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Individual Freedom in the Legal Discourse in Indonesia

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ABSTRACT: Indonesia is one of the countries included in the state law. Law is a rule that can not be separated from our daily life where every joint of our lives is in the shade of law. Laws other than to protect us from abuse of power, the law is also used to uphold justice. This freedom is the hallmark of modern society today. But freedom has certain qualities. A free individual does not mean that they can do things themselves, such as damaging their surroundings, destroying other people's goods, harassing a man's wife or husband and so on. Of the 1945 Constitution Article 28 E is Everyone is free to embrace religion and worship according to his religion, choosing education and teaching, choosing a job, choosing citizenship, choosing a residence in the territory of the country and abandoning it, and the right to return, Everyone has the right to freedom of belief, expression of thoughts and attitudes, in accordance with his conscience, Everyone has the right to freedom of association, assembly, and expression.

KEYWORDS: Freedom, Legal Discourse, Law Enforcement, Human Rights, Constitutional Rights



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I. INTRODUCTION

Humans as social beings must respect each other's freedom of the individual and uphold the freedom. In addition to the existence of community organizations based on Pancasila is also able to increase the active participation of humans and the entire Indonesian society in the success of freedom will soon be realized. The way the society can realize the freedom is the realization of community organizations that are able to provide education to the people of Indonesia, the realization of an independent social organization to channel its aspirations in national development, as well as an elaboration of article 28 of the 1945 Constitution namely development is the experience of Pancasila so the goal and its subjects are all Indonesian society that have Pancasila.¹

¹ Soedjono Dirjosisworo, *Pengantar Ilmu Hukum* (Jakarta: Rajawali Pers, 2008), pp. 133-134; Siti Afifatul Mukaromah, Ari Gusmawan, and Jeremiah Munandar. "The Lunge of Global Ideologies: The Challenges of Pancasila Ideology Education in the Middle of Global Existence in the Era of Globalization". *Jurnal Panjar: Pengabdian Bidang Pembelajaran* 4, No. 1 (2022): 1-30. <https://doi.org/10.15294/panjar.v4i1.55017>; Elly Rahmawati, "The Existence of Pancasila for the Millenial Generation in Order to Realize the National Ideological Resistance in the Era of Disruption". *Jurnal Scientia Indonesia* 2, No. 1 (2016). <https://doi.org/10.15294/jsi.v2i1.35968>; Nuria Fatmawati, "Pancasila as a Nation and State Guideline: The Future Challenges". *Jurnal Scientia Indonesia*, 4, No. 2 (2018). <https://doi.org/10.15294/jsi.v4i2.36042>; Ria Kurniasih, "The Effect of Globalization on the Ideology of Pancasila". *Jurnal Scientia Indonesia* 2, No. 1 (2016). <https://doi.org/10.15294/jsi.v2i1.35972>; Zulva Alya Luthfianeza, "The Challenge of Implementing Pancasila Values to the Milenial Generation". *Journal of Creativity Student* 3, No. 1 (2018). <https://doi.org/10.15294/jcs.v3i1.35971>; Ebit Ebit. "The Role of Pancasila in Effort to Preserve Culture, Moral, and Preserve the Youth Generation of Nationalism in the Globalization Era". *Journal of Creativity Student* 3, No. 1 (2018). <https://doi.org/10.15294/jcs.v3i1.35966>

The purpose of human life is to achieve a happiness, while happiness can not be achieved when one does not actualize in an action, in the form of human freedom. It can be seen in one's life, that one who is wise, thinks himself, speaks on his own understanding and states what he says and also knows why he expresses it, compared to someone who is superficial thinking, who always follow-up and only repeating what others are saying. Human freedom will come to a limit.

This then requires a person to decide a choice. At a time when humans choose or fall of decisions arise to the sense of human beings, because basically humans self-realize autonomy from the first time to himself. He accepts his own facts and becomes himself with his uniqueness. It is autonomous and self-reliant. Human freedom is an ability to give meaning and direction to life and his work, the ability to accept or reject the possibilities and values that are constantly being offered to him. There are two things that affect human beings, which in turn affect human freedom of "*autodeterminism*". First, in determining human choice is determined by factors beyond its own ability, as well as its social conditions, while on the one hand human beings autonomously also determine their actions.

John S. Mill classifies freedom into two types. *First* freedom which includes the field of inner power, the consciousness which demands the freedom of conscience in the broadest sense of freedom in thinking and feeling, absolute freedom of opinion and sentiment for all practical or speculative, scientific, moral or theological. Freedom to express and announce his opinion. The *second* is the freedom

associated with individual power and the third is the freedom that is related to others.²

II. METHODS

This research is normative law research with approach legislation (statute approach). It is intended that this study uses legislation as the initial basis do the analysis. This should be done because of the legislation, the invitation is the focal point of the research that focuses on the legislation on freedom of religion.³ This study examines legislation relating to freedom of the law, and what are the norms associated with the rule until its actualization in society. The research material was obtained by conducting a literature study reviewing legal materials. The legal material as research material is taken from literature materials in the form of legal materials in the form of legal materials primary, secondary legal materials and tertiary legal materials. Primary legal material is a library material containing the rules legislation consisting of:

- 1) The 1945 Constitution of the State of the Republic of Indonesia.
- 2) Law No. 39 of 1999 on Human Rights in the State Gazette of the Republic of Indonesia Year 1999 Number 165.
- 3) Law Number 12 Year 2005 on Ratification of the Covenant International on Civil and Political Rights (International

² John Stuart Mill, *On Social Freedom* (Columbia USA: Columbia University Press, 1941); John Stuart Mill, *The basic writings of John Stuart Mill: On liberty, the subjection of women and utilitarianism*. (Modern Library, 2010); John Stuart Mill, *On liberty and other essays*. (Oxford USA: Oxford University Press, 1998).

³ Fajar Mukti and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2015), pp. 185-186.

Covenant on Civil and Political Rights) in the State Gazette Republic of Indonesia Year 2005 Number 119.

- 4) Book of the Criminal Code.
- 5) MPR Decree No. XVII / 1998 on Human Rights and Determination of the President of the Republic of Indonesia Number 1 / PNPS Year 1965 on the Prevention of Misuse and / or Blasphemy.

III. INDIVIDUAL FREEDOM IN THE IDEA OF LAW

To realize a just and prosperous society based on Pancasila, it is necessary to implement development in all fields which is essentially a whole Indonesian human development and development of the whole Indonesian society. The idea of law as a system of government is found by human experience which shows that the will of each individual man will attain the perfect freedom which is consistent with that same freedom which is given to the will of others.⁴ To realize a just and prosperous society based on Pancasila, it is necessary to implement development in all fields which is essentially a whole Indonesian human development and development of the whole Indonesian society.

The idea of law as a system of government is found by human experience which is going to each individual man will attain the perfect freedom which is consistent with that same freedom which is

⁴ Roscoe Pound, *Filsafat Hukum* (Yogyakarta: Bhuratara, 1963), pp. 30-31; Roscoe Pound, "Law in the Service State: Freedom versus Equality." *American Bar Association Journal* (1950): 977-1053; Roscoe Pound, "The Theory of Judicial Decision II. Nineteenth-Century Theories of Judicial Finding of Law." *Harvard Law Review* 36, No. 7 (1923): 802-825.

given to the will of others.⁵ In its development human rights are no longer seen merely as the embodiment of individualism and liberalism as it once was. Human rights are better understood in human terms as inherent rights with the dignity and essence of humanity, regardless of race, ethnicity, religion, color, sex, age or occupation.⁶ Freedom is freedom, freedom of religious freedom is freedom to embrace or embrace a particular religion, without any compulsion and pressure to abandon it. In the view of Islam, human rights are the natural rights granted by God to every human being, which can not be uprooted or diminished by any power or entity. Furthermore, according to Maududi, the rights given by God are permanent, eternal and should not be changed, modified or canceled. The concept of human rights in the history of Islam actually goes beyond Western history in formulating and practicing the concept of human rights. Islam has a more comprehensive doctrine of human rights protection than the concept of human rights in Magna Charta.⁷

⁵ Nico Syukur, *Filsafat Kebebasan* (Jakarta: Kanisius, 1998), p. 21.

⁶ Saafaroedin Bahar, *HAM Analisis Komnas HAM dan Jajaran Hankam ABRI*, (Jakarta: Pustaka Sinar Harapan, 1996), p. 6. *See also* Amira Rahma Sabela, "Kajian Freedom of Speech and Expression dalam Perlindungan Hukum terhadap Demonstrasi di Indonesia." *Lex Scientia Law Review* 1, No. 1 (2017): 81-92; Virdatul Anif, "Human Rights and Power of State: A Book Review Negara Hukum dan Hak Asasi Manusia, Bahder Johan Nasution." *JILS (Journal of Indonesian Legal Studies)* 3, No. 2 (2018): 327-332; Ridwan Arifin, "Democracy on Indonesian Legal Reform: How Can People Participate on Laws and Regulations Establishment Process." *JILS (Journal of Indonesian Legal Studies)* 2, No. 2 (2017): 155-158.

⁷ Sodikin Sodikin, "Hukum dan Kebebasan Beragama", *Jurnal Cita Hukum* 1, No. 2 (2013): 175-186. Concerning to Freedom of Religion and Belief in Indonesia, *please also see* Siti Faridah, "Kebebasan Beragama dan Ranah Toleransinya." *Lex Scientia Law Review* 2, No. 2 (2018): 199-214; Hasyim Asyâ, "Politik Hukum Kebebasan Beragama di Indonesia." *Pandecta Research Law Journal* 6, No. 1 (2011); Nathanael Bagas Setyawan, and Ridwan Arifin. "Analisis Perlindungan Terhadap Toleransi Kebebasan Beragama di Indonesia

According to Arief Sidharta⁸, Scheltema, formulated his views on the elements and elements of the new Law State, covering 5 (five) things as follows:

- 1) Recognition, respect and protection of human rights rooted in respect for human dignity.
- 2) The validity of the principle of legal certainty. The State of Law for the purpose of ensuring that legal certainty is manifested in society. The law aims to realize legal certainty and high predictability, so that the dynamics of common life in society are predictable.

The right to freedom of religion is expressed in more detail in the International Covenant on Civil and Political Rights Articles 18, 19, 20 and 27, those articles are relevant to religious rights. The present Covenant has been ratified by the Indonesian government through Law (No. 12 of 2005). Article 18 The contents are as follows:

- 1) Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to embrace or accept a religion or belief in its own choice, and freedom, individually or collectively, in public or private, to practice its religion or belief in worship, obedience, practice and teaching
- 2) No one shall be compelled to undermine his or her freedom to embrace or accept a religion or belief according to his or her choice.

dalam Perspektif Hak Asasi Manusia." *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 19, No. 1 (2019): 27-34; Indra Wicaksono, "Membumikan Pancasila Arti Penting Menegakkan Ham Sebagai Tameng Toleransi Keberagaman." *Lex Scientia Law Review* 2, No. 2 (2018): 169-176.

⁸ B. Arief Shidarta, "Kajian Kefilsafatan tentang Negara Hukum." *Jurnal Jentera* 7, No. 2 (2004).

- 3) The freedom to practice one's religion and beliefs can only be subject to the restrictions imposed by law and which are necessary to protect the safety, order, health, or general morals, or the fundamental rights and freedoms of others.
- 4) States Parties agree to respect the freedom of parents and, where applicable, legal guardians to ensure that religious education and character for their children conform to their own beliefs.⁹

The challenge of freedom of religion and belief or belief has been around since the beginning of human history. It colored the stories of the journey of human life in the world; such as Qabil killed Abel, after a dispute over the most appropriate form of sacrifice; Antigone buried Polyneices when consciousness met the classical state power; Prince Siddharta Gautama must resist the temptation of his father's kingdom to follow the path of *tapabrata* and the ultimate enlightenment; at the beginning of Islamic history, the Muslims fled in exile from the persecution of the Quraysh for defending their faith so that they migrated to Habashah and gained protection from the Christian Najasyi king and given freedom to practice their religion.¹⁰

Indonesia is a State of Law imbued by Pancasila in the administration of national and state life, so although not a religious state is also not a secular state especially atheist state, but is an Indonesian Law Country, where there is a close relationship between state and religion, religious teachings that require state intervention, then they should be regulated in legislation, and followed up by various government policies. The concept is in line with current developments where political and civil rights are also a negative

⁹ Nasution, Aulia Rosa. "Kebebasan Beragama dalam Tinjauan Hak Asasi Manusia." *Jurnal Hukum Responsif* 6, No. 6 (2019): 67-92.

¹⁰ Syeikh Shafiyurrahman Al-Mubarakfuri, *Sirah Nabawawiyah* (Jakarta: Pustaka Al-Kautsar, 2010) pp. 93-97.

right, a right that requires the state's role to make it happen. The right to freedom of religion and worship is part of political and civil rights, thus requiring the role of the state in not only in individual terms, but in groups, even in relation to other countries, such as the conduct of Hajj.¹¹

When examined about the freedom of an individual, there are two things that should be noticed that is wild and free free of responsibility. Wild-free with his own accord, such as speeding on public roads, playing music until midnight in a residential neighborhood and others are not justified deeds. The freedom that is the pillar of democracy is certainly not free of the wild, the arbitrary, but the pillars of democracy are responsible free. Freely responsible is the freedom to express himself by not disturbing others. Freedom is also limited, that is limited by the freedom of others. When a person is playing music until late at night of course it disturbs others who want to sleep. Freedom of others to sleep would be disturbed. Thus, the freedom of a person must also respect the freedom of others. In addition to the freedom to do the will and express themselves, also need to be concerned about freedom from oppression. Strong parties should not oppress the weak. The majority party should not oppress the minority. The rulers should not oppress the common people. Bear financiers may not monopolize a business.

There are several groups of liberties, namely *First* Social-political freedom, *Second* Individual freedom. The group's distinction is based on the subject of freedom itself. Social-political freedom gives freedom to a nation and State to determine the ideology of the nation

¹¹ Fatmawati, Fatmawati, "Perlindungan Hak Atas Kebebasan Beragama dan Beribadah dalam Negara Hukum Indonesia." *Jurnal Konstitusi* 8, No. 4 (2016): 489-520.

and its country. Individual freedom gives freedom to individual humans. Social and political freedom in a nation and state is not so easy to obtain. Usually through a long struggle that requires the sacrifice of both soul, property and things. As K. Bertam states that social political freedom is not something that has always existed, but is largely a product of historical development or, more precisely, a product of struggle throughout history.¹²

IV. FREEDOM IN THE DEMOCRACY & LEGAL DISCOURSE

Democracy as a value is built on three pillars. First, freedom. Democracy must be supported by individual freedom in expressing ideas and creativity. Because democracy demands freedom of expression, then there is no censure of opinion. The second pillar is pluralism. Freedom needs to be accompanied by an appreciation of diversity and respect for plurality. The third pillar is the existence of a knot, a binder or a tolerance.¹³

All living things have a tendency to live freely. Birds do not want to live in a cage, even though the cage is made of gold. Humans also no one wants to live unfettered, limited and controlled. Everyone wants to do what they want. Freedom needs to be accompanied by an appreciation of diversity and respect for the future, the third pillar of

¹² Gadug Kurniawan, "Kebebasan Sebagai Hakekat Demokrasi." *INOVATIF | Jurnal Ilmu Hukum* 8, No. 1 (2015). See also Ryan LaMothe, "Social and political freedom: A pastoral theological perspective—Part I." *Pastoral Psychology* 70, No. 3 (2021): 255-271; Ryan LaMothe, "Social and Political Freedom: a Pastoral Theological Perspective—Part II." *Pastoral Psychology* 70, No. 5 (2021): 487-505.

¹³ Muhammad Nur Prabowo Setyabudi, "Konsep dan Matra Konsepsi Toleransi dalam Pemikiran Rainer Forst." *Jurnal Filsafat Indonesia* 3, No. 3 (2020): 81-94; Kalimatul Zuhroh, and M. Anang Sholikhudin. "Nilai-Nilai Toleransi antar Sesama dan antar Umat Beragama." *Journal Multicultural of Islamic Education* 3, No. 1 (2019): 41-55.

democracy is the existence of a knot, a binder. In relation to Indonesia this third pillar is tolerance.

The right component of freedom of religion there are two aspects of freedom contained in the right to freedom of religion. The first is, the aspect of internal freedom or called the international forum, and the second is the aspect of external freedom or called the external forum. What is freedom *internum*? It is the individual freedom that everyone has for believing, or thinking, or choosing a religion he believes in, believing in the religious doctrine that he thinks is true. Forum *internum* can not be intervened by the state. While external forums or external freedom, that is meant is the freedom of a person to express or manifest the religion that he believes through da'wah, through education, and through other suggestions. This freedom must also be guaranteed for every person of religion freely deliver his religious mission, preach it, pass it on to his offspring, and so on. It must be guaranteed by every country. Freedom is also subject to restrictions. Although the quality of this right is very high because it is non derogable, but against this freedom is also applied limitation restrictions. However, its limitation is directed primarily to external freedoms, namely in the context of spreading the religion's teachings, passing it on, preaching it, and so on.¹⁴

The objective of the regulation on freedom of expression in the public opinion as stipulated in Law No. 9 Article 4 of 1998, is as follows:

¹⁴ Suparman Marzuki, "Politik Hukum Hak Asasi Manusia Tentang Kebebasan Beragama Pasca Orde Baru." *Jurnal Hukum Ius Quia Iustum* 26, No. 2 (2019): 215-237; Muhammad Nizar Kherid, and Fifiana Wisnaeni. "Pluralism Justice System dalam Penyelesaian Masalah Kebebasan Beragama." *Masalah-Masalah Hukum* 48, No. 4 (2019): 385-392.

- 1) To realize responsible freedom as one of the implementation of human rights in accordance with Pancasila and the 1945 Constitution;
- 2) Achieve consistent and sustainable legal protection in ensuring freedom of expression;
- 3) To create a conducive climate for the participation and creativity of every citizen as a manifestation of rights and responsibilities in democratic life;
- 4) Placing social responsibility of life in society, nation and state, without neglecting individual or group interests.¹⁵

From the above description in the future legal development, especially in the field law enforcement needs to be developed progressive law. So the law enforcers not only the mouthpiece of a law that prioritizes procedural justice, however more put forward substantial justice. Justice is really felt by society a lot. The law can be used as a reference or a foothold if it is legitimate is able to provide a sense of community justice. But what if the law can not give a sense of justice law enforcement can multiply the values that live on in society.

In democratic life, the development of democracy will also follow the development of community thinking, if the thinking of good society then the development democracy will be good, and so is the end. For that law enforcement must also follow the development of democracy. Future legal developments should not be far from developing values in society. It is very good to adopt the legal system of other countries however substantially the law in Indonesia should

¹⁵ Nur Yusriyyah Bakhtiar, and Muhammad Rinaldy Bima. "Pemenuhan Hak Kebebasan Berpendapat Berdasarkan Undang-Undang Nomor 9 Tahun 1999 Tentang Kemerdekaan Berpendapat di Muka Umum." *Journal of Lex Theory (JLT)* 1, No. 1 (2020): 41-58.

be extracted from the values of Indonesian life own. The plurality of the Indonesian nation makes an extraordinary wealth.

Freedom of opinion and expression is an individual and collective right, which is allowing people to have a chance to convey, seek, receive, and share a variety of information, which can develop and express their opinions / views in a manner according to them right. Freedom of expression can be seen from two ways, namely: the right to access, receive and distribute information, and; right of self-expression through any medium. Discussion of digital natives and current educational practices are closely related with freedom of expression on the internet. Good generation of "*digital natives*" and "*digital immigrants*" have activities in the digital world as well. While the generation of digital immigrants does not have a good experience with the world digital, digital native generation does not have device knowledge is quite when activity in the digital world. Freedom of expression is wrong a benchmark of democracy has surfaced at least since the issuance of the Decree MPR RI Number: XVII / MPR / 1998 on Rights Human Rights by the Assembly People's Consultative Republic of Indonesia (MPR RI). This statement marks a shift point of view of power over communication and information, which had been arranged strictly by the state into citizens' rights which must be protected by the state. In addition, freedom of expression is also published post-amendment constitution, that is in the article

28 E Paragraph (2) and (3) and Article 28 F of the Constitution 1945. It contains the following points; citizens are entitled to freedom of belief trust, expressed thoughts and attitudes, according to his conscience (article 28 E Paragraph 2); citizens are entitled to freedom of association, gathered, and expressed opinion (chapter 28 E Paragraph 3); and citizens are entitled to communicate and obtain

information for develop personally and environmentally social, and entitled to seek, acquire, possess, store, process and convey information with using any available channel types (article 28 F).

Freedom of expression also is rights of all human beings, as contained in Article 19 of the Charter of the United Nations (UN) on human rights: *"Everyone is entitled to freedom of belonging and expelling opinion. This includes freedom have opinions without interruption, and for seek, receive, and deliver information and thoughts through any media and regardless of boundaries region "*. Freedom, which is one element of democracy, is not always acquired by every human being, even though it is the right of each individual. It can be seen in *"syari'at"* outside of Islam. Where civil liberty, the status that makes a person free to do various transactions, bear the burden, have the property moves or does not move and manage his property, sometimes castrated all-out.

In Islam, freedom of thought and opinion is greatly appreciated. This can be seen from the historical journey of early Islam in the time of the Prophet and his companions, or from the teachings of Islam. What is meant by freedom of thought and expressing opinion is the freedom of each individual to think independently about everything that is around him, the phenomenon that comes to mind and holds to the results of his thinking, and put forward in various ways. Then freedom of thought includes the freedom of knowledge and freedom of scientific thinking. It means that everyone has the right to establish his thoughts on the phenomena of the firmament, nature, animals, plants, people, and hold on to the results of his thinking and express them. In Islam itself does not specify a certain scientific formula or theory about these phenomena.

Therefore, the Qur'an in this case only advocates to the human mind, to think about every natural phenomenon, and to motivate always to contemplate, and to explore some general rules, as research effort, as well as the main road to faith and Islam. And the verses of the Qur'an "which emphasize the humans to reflect on the phenomena that exist around it are very diverse. Among them are QS. al-A'raf: 185, QS. al-Baqarah: 164, QS. al-Nur: 43-44, which tells people to observe and think about His kauniyya verses, covering the heavens, the earth, and all that, the turn of night and day, and the events that exist in the ocean. In addition, QS. al-Ghasyiyah: 17- 20 even commands empirical research on the origin or occurrence of camels, the height of the heavens, the erect of mountains, or the earth overlaid. Then there is also the Prophetic traditions that give freedom (thinking and expression) to determine our worldly steps. *Antum a'lamu bi umûri Dun-yâkum*. In addition, freedom of thought is also not feared by Islam. Because the teachings of Islam itself is not contrary to common sense. Therefore, between reason and science must have absolute power. And Islam echoes its appropriateness with knowledge and reason. So that the three can be integrated to the happiness of man in the world and the hereafter.¹⁶

Freedom is also sometimes hindered by human rights violations. Human Rights Violations occurring in Indonesia, especially in the regions, have been very stifling as the nation of Indonesia as a nation that upholds the value and the dignity and dignity of a human being in the land of motherland. Events from time to time continue to continue despite instinct occurrence of an ups and downs occasionally the incidence of human rights violations is low and at

¹⁶ Muh In'amuzzahidin, "Konsep Kebebasan dalam Islam." *At-Taqaddum* 7, No. 2 (2017): 259-276.

other times increases. Of course this becomes homework for the noble Indonesian nation based on the values contained in Pancasila which is described with 5 grains *kalimah syahdu*.

The state of Indonesia in this case the government that memamunyai mandate of the people, which is the mandate to raise the prosperity and peace among fellow society seyoyanya already seyoyanya trying to find ways of resolving that put forward the sides of humanity civilized and noble personality. Indeed in order to reduce to eliminate the forms of human rights violations is not an easy and arbitrary job but rather a performance of all elements of the Indonesian nation to create a conditional atmosphere for the enforcement of human rights of course with a democratic, comprehensive and touching the conscience of society itself.

The problem in the territory of Indonesia in relation to the cases of violence which lead to human rights violations must be able to describe the variables why the violation occurred, in order to find the root of the problem must be first identified by tracing the data that is in society, because there are actually precipitates dilemmas- dilemma that must be actualized in order to be resolved. The problem of human rights violations in the Indonesian territory has become an actual topic which is always being discussed in order to look for its settlement efforts but until now, from the reformation period until the post-tsunami period is still and unresolved, this must be carefully observed and understood by all parties. From the time of the Presidency of BJ Habibie, Abdurrahman Wahid, Megawati Soekarnoputri, until now during the reign of Joko Widodo the lead was not never resolved through the policy of the central policy which tries to accommodate all the interests and desires of local people, still

not enough in order to solve the problem human rights violations in Indonesia.

Freedom of expression is an important element of democracy. In fact, at the first session of the United Nations in 1946, prior to the adoption of Universal Declaration on Human Rights or treaties adopted, the UN General Assembly through Resolution No. 59 (I) has previously stated that "*the right to information is a fundamental human right and ... standard of all freedoms declared 'holy' by the UN*". Freedom of expression is one of the important conditions that enable democracy and public participation in every policy-making. Citizens can not exercise their rights effectively in voting or participate in public policy making if they have no freedom to obtain information and express their opinions and are unable to express their views freely. The fundamental question about it is what freedom of expression really is. Scholars argue, one of them as stated by John Locke, that freedom bereskpresi is the way to the search for truth. Freedom of expression is placed as a freedom to seek, disseminate and receive information and then discuss whether to support or criticize it as a process to remove our misconceptions of facts and values.¹⁷ John Stuart Mill says freedom of expression is needed to protect citizens from corrupt and tyrant rulers.¹⁸ A democratic government requires its citizens to assess the performance of their government. In fulfilling the need for control and assessment, citizens should have all the necessary information about their government. Not only that, the

¹⁷ Larry Alexander, *Is There A Right to Freedom of Expression*, (New York: Cambridge University Press, 2005), p. 128.

¹⁸ John Stuart Mill, *On liberty and other essays*. (Oxford USA: Oxford University Press, 1998).

next condition of citizens can disseminate the information, and then discuss it between each other.¹⁹

Departing from the theory, freedom bereskpresi then become a claim against the authorities that prohibit it or inhibit its implementation to get freedom of expression. As noted earlier, freedom of expression has a political dimension, that this freedom is regarded as an essential element for citizens' participation in political life and also promotes critical ideas and debates about political life even to the question of military authority. The relation of freedom of expression to democracy is then recognized in international human rights law which states that freedom of expression is a pre-requisite for the principle of transparency and accountability that ultimately is essential for the promotion and protection of human rights. Freedom bereskpresi also be a door for the freedom of assembly, association and implementation of the right to vote.

V. CONCLUSION

Based on the discussion in the previous chapter it can be concluded that law and freedom are essentially two interconnected elements, the law as a rule that sustains and manifests the protected individuals referred to in the law itself. However, above the law and freedom is very important for the harmony of both elements. Nevertheless, the objects used by the rulers are unbalanced between law and its application in the face of force. Power must also be locked, because otherwise it will have an impact on freedom in society. Furthermore, the true freedom is non-liberation itself. Because there is no behavior free from the rules and norms, both divine and human. The existence

¹⁹ Larry Alexander, 2005.

of rules against something, is a binder that makes it not free. That is, freedom is not separated but limited.

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COMPETING INTERESTS

The Authors declared that they have no competing interests.

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