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Religious Freedom in the Indonesian Constitution (a Democratic-Constitutional Approach)[1]

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Abstract-Indonesia constitutionally is not a religiously based state, in the sense that the state does not adhere to only one religious conviction like Saudi Arabia, Pakistan or Iran. Indonesia does not support any given religious conviction as being the state's ideology. In order to become a national policy, a given religious norm must follow "the rule of game" written in the Indonesian Constitution (UUD 45). This is important for the sake of seeking constitutional justification. Thus, knowing the position of a given religious conviction in the context of the Indonesian Constitution (UUD 45) is of great importance. The following discussion will be devoted to elaborating the constitutional arguments with democratic approach.

Key words: *Indonesian Constitution, state, citizen, absolutism*

Background

1. The Position of Religion in the Indonesian Constitution.

As stated earlier, Indonesia is not a theocratic state which is based on one religious conviction. Yet it is, by no means, a secular state for the religious life is not totally separated from the state. Although Islam constitutes the religion of the majority, every citizen, regardless of his/her religious background has the same right to hold any governmental position, including the fundamental ones, the presidential position, the head of the People's Consultative Body, the head of the House of Representative and the like. Article 27, verse (1) of the 1945 Indonesian Constitution (UUD 45) clearly states that "Without any exception, all citizens shall have equal position in Law and Government and shall be obliged to uphold that Law and Government".

This article is in line with article 1 of UUD 45 stating that Indonesia is a unitary state and has the form of a Republic (verse1). While verse 2 states that "the sovereignty shall be in the hand of the people and shall be exercised in full by the *Majlis Permusyawaratan Rakyat* (The People Consultative Assembly)". According the formal explanation,[2] the above article contains principles that, firstly, the state of Indonesia is based upon law or *rechtstaat*; it is not based upon power or *machtstaat*. Secondly, the government is based upon constitutionalism, not absolutism. Thirdly, the highest authority of the state is in the hand of *Majlis Permusyawaratan Rakyat* (MPR) which constitutes the embodiment of the whole people of Indonesia.

The above article indicates that the Indonesian Constitution (UUD 45) does not give any special treatment to a given religion to be a state religion. Yet, the UUD 45 gives freedom to every citizen to adhere to his/her own religious convictions. Every religious follower is free, not only to hold his own religious convictions but also to express those convictions in daily life. This guarantee is

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[2] The formal explanation here means the explanation made by the legitimate Indonesian Government. It becomes integral part of the Body of the UUD 45 itself. Therefore none is allowed to give other explanations.

stated explicitly in the UUD 45 article 29, verse 2: "The state shall guarantee freedom to every resident to adhere to his respective religion and faith and to perform his religious duties in conformity with that religion and that faith".

From the above feature, it can be understood that, on one hand, the UUD 45 gives equal rights to every citizen to hold any governmental position and treats all citizens equally before the law. On the other hand, it provides the right to religious freedom to everyone, not only citizens but to all residents who live within Indonesia. At a glance, these two articles look in harmony and are mutually complementary. But if we look deeper, there is a hidden potentiality to clash with each other. The problem is what is the meaning of "equal right" and "religious freedom" written in the text of UUD 45? How if, in the name of religious freedom, other people's rights are offended? For instance, the Muslims in Indonesia might say that attempting to make Islam into a state Ideology, as well as attempting to make Islamic Law to be the state legal policy, are normal in democratic discourse. But the problem then arises, how if, in implementing Islamic Law, other people's rights are offended? Failure to answer this problem is bound to lead to political as well as constitutional chaos. This is why it is important to know what is the meaning of religious freedom in relation to the Indonesian Constitution, and what is the democratic resolution to resolve the problem concerning the relationship between religious teaching and state in a democratic country like Indonesia.

2. The Meaning of Religious Freedom

Religious freedom and religious liberty are often used interchangeably. Both have the same meaning, expressing the absence of coercion in expressing belief and conscience. Yet in the context of political and legal rights, the term "religious freedom" is more often used than the term "religious liberty (Koshy, 1992: 23)

Carilo de Albornoz, as quoted by Koshy, has suggested that religious freedom has four main aspects, namely: freedom of conscience, freedom of religious expression, freedom of religious association and the last, corporate and institutional religious freedom. Among these four aspects, freedom of conscience is the most absolute right in the sense that its "inalienability" transcends the other three aspects. Since freedom of conscience is the most absolute right, religious freedom should encompass freedom to choose and not to choose a certain religion. Personal truth must be regarded as a supreme value. It entails self-commitment and self-responsibility. It transcends the commitment to other agents such as government, and even God. (Koshy, 1992:22) Thus, the freedom of conscience is above everything. If one believes that there is no god, we must let him not to believe in god. Let him be responsible for his own personal truth. It is in this sense that the meaning of "authentic human being" should be defined. Thus, in a broader terms, religion can be defined as self-commitment to personal truth since it is the foundation of determining the authenticity of human beings (Gamwell, 1996:30-31).

The freedom of conscience constitutes the inner dimension of believing or not believing in god. While the manifestation of that conscience, either personally or institutionally, constitutes the external dimension of religious freedom (Koshy, 1992:24).

The division of religious freedom into internal and external dimensions finally leads to the idea that the latter is not absolute in nature. This means that the right to manifest a religious conscience is dependent on other agents, such as government, law and the other elements of body politic, such as political, religious and other social organizations. For instance, in May 4th 2001, one of the members of Laskar Jihad Ahl al-Sunna wa al-Jama'a, a "fundamentalist" group of Indonesian Muslim, was sentenced to death by his fellows because of committing adultery. The police finally detained its leader, Ja'far Umar al-Talib, with the charge of murder and provocative speech to abort the state. However, Umar refused that charge. He stated that what he had done was implementing religious teaching which is guaranteed by the Indonesian Constitution (UUD 45). He further stated that implementing Islamic Law had been the commitment of all members of Laskar Jihad. (www.library.ohiou/indopubs/2)

The above illustration is a very good example of religious freedom when its external manifestation clashes with other agents, namely, law and government of Indonesia. Thus, Umar's detention made by the police should be understood from this point of view. In this case, the government of Indonesia is doing its duty to guard and control the "social contract" of the Indonesian people written in the UUD 45, according to which Indonesia is not an Islamic State. Whoever breaks the "contract" he must deal with its guard, that is, government. Yet, the Indonesian government could only deal with the external dimension of religious freedom, namely, the expression of religious conscience in public life. It cannot force the members of Laskar Jihad to change their religious conscience or religious conviction concerning stoning punishment.

Why must religious freedom be differentiated into absolute and relative rights? The answer is that it is very important for the sake of avoiding conflict or clashes between one and other human rights. In our daily life, so many things have been done in the name of religion. The Aum Synrikiyo in Japan killed many people with poisonous gas in the name of religion. The Muslims attacked and burned churches in Situbondo, East Java Indonesia, also in the name of religion. Recently, the Muslims and the Christians in South Maluku, Indonesia, have fought against each other in the name of religion. Based on the above reasons, differentiation between absolute and relative rights is needed for the sake of determining a strategy to avoid the clash among rights guaranteed by the constitution.

From the above explanation it is clear that the religious freedom has two meanings: the narrow meaning and the broad one. In its narrow sense religious freedom is confined to the internal dimension. This right is purely absolute. In its broader sense, religious freedom includes an external dimension, but the external dimension of religious freedom is relative in nature. Yet, it does not mean that the internal dimension is the only one to be considered. Both constitute integral parts and should be treated as integral rights. This differentiation is needed only for the sake of deciding a strategy when two or more human rights clash with each other. I think only in this sense should the meaning of religious freedom written in the article 29 of the UUD 45 be understood. Thus, even though the right to implement religious teachings, let say Islamic Law, is guaranteed by the UUD 45, its implementation is relative to other human rights. In this respect, the fundamental question to be answered is that: are the fundamental rights of other people offended with the implementation of Islamic Law?

Let us take one example of Islamic Law whose implementation will offend other people's rights. According to the classical approach, the non-Muslim minority groups who live in an Islamic State are called *"dhimmy[3]"*. It literally means "a contract". In the context of political rights, it means "

[3] The *dhimmy* (protected minority group) is a political institution which is based on the practice of the Prophet. The Qur'anic text does not contain this. Even though the word "*dhimma*" is mentioned in the Qur'an twice (9 : 8,10) its meaning is not related at all to the political concept. The word "*dhimma*" in these two verses is more adequate to be translated as "covenant".

According to Montgomery Watt, the concept of *dhimmy* was firstly developed by the Prophet Muhammad during his expedition to Tabuk in 630 CE. In this expedition, the Prophet made a treaty with the minority groups such as the Christian group of Ayla (modern Akaba), the Jews of Maqna and other small groups encountered during this expedition. The treaty said that these small groups got protection from external enemies as long as they pay poll tax (*jizya*) to the central government. Yet, the central government let them have internal autonomy (Watt, 1987:49-50)

These small groups whom the central government at Medina protected are called "*ahl al-dhimma*". During the time of the Prophet and the first four Caliphs, the protected minority groups got better treatment than they got from both Sasanian and Byzantine (Watt, 1987). But, they often became the target of Islamic missionaries that make them feel as second-class citizens unless they converted to Islam. That is why, in a relatively short period, Muslims became the vast majority in the Middle Eastern areas. However, as

a contract between Muslims and non-Muslims who co-exist in one community". The objective of the contract is, actually, lofty, namely in order for them to have protection by Muslim rulers (Attabani, 1995:65). This is why, W. Montgomery Watt, a leading Islamic Historian, in his book entitled "*Islamic Political Thought (1987)*" translates it as "the protected minority".

Attabani suggests that, according to Islamic Law, if the non-Muslims have made a contract with the Muslim State or Muslim rulers, they enjoy all right and privileges as full citizen. Exempted from these rights is the right to hold some positions that have a religious nature, such as the head of the state and the Chief Commander of the Army (Attabani, 1995: 65).

No matter how just and convincing the concept of *dhimmy* or "protected minority" has been developed by the Muslim jurists, it is not compatible with the Indonesian Constitution, UUD 45. The reason is that its implementation would offend other people's rights which are also guaranteed by the UUD 45. In addition, the material claims of justice, as reflected by Islamic teaching in treating the protected minorities (*dhimmy),* could eliminate the procedural justice explicitly stated in article 27, verse 1 of the UUD 45. It states "Without any exception, all citizens shall have equal position in Law and Government and shall be obliged to uphold that Law and Government".

This is one example of how a part of Islamic Law cannot be implemented in Indonesia. Thus, if someone claims that implementing Islamic Law is a part of religious freedom and is sanctioned by the article 29 of the UUD 45, this claim, as a matter of principle, is misleading. Not all of Islamic teachings covered by Islamic Law can be adopted to be the national policy. A part of it could possibly be adopted, namely that which does not offend other fundamental rights or, that which does not abolish procedural justice as indicated in article 27, verse 1 UUD 45, but it is impossible to adopt the Islamic Law as a whole as a state legal policy of Indonesia. To be a state legal policy, Islamic Law must first be selected. This process of selection, by no means, indicates the absence of religious freedom in the UUD 45. As stated earlier, expressing religious teaching is the external dimension of religious freedom, which is relative to other agents within the body politic. Thus, the process of selection should be seen as the strategy of the Indonesian government for the sake of avoiding clashes with other fundamental rights, which are also guaranteed by UUD 45.

From the above explanation, it is clear that according to the Indonesian Constitution, manifesting religious teaching in the form of Islamic Law is a part of religious freedom, which is guaranteed by UUD 45. Because implementing Islamic Law belongs to the external dimension of religious freedom, it is relative to the presence of other agents, such as government and the other institutions such as politics and law.

The guarantee provided by UUD 45 is not only the right to manifest religious teaching such as Islamic Law as an individual right, but following the logic of a democratic constitution, it (UUD 45) also guarantees the right of every religious follower to attempt to make his/her religious tradition to become the state policy. Thus, insofar as Islamic Law is not contradictory to other fundamental rights which are guaranteed by UUD 45, it can be adopted to become national legal policy. And the same would be true for other religious groups. Its position is the same as the position of customary laws. It is a legitimate source of national legal policy. But, since Indonesia follows the principle of democracy, the problem here is what is a constitutionally justifiable way to apply the Islamic Law to the positive law of Indonesia? In other words, can Islamic Law, through a democratic process, be applied to the Indonesian system of law? This is another problem that needs further explanation by using a democratic resolution theory.

Montgomery Watt acknowledges, "On the whole, there was more genuine toleration of non-Muslims under Islam than there was of non-Christians in medieval Christian states. " (Watt, 1987: 51).

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3. Religious Freedom and Democratic Resolution

Democratic resolution in relation to religious freedom entails the involvement of all religious adherents in the process of making decisions. All citizens, without regard to their religious background, have the right to express their ideas and to participate in the political arena. Even though the majority frequently becomes a determinant factor in the process of decision-making, the rights of the minority groups cannot be eliminated by that decision. In brief, democracy is not the same as dictatorship of the majority (Peczenik, 1991, 102-103).

All countries that follow the principle of democracy are bound to deal with what Prof. Gamwell (1995: 5) calls the "modern political problematic". The modern political problematic refers to a condition in which a religious authority loses its domination over the state. At the same time, there is an increasing freedom to choose a given religion within the political community. The erosion of one religious authority finally leads the state to legitimate a plurality of religions. The modern political problematic is, therefore, characterized by an indeterminate number of religions. A limitation on the increasing freedom to choose a given religion can possibly be done only by force. A limitation by force, however, is not a good resolution since it is not consistent with the idea of democracy.

A democratic resolution to the modern political problematic can only be worked out by letting the society or political community exercise their "activities". Prof. Gamwell thinks that human activities are distinguished by the question which is "explicitly" asked. Thus, religious activities can be differentiated from political activities because of the question which is "explicitly" asked, not because of the "implicit" question. Based on this account, he defines religion as "the primary form of culture in terms of which the comprehensive question is explicitly asked and answered". The term "form of culture" here means that a religion is "a set of or system of concepts or symbols in terms of which human beings explicitly understand themselves" (Gamwell, 1995: 23), while the term "comprehensive" means the purpose of life (Gamwell, 1995 18). Thus, the question about religious activities can be formulated: what should the activities of religion be or what should the religion do to fulfill the purpose of life?

While religion asks and answers "explicitly" the comprehensive question, politics asks and answers "explicitly" the question about the state. This is because politics is only a "form of association" not a form of culture. Hence, political activities are not directed to ask and answer "explicitly" the comprehensive question, but are limited only to ask and answer explicitly questions about the state. Therefore political activity might be formulated "what should the activities of the state be and what should the state do"? (Gamwell, 1995: 32)

To clarify the above feature, let us look to the following example. If a state implements the law of monogamy, it means "implicitly" that it is implementing Christian teaching. But because the law of monogamy has now become a state policy, it can no longer be claimed "explicitly" that a state is implementing Christian teaching. Since it has become a state policy, the implementation of the monogamous principle is not intended to answer the "comprehensive question", that is the question concerning the purpose of life. However, it is intended to answer the question as to what should a state do to administer the country in dealing with the question of marriage law. The Christian community might say that a state is implementing Christian religious teaching, but the state cannot explicitly claim that it is implementing the Christian teaching, even though it might be "implicitly" implementing the Christian religious teaching.

A human being, in his authentic meaning, can only be found if he is freed to determine it himself by letting him adhere to his religious conviction or religious teaching. This is the logic of the common claim that religion provides the answer to the comprehensive question. In brief, it is in the comprehensive answer that someone can find for himself what it means to be an authentic human being. Because religious conviction provides the authenticity of human beings, it is not wise to expel religion from the political arena. But, as a consequence, religious conviction has to be ready to enter into a free and public debate. Thus, in democratic discourse, attempting to make religious teaching to be a state policy is politically acceptable. But, before a given religious teaching becomes a state

policy, it must be debated publicly to determine its validity. By referring to human experience and reason, the validity of a given religious teaching can, of course, be tested in public debate (Gamwell, 1995:190).

While Prof. Gamwell suggests that religion is important to politics, Prof Rawls believes the contrary. Rawls (1993: 11) suggests that political conceptions must be based on "justice as a free-standing view". But, the "free-standing view" is impossible to be manifested in political conceptions without a fair system of cooperation (Rawls 2001: 5, 1993: 15) and toleration (Rawls, 1993: 10). In order to be fair the concept of justice should be purged from religious and metaphysical doctrines. Fairness is not based on any specific religious and metaphysical doctrine, except what is "implied by the political conception itself" (Rawls, 1993: 10). He calls such a concept of justice "justice as fairness".

Thus, for Rawls, no religious convictions or religious traditions in community are important to politics. This can be inferred from his conception of justice. A political conception must be independent of wider doctrines, either religious or secular ethical doctrines. It is worked out in terms of "certain fundamental ideas seen as implicit in the public political culture of a democratic society" (Rawls, 1993: 13).

Rawls (1993: 14) believes that human beings have a capacity to create "a fair system of cooperation over time". Why? Because they have "two moral powers", namely a capacity for a sense of justice, that is, the capacity to honor fair terms of cooperation and a capacity to form, to revise, and rationally to pursue a conception of what is considered as good (Rawls, 1993: 19). Thus, according to Rawls, a reasonable person must be able to accept principles of justice as fairness even though they differ in their religious backgrounds.

From the above explanation, it is clear that "justice as fairness" requires religion to be left behind when we enter the political arena. We have to come to the political arena with our "original position". This means that we have to put off whatever attributes we possess, either these related to our religious convictions, ideologies or social organizations. Thus, we come to the political arena only as a citizen, not as a Muslim, a Christian, a Buddhist, neither as an atheist. For Rawls, this is important for the sake of fulfilling a fair agreement and fair cooperation among the body politic. (Rawls, 1993: 22-23). Thus, religious teachings cannot be made as reference in public debate. This what makes Gamwell (1995: 4) accuse "privatists" like John Rawls of having treated religious belief as irrational, and, hence it cannot be the subject of public debate. It is solely a matter of faith and confession. For Gamwell, because the authenticity of human beings can only be found in their freedom to choose what has been their conviction, referring to a given religious conviction in the political arena is justifiable. But, consequently, religion must be ready to be debated publicly.

Full and free debate is only possible if we change our perspective from the thesis of religion as non-rational to the thesis of religion as rational. This is the first and foremost step to be taken into consideration if we would like to follow Gamwell's ideas about overcoming the political problematic related to religious freedom. It is a necessary condition for following the step proposed by him, namely a "democratic resolution." Thus, before we come to the political arena, our minds should agree upon the idea that religious convictions or religious teachings are subject to public debate and discussion. Muslims, for example, cannot merely say that because implementing Islamic Law is the obligation dictated by God in the Qur'an, there is no other choice but that the state must implement it. This is not a rational argument in the eyes of democracy, even though it might seem reasonable to Muslims. Such a position, however, would eliminate the function of full and free debate.

Thus, according to Gamwell, every religious adherent is free to refer to his comprehensive understanding or religious teaching in the political debate. Muslims are allowed to refer to their *Shari'a*, similarly, Christians are allowed to refer to their canonical book as reference, Buddhists are justifiable to base their arguments on Tri Pitaka and atheist groups can use their personal truth to buttress their arguments. In brief, every religious adherent is free to use his or her religious teachings

as a reference or as a basis for political debate. This is different from the idea of justice as a free-standing view of John Rawls which requires justification only from the ideas that are implicit in the political culture (Rawls 1993,10). Hence, no religious conviction is important to politics. Religious conviction should be left behind when we play in the political arena.

The democratic resolution of religious freedom entails a democratic constitution. A democratic constitution should encompass and answer both the politically as well as religiously formulated problems. The formulation of a political problem would ask: is a given constitution consistent with a plurality of legitimate religions? While the formulation of a religious problem would ask: can a given constitution be affirmed by adherents of a plurality of religions (Gamwell 1995,161). These two problematic formulations are of great significance for determining whether the public view or public debate can be worked out. A given constitution that does not encompass the answer to these two problematic formulations is not a democratic constitution, and hence, one without religious freedom.

Now, let us examine the UUD 45 to see whether or not it is consistent with a legitimate plurality of religion. Article 29 verse (1) UUD 45 says "The state shall be based upon Belief in One, Supreme God". The formal interpretation of this clause does not give any kind of definition as to what the definition of religion is and how many religions are considered as legitimate. But referring to the fact that there are only six religious traditions which are represented by the Department of Religious Affairs of the Republic of Indonesia, namely Islam, Buddhism, Hinduism, Catholicism, Protestantism and Confucianism, indicates that only religions which have systems of belief in the oneness of ultimate reality are considered as legitimate. Thus, there is a reduction in meaning concerning religious freedom. As stated above, however, to be fully authentic, human beings should be free to choose whatever they believe. If his conscience believes in the absence of God, let him be atheist.

A democratic constitution must also identify the participants in the discussion or debate and their rights in order that the discussion can be fully free. A procedure for making and executing decisions must also be included in the constitution. In order to maintain the condition for a fully free debate, the constitution itself must be subject to continual assessment. Thus, a procedure for changing or amending the constitution must be explicitly stated in the constitution. All of these constitutional procedures must first be affirmed by all political communities (Gamwell, 1995:163). In other words, a democratic constitution should reflect the affirmations of all religious adherents. This affirmation is of great importance because such constitutional procedures are those decisions made prior to all later state policies and rules, and to which they must be referred.

If these requirements have been fulfilled, logically it would be impossible for a state to give sole support to any one religious tradition or religious teaching, for instance, because the majority of the population of a given state is Muslim its constitution should state "Islam is the state religion". Meanwhile, another of its clauses states "The state shall guarantee to every citizen adherence to his/her own religious teaching". These two clauses, even though they look convincing and fair, according to the democratic discourse are void. Why? Because the explicit support of the state to a given religion will automatically eliminate the right of other religious adherents to have a free and full debate in the political arena. These clauses are inconsistent with existing legitimate religious convictions. A democratic constitution must be neutral from any explicit claim of any "comprehensive" understanding. This is what has been the character of the Indonesian Constitution, the UUD 45.

The democratic decision produced by a democratic constitution might not satisfy some religious adherents. But insofar as the procedure reflects justice, in the sense that the procedure has been stipulated through agreement before the decision emerges, there is no reason for other religious adherents not to obey that decision. In other words, they might be in disagreement with that decision, but they have to obey and respect it as long as it is stipulated through an agreed procedure.

Inconsistency to the democratic procedure means inconsistency to the preceding commitment and inconsistency to the idea of religious freedom itself.

The feeling or the stance that a given constitution is just might change from time to time. A given religious adherent might feel that the decision-making procedure written explicitly in the constitution is just and, therefore, they are bound to a commitment to it. But, later, after undertaking a series of debates, they find the decision-making procedure unjust. As a result they want to change their previous commitment.

Democratic discourse, however, does not regard changing commitment as an aberration of the commitment itself. Changing commitment to the preceding decisions, namely the decision-making procedures written in the constitution, is justifiable. Those who disagree must have room in the constitution in order to persuade other religious adherents, that a certain decision-making procedure written in the constitution must be changed. While they have the opportunity to persuade the other religious adherents to change their commitment to the preceding decisions, at the same time they have to respect and comply with the decisions produced through that decision-making procedure with which they now disagree (Gamwell 1995, 167)

With the above description, Gamwell stresses a distinction between formal and material claims about justice. Formal or procedural justice is a justice reflected by, and manifested in, the constitutional procedure that precedes other later decisions. As long as the preceding constitutional procedure has been affirmed by the other religious adherents, there has been a claim about justice. Thus, the affirmation of the other religious adherents to the preceding constitutional procedure is a decisive factor in determining that the formal claim about justice has been fulfilled, while material justice is a justice manifested in the decisions produced later through the constitutional procedure.

In democratic discourse, what has been at stake is the formal claim about justice. The material claim about justice might be different from one or another adherent of various religious traditions. But as long as the formal claim about justice manifested in the procedure of making, executing, enforcing and changing decisions is affirmed by the adherents of all religious convictions democratic discourse can work out (Gamwell 1995,175). Thus, even though the material claim about justice manifested in a given ordinance cannot satisfy all religious adherents, they must obey that ordinance since it is stipulated through the preceding constitutional procedure that has fulfilled the criteria of the formal claim of justice.

Although a democratic constitution emphasizes the importance of procedural justice or the formal claim about justice, this does not mean that material justice can be neglected. The material claim about justice manifested in a given ordinance stipulated through a just and constitutional procedure must also be tested and validated by appealing to human experience and reason (Gamwell,1995:190). For instance, the Indonesian Parliament stipulates an ordinance allowing the practice of slavery. The ordinance is, finally, stipulated through voting after having been debated freely and in accord with the affirmed and just constitutional procedure. Although this ordinance is stipulated through the procedural justice and is passed through democratic principles, it is not in line with the idea of democratic discourse since human reason and experience regard practicing slavery as morally inhuman. Thus, there is a room for moral appraisal[4].

The above explanation demonstrates that UUD 45 follows the principle of procedural justice and, hence it is a democratic constitution. Its position is neutral in relation to the existing religions in Indonesia. None of them is given special treatment. All religious adherents have an equal position in law and government, and they have the equal right to work and to have a better living (article 27). Every citizen, without regard to religious background, has the right to freedom of

[4] It is not the right place here to discuss whether a moral judgement is philosophically sound or not. David Lyons has elaborated in length about this matter. For further inquiry see (Lyons,1993: 1-35).

association and assembly, they have the right to express their thoughts and publish them (article 28), and they have the right to obtain an education. The UUD 45 is also subject to continual assessment. It can be changed provided that two-thirds of the members of the MPR (the People's Consultative Body) agree. In brief, the UUD 45 has fulfilled the provisions maintained as establishing a just procedural constitution.

4. Concluding Remarks

Based on the UUD 45, none of the existing religions in Indonesia has a privilege place. Islam is not the state religion and, therefore, the position of Islam is the same as that of other religious convictions. Thus, there is a wide room given for Islamic teachings, and for the other religious teachings as well, to become state policy, provided that the fundamental rights of others are not offended. After becoming a state policy, Islamic teachings can no longer be claimed "explicitly" as Islamic teachings, because it is not providing now an answer to the comprehensive question, but only to the partial question, namely the question of how to administer the state. Its function in the society has changed from answering "explicitly" the comprehensive question to answering "explicitly" the question about the state's policy.

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