

Analysis Protection of the Right to Freedom of Religion in Prohibition of Worship at Al Aqsa Mosque by Israeli Police to Palestinians: Insight from Indonesia

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Abstract

This study conducts an analysis of the protection of the right to freedom of religion amidst the prohibition of worship at the Al Aqsa Mosque by Israeli police targeting Palestinians. Amidst ongoing tensions in the region, particularly in Jerusalem, this research scrutinizes the legal frameworks and human rights implications surrounding the restrictions imposed on worship activities at one of Islam's holiest sites. Utilizing qualitative research methods, including legal analysis and examination of relevant international human rights instruments, this study aims to elucidate the complexities and challenges faced by Palestinians in exercising their religious freedoms. Through an exploration of primary and secondary data sources, including reports, legal documents, and testimonies, this research seeks to shed light on the socio-political context and legal justifications underpinning the actions of the Israeli authorities. Ultimately, this study



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contributes to the broader discourse on religious freedom and human rights violations in conflict-affected areas, highlighting the urgent need for international attention and intervention to safeguard the rights of Palestinians to worship freely at the Al Aqsa Mosque.

KEYWORDS *Freedom of Religion, Human Rights, Conflict, Violence*

Introduction

The prohibition of worship at the Al Aqsa Mosque by Israeli police targeting Palestinians has emerged as a pressing issue with profound human rights implications. Amidst the ongoing tensions in the region, particularly in Jerusalem, the restrictions imposed on worship activities at one of Islam's holiest sites have sparked international concern. Drawing upon insights from Indonesia, a country known for its diverse religious landscape and commitment to religious freedom, this paper conducts an analysis of the protection of the right to freedom of religion in the context of the Al Aqsa Mosque prohibition.

As a nation that upholds the principles of religious tolerance and pluralism, Indonesia provides a valuable perspective on the challenges faced by religious minorities and the importance of safeguarding religious freedoms. Through an examination of legal frameworks, international human rights instruments, and socio-political dynamics, this study aims to shed light on the complexities surrounding the prohibition of worship at the Al Aqsa Mosque and its impact on Palestinian communities.

In addition, human rights are fundamental entitlements inherent to all individuals by virtue of their humanity. They encapsulate the essential freedoms and protections necessary for human existence and dignity.¹ Human rights are not contingent upon the actions or recognition of

¹ Stephen Hopgood, *The Endtimes of Human Rights*. (Cornell University Press, 2013). See also Upendra Baxi, *The Future of Human rights*. (Oxford: Oxford University Press, 2007); Charles R. Beitz, *The Idea of Human Rights*. (Oxford: OUP Oxford, 2009).

others; rather, they are intrinsic to human nature itself. As articulated in Article 1 Sub-Article 1 of Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on Human Rights Court, these rights are rooted in the essence and dignity of human beings, bestowed upon them as creatures of the divine. They constitute a universal framework that applies universally, transcending boundaries and affiliations. Central to the concept of human rights is the principle of individual responsibility in safeguarding one's own dignity and respecting the dignity of others. Thus, human rights serve as both a moral compass and a legal imperative, guiding human behavior and interactions towards upholding the sanctity of human dignity.²

With every right comes a corresponding set of obligations. Alongside the recognition of human rights, there exists a parallel framework of human rights obligations—requirements essential for the realization and enforcement of these rights. As individuals exercise their human rights, they are obligated to consider, honor, and respect the rights afforded to others. This conscientiousness towards human rights, dignity, and humanity is ingrained in human existence from the very inception of humanity on earth. Human rights are intrinsic to human nature, inherent from birth, and form an indispensable aspect of human existence. Throughout history, significant global events have underscored humanity's collective endeavor to uphold and defend human rights,

² Bambang Heri Supriyanto, "Penegakan Hukum Mengenai Hak Asasi Manusia (HAM) Menurut Hukum Positif di Indonesia." *Jurnal Al-Azhar Indonesia Seri Pranata Sosial* 2, No. 3 (2016): 151-168; Susani Triwahyuningsih, "Perlindungan dan penegakan hak asasi manusia (HAM) di Indonesia." *Legal Standing: Jurnal Ilmu Hukum* 2, No. 2 (2018): 113-121; Majda El-Muhtaj, *Hak asasi manusia dalam konstitusi Indonesia*. (Jakarta: Prenada Media, 2017). For further discussion concerning the controversial issue in human rights in Indonesia, please also see Hikmahanto Juwana, "Human rights in Indonesia." *Human Rights in Asia: A Comparative Legal Study of Twelve Asian Jurisdictions, France and the USA*. (London: Routledge Taylor & Francis Group, 2006), pp. 364-383; Katharine E. McGregor, "Memory studies and human rights in Indonesia." *Asian Studies Review* 37, No. 3 (2013): 350-361; Knut Asplund, "Resistance to Human Rights in Indonesia: Asian Values and Beyond." *Asia-Pacific Journal on Human Rights and the Law* 10, No. 1 (2009): 27-47; Sebastiaan Pompe, "Human rights in Indonesia: between universal and national, between state and society." *Leiden Journal of International Law* 7, No. 2 (1994): 85-98.

serving as a testament to the enduring significance and universal applicability of these rights.

According to Jan Materson, as referenced in the United Nations' Teaching Human Rights, Baharuddin Lopa affirms that human rights are intrinsic to every individual, constituting essential attributes without which human existence would be untenable. Furthermore, John Locke posited that human rights emanate directly from the Creator, representing natural entitlements bestowed upon humanity.³

In article 1 of Law Number 39 Year 1999 on Human Rights stated that "Human Rights is a set of rights that adheres to the nature and existence of human beings as creatures of God Almighty and is a gift that must be respected, upheld and protected by the state, law, government and everyone, for the sake of honor and protection of human dignity and prestige". According to Dardji Darmodiharjo, human rights are the basic rights brought by human from birth as a gift of God Almighty. Pancasila Laboratory of IKIP Malang stated that human rights are the inherent rights to human dignity as human beings of God Almighty. Kuntjono Purbo Pranoto, emphasized that human rights are a right that belongs to man by his nature that is not separated essentially. Koentjoro Poerbapranoto, Human Rights are the rights which man possesses according to his nature which cannot be separated from the essence so that it is sacred.

³ John Locke, and James L. Axtell. *The educational writings of John Locke*. (CUP Archive, 1968). Furthermore, Locke wrote that all individuals are equal in the sense that they are born with certain "*inalienable*" natural rights. That is, rights that are God-given and can never be taken or even given away. Among these fundamental natural rights: "*life, liberty, and property*." Locke believed that the most basic human law of nature is the preservation of mankind. To serve that purpose, he reasoned, individuals have both a right and a duty to preserve their own lives. Murderers, however, forfeit their right to life since they act outside the law of reason. Locke also argued that individuals should be free to make choices about how to conduct their own lives as long as they do not interfere with the liberty of others. Locke therefore believed liberty should be far-reaching. *Please see* John Locke, "Natural rights." *Moral Reasoning: A Philosophic Approach to Applied Ethics*. (London: Dryden Press, 1990), pp. 133-135.

Law No. 39 of 1999, Human Rights is a set of rights that are inherent in nature and the existence of human beings as creatures of God Almighty and is a gift that must be respected, upheld, and protected by the state, law, government and everyone for the honor and protection of the dignity and human dignity. So that we can conclude that Human Rights is a basic right that is owned by every human being who is given by God Almighty who cannot be separated from human self then the rights must also be upheld and protected by the state, the law, Government, and everyone, for the sake of honor and dignity.

As a nation that upholds the principles of religious tolerance and pluralism, Indonesia provides a valuable perspective on the challenges faced by religious minorities and the importance of safeguarding religious freedoms. Through an examination of legal frameworks, international human rights instruments, and socio-political dynamics, this study aims to shed light on the complexities surrounding the prohibition of worship at the Al Aqsa Mosque and its impact on Palestinian communities.

By drawing parallels between the experiences of religious minorities in Indonesia and the situation faced by Palestinians at the Al Aqsa Mosque, this research seeks to offer nuanced insights into the broader discourse on religious freedom and human rights violations in conflict-affected areas. Through an interdisciplinary approach that combines legal analysis, socio-political inquiry, and comparative studies, this paper endeavors to contribute to a deeper understanding of the complexities surrounding the protection of the right to freedom of religion in the face of religious restrictions and state intervention.

In the context of analyzing the protection of the right to freedom of religion in the prohibition of worship at the Al Aqsa Mosque by Israeli police to Palestinians, the chosen methodology holds particular significance. The qualitative approach allows for a deep exploration of the complex socio-political dynamics and human rights implications surrounding the situation. By employing methods such as case studies, interviews, and observations, this research seeks to delve into the lived experiences and perceptions of those affected by the prohibition of worship at the Al Aqsa Mosque.

Through the case study methodology, this research aims to scrutinize the specific circumstances and nuances of the situation, examining key factors and contextual elements that shape the dynamics at play. By focusing on the case at hand with maximal attention to detail, the study endeavors to uncover insights that may not be captured through quantitative methods alone. Additionally, the qualitative nature of the research allows for a more holistic understanding of the multifaceted issues surrounding religious freedoms and human rights violations in conflict-affected areas.

Examining Human Rights Implications of Palestinians' Prohibition from Entering Al Aqsa Mosque

Since this world has been confronted and acquainted with a wide variety of cultures that spread almost all over the world, each of which has a striking difference. There will be different social and cultural standards. In connection with the right to freedom of religion and worship. The history of the relationship between state and religion is very influential on the concept of freedom of religion and worship in each country. Although there is a Human Rights regulated in the legislation but in fact there are still many problems that exist within it. In Indonesia, based on the protection of human rights, including religious freedom, is found in the first principle which reads the divine divinity.

Including human rights violations because it considers that religion or belief, for everyone who recognizes both religion and belief, is one of the basic elements in his conception of life and that freedom in the name of religion or belief must be fully respected and guaranteed. In Article 28E Paragraph (1) of the 1945 Constitution which says "*Everyone has the right to freedom of thought, conscience and religion. This right should include the freedom to adopt any religion or belief of its choice, and freedom either individually or in society with others and in public or in isolation, to realize religion or belief in worship, practice, and instruction*".⁴ Such things not only

⁴ Zaka Firma Aditya, and Sholahuddin Al-Fatih. "State Liability for Violation of Constitutional Rights Against Indigenous People in Freedom of Religion and

violate human rights but also undermine the harmony of religious life, Worshiping beliefs is a constitutionally protected human right, anywhere in the world.

In the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief adopted by the United Nations in 1981, Article 1 also states that: every person is free to choose and profess religion, and manifests it personally and in groups, whether in worship, practice, or teaching.⁵ The bans and attacks proved Israel had suppressed religion and human rights, Israel must respect religious freedom. Moreover, the city of Jerusalem until now its status under the international authority (United Nations).⁶ Therefore, the prohibition and attack on the Aqsa Mosque is not only a blasphemy, but it has also harassed humanity and the international community.

Legal Regulations on Freedom of Religion and Belief

With regard to freedom of religion, the problem that gets attention is the number of legislative provisions that are problematic from the perspective of religious freedom. The regulation is problematic, either because it is judged to be contrary to the principle of religious freedom or

Belief." *Brawijaya Law Journal* 4, No. 1 (2017): 29-58. Please also see Jørgen Møller, and Svend-Erik Skaaning. "Autocracies, democracies, and the violation of civil liberties." *Democratization* 20, No. 1 (2013): 82-106; Kevin Boyle, and Juliet Sheen. *Freedom of religion and belief: A world report*. (London: Routledge, 2013).

⁵ Nazila Ghanea, "The 1981 UN Declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief: some observations." *The challenge of religious discrimination at the dawn of the New Millennium*. (Leiden: Brill Nijhoff, 2004), pp. 9-31; Natan Lerner, "Religious human rights under the United Nations." *Religion, Secular Beliefs and Human Rights*. (Leiden: Brill Nijhoff, 2012), pp. 13-55; Donna J. Sullivan, "Advancing the Freedom of Religion or Belief through the UN Declaration on the Elimination of Religious Intolerance and Discrimination." *American Journal of International Law* 82, No. 3 (1988): 487-520.

⁶ Rashid Khalidi, "The Future of Arab Jerusalem." *British Journal of Middle Eastern Studies* 19, No. 2 (1992): 133-143; Mustafa Abu Sway, "Al-Aqsa Mosque: Do Not Intrude!" *Palestine-Israel Journal of Politics, Economics, and Culture* 20, No. 4/1 (2015): 108.

because it contradicts one another. Therefore, anachronism of legislation is a matter that needs to be resolved immediately. However, harmonization as well as the synchronization of the rule of law in the field of religious freedom has not been handled optimally. In fact, the field of religious freedom, and relations among religious followers are very dependent on the harmonization.

Law No. 1/PNPS/1965 on the Prevention of the Abuse and Defamation of Religions, for example, is one of the most criticized. The rule essentially prohibits the interpretation and religious activities that deviate from the points of religious teachings.⁷ The provision clearly implies the state protecting Indonesian citizens through protection against the abuse and blasphemy of religions, while at the same time banning other religious schools from making interpretations outside of conventional teachings. The rule, in addition to being considered contrary to the spirit of religious freedom according to the constitution, is also considered to be an unnecessary form of state intervention. Many ideas have emerged that religion or defamation need not be governed by the state. Or in other words the state should not interfere in the confidence of its citizens.⁸

Government policies that only recognize the six religions make other religious adherents do not get their civil rights as citizens. Some even say religion life in Indonesia is better if no country. That is, the country does

⁷ Hwian Christianto, "Arti Penting UU No. 1/PNPS/1965 Bagi Kebebasan Beragama: Kajian Putusan Mahkamah Konstitusi 140/PUU-VII/2009." *Jurnal Yudisial* 6, No. 1 (2013): 1-16; Faiq Tobroni, "Keterlibatan negara dalam mengawal kebebasan beragama/berkeyakinan (Komentar akademik atas Judicial Review UU No. 1/PNPS/1965)." *Jurnal Konstitusi* 7, No. 6 (2016): 097-118.

⁸ Brett G. Scharffs, "International law and the defamation of religion conundrum." *The Review of Faith & International Affairs* 11, No. 1 (2013): 66-75; Nicole McLaughlin, "Spectrum of Defamation of Religion Laws and the Possibility of a Universal International Standard." *Loyola of Los Angeles International and Comparative Law Review* 32, No. 3 (2010): 395. See also Nicola Colbran, "Realities and challenges in realising freedom of religion or belief in Indonesia." *The International Journal of Human Rights* 14, No. 5 (2010): 678-704; Kari Telle, "Faith on trial: Blasphemy and 'lawfare' in Indonesia." *Ethnos* 83, No. 2 (2018): 371-391; Zainal Abidin Bagir, and Renata Arianingtyas. "Limitations to freedom of religion or belief in Indonesia: Norms and Practices." *Religion & Human Rights* 15, No. 1-2 (2020): 39-56.

not need to interfere regulate the religious life because the state actually makes the religious life is not good. Adnan Buyung Nasution in a discussion once vigorously criticized the country that tried to intervene into religious life. State, said Buyung, has no right to interfere in religious affairs, let alone try to give recognition to a particular religion. The argument that supports the idea, the state must be neutral to all religions and should not prohibit the emergence of any flow of belief or religion. If there is a group that for example want to establish their own religion, it cannot be prohibited by the state. According to the supporters of this idea provisions that indicate state intervention against as Law No. 1/PNPS/1965 is no longer necessary. Freedom of thought and belief is an inherent right, should not be limited, cannot be delayed, and should not be seized.

The absence of state regulations concerning freedom of religion poses significant challenges and potential risks. Without clear legal frameworks in place, there is a heightened potential for religious tensions to escalate into acts of violence. Religious beliefs often evoke strong emotions and attachments, and when individuals feel that their faith is being criticized or mocked, it can lead to volatile situations. In the absence of legal guidelines, individuals may take matters into their own hands, seeking to protect what they perceive as sacred or defending their religious beliefs through force or intimidation. This can create an environment of fear and uncertainty, where individuals may feel compelled to adhere strictly to their own religious interpretations, leading to intolerance and the marginalization of dissenting voices.

Moreover, the absence of state regulations on freedom of religion can result in subjective interpretations and arbitrary enforcement of religious norms. Without legal standards to govern religious discourse and behavior, individuals may impose their own interpretations of religious teachings, often with varying degrees of orthodoxy and intolerance towards dissenting views. This can lead to the stigmatization and persecution of individuals who deviate from mainstream religious beliefs or practices. Additionally, the lack of legal safeguards may enable those in positions of power within religious institutions to wield undue influence and control over religious discourse, further marginalizing minority voices and restricting the freedoms of religious minorities. Thus, while the absence of

state regulations may seem to offer greater freedom, it often leads to the erosion of religious liberties and exacerbates religious tensions within society.

The Application of Religious Freedom: National & International Law Perspective

The application of religious freedom which is supposed to be in accordance with the Article In article 28E paragraph (1) of the 1945 Constitution which says "Everyone has the right to freedom of thought, conscience and religion. This right shall include the freedom to adopt any religion or belief of its choice, and freedom either individually or in society with others and publicly or alone, to realize religion or belief in worship, practice, and teaching. Article 2 of the Universal Declaration states:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration without any exceptions, such as race, color, gender, language, religion, politics or other opinion, national or community origin, property, birth, or other positions."

The significance of religion and belief within international human rights instruments is underscored in Article 18, which unequivocally asserts the right to freedom of thought, conscience, and religion. This encompassing right extends to the freedom to change one's religion or belief, as well as the freedom to practice religion or belief individually or collectively, in public or private settings. The International Covenant on Civil and Political Rights elaborates further on this right in Article 18, a treaty ratified by the Indonesian government through Law No. 12 of 2005. This Covenant affirms that everyone is entitled to freedom of thought, conscience, and religion, granting individuals the liberty to embrace or accept a religion or belief of their choosing, and to practice it freely in worship, obedience, practice, and teaching, either alone or in community. Moreover, individuals cannot be coerced into renouncing their religious or belief-related freedoms.

The right to freedom of religion is considered a fundamental human right, falling within the realm of non-derogable rights. As such, it is

absolute and pertains to the internal forum, representing an individual's inner freedom to believe or not believe. This classification implies that the state cannot suspend or limit this right under any circumstances, even during times of emergency such as civil unrest or military conflict. Thus, the protection of freedom of religion is paramount, serving as an essential component of international human rights law aimed at safeguarding individual autonomy and dignity.

This non-derogable right is seen as the ultimate right of human rights. These non derogable rights must be exercised and must be respected by the state under any circumstances and under any circumstances.⁹ It is believed that religious freedom and trust must also contribute to the achievement of the goals of world peace, social excellence, and friendship between nations, and on the abolition of the ideology and practice of colonialism and racial discrimination. Upholding inter-religious tolerance and always respecting regardless of what religion they profess is one way to keep religious harmony¹⁰, if there is a problem that carries the name of

⁹ Teraya Koji, "Emerging Hierarchy in International Human Rights and Beyond: From the Perspective of Non-derogable Rights." *European Journal of International Law* 12, No. 5 (2001): 917-941; Anna-Lena Svensson-McCarthy, "The Non-Derogable Obligations Under the International Covenant on Civil and Political Rights." *The International Law of Human Rights and States of Exception*. (Leiden: Brill Nijhoff, 1998), pp. 380-450.

¹⁰ Teguh Wijaya Mulya, and Anindito Aditomo. "Researching religious tolerance education using discourse analysis: a case study from Indonesia." *British Journal of Religious Education* 41, No. 4 (2019): 446-457. See also Sri Widayati, and Eka Cahya Maulidiyah. "Religious tolerance in Indonesia." *Proceedings of the 2nd International Conference on Education Innovation (ICEI 2018)*. Vol. 212. 2018; Christian Siregar, "Pluralism and religious tolerance in Indonesia: An ethical-theological review based on Christian faith perspectives." *Humaniora* 7, No. 3 (2016): 349-358; Nurfaika Ishak, and Romalina Ranaivo Mikea Manitra. "Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia." *Journal of Human Rights, Culture and Legal System* 2, No. 1 (2022). However, in the further context, is it also emphasized that the absence of religious freedom stems from the fact that the Indonesian state, like other secular powers, imposes on society its definition of what religion *is*, what *counts* as religion. The state recognizes only six religions: Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. Furthermore, each religion has its own appointed national council that has been authorized to define what is considered orthodox

religion, keep it with cold and peaceful heads, without having to point each other and blame.

Conclusion

In conclusion, the right to freedom of thought, conscience, and religion is a fundamental human entitlement, encompassing the freedom to adopt any belief or religion of one's choosing and to practice it openly, whether in solitude or in community settings. However, challenges persist regarding the interpretation and application of religious freedom principles, leading to ongoing debates and discrepancies within legal frameworks. Addressing these issues is imperative to prevent anachronistic provisions that may infringe upon individuals' religious liberties or contradict other fundamental rights. Despite the need for harmonization and refinement in the legal sphere, it is evident that religious freedom plays a crucial role in fostering global peace, social cohesion, and mutual respect among nations. Upholding the spirit of inter-religious dialogue and mutual respect is essential for maintaining religious harmony, especially in times of religious tension or conflict. Rather than resorting to blame or accusation, it is vital to approach religious disputes with calm and understanding, prioritizing peaceful resolution and mutual understanding as the cornerstone of religious coexistence and harmony.

beliefs and practices. Deviations from these central tenets will be punished under article 156a of the Indonesian criminal code, also known as the blasphemy law. Offenders can be imprisoned for up to five years. To discuss for this issue, *please also see* Gabriel Facal, "Islamic Defenders Front Militia (Front Pembela Islam) and its impact on growing religious intolerance in Indonesia." *TRaNS: Trans-Regional and-National Studies of Southeast Asia* 8, No. 1 (2020): 7-20; Greg Fealy, "The politics of religious intolerance in Indonesia: mainstream-ism trumps extremism?." *Religion, law and intolerance in Indonesia*. (London: Routledge, 2016), pp. 115-131; Dicky Sofjan, "Religious diversity and politico-religious intolerance in Indonesia and Malaysia." *The Review of Faith & International Affairs* 14, No. 4 (2016): 53-64; Wil Mackey, and Ben Dolven. "Religious Intolerance in Indonesia." *Current Politics and Economics of South, Southeastern, and Central Asia* 30, No. 2-3 (2021): 299-304.

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Religious liberty might be supposed to mean that everybody is free to discuss religion. In practice it means that hardly anybody is allowed to mention it.

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