The Indonesian 1945 Constitution is clear that the state guarantees all citizens’ rights to believe in a religion and to pray in accordance with their religion without any disturbance (Article 28).

Lately, an increasing number of Local Regulations and Regional Heads’ Decrees have been passed banning the Indonesian Ahmadi (members of Jemaat Ahmadiyah Indonesia - JAI) from conducting religious and social activities. The root cause of this problem is actually the national government, in this case the Minister of Home Affairs, who misunderstands the essence of the key Joint Ministerial Decree No. 3/2008 issued on 9th of June 2008.

Article 1 of the Decree of the Ministery of Home Affairs’ own Decree No. 450/3457/SJ, issued on 24 August 2010, provides, for example, that ‘the Joint Ministerial Decree is a form of supervision and law enforcement for any violation of the law by either the Ahmadi or members of the public who conduct an act of violence’. This has been relied on by local governments to pass laws banning Ahmadiyah in the region entirely.

As a historical actor directly involved in the process of formulating the Joint Decree, I feel obliged to clarify that the essence of the Joint Decree is actually to recognize and protect Ahmadi throughout Indonesia. The Joint Decree also stipulates, however, that in exercising their activities, the Ahmadi should confine their activities within their community so as not to disturb security and order. The Joint Decree does not, however, in any way prohibit the Ahmadi from worshiping in Islam and exercising their religious practices. The limitation applied to the Ahmadi is merely preventing the spreading of
teachings that divert from core teachings of Islam, namely, their belief that there is another Prophet after Prophet Muhammad. As stated on Article 2 in the Joint Decree:

“...warning and ordering all believers and the management of the Ahmadii Indonesia (JAI), as long as believing in Islam, to stop all activities that are not in accordance with the general teachings of Islam. For example confessing that there is another Prophet after Prophet Muhammad.”

There is then no prohibition in the Joint Decree on the Ahmadi exercising their religious routines and other social activities, provided they do not spread the idea that there is another Prophet after Prophet Muhammad.

Even if an Ahmadi member or leader does behave in a way inconsistent with the general Islamic doctrines, this must be proven through formal legal proceedings involving the due process of law in the courts. Allegations against the Ahmadi cannot be interpreted or judged by anybody else, not even the government and especially not vigilante groups in the community.

To clarify understanding of the Joint Decree I need to explain the history of its passage. In the beginning, the government planned to issue this Joint Ministerial Decree at the end of April 2008 with the aim of banning Ahmadiyah (JAI). However, acting in my role as Presidential Advisory on Law, I advised the President that this plan would contradict the Constitution, and was consequently a violation of the principles of a democratic state and constitutional government.

President Yudhoyono agreed and gave a positive response, asking me to convey his decision to the three relevant Ministers, that is, the Minister of Home Affairs, the Attorney General and the Minister of Religion.

In order to follow up on the President’s order, on May 6th 2008, State Secretary Hatta Rajasa invited me and the three ministers, Mr. Mardianto (Minister of Home Affairs),
Mr. Hendarman Supandji (Attorney General), and Mr. Maftuh Basuni (Minister of Religion) to the Office of the State Secretary to discuss the government’s decision on the Indonesian Ahmadi. At that meeting, my advice to the President was accepted by the three ministers. The government therefore decided to postpone and revise the Joint Decree. It was also agreed to establish a small team to draft the Joint Decree.

Another meeting was then convened to discuss the formulation of the Joint Decree. This was attended by representatives from the Home Affairs Ministry, the Ministry of Religion, the Attorney General, the Police Department, and my assistant, the Secretary to the Presidential Advisors on Law.

The meeting was successful in revising the draft of the Joint Decree that was initially intended to ban the Ahmadi to instead (1) limit the Ahmadis’ activities to prevent them spreading their teaching that there is a prophet after Prophet Mohammad, and (2) prohibiting any violent acts against the Ahmadi.

The existence of Regional Heads’ Decrees banning all Ahmadi religious activities in any form is thus not merely a violation of the Joint Decree but also of the religious rights of every Indonesian. After all, Indonesia’s Constitution provides in Article 28 (1) that religious rights are among the non-derogable human rights guaranteed by it.

According to Law No 32/2004 article 10 (3) (f) regarding Local Government, religious affairs is solely the National Government’s authority and is one of the few areas not delegated to the Local Government. This means Local Governments, both Governors and Regents, are not authorized to pass any regulation on religious affairs. This means they cannot prohibit Ahmadi activities in all forms in their regions. Again, religious rights are not within the authority of the local government but that of the National Government.

Additionally, the Indonesian Constitution guarantees that everyone is free to exercise his/her religion and pray in accordance with it (article 28E); everyone has the right to a freedom of faith, to express their mind and attitudes according to their conscience (article
28E (2)); everyone has the right for recognition, protection and legal certainty, as well as to be treated equally before the law (article 28D); everyone has the right to live in a physically and internally prosperous way, to have a home and a good and healthy life environment (article 28H); and everyone has freedom from discriminatory treatment (Article 28I (2)).

All these rights apply to all citizens, including members of the Indonesian Ahmadi (JAI) and all are non-derogable rights (article 28I), that is, they cannot be diminished in any way.

I would also add that under our constitutional system, the protection, development, enforcement and fulfillment of basic human rights are the responsibility of the state, specifically the government.

Given that the principles and the values mentioned above are all included in the constitutional rights of all citizens guaranteed under the Constitution, the Decree of the Home Minister Number 450/3457/Sj of August 28th 2010 issued to all Governors in Indonesia cannot be used as an excuse to reduce the religious rights of citizens, including members of Indonesian Ahmadi (JAI).

Despite this, there are so far 4 provinces (Banten, East Kalimantan, South Sumatera and East Java) and 7 Districts (Garut, Tasikmalaya, Bogor, Samarinda, West Lombok, East Lombok and Pandeglang) that have issued regulations banning Ahmadi activities.

A constitutional government or a democratic state based on law is obliged to run the government based on the law, in which case the highest or supreme law is the 1945 Constitution. On his inauguration, President Yudhoyono also took a religious oath to “…fulfill the obligations of the President of Republic of Indonesia at best and fairly, hold on to the constitution firmly and enforce the law and its rules honestly, as well as serving the country.”
Therefore, the national government, including the President and the Home Affairs Minister should reprimand local governments for assuming the authority of the national government by purporting to prohibit the activities of the Ahmadi.

The national government should also immediately take steps to overrule the local governments. Specifically, the Home Affairs Minister should revise the Decree of Home Minister Number 450/3457/Sj of August 24th 2010 on the grounds that the essence of the Joint Ministerial Decree is actually to protect and guarantee the freedom of Indonesian Ahmadi (JAI) to believe in their religion and to pray in accordance with it in their own community.

Thank you.

Melbourne, April 2011

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