

CHAPTER 2

The Real Condition of Freedom of Religious/Belief

From the monitoring of SETARA Institute, in the period of 2012, the amount of intolerance action case and discrimination of freedom of religious/ belief has increased. It was represented by 264 and 371 cases on violations of freedom of religious/ belief as the constitutional rights which protected and guaranteed by the state. The number of 264 and 371 as representing as in the graphic of the amount of Cases and Actions (see graphic 1), shows the significant escalation about minor situation in freedom of religious/ belief if compared with last year, where the each “only” 244 and 299.

The various violations of freedom of religion / belief on this year occurred in different months (see graphic 2). Violations that occurred along this year mostly occurred in May (38 violations) and October (40 violations). The factor of month in this case is not a primary factor analysis to find certain patterns relating to the violation of freedom of religion / belief of the time (months) occurrence. In the previous year research, the month that became the “culmination” month of the violation was on February (45 violations) and March (48 violations).³²

32 See Hasani and Naipospos (Eds), 2012, *Politik Diskriminasi Rezim Susilo Bambang Yudhoyono: Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia 2011*, (Jakarta: Pustaka Masyarakat Setara), p. 22.

The spread of those violations in various month describes about the pattern which relatively “static”, which related to the “major” incident that stimulates some of “derivative” violations.

In this year the big number of violation happened on May that relates to the HKBP Filadelfia Bekasi and GKI Yasmin Bogor which again heats up in February-April 2012 so that the violations “culminated” in May. This key incident also occurred in Aceh Singkil. The violation is forcibly closure the Christian’s place of worship on the beginning of May, 2012. And the others incident culminated on October “supplied” by barbaric incident on Shia (Syi’ah) congregations session 2 in Sampang, Madura, which occurred on ultimo August and continued on September and others violation happened on October also.

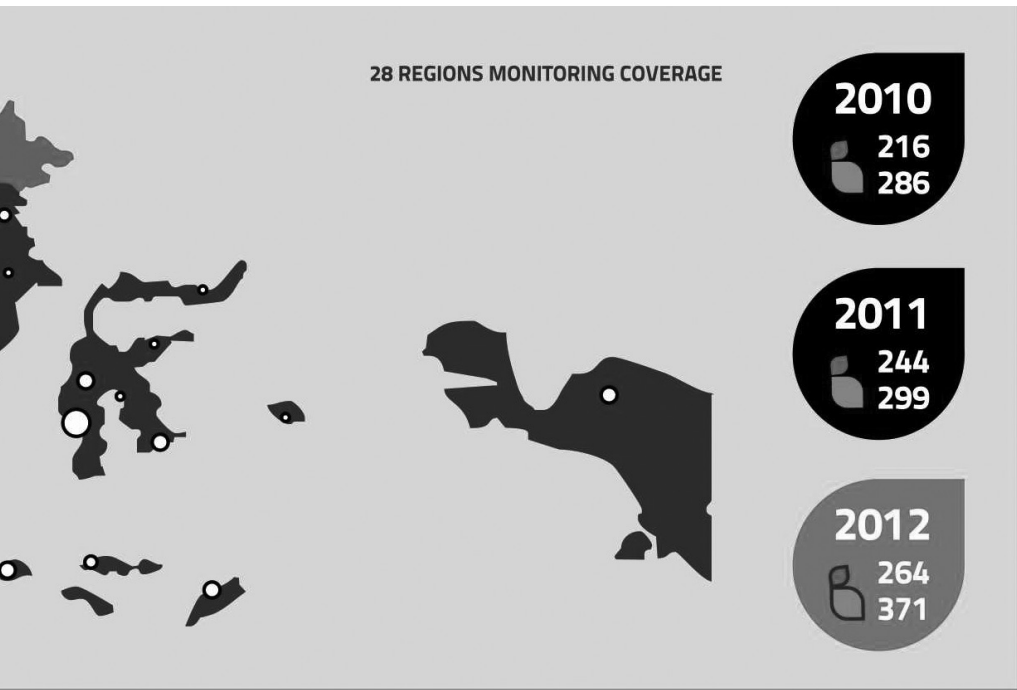
If compared with the culminated violations occurred years past, what happened on February and March relates to two key incidents which occurred sequentially, there is the massacre of Ahmadiyah in Cikeusik and church burnings which occurred in Temanggung.



The culmination of violations which occurred on May and October also could be interpreted symbolically. The two “sacred” months for the Republic actually unable to evocative the spirit of the people of Indonesia to sow tolerance as stipulated as the concept of “Bhinneka Tunggal Ika” among the adherents and followers which has different sight of religion and belief.

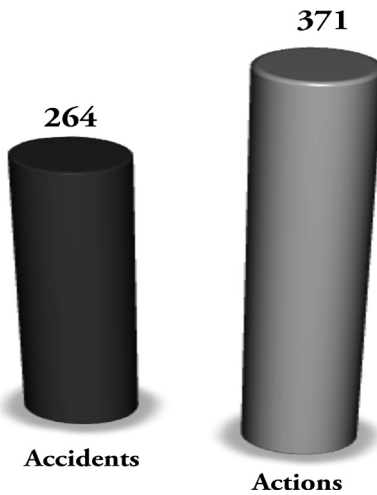
As we all know, May and October are the important month of Indonesian people where the precious moments of Indonesia commemoration, namely “bulan kebangkitan nasional” (The National Awakening Day-on May), and October as the day of Sumpah Pemuda (youth pledge), that day being the historic day of Indonesian concatenation-history of nation shapers (young people) to be united in their different.

The culmination of violation which occurred on May and October confirms that the sacred spirit of *Kebangkitan Nasional* (National Awakening) and Youth Pledge/ *Sumpah Pemuda* have not growing in

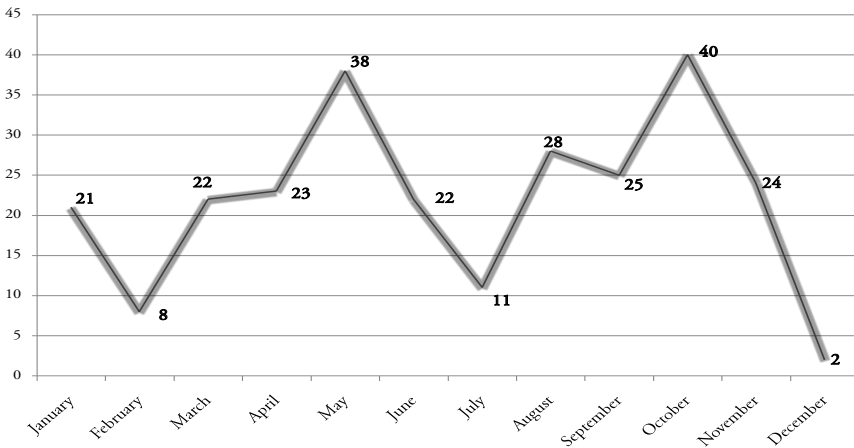


Indonesian which has different and diversification as their naturally given. Politically, this condition could be read as a serious problem for existence and national integration of our nation (nationality). Are the nation as a community, be imagined – or at least base on the opinion of Huntington – be treated such as through the reproduction of sacred symbols of nationality.

Graphic 1
Amount of the incidents and actions.



Graphic 2
The Monthly report of Distribution of Occurrence Violation Time



From the location of occurrence violation, SETARA's monitoring shows that most of provinces of administrative jurisdiction area of Republic of Indonesia, contributes some violations' data on freedom of religious/ belief. Those violations to spread occur in 28 provinces (see graphic 3). The number of violations leveled on more than 10, occurred in 6 (six) provinces. While the most massive and significant violation, quantitatively occurred to spread in 5 areas (graphic 4). The most-high violations occurred-province is West Java. It becomes the "champion" of the past. In fact, in terms of the quantity, the violations that occurred in that neighbor-city of Indonesia – 76 cases of violations – it increased if compared to the condition on last year which "only" 57 cases.

The stable status of West Java as the most intolerance province in Indonesia, reflects the deepest apprehension if related to its position as the biggest demographic contributor of Indonesia. As recorded in statistical notes of Central Statistics Agency (BPS/ *Badan Pusat Statistik*),³³ West Java is the most densely-populated provinces of Indonesia. By analyzing the relation pattern of Indonesian population, could be assumed that the level of diversity of West Java is also high. Thereby, the failure of experimentation on tolerance in the terms of differences (including religious/ belief) in West Java can be interpreted as a failure of tolerance hotbed in the greatest socio-demographic miniature of Indonesia.

Trough the data, is also needed to be asked the epistemological questions, why West Java? SETARA Institute within the Framework regrets the weak position and role of local elites, in this case is the Governor of West Java. Governors who are the real power in West Java is a figure at once carried by the Prosperous Justice Party (PKS), the Islamic Party since 2009 claims have formally transformed into

33 For data on 2010, the newest population data can be accessed by Central Statistics Agency (BPS), the population of West Java is 43,1 milion or almost 20% of the total population of Indonesia in the same year which amount 237,6 milion people. See on the site of BPS through this link http://www.bps.go.id/tab_sub/view.php?kat=1&tabel=1&daftar=1&id_subyek=12¬ab=1 accessed on December 11, 2012.

an opened-party. The political platform as the opened-party should be applied concretely by Ahmad Heryawan in his politico-juridical policy as the head of government of West Java in order to establish West Java become the inclusive and tolerance province.

From the deployment regional where the violations occurred also could be identified its stagnancy or deterioration in compliance of freedom of religious/ belief as the constitutional right in top 5 provinces. The highest contributor of violation on freedom of religious/ belief this year is not shifting. The shifting only occurred in North Sumatera and Banten. North Sumateran on the last research ranked the second after West Java with the number of violations as much as 45 cases of violations, and now it “donates” 3 cases. The position of North Sumatera on top 5 was replaced by “neighbor country” Naggroe Aceh Darussalam with 36 cases. And Banten which became the place where 14 cases happened, now is out of top 5 with 4 cases only. The top 5 position of Banten was replaced by Central Java when this year ranked on third position as intolerance province in Indonesia with 30 cases of violations.

Meanwhile three (four) provinces as the other occupant of the top 5 other, was not shifting. The position of West Java, East Java and South Sulawesi stayed on top 5 (five) as same as last year. From the quantity the freedom of religious/ belief increase significantly in West Java (last year 57 cases) and East Java (31 cases). This phenomenon of province’s position which “again” on the top of 3 as the intolerance provinces, reflecting the lack of regional initiative to take progressive actions to fulfill the constitutional rights of its citizens in the form of freedom of religious/ belief. There’s fact of strong tendency that Regional Government did the omission even in certain extend in order to create worsen the situation of intolerance and discrimination. That tendency could be captured in East Java by the case of persecution on Shia congregations in Sampang and West Java, case of GKI Yasmin, and case of HKBP Filadelfia.

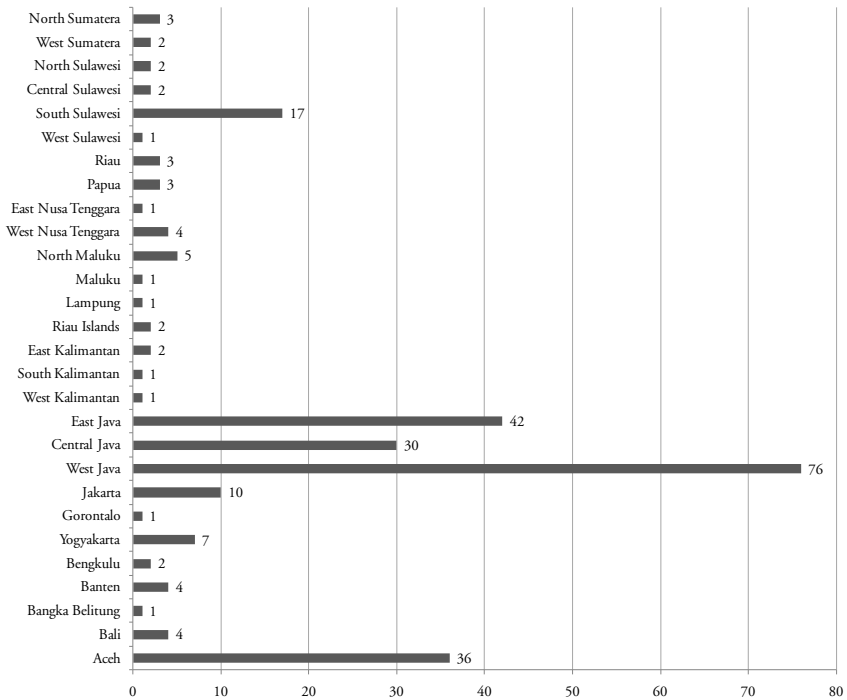
An advance situation brightly shows incompetency, incapability and lack of political will of the local government to take breakthrough

policy in order to promote the constitutional guaranty for freedom of religious/ belief. Not only that, the data also show ineffectiveness of relations among the provinces-districts/municipality cum governor-regent/mayor which represented by disability of governor “to control” or “to direct” his underling-governmental unit. This ineffectiveness relation is reinforced by the amount of violations which carried out by the district government/municipality government or regent/mayor (see graphic 6) as one of factors.

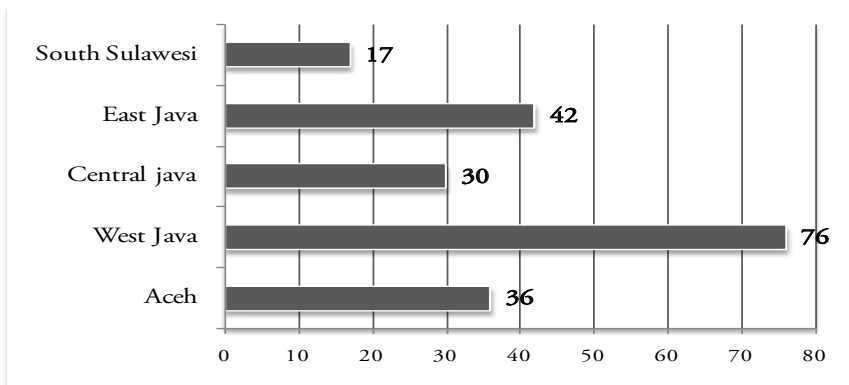
This minus situation aggravate the similar situation in national level, where the regulation in governmental level, ministry, and institutions “the auxiliary” of the state, such as MUI³⁴ and Bakorpakem, tend to fail in embodying the constitutional guaranty for freedom of religious/ belief in the field of politico-juridical policy under the basic law of the state. Incongruence and inconsistency of governmental policy both politically or administratively with constitutional policy design which stipulated in the 1945 Constitution (UUD) of the state, becoming the fundamental problem for freedom of religious/ belief. This description has been done in Chapter 1 of this report.

34 The ambiguity of institutional position (institutional) of MUI that considered as the *state agency* or an ordinary community organization (Ormas) like NU and Muhammadiyah, dyes the discourse relation between state and religion in Indonesia. At first, MUI was established by state/government of Orde Baru Regime to control the religious community organization, but in that development, the position of MUI become more significant and moreover its authority was strengthened related to some of regulations, such as: Syaria Bank, Zakat and Halal Certification.

Graphic 3
The Regional Distribution of Violations Occurrence (per-Province)



Graphic 4
The Top 5 (five) Regional of Highest Violations Occurrence



From the side of actors behavior, by using the normal category in study and human rights perspective, the violations on freedom of religious/ belief can be categorized as two kinds, such as; the actions committed by state, and action committed by non-state actor. The research result of SETARA Institute shows that the action committed by state actor tend to lower than by non-state actor, means 39% of violation, compared with the percentage of action which committed by non-state actor, means 61% (see graphic 5). Cumulatively, the percentage of this action classification based on the actor, is not significantly shifting.³⁵

Graphic 5
The intensity of Action by Actors



State actor which being the biggest violation quantitatively is Indonesia National Police (Polri), means 40 cases. This confirms that

35 In counting the actor, SETARA Institute bases itself to who involved in an incident. In one incident, some governmental institutions could be merged to do an action. Likewise happened between the state institutions and society groups could be merged to do some of actions in an incident.

the position of the state police as the *potential offender* which in human right perspective generally congruence with its Tri Brata Corps in the specific issue of freedom of religious/ belief. The violations committed by the police, on this year as equal as which committed by them on years ago (40 cases of violations). Meanwhile, the other institutions which committed the highest action of violation after police, is district with 28 cases and city with 10 cases. The composition of violation which committed by district government and city government (38 cases) escalates significantly if compared with last year condition (only 18 cases).

Mostly the actors of state government (executive) are who sat in national or local level, as the main state agencies or auxiliary state agencies. Those state institutions --exclude police and district government/municipality government—namely attorney, ministry (particularly Religious Affairs Ministry), provincial government, Public Order Agency (*Satpol PP*), agency, sub-district head, and so other.

If classified by using the perspective of human rights, the violation committed by the state could be divided into 3 kinds, such as direct-act violation (by commission), indirect-act violation (by omission), and through the policy which overarching or provoked the violation (*by rule/judiciary*). Mostly violation committed in the form of direct action (112 cases/ 77, 2%). Indirect act violation occurred around 28 times (19, 3%), and in the form of policy around 5 (five) times of violation (3, 5%). The direct act committed by state actor could be including the prohibition of establishing a place of worship, to force a belief, the dissolution of the discussions, dissolution the religious activity, misdirection, investigation on allegations of religious desecration, suspicion of religious desecration, prosecution on religious desecration, verdict of indictment, and so on (see table 1).

Graphic 6
State Actor and Amount of Violations

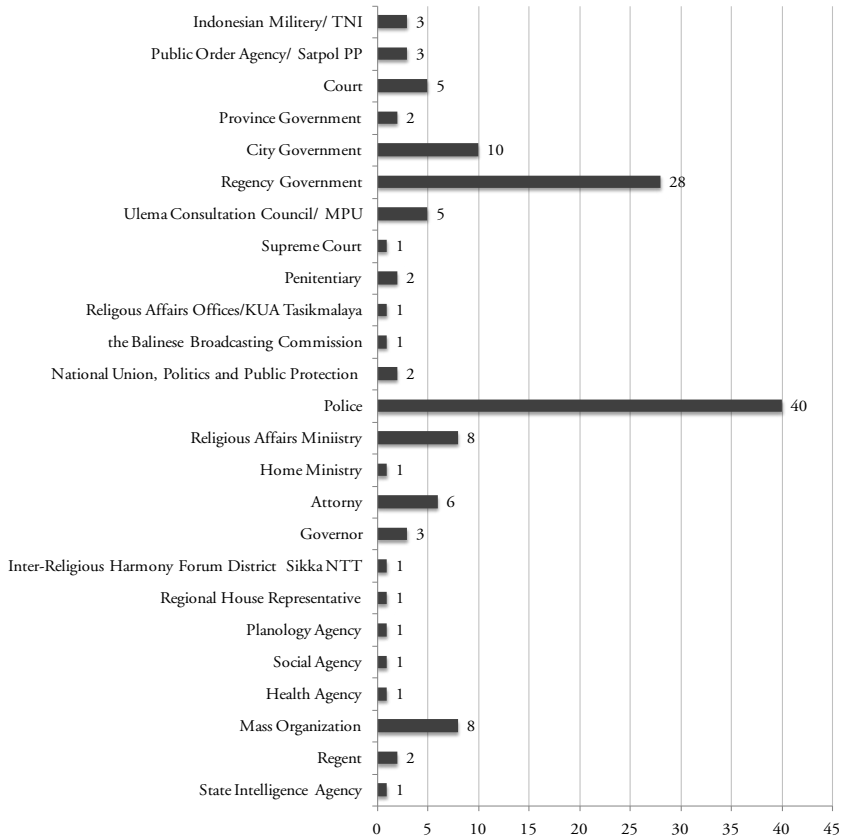


Table 1
Violation Act by the State

Violation	Amount
Threat of Dismissal	1
Threat of worshipping place closure	1
Condoning	8

Discrimination	18
Intimidation	4
Discriminative policy	5
Disallowance of religious belief	1
Disallowance of worshipping	5
Disallowance of religious activity	1
Disallowance of establishing Educational Institution of Religion	1
Disallowance of establishing worshipping place	4
Coercion of belief	7
Disallowance of freedom of expression	7
Omission	28
Dissolution of discussion	1
Dissolution of religious activity	1
Extrajudicial investigation	1
Detention	2
Detention on Religion Desecration	1
Arbitrary Detention	1
Arrestment	6
Neglect of Refugees	2
Eviction	2
The Sealing Action of House of Worship	19
Misdirection	6
Investigation on Allegation of Religion Desecration	1
Suspicion on Religion Desecration	3
Prosecution on Religion Desecration	4
Verdict of indictment on Religion Desecration	4
Total	145

Meanwhile, the act committed by non-state actors (61% from the whole of violation's cases) mostly cases involving the organization and religious irregulars, society/individual, and other non-state organizations (see table 2). The institutional actor which in the research data is mentioned as biggest contributor in doing violations on freedom of religious/ belief, is Indonesian Ulema Council (MUI)³⁶ with 25 violations and Islam Defenders Front/ *Front Pembela Islam* (FPI) which "donates" 24 violations. The violations committed by those institutions is only lower that committed by society – individual group which its collective affiliation and organization, is difficult to be identified – committed 76 cases of violation.

Table 2
Non-State Actor and the Amount of Violation.

Actor	Amount
Businesses	2
Fatayat NU Kudus	1
FBR	1
FKAM	1
FKUB District of Bekasi	1
Forkabi	1
FPI	24
Front Jihad Indonesia (FJI)	1
Front Pembela Pancasila (FPP)	1

36 Technical Operationally in research of SETARA Institute, MUI categorized as the non-state actor, even institutionally there is an ambiguity in the component of institutional of MUI, is this institution part of state agency of mass organization. The choice of this categorization is substantially not problemati. The problem of this institution's role, as the state agency or mass organization, is not significant. The point of significance lies precisely on this institution's contribution on escalation of violations on freedom of religious/ belief.

FUI	1
FUUI	1
Garis	1
Gerakan Anti Maksiat (GAM)	1
Gerakan Anti Pemurtadan dan Aliran Sesat (Gapas)	1
Gerakan Muslim Penyelamat Aqidah (Gempa)	1
Gerakan Pemuda Ka'bah (GPK)	2
GP Anshor	1
HTI	1
Individual	6
Educational Institution	9
IPNU-IPPNU Kudus	1
Jamaah Hizbullah	1
JAT	1
Kokam	1
Laskar Sabilillah(LS)	1
Laskar Umat Islam Solo (LUIS)	1
LPI	1
LSM Pandam	1
Majelis Mujahidin Indonesia (MMI)	5
Muhammadiyah Jatim	1
MUI	25
NU Jawa Timur	2
Hindu-Student Organization (KMHDI Bali, BEM IHDN Denpasar)	1
Pagar Aqidah (Gardah)	2
Islamic Mass Organization	10
PMII Kudus	1

Persis Bandung	1
Religious Leaders	6
Residents	76

Related to MUI and FPI, if juxtaposed with last-year data, so could be inference that both organizations are being the serious obstacles in compliance and realization of freedom of religious/ belief. On 2011, violations committed by these organizations were also high, more increased around 2-3 points. Referring the last-year data, both each organization was committing 28 cases of violations, and it meant lower than violations committed by society, 80 cases.³⁷

Connected to the number of “contribution/donation” on violations of freedom of religious/ belief, should be noted that society could be the agents of violation or harshness in incidentally in the name of religion/belief, even systematically or sporadically. This facts show about the weakness of lower layer condition among plural Indonesian society. Besides that, on the level of curative-prosecutorial, the in juridical-management on violations of freedom of religious/ belief would be facing serious troubles in some cases and claim of violation victim’s rights. And, the violation committed by non-state actor, is mostly formed in intolerance action (42 cases) and misdirection (23 cases). The violation which mostly committed also is offensive and torture actions. The number of physic persecution which generally occurred (murder, torture, sporadically offense, destruction of worshipping places and property of different group, burning of worshipping places, residence, and other property of minority group) was sharply increasing in 2012 (see table 3).

37 Hasani and Naipospos (eds), *op.cit.*, page 27.

Table 3
Violation Action by Non-State Actor

Violation Actions	Amount
Threat of Dismissal	1
Threat of murder	1
Threat of worshipping place closure	1
Threat of Offense	2
Condoning	15
Discrimination	11
Intimidation	9
Intolerance	42
Proscription of Belief	3
Proscription of Worshipping	12
Proscription of Discussion	1
Proscription of religious activity	3
Proscription to establish the religious facility	2
Proscription of establishing the worshipping places	6
Detention of belied	8
Detention to worship	1
Burning residence	3
Burning the property	2
Burning the worshipping place	2
Burning of religious activity's place	1
Disallowance of freedom of expression	8
Property Demolition	1
Dissolution of Discussion Activity	1
Dissolution of worshipping activity	2
Dissolution of religious activity	2
Murder	2

Terror/shooting of worshipping place	1
Torture	13
Eviction	1
Road access closure	2
Residence Sealing	1
Worshipping Place Sealing	5
Sporadic attack	15
Discretion	23
Worshipping place destruction	5
Property destruction	5
Worshipping place destruction	13
Total	226

The important question that also explored by SETARA Institute which related to the violation on freedom of religious/ belief is about who become the victim and how is the quantitative overview of that violation on that victim. The monitoring data shows the variety of victim's group. Generally, SETARA Institute classifies these groups based on its special socio-religious identity when the violation on freedom of religious/ belief occurred.

By using that indicator, the victims could be divided into 25 groups, plus 2 "groups" of victims which hard to be identified its collective-affiliation and special social identity when the violation occurred; there is individual (for individual victim) and society (for more than one victims in every one action of similar violation). The group of victims which being the object of violation with highest amount are Christian (50 cases). The next victim with number of highest violation is individual object (47 cases), religious sects (42), Shia (34) and Ahmadiyah with 31 cases (see table 4).

From the point of collective quantity of victims, seems that violation on freedom of religious/ belief significantly afflict minority groups, such as Christian, followers of Jemaat Ahmadiyah, followers of Shia, Buddhist, Confusians (Konghucu) and others. This situation could be interpreted that the binary relation between majority and

minority in the country of Pancasila which “united in diversity”, still littered by constrain that finally put the majority as the ordinate and also potential offender, whereas the minority become the subordinate of *cum vulnerable victims*.

However, the irrespective of number of mathematic problem, from the point of identity (especially socio-religious) the violation on freedom of religious/ belief could involves the followers of certain religion/belief. Almost all of worshipping place of religion has problems (see table 7). Those violations could afflict the Christians, Moslem, Islamic preaching assembly, students, member of *padepokan* (small organization), and another. It shows that violation on freedom of religious/ belief could afflict everyone. This portrait reconfirms that violation on freedom of religious/ belief is a common enemy which can afflict everyone in a country.

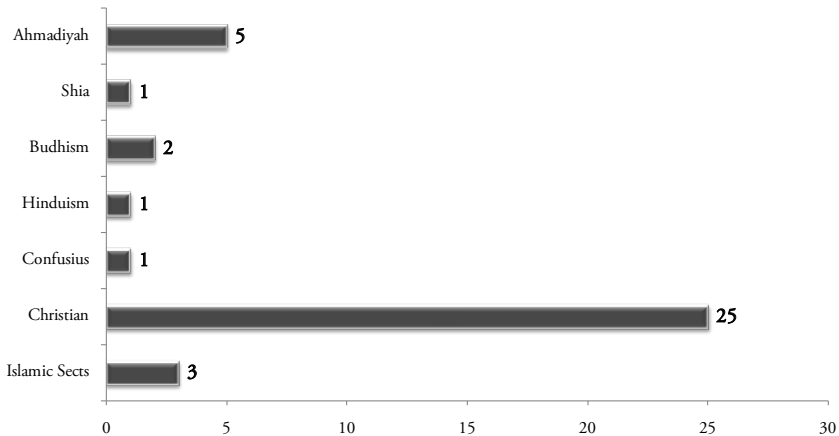
Consequently, in order to protect all of human being, the “presence”, real presence, and rigidity of state strongly needed to protect all of citizens from the offender/violator.

Table 4
Group of Victims and Violations on them

Group of Victims	Amount
Ahmadiyah	31
Religious Sects	42
Academic	1
Businesses	8
Gafatar	3
Individual	47
Jemaat Babul Maarif	1
Islamic Preaching Community	1
Employees of the company	1
Assembly of Tafsir Al Quran (MTA)	1
Mass Media	2
Padepokan Rabbani	1
Students	7

Human Rights Activist	3
Pluralism Activist	4
Social Activist	2
Civil Official of Purbalingga District (PNS Pemkab Purbalingga)	1
Islamic Boarding School	2
Student of Islamic Boarding School	1
Shia	34
Religion Leader	2
Buddhist	7
Hindu	1
Moslem	3
Confucians (Konghucu)	5
Christian	50
Residents	3
Total	264

Graphic 7
List of Affected Worshipping Place

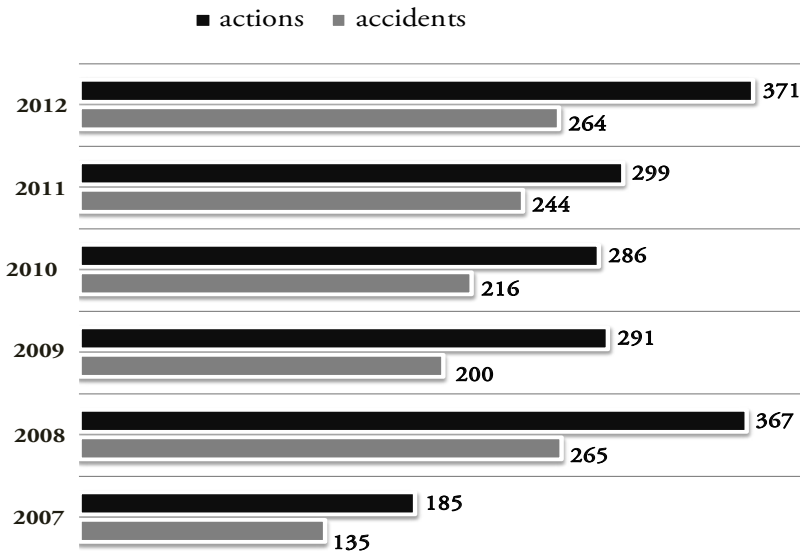


In the last 6 (six) year, SETARA Institute monitors the condition of freedom of religious/ belief in Indonesia, particularly on the specific issues of; violation on freedom of religious/ belief, the actors who

commits violation, and the victims. Since the first time monitoring data was done in 2007 up to now shows escalation numbers. The rate of violation on freedom of religious/ belief could be in graphic 8. The violation which statically increased, describes of main situation; the failure of state's politic to give guaranty and protection on freedom of religious/ belief as the protected and strengthened basic right in the constitution of the state.

The failure of state's politic mainly occurred in 3 points: 1) failure of legislation system (as the joint authority between legislative and executive) in creating regulation which refers to and derived from guaranty of the 1945 Constitutional; 2) failure of regulation system to conform provisions of one regulation and others. And some of regulation that allowed by state to be not aligned are Law 1.PNPS/1965 and Law 39 of 1999; 3) political failure of state law to guarantee of all national regulations from central level up to smallest juridical unit of state must be in line and in same breath with the 1945 Constitution and other derived regulation which already conformed to guarantee the freedom of religious/ belief as the basic right of people and citizen.

Graphic 8
Incident and Violation Action in 6 years



Those negative situation confirmed by the product of discriminative regulation which still being maintenance, such as Law 1/PNPS/1965, Joint Decree of Minister of Religion and Minister of Internal Affair, and other discriminative local regulations. All of mentioned law products have been factually used as the legitimacy instruments for extreme Islamic organizations and people to do some violations.

Those failures and violations facts boils down to basic questions, what and where is the role of President as the head of government and also head of state? The whole portraits of research result and monitoring shows about the weakness of leadership of President Susilo Bambang Yudhoyono in realizing the constitutional guaranty of freedom of religious/ belief.



Mosque and house belong to Ahmadiyah followers broke by the citizen, Ciranjang Street Cisaat Village RT 01/08 Cipeuyeu Haurwangi District, Cianjur West Java, Friday, February 17th, 2012. (source: vivanews).

There's no initiative and breakthrough action taken by the President in handling some violation afflicted by Christian, Shia, Ahmadiyah, and other minority groups. Ironically, SBY always boasted that there's no gross violations of human rights occurred as long as his leadership period. Factually, the real meaning of freedom of religious/ belief is a basic and fundamental freedom which cannot be diminished or postponed its fulfillment. The perspective of SBY about human rights just restricted on the violation actions which committed by security

apparatus only. That perspective is totally wrong in understanding the concept of human rights. As long his leadership period, the violation on fundamental right on freedom of religious/ belief has been violated.

Similar to the condition in 2011, the leadership of Susilo Bambang Yudhoyono seems to prefer in giving speech about tolerance than working seriously and measurably to build the tolerance by giving the guaranty of freedom to all of his people. Without guaranty of freedom, tolerance would be a speech of president and could not contribute anything for advancement of human rights. During 2012, not less than 15 times, Susilo Bambang Yudhoyono was giving message of tolerance in some events. It was less than 2011 where the President conveyed the message in 19 times.

The data of report of condition on freedom of religious/ belief plus violation of freedom of religious/ belief occurred, at least 6 years, directs to one of macro conclusion that the regime of Susilo Bambang Yudhoyono – after 2011 was clearly selected the path of political discrimination in regulating the religious life. And in 2012, confirmed that Susilo Bambang Yudhoyono becomes the President without an initiative and a leader without leadership in terms of fulfillment and advancement of freedom of religious/ belief. []