human rights, especially those related to minority rights (Zul Fadhli, 2016). Minority rights are often not taken seriously when, in reality, they should be given more attention; this is indicated by the fact that many countries

still have not regulated minority rights in their national legal framework, so legal protection of minority groups is tough to do. In Indonesia itself, many human rights violations have occurred. After the fall of the New Order regime, which for 32 years was almost dotted with various human rights violations, the reform regime aspired to create democracy in all aspects of life, the rule of law, and respect for human rights without discrimination. However, instead of the long-desired democracy, rule of law, and respect for human rights, freedom has led to violence and discrimination that is no less gratuitous than the despotic rule of the old regime. The difference is that the violence and discrimination in this regime are no longer carried out by state authorities alone but by a handful of community groups carrying specific identities (Ashri, 2023). These groups seem to present oligarchic power amid legitimate republican power. Violence and discriminatory treatment in Indonesia today seem to be increasingly forming social institutions, which are institutionalized and plural as problem solvers. Based on the above events, it is certainly not in line with Article 1, paragraph (3) of the 1945 Constitution. Through the constitution, Indonesia has proclaimed itself as a state of law. The rule of law has the principle that the rights of every citizen must be protected without exception. That everyone is in an equitable position before the law. Even Article 28D paragraph (1) mandates that everyone is entitled to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law.

Moreover, by postulating basic norms, the constitution ranks highest in national law (Kelsen, 2013). The constitution, as the highest law, according to Miriam Budiarmo, must be obeyed by the state and government officials by the postulate of government by laws, not by men (Marzuki, 2011). The Constitution influences regulations, decisions, or administrative policies issued by legislative, executive, and judicial organs. The nature of the rule of law aims to protect individual rights, so the presence of legislative, executive, and judicial entities has a vital role in maintaining and promoting human rights. This is in line with Montesquieu's concept, namely, the need for the division of power to guarantee human rights (Budarmo, 1996).

The labeling of minority groups is a result of the strengthening of identity politics. Identity politics is rooted in primordialism. Pratama (2016). Following Aristotle's concept of polity, Primordialism means 'fighting outward' and 'consolidating inward' (Satryo Pringgo Sejati & Ahmad Burhan Hakim, 2023). Therefore, identity politics always celebrates conflict both *vis-à-vis* and dialectically. Celebrating conflict means defining the self as the Same as the Other (Wahid et al., 2020). The Same always means foremost, while the Other always means minor. That is the superior character. However, it can also be the opposite, and that is the inferior character. Identity politics is always in the range of tension between superior and inferior, between the Same and the Other, between the majority and the minority. Identity politics seems to find strength in the politics of pluralism theory. In the politics of pluralism theory, the existence of minorities changes from being silenced and denied to being questioned and fought for (Terre, 2014).

Respect and protection should also be done by looking at the position of minority groups who are vulnerable to being victims of human rights violations. Minority groups are often forced to follow unfavorable state policies. On the other hand, they lose their political rights due to the different treatment of minority and majority groups by the state. As a result, the existence of minority groups often loses their identity and dignity as fellow beings who must have equal human rights with other humans (Khanif, 2010). From the above background, this paper seeks to explain the rights of minority groups within the framework of a multicultural society from the perspective of human rights and the Indonesian national legal framework.

II. Research Method

This writing uses normative legal research, which answers all questions and problem formulations by briefly explaining the discussion of research results (Irwansyah, 2020). Legal science research with a normative approach focuses on studying legal problems on the issue of norms. This approach will focus on examining legal reality from the perspective of the governing legal substance. The collection of legal materials in this research will be carried out through literature studies, namely legal materials collected, both primary, secondary, and tertiary. These legal materials can be in the form of official documents, reports, and publications in print and electronic form.

III. Results and Discussion

3.1. Minority Rights Under Indonesian Law

In general, minorities refer to groups in society with specific characteristics that distinguish them from the majority group, whether in terms of ethnicity, religion, language, culture, or ideology. According to the United Nations Minorities Declaration, minorities have a specific identity that distinguishes them from the dominant or majority group in a country. This identity can be ethnic, linguistic, religious, or cultural, which affects their social relations with the broader community. In the Indonesian context, minority groups are often identified with religions or ethnic groups that are smaller in number than the majority group. Some examples of minority groups in Indonesia include:

- 1) Religion: Groups that do not belong to the majority religion, such as Christianity, Hinduism, Buddhism, and Confucianism in some Muslim-majority areas.
- 2) Tribe: Tribes smaller in number and outside the majority tribes, such as Javanese or Sundanese, such as Dayak, Minangkabau, Batak, etc.
- 3) LGBTQ+: This group can also be considered a minority in the context of sexual orientation and gender identity in Indonesia, although their presence is often marginalized in the public sphere (Irwansyah, 2020).

The Constitution of the Republic of Indonesia, the 1945 Constitution (UUD 1945), guarantees human rights that apply generally to all Indonesian citizens without distinction of religion, race, ethnicity, or class. Some articles in the 1945 Constitution that emphasize the protection of minority rights include Article 27, paragraph (1) of the 1945 Constitution: "All citizens shall be equal before the law and government and shall uphold the law and government with no exception." Article 28E paragraph (1) of the 1945 Constitution: "Every person is free to embrace a religion and worship according to his religion, choose education and teaching, choose a job, and choose citizenship." These articles provide a strong legal basis for equality and religious freedom, which form the foundation for protecting minority rights in Indonesia.

a. Right to Religion and Worship

Regarding religious freedom, Indonesia guarantees every citizen the right to embrace and worship a religion by the teachings of their religion. This is regulated in Article 28E paragraph (1) and Article 29 of the 1945 Constitution, which states that the state guarantees freedom for everyone to embrace their respective religions. Consequently, although the majority of Indonesia's population is Muslim, minority religious groups such as Christians, Hindus, Buddhists, and Confucians have the right to practice their religion freely and safely, both in houses of worship and in everyday life.

b. Right to Speak and Express Opinions

Freedom of expression is also an important fundamental right for minority groups to voice their opinions or views. Article 28F of the 1945 Constitution states that: "Everyone has the right to communicate and obtain information to develop his/her personal and social environment, and has the right to seek, obtain, possess, store, process, and convey information by using all available channels." Thus, minority groups in Indonesia have the right to voice their aspirations, whether through mass media, organizations, or other public forums. This freedom of expression is important for minority groups to protect and fight for their rights.

c. Right to Non-Discrimination

Indonesia explicitly adopts the principle of non-discrimination in its constitution. Article 28I(2) of the 1945 Constitution states that:

"The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right to non-discrimination, and the right to equal recognition, security, protection, and justice before the law are human rights that cannot be diminished under any circumstances."

This statement emphasizes that discrimination on any basis, including race, religion, or ethnicity, is not justified in Indonesia. Therefore, minorities are entitled to equal treatment in the social, economic, and political spheres without any detrimental or unfair treatment simply because of their different identities.

d. Right to Access Education and Health

Minority groups in Indonesia also have the same rights to access proper education and health services. According to Article 31, paragraph (1) of the 1945 Constitution, every citizen has the right to education. This also aligns with the principle of nondiscrimination that the state must guarantee. Thus, there is no reason for minority groups not to access equal education and health facilities.

3.2. Fulfillment of Minority Rights in a Multicultural Society

Many international instruments recognize and protect minority rights, such as the 1992 UN Declaration on the Rights of Minorities, which emphasizes the right to maintain cultural, linguistic, and religious identity UN General Assembly, 1992. In addition, the 1966 International Covenant on Civil and Political Rights also affirms the right not to be discriminated against by the United Nations, 1966 (M.Zen, 2006). At the national level, countries such as India, Canada, and South Africa have laws that specifically protect minority rights. In General Comment Number 23, as quoted by Patra M. Zen, at least it can be seen that the scope of minorities that exist in a country (or territorial jurisdiction can be based on (1) ethnicity, (2) religion or belief, and; (3) minorities in the scope of language. Various international human rights treaties, important court decisions, and unique mechanisms in the UN in the form of committees, special rapporteurs, working groups, and independent experts strengthen the existence of minority groups as subjects in human rights law. (Smith, 2008). Although Indonesia has provided guarantees for minority rights in its constitution, there are still several challenges in its implementation in the field.

1) Social and Economic Discrimination

Minority groups often face discrimination, both in social life and in access to employment, education, and public services. Despite regulations guaranteeing minority rights, the reality on the ground shows that there are still significant disparities.

2) Limitations in Policy Implementation

Although Indonesia has laws that protect minority rights, there are often gaps in policy implementation. One of the reasons is the unpreparedness of the state apparatus and society in dealing with issues related to the rights of minority groups.

3) The Spread of Intolerance

Although freedom of religion is guaranteed by the 1945 Constitution, minority groups, mainly non-Muslim religions in some areas, often face acts of intolerance and violence. Several cases of attacks on places of worship or persecution of individuals of different religions or beliefs show that there are significant challenges in maintaining social harmony and tolerance.

4) Violence against Minority Groups

Minority groups such as the LGBT+ community are often victims of physical and verbal violence. In some cases, they are subjected to discrimination by the majority or even by the state. In this case, the protection of their rights is still minimal.

From a human rights perspective, minority groups are equal to other rights-holding individuals; however, because minority groups are, in fact, subordinated class citizens, special rights are needed to elevate their dignity. Special rights are not privileges but granted so that minorities can maintain their distinctive identities, characteristics, and traditions. Such special rights are important to achieve equal treatment without discrimination.

The legal protection of the human rights of minority groups in Indonesia is regulated within the framework of the principles of equality before the law and non-discrimination in Article 28 D and Article 28 I of the 1945 Constitution. It is also stated in Article 3 Paragraph (3) of Law Number 39 of 1999 concerning Human Rights. Meanwhile, Article 27 of the *International Covenant Civil and Political Rights*, which has been ratified by Law No. 12/2005 on the Ratification of the ICCPR 1966, stipulates that minority groups cannot be denied their rights. Meanwhile, Law No. 39/1999 does not mention protecting minority groups. Protection of the human rights of minority groups, Law No. 39/1999 on Human Rights does not mention it. It is only mentioned in Article 5, paragraph (3): In the explanation of this article, what is meant by vulnerable groups include the elderly, children, the poor, pregnant women, and people with disabilities. Although minority groups are not recorded, in the development of human rights law discourse, minority groups are recognized as the leading group of subjects of human rights law, along with *indigenous people* and *refugees*. Various international human rights treaties, important court decisions, and unique mechanisms within the UN in the form of committees, *special rapporteurs*, *working groups*, and *independent experts* strengthen the existence of minority groups as subjects in human rights law. (Zul Fadhli, 2016).

Minority groups are on an equal footing with other individual rights holders. Equality is a key principle of human rights. Inequality and discriminatory treatment have no place. There is no license for anyone to act discriminatorily against anyone, whether he or she is from a minority group or not, including by the state as a legal subject with human rights obligations. All people have equal access to political life, religion, choice of beliefs, practice of religious rituals in peace, language, culture, freedom from torture, guaranteed security, and access to all human rights. However, because minorities are, in fact, class citizens, special rights are needed to uplift their dignity. (Zul Fadhli, 2016). Special rights are not privileges but granted so that minorities can maintain their distinctive identities, characteristics, and traditions. Such special rights are necessary to achieve equal treatment. Only when minorities are empowered to worship according to their religion, use their languages, benefit from services that they organize themselves, and participate in the political and economic life of the country will they achieve the status that the majority group has always had.

IV. Conclusion

Protecting minority rights is important to building an inclusive and just society. Although significant challenges remain, many efforts are underway at various levels to improve the living conditions of minority groups. Through international cooperation and strong commitment from governments and civil society, there is hope for better achievement of equal rights worldwide. In this regard, while Indonesia has a strong foundation in the protection of speech rights, diversity of beliefs, non-discrimination, and various other aspects related to minority rights, implementation on the ground remains problematic. Social discrimination, lack of policy compliance, intolerance, and mistreatment continue to occur. Therefore, awareness and hard work by the government, legal institutions, and society are still needed so that the speech rights of minority groups are respected and protected.

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