CHAPTER V

The Evaluation of SBY’s Leadership: Powerlessness until the End

A. Introduction

2013 can be called as the “pure” year of last leadership period of Susilo Bambang Yudhoyono. As known, 2014 is the year for legislative and new president election. SBY has officiated the President for two periods and impossible to be renominated. In 2014, the government and politicians in this country will focus to face election. That’s why, 2013 become the right momentum to evaluate the taken policy since his first period until the end of 2013.

This evaluation includes the prominent tendencies in his leadership period as the Head of State and the Chairman of Government. Those questioned tendencies include various governmental fields of where SBY contributes for violation problems cumulation on freedom of religion/belief.

Necessarily to be noted, the things that discussed in this part is relating to the failures of SBY in leading this country and government, to perform the governmental obligations and responsibility in guaranteeing protection of freedom of religion/belief as the fundamental and constitutional rights of all citizens. Thereby, this evaluation just become the red raport card for SBY that generally impacted to the plenary stagnation on the life of religious/belief in Indonesia.

B. The Preservation of Violation and Politics Discrimination

One of the prominent aspects in two periods of SBY’s leadership
in the field of human rights, particularly the rights to be free embracing the religion/belief is about the maintenance of violation acts. Violation is one of prominent act performed by the state actors and non-state actor in the living arena of religious and beliefs. Violationas is the reflective form for incivility\(^1\) that generally befalling on minority.

Violation by violation against the minority groups can be seen since the first period of SBY’s leadership. Some of those violations that ever be reported by SETARA Institute in 2008 are the violations against the sect of al-Qiyadah al-Islamiyah, led by Ahmad Mushaddeq. This sect has 68 cases of violation that mostly used violence instruments, either performed by the sate or the citizens.\(^2\)

In 2008, the violation useage are mostly done by the state and the society against Ahmadiyah congregations. Violation against Ahmadiyah, was mainly triggered by the issuance of joint decree of 3 ministers about the restriction of Ahmadiyah. The congregation of Ahmadiyah experienced some forms of violations that actually suggested to the people by the government against Ahmadiyah congregations. But the facts shows that violations against Ahmadiyah are continously happened and no actions which pointed to the persecution actors of Ahmadiyah.

After 21 violation objects happened in 2007, in 2008 the congregation of Ahmadiyah became the object of 238 violations, which mostly are in the form of violation that should be charged with the Criminal Code, as threatted as by such SKB of 3 ministers. But the fact, those violations can be performed by the state both in verbally and symbolically that legalized by the state and the administrator apparatus.\(^3\)

Violence against Ahmadiyah was actively ongoing. In 2009, Ahmadiyah experienced 33 violations that mostly are violence, started from the forced dissolution of worshipping activities, the mosque’s sealing, until the attack actions that just be “watched” by the state apparatus\(^4\). In 2010, they also experienced many kinds of violences. About 55 violences which performed by intolerance groups, either the state actors or non-state actors, befalling on them.\(^5\)

In 2011, the escalation of violence against the Ahmadiyah was higher. 114 of violations override Ahmadiyah are mostly formed in the violence, either in verbal, symbolic, and physical. A total of nine places of worship of them become the object of violence.\(^6\) Even in that year, a barbarians attack occured against Ahmadiyah congregation in Cikeusik,
Pandeglang, Banten that done by hundreds of people who triggered his hatred on the basis of majoritarianism religious views, which led to human casualties, in which five people were seriously injured and three others died.

In 2012, the Ahmadiyah violence continues. They were experiencing 31 times of violation that performed by state actor and non-state actor. And in this 2013, various groups of intolerance, especially the religious and social organizations, still doing violence to the Ahmadiyah congregation. They suffered 59 violations, which are dominated by various forms of violences.

The violences with religious/belief motives are not only bafalls on Ahmadiyah congregations. The Christians in this country are “consistently” became the violence objects from intolerance groups. This problem they have experienced within the span of long time. Whereas, they have equal historical right which to be treated fairly as the citizens as same as the other religious congregation in this republic.

The president Susilo Bambang Yudhoyono, is verbally, in his speeches, particularly attending the celebration of Christmast Eve anually, always states that the religious harmony that covering the whole of religious people in Indonesia. And SBY always guarantees that the government he leads will ensure to do intolerance acts, discrimination and violences against to all of religious people.

But the fact is, the Christians always become the victims group of violence in the name of religion. Those violences are the dissolution of worship activities, force closing the house of worship, and explosure the congregation who were doing worship, up to the attack against the church and the Christians who worships.

In 2007, the Christians got 28 violents that the whole are almost in the form of violences. In 2008, the violation against them decreases into 15 violations. That reduction is caused by the escalation of violence performed by intolerance groups that is very high befall on Ahmadiyah congregations.

In 2009, the Christians become the victims in 16 violations that mostly are in the form of violences. Then, in 2010 they become the most victim group in the case of violation on freedom of religion/belief. There are 75 violations befall on the Christians, and most of it are in the form of violences.
Further, in 2011, the Christians become the violence objects in 54 cases of violations. In the next year, 50 violations befall on them. And in 2013, the Christians became the violations' objects that had 48 cases.

In the two periods of leadership of SBY, two of minority groups, they are Ahmadiyah and Christians, in turns to be the most victims group that experience violation on freedom of religion/belief. If Ahmadiyah became the most victims of violation, so the Christian became the “runner-up” of being the victims of violation, or vice versa.

Not only the Ahmadiyah congregation and the Christians, the violence also often befalls another minority groups as a victims. Mostly of the minority groups that becom the violation’s victims is the Mystical Beliefs that accused as the misguided and misleading sect by the majority or the state through Bakorpakem. The violations against them are performed in the form of the attack from intolerance mass which led to cause the loss live of citizens, such as happened as in Aceh.

Later, the Syi’ah becomes the target of violence done by intolerance mass. As we know, the most severe violence against them is happening in Sampang, Madura. Besides to cause the death victims, the sporadic attack of mass to cause the mosque, pesantren and their residences are destroyed. So that, those residents should be evacuated and expelled from their residences.

Those data shows that the violence by violence against religious minority groups gradually happened until the end of presidential tenure of SBY. That such violence seems to be maintained. Let to be happened it self without strong political will to solve it.

Even, those such as violences by violence which happened on minority groups are triggered by politico-legal policies that deliberately are allowed or created, and relating the various violences to minority groups. The rule of law that shows the discrimination forms and become the basis of “violence maintaining” on minority groups of religion/belief, such as following:

First, the Law Number 1/PNPS/1965 is about Preventive action on Missaplication and/or Religious Defamation. Article 1 of that Law states that: “Every person is prohibited in public to tell, to recommend or to attempt public support, to do interpretation about certain embraced religion in Indonesia or to do religious activities that resembles the religious activities from that religion; interpretation and activity which
deviating from that main religious teachings. “Through that Law, as stipulated as in Article 1, the Government discriminates the religious believers with interpretation that subjectively judged “not in line” with the majority’s interpretation. This causes exclusion phenomena of minority groups, which are clearly always not or almost ascertained not in line with the majority. Through that such logical construction, so it can be ascertained the potency of violence by violence against minority will appear.

Besides that, the state intervenes too deep inside the individual forum internum of citizens, moreover to the interpretation space in their head and soul. The state already did serious legal violence to be “the moral police” of it.

Therefore, the state is impossible to guarantee the legal certainty for all of citizens by creating and implementing the law that set the object and the abstract, vague, and absurd substancy. With that such absurdity, so the possibilities of state to lay on the regulation that legitimate the “moral police”, will appears. And the fatwa of MUI is usually being the base of acting. There is no changing construction from that law ratio in the leadership tenure of SBY.

Some other regulation that also strengthen discriminative politics in the government of SBY is the Joint Decree of Ministry of Religious Affairs and Ministry of Internal Affairs Number 9 and Number 8 Year 2006 about Guidance of Task Implementation for Regional Head/Deputy of Regional Head in Maintenance of Religious Harmony, Empowerment Forum of Religious Believers Harmony, and House of Worship Establishment (Joint Decree of Two Ministers). Factually, that regulation sparks difficulties that experienced by minority groups and used as majority “basic” to perform violences, such as sealing, explusion and attack as well.

Another regulation is Joint Decree of Minister of Religious Affairs, General Attorney and Ministry of Internal Affairs of Republic of Indonesia (SKB) Number 3 Year 2008, Number KEP-033/A/JA/6/2008, Number 199 Year 2008 about Warning and Command to the Believers, Members, and/or the Official of Indonesia Ahmadiyah Congregation (JAI) and citizens. The SKB invites the intolerance group “to help the state” to regulate Ahmadiyah through the violence matters.

Moreover, some regulations in local level are issued based on the
principles and contents that led to the above regulation. The questioned local regulation can be found in province of West Java, Banten, Kota Bekasi, Kota Bogor, Kabupaten Sampang, Provinsi Nusa Tenggara Barat, and so on.

C. The Weakness of Law Enforcement

Within the complexity and problems of restrictive legal regulation against protection on freedom of religion/belief, SBY strives powerlessnessly adequate law enforcement to prevent and to solve the violences and violations that performed by intolerance actors which obviously shown to the public.

Too many cases we can present to prove that the law enforcement apparatus not use its authority to enforce the law, at once to enforce its authority itself. The President SBY cannot mobilizes law enforcement apparatus in presidential authority domain, in this context are the police and attorney, in order to protect minority’s rights, to guarantee the fulfilment of freedom of religion/beliefs as the constitutional rights, or “at least” to guarantee the enforcement of the most conventional material law, the Criminal Code.

In two leadership tenures of SBY, we show some “saving” stories of law enforcement powerlessness to fight intolerance masses. In 2008, there are 3 attack actions on house of worship with unclear law enforcement. They are, attack against GPDI congregations in Pondok Rangon, Cipayung, East Jakarta, which attacked by Islamic masses number around 200 persons on August 17, 2008. On October 11, in the same year, the attack occurred against mystical belief ritual house of worship of Sapta Dharma, Sanggar Candi Busonodi Dusun Perengkembang, Balecatur, Gamping, SlemanYogyakarta by FPI.

The attack also occurred on October 30 against the Ahmadiyah Centre mosque, at Balikpapan I Street, Petojo Utara, Gambir, Central Jakarta by FPI. In the case of religious sect misleading in Aceh as the sample, the police cannot prevent mass assault and save the lives of that sect’s followere from mass aggression. The apparatus cannot bring the perpetrators to the court. The law enforcement that should be confessed by us that relatively well implemented is while Rizieq Shihab and Munarman are brought to the court in 2008. The remaining, nothing worthed actions that performed by SBY to enforce the law on
the occurrence of violation acts on freedom of religion/belief, moreover against the acts which obviously performed in the criminal forms.

The weakness of authority usage of law enforcement officials, we can see in the mass rampage at Cikeusik in 2011. The attack against intolerance mass on February showed the failure of police apparatus in preventing the mass brutality that led into 3 death victims. That such case also shows the failure of that murder perpetrator in Cikeusik, because has prosecuted the executioners with very light punishment, maximal 7 months. So, it is rationally if based on that such charge sentence, the judge charged the perpetrators number 12 persons with sentences around 3,5 months until 6 months.

So do the case of mass rampage on the church that occurred in Temanggung, Central Java. The police failed to anticipate the anarchy action from intolerance group and failed to protect the Christian minority as well. The Attorney also failed to charge severe punishment on the perpetrators, so that the 16 suspects were prosecuted in the court just be sentenced with light punishment, that’s about 4 until 5 months with in prison subsidiary.

In 2011, the police show its disability or unwillingness to enforcing law and justice for minority groups that become violence victims of the case of religious sect in Bireun, Nangroe Aceh Darussalam. The sect led by Tengku Aiyub got the attack from resident who accused Tengku Aiyub community is misguided. Because of that incident, Tengku Aiyub asked protection to the police apparatus because of manytimes intimidation and real violence.

But in 2012, they got re-gain attack. The attackers finally burned Aiyub’s home that actually guarded by police and army, and police did not do adequate actions to prevent that such burning action. Moreover, the security personnels failed to prevent the abbatoir of Tengku Aiyub and two persons suspected his followers. About 9 persons are in critical condition because of that abbatoir. The police entourage in big capacity just came to identify and to evacuate the victims, police set up police line, 5 minutes after the burning and abbatoir action.7

The failed plenary exhibition in law enforcement by the apparatus, we can see in the case of Sy’iah Sampang. In that such case, the state administrator’s unwillingness accumulation happened, from the police department, intelligence service, to the court. The law not only fails to
guarantee justice for all citizens, but obviously be used as instrument to persecute minority group.

On the case of deadly attack against Syi’ah I and II, the intelligence service of the state, fails to prevent violence and to punish the attackers. Even, Tajul Muluk, the victim that should be protected and be recovered his rights as victim, either the rehabilitation, compensation, or restitution, is precisely dragged by police and charged as the suspect, charged by the attorney with severe punishment, and charged by the attorney with 4 (four) years imprisonment. That punishment is based on the Article of religious defamation and unpleasant action (Article 162 and Article 335 of Criminal Code). The criminal prosecution case of Tajul Muluk is a sample of criminalization of intolerance victim and failure of most vulgar law enforcement. The persecution on Tajul Muluk is done fast and sever with haphazard legal consideration and unaccountable process.

Contrarily, if compared to the treatment on Tajul Muluk, the law enforcement officers from police, attorney until the court, are obviously defending the criminals who did provocation and attack on Syi’ah Sampang residents. The attackers were just charged between 3,5 months up to 1,5 year. Only the murder suspect of Hamamah was charged 4 years. The main suspect actor of the attack incident on Syi’ah, Rois Al-Hukama, even was acquitted.

There are many awkwardness that obviously show the failure of law enforcement in that deadly attack case of Syi’ah Sampang resident. From the hatred speech, attack, omission, murder, and criminalization are the intolerance group crimes and state apparatus that can be responded by the state through the “normal” law enforcement. There is always a way of the law enforcement apparatus and institution to state that the guilty party in such context is Syi’ah minority.  

Who continuously demonstrate and failure anomaly of law enforcement by SBY’s government is the case of GKI Yasmin, Bogor and HKBP Filadelfia, Bekasi. The president not shows his strong willingness to enforce the law on the court verdict. Juridically in those both cases, that two Christian groups have won the state administration lawsuit, thus until the further appeal in Supreme Court. But it still cannot enforce the final and binding court verdict. To see this reality, it’s hard to not say that there’s no serious action from the state, especially through its
security apparatus that has authority to do necessary legal action for recovering situation. The omission on situation of law violating that is performed by the government, justifying the society or communal group to perform unconstitutional actions by violating another group’s rights. For sure, this is a portrait of no attention of violation on citizen’s rights.

Several such narrations show that the law enforcement along the leadership tenure of SBY became a very brittle point in protection on freedom of religion/belief as the constitutional rights of citizens. Government of SBY has no power to mobilize the law enforcement administrator under his authority to ensure protection on freedom of religion/belief.

D. Subjected to the Agent of behind the Name of Religion Violence

One of another ways performed by SBY to maintain stagnation and intolerance of freedom of religion/belief in Indonesia during his leadership tenure is about the tendency to put the violence agents on the state law regulations.

That such submission is shown by, such as; first, giving accommodation space for the group that obviously questioned by the society because often perform the attitude of violence usage. One of the samples of government’s attitude is on FPI (Islam Defender Front).

FPI in many case happened in Indonesia, often perform the anarchy, violence, and communal arrogance (and interest as well) by shelter behind the religion. Whatever the reason, many involvement of FPI in many cases obtain justification and defense, because the optional witnesses are they who promoting violence.

The people’s attitude on FPI, such as, which was reflected by Kendal public uprising over vigilante FPI. Although in some degree to remain must be said that in a democracy violence is not the right way to face violence, but what is shown is a form of public Kendal a sample of rejecting action on FPI actions.

Another example is the number of anti-FPI action. Indonesia Movement Peace Without FPI as social movements in virtual world or on way action shows how the aspirations of the people against the violence that is often exhibited by FPI. But the government is not
sensitive and deliberately gives privilege space to the intolerance group. The accommodationist attitude against them shown by SBY, and exhibited vurgarly in front of the public.

One of excessive accommodationist expression of SBY, is presented by his Ministry of Internal Affairs, who raised the FPI position as one of the important elements in the life of the nation. The Minister of International Affairs, Gamawan Fauzi in his statement on Thursday, October 24, 2013, as quoted by so many national media, calling for local governments to cooperate with FPI. The way of SBY’s government treats FPI actually strengthen and appreciate the use of violent that performed by other mass organization or social groups behind the name of everything. It obviously will enrich the practice of intolerance in Indonesia.

That government behavior on FPI shows that Ministry of Internal Affairs and SBY’s government in general, prefer to do capitalization on FPI for certain goal and political interest, than do articulation and aspiration aggregation and society interest in general, for the national interest as well in order to constitutionalize the democracy, peace and civility.

If the reason of government, particularly Gamawan, is because of his authority as Ministry of Internal Affairs to develop mass organizations, FPI should not be treated prefentially. The favoritism on FPI that shown by Gamawan is in contrary with the mainstream that demanding all of violence practice of FPI should be answered in front of the law. In the context of democracy, FPI indeed has same rights with another mass organization, but the kondite of FPI as the anarchy organization should be considered morally and ethically by Ministry of Internal Affairs. This calling will strengthen the role of FRI as the vigilante organization under the pretext of cooperation with local government to create ‘social order’ through various operations that violates basic human rights and citizen constitutional rights. That calling just will enrich the practice of intolerance.

Second, by not asking legal responsibility on various intolerance acts that performed by minority groups. In many cases of violence on mystical beliefs that misleaded, the case of church sealing in Aceh Singkil, the government not taking adequate steps to ask legal responsibility to intolerance groups on their violence act and criminal acts.
Third, demanding the light punishment charge to the violence agents. The tragedy of Cikesik, Temanggung and Sampang, as explained as previous point in this chapter, showing those facts that indicates about ‘subject’ to the violence agents.

Fourth, by using the intolERENCE group’s violence to criminalize and to sentence minority group that even becoming the victims. What was perfomed by SBY, either through the police department or attorney that strengthened by the court, in the context of Syi’ah Sampang case, is a vulgar spectacle about the repression of violence agents is above the power of repression of state instruments. So that, instead of to repress the violence agents on their disobedience on state social order, that repression of that violence agent is used as justifying instrument to criminalize the victims.

E. The Harmony Regime and Camuflage Festival

The religious harmony is the output and outcome from protection guaranty on independence of embracing religion/belief and worshiping for all of citizens in accordance to their own religions/beliefs. That is also the result of intolerance institutionalization, non-discrimination, and non-violence in life pranata on religion/belief.

In the perspective of government, the harmony can be simplified by institutionalizing the harmony in religious people forum (FKUB), that even not as always\textsuperscript{11}, but oftenly become new instrument for religious majority groups to force their willingnesses and interests, and then to repress minority groups behind the name of harmony regime that is legitimated by the state. FKUB existence in many local government become instrument of communal tyranny of majority belief against minority groups.

Besides that, President SBY also prefer to declare the words in facing the intolerance practice than to show concrete policy and strict attitude to build tolerance and to punish the group which break tolerance order, non-discrimnation and non-violence in democratic framework. There are many speechs of President talking about tolerance and freedom of religion/belief in Indonesia.

In a momentum on June, 2008, the Presiden delivered statement, that:
“Our state is law state that has Coonstitution (UUD), Law (UU) and applicable regulation. Not the violence state. So, related to the violence incident yesterday, I asked that the law should be enforced. The perpetrators should be prosecuted and be sentenced to the right sanction. This shows that the state cannot subject to the violence actions. The state should enforce the applicable structure for all Indonesian people's interests.”

”The state cannot to subject to the violence actions. The state should enforce the applicable structure for all Indonesian people’s interests,”12

That statement of SBY is a response on attack incident that performed by Jihad Force Commando and Islam Defender Front on peace action of AKKBB in Monas on June 1, 2008. What is stated verbally by President SBY, at least congruent with what is expressed by the majority of academics and human rights activists and democracy, that the constitutional guaranty for all of citizens is clear in basic law and our laws. It means that there is what was stated by SBY with his super politico-juridical, is not worth at all as the State Head and Governmental Chairman.

As in the previous years, in the Christmas celebration on 2008, President SBY stated his commitment through a statement that difference as the social reality in Indonesia which should be respected gracefully. In that difference, the tolerance, appreciation, and respect should be developed. SBY strictly said that “Indonesia is pluralistic nation of its religion, tribe, ethnic, place of origin and language. If those are cultivated well, so that plurality will bring Indonesia to have superior and glorious civilization that respected by people around the world”13

Declaratively, what was stated by SBY is beautiful. But what is waited by the people factually not only the beautiful statement, but the real executorial actions to prevent various intolerance acts, discrimination and crime against other groups.

Along his leadership tenure, in the context of basic rights protection on the field of religion/belief, President SBY show verbal leadership – prefers to give speech talks about tolerance than working seriously
and measureably to build tolerance by giving freedom guaranty to his citizens. The political willingness seems invisible to promote freedom of religion/belief. Without political will and seriousness from the Head of State to give freedom guaranty, so the tolerance will become political words from a president who has no contribution on promoting human rights. The statistical data that collected by SETARA Institute shows about that matter. In 2012 for example, not less than 15 times, President SBY delivered tolerance message in many events, a little bit more than while in 2011, where the President SBY delivered tolerance speech for 19 times.\textsuperscript{14}

Like in previous years, the President in 2013 prefers to play the words in attempting to promote tolerance and freedom of religion/belief in Indonesia. Those SBY’s speeches about tolerance in this year spreaded both in many domestical or international forum, and in formal or informal moments. But almost all of those speeches are without any real execution. Moreover against the victims of violations on freedom of religion/belief such as Syi’ah, Ahmadiyah, and Christians, SBY never take concrete and significant policy that pro to their interests and stand on their existential identity confessions. If we just look at SBY’s speech, this Republic is actually deficit of violation cases on freedom of religion/belief.

Those messages “as if” that the President has done something real to prevent violation and to sentence it as well, and also to recover the victims’ rights in various violation on freedom of religion that stated by SBY, become an irony if compared to his attitude to his cabinet that appointed and existed in his obligatory and authority. Some ministers are obviously making explicit the public statement, attitude, and policy direction that discriminate the minority. And repeatedly into the spotlight person is Religious Affairs Ministry, Suryadharma Ali.

The Minister of Religious Affairs as person incharge related to life of religion/belief in Indonesia, fails to be the state representative in all embracing/all encompassing the whole of religious/belief group including minority. Since the beginning of being Ministry of Religious Affairs after the cabinet reform, Suryadharma Ali has been repeteadly highligthed. Suryadharma is judged has forcing his personal perspective into public thought to be intolerance. His statements that spread the hatespeech against Ahmadiyah and other minority groups, has provoked the public (condoning) to act intolerance as well. Besides
his failure, Suryadharma also denied many conflicts and violences that befall citizens along 2010. In his statement as quoted various media on January 10, 2011, the Minister of Religious Affairs, Suryadharma Ali denied about the violence incidents with religious nuances which oftenly occurred in 2010 as religious conflicts. According to him, the main trigger of tense occurrence among inter-religious people is caused by the involved religious figures who do not want to fullfil main provisions in the context of house of worship establishment.\(^{15}\)

In monitoring of SETARA Institute, in 2011, Suryadharma Ali often said the contra-productive statements against fulfillment of basic rights of all citizens to embrace religion and belief. Recorded around 85 times of Suryadharma’s contra-productive statement for promoting human rights, especially in the field of freedom of religion/belief for all citizens.\(^{16}\) In 2012, in many attack cases that performed on Ahmadiyah as happened as in Singaparna, Tasikmalaya, Jawa Barat, Suryadharma Ali was clearly blaming Ahmadiyah and he inclined to give legitimation and justification on violence acts that performed by FPI and other intolerance masses.

The attitude and action of Suryadharma as the “state representatives” not only to ravage the design and reconciliation plan with cultural and recognition based to be exist together and coexistence in peace (\emph{peaceful co-existence}), and not only to destruct the building of inter-faith life, but also to show that Ministry of Religious Affairs and at once the Political Party Chairman of United Development Party as a person who anti-minority, anti-diversity, and not appropriate to be the leader of ministry that dealing with religious life in Indonesia that manifestly as plural-multicultural country (bhinneka). In an event, that Minister mentioned the Christians is “discriminating their ownselves” in some case of restriction or retardation of house of worship establishment. This matter showed that the Minister not too understand about the problem’s root that relating to the house of worship establishment in Indonesia. In the polemic of Syi’ah refugees, base on the explanation from Syi’ah followers’ lawyer, the Minister of Religious Affairs asked those Syi’ah Sampang followers to repent and to return to the rights \emph{aqidah} (teaching), eventhough in the camouflage of “founding”.

Not only the Minister of Religious Affairs, the Minister of Internal Affairs, Gamawan Fauzi also be highlighted by public. The nearness
of the minister to religious mass-organization elements that oftenly performed violences behind the name of religion, the directives to the Governor/Deputy Governor of DKI Jakarta to displace Lurah Susan who is Christian as wanted as by the intolerance groups, even the appeals pointed to local government to cooperate with FPI which oftenly showing itself as an intolerance group, is the real evidence of lack well state vision, weak to recognize constitution, and because of it the state subject easily to the willingness of violation groups on freedom of religion/belief.

Besides those two ministers, some other ministers that its alignment on minority in conflict handling of religion/belief dimension can be questions, they are; Coordinating Minister of People’s Welfare, Social Minister, and Minister of Public Housing, particularly in the context of case handling on Syi’ah Sampang refugee and Ahmadiyah congregation handling in Wisma Transito, Mataram, Nusa Tenggara Barat.

What is performed by the Cabinet of SBY, especially the Minister of Religious Affairs and Minister of Internal Affairs, showing a big irony of what was oftenly said by SBY in his speeches.

SBY doesn’t have strong willingness to “straighten up” his internal authority to ensure that the governmental executorial policies as in line to the constitutional guaranty on freedom of religion/belief. Moreover, even the strict admonition seems not be implemented to the ministers which are obviously performing intolerance and discriminative preferences, and also having sharp-focus from the public.

Besides that, the factual situation on violation on human rights in some local areas, defensively pointed to be negated by SBY and his servants, mainly at the time of near the conferment of “World Statesman Award” from the Appeal of Conscience Foundation (ACF) located in New York, United States. Moreover, in verbally SBY shows about the effort of handling authority to the local government to enforce the law and to solve the religious conflict that continous to bloom.

Not only in verbally, the President finally legitimates the factual quasi that Local Government should take responsibility in handling all of conflicts with religion/belief dimension which have been happening. The President issued the Presidential Instruction (Inpres) No. 2/2013 about Internal Security Troubleshooting in 2013. That Inpres gives an
authority to the Local Government to do coordination in taking fast, precise, unequivocal and proportional steps to stop all the forms of violence as the effect of social conflict.

In some events, the President also divert his role and responsibility to build harmony of religious/belief life to the community, as several times stated; in the State Speech to Proclamation Rememberance, and the last was in Christmant Celebration od 2013. The President seems confused and forgot that the religious matter is not about the responsibility of government which decentralized to the Local Government in the frame of local autonomy. The President also seems forgot that the authority of law repression and enforcement on the violation acts and destruct the life of religion/belief which is in his hand and in the hand of the government he leads, not in the hand of society.

Last, in 2013, the image of “successful” of SBY was prominently appeared. Various tolerance festivals, such as appearing in the speeches and the victim criminalization are just to impress the victims that they are the real perpetrators, and building the religious performance of religion/belief through his servants, finally creating impression or building the image as if the situation and condition on freedom of religion/belief are conducive and lead to the significant recovery. The government of SBY as if cares to the guaranty and protection on freedom of religion/belief.

The Award Conferment from ACF and the acceptance by SBY, that actually suppressed by some parties to be refused, according to SETARA Institute is in the framework of successful image and covering the failures. So do the launcing of the National Harmony Day on January 3, that starts to be celebrated from 2014, which also part of framework of camouflage festival to explain the condition on freedom of religion/belief as though conducive as well. But actually the case is, the harmony cannot be celebrated by the state. The harmony is an objective situation that was born from active actions of state in guaranteeing the citizens’ constitutional rights and law enforcement of state to ensure the occurrence of social order, tolerance, anti-violence, and non-discrimination.

F. The President without Initiative

Finally, objectively we should say that based on the existing data
that along the leadership tenure of SBY, almost there’s no initiatives policy that he took to ensure five things:

1) Protection of independence and freedom for all of the citizens to embrace a certain religion/belief and to worship in accordance to their religion/belief,

2) To give guaranty on basic human security for minority groups,

3) To prevent of violation and violence occurrence by majority or the intolerance mass to the minority religious groups,

4) To enforce the law and to ask the legal responsibility to the perpetrators for all their violations they performed in all forms of violation on freedom of religion/belief, and

5) To recover the victim’s rights of violation on freedom of religion/belief.

Whereas there are some initiatives that should be taken by Presiden SBY to realize those things above as the ideal condition to recognize the guarantees which are stipulated in 1945 Constitution of Republic of Indonesia. *First*, the President as the Head of State and Chairman of Government, the “Patron” of the Joint Secretariat (Setgab) of Governmental Coalition, the Head of Political Party with majority seats in House of Representatives (parliament), SBY surely can take initiative to designing the Law of Deletion on Religion/Belief Discrimination as the substitute law Number Nomor 1/PNPS/1965. As we know that this Law contains too many weakness, such as this Law is not setting about legal mechanism which actually should be done by the law enforcement administrators, before someone or organization that suspected to perform violation should be given the warning, admonition or dissolution. That warning and admonition can be given directly without any evidence of the violence that suspected to. That such condition will open the space for arbitrary actions and discriminative acts in implementation of the religion and belief practice.

That regulation has undergone the material test in Constitutional Court (MK). Through the Verdict Number 140/PUU-VII/2009 in the case of testing Act Number 1/PNPS/1965, MK confesses that this law has weakness that needs a change. In the poin [3.71] its legal opinion, the Constitutional Court states:
Considering that the Court can accept the views of experts such as Andi Hamzah, Azyumardi Azra, Edi OS Hiariej, Emha Ainun Nadjib, Siti Zuhro, Jalaludin Rakhmat, Ahmad Fedyani Saifuddin, Taufik Ismail, and Yusril Ihza Mahendra, who state about the need of revision of Law on the Prevention of Blasphemy, either in the formal scope of the law or substantial scope in order to make it having the obvious material elements which does not invite wrong interpretation practically. But, because the Court does not have authority to do the editorial and the contents improvement, just able to state the constitutional or unconstitutional status, and remembering that the substanty of the Law of Prevention of Religion Blasphemy is generally constitutional. The Court cannot cancel or change the redaction of that Act. Because of it, to improve it become perfect, it totally becomes the authority of the Law Makers to do it through the normal legislation process.\textsuperscript{18}

Regardless of the problem of legal logical contradiction that built by MK in such consideration above, one thing for sure is that Act cannot give the certainty of implementation of rights of religion/belief for the citizens. That such Law also cannot give the certainty of discriminative attitude occurrence in implementation of rights of religion/belief on someone, that caused by the reason of that such Law has unclear material elements of its meaning or has multiple-interpretations. That fact confessed by all of the Constitutional Judges who examine it in the testing process of this Act. That condition also hints that that Act is inadequate to give certainty of implementation of rights of religion/belief well, without any violation and discrimination.

In the messy legal situation that existing in the Act Number 1/ PNPS/1965 and because of the “recommendation” from MK, SBY should take initiatives to revise that Act with his ultima legal-politico authority and formulate the new Act that in line with the 1945 Constitution about the freedom of religion/belief and more adaptive on the universal norms which existing in the Act Number 12 Year 2005 about Ratification of International Covenant on Civil Rights and Politics.

\textbf{Second}, to revies and to revise the Joint Decree of Minister of Religious Affairs and Ministry of Internal Affairs Number 9 and Number 8 Year 2006 about the Guidance of Task Implementation of
Regional Head/Deputy of Regional Head in Religious People Harmony Maintenance, Religious People Forum Empowerment, and House of Worship Establishment or commonly called as Joint Decree of Two Ministers.

PBM is arranged base on the Act Number 1/PNPS/1965. In principle, that Act not set about religious community harmony, but set about religion blasphemy. Besides that, there is no provision that founded to hint or to command the maintenance of religious people harmony from the Local Government. So, in formally, PBM that issued in 2006 is containing formil defect.\textsuperscript{19}

Moreover, if referring to the Act of Local Government, the religious matter is the responsibility of Central Government. That is appropriate with the provision of the Article 10 verse (3). Besides that, the material which set up in PBM, such as the task of Local Government Head in creating the religious harmony, religious harmony forum, house of worship establishment, dispute solving, are the material connecting to the fulfillment of legal needs of society. The similar material of it should be regulated in the Act, not only in a PBM.

Besides it, PBM arrange about the establishment of house of worship that problematical. The basic principle of establishing house of worship refers to the real needs of the community. The establishment of house of worship is not based on the minimum quantity of the congregations of the certain religion. The procedure of house of worship establishment is ideally exempted from the common building process.

Factually, this PBM become the guidance of the adjustment of house of worship establishment, whereas it is not adequate as the material guidance of house of worship establishment, because that PBM showing the discriminative attitude.

Besides it, the historical background of PBM’s birth contains the formal defect. The claim that this PBM is a joint consensus of all of religions is disavowal on the history and critical note which have submitted by some religious council. Even in formally, this PBM is legalized in the future, the disobedience of the objection notes from the religious council will make PBM suffer from the problem substantively. In reviewing the developing discussion in PBM formation, the formation intention obviously seems to restrict another group.

PBM is established as the response of insistence from various
circles that refuse and insist the revocation of Joint Decree of Ministry of Religious Affairs and Ministry of Internal Affairs Number No.1/BER/MDN-MAD/1969 about the Task Implementation of Government Apparatus in Guaranteeing the Orderliness and Smoothness of Development and Religious Worship Application by the Followers. This SKB is considered in contrary to the 1945 Constitution of Republic of Indonesia. But, the citizens’ protest is still answered by issuing the discriminative PBM.

PBM contains constitutional defect because in contrary to the guaranty of freedom that stipulated in Constitution of Republic of Indonesia. Besides containing the discriminative content, the existence of PBM is precisely reducting the existing norms in the constitution. As a legal product, PBM is disallowed to be in contrary with the Constitution of Republic of Indonesia, because the Constitution of RI is a constitutional foundation of all forming of Law in Indonesian context.

The establishment of house of worship that regulated in that PBM is inadequate to accommodate the guaranty of freedom of religion/belief. As arranged as in chapter IV of PBM, the provision of establishing house of worship to fulfill the particular requirements that involves list name and copy of identity card of the congregation who will use that house of worship, at least 90 (ninety) persons that legalized by local officials and should be getting support from local society in at least 60 (sixty) persons that legalized by the Headman. For the religious majority congregation in a region, this provision will be provided easily. But for minority group, that provision is very difficult to be fulfilled. So, until whenever, the minority religion or belief, will have no house of worship. If it happens, so it is in contrary to the constitutional stipulation.

Besides the establishment of house of worship, in the certain situation, the religious people also needs house of worship as the integral part of embracing religion and belief. In the context of certain religious followers does not have ability to establish the house of worship, those are should be permitted to utilize a building or a part of that building as house of worship. For that reason, the licensing procedura of house of worship should be in line with 1945 Constitution which guarantees the freedom of religion/belief. That utilizing license of house of worship should not be discriminative instrument through the administrative procedures.
In line with that such reasons, the President should take initiatives to review the existence of PBM with the reason of its formil and material defect as explained as before. But SBY not take any step relating to this PBM, even almost certainly to be ensured that various violation that occurred on minority religion which relating to the establishment of house of worship, such as in the case of GKI Taman Yasmin and HKBP Filadelfia, are actually began from discriminative contents of this PBM.

**Third,** to refuse the Joint Verdict of Minister of Religious Affairs, General Attorney and Ministry of Internal Affairs of Republic of Indonesia Number 3 Year 2008, Number KEP-033/A/JA/6/2008, Number 199 Year 2008 about Warning and Command to the Followers, Members, and/or Board Members of Jamaah Ahmadiyah Indonesia (JAI) and Citizens (SKB Tiga Menteri).

The issuance of that SKB is a follow up from the provision of Article 2 verse (1) Act Number 1/PNPS/1965 that states: “Anyone who violates that such provision in Article 1 be given command and strict warning to stop that his/her actions in a joint verdict of Minister of Religion, Minister/ General Attorney and Ministry of Internal Affairs.”

The questioned articles in the Act of Religious Blasphemy, is actually a problematic as explained as above. The judges of MK also stated it. How can someone or group accused violates without any judicial process, that in that Act of Religious Blasphemy also no legal mechanism is available there.

Besides that, the SKB also legitimate and become the foundation of citizens and tolerance group justification to show off intolerance acts, discrimination, attack until murder on Ahmadiyah congregation behind the name of “to participate” to enforce the SKB mandate. Hundreds of violation cases on Ahmadiyah that was triggered by that SKB, causes hundreds of people cannot worship securely and hundreds of people also tried to survive in evacuation place after many years exiled from their town. By seeing it, SBY should take initiative to revoke that SKB.

If that initiative on that regulation is taken by SBY, so those steps will be an important legacy from SBY. It can be equated with the great legacy from Gus Dur who while being the President revoked all the regulation that restricting the Tionghoa ethnic and gave formal confession to Konghucu. But unfortunately, that initiative is not taken and impossible for SBY to do it in last minute of his leadership tenure.
Fourth, to command the Indonesian Police to set the internal policy that conducive for promoting the guaranty of freedom of religion/belief by doing the special training fro police apparatus about the pluralism and freedom of religion/belief, including the steps of handling the conflict and/or violence behind the name of religion.

As known, the police often fail to prevent, and not success to enforce the law, on the various occurred violations on freedom of religion/belief. If the President takes that initiative to Police which become under his authority, undoubtedly the police will be more responsive to protect the minority before and after the occurrence violation.

Fifth, commanding the attorney to give maximum charge to the violation perpetrators and to avoid the criminalization on victims. If it can be done by SBY, so we will see the fair justice for all, and we can avoid the impunity which often invites the more violations.

Sixth, commanding all the ministers in his cabinet to perform the tolerance and to use the constitutional provisions which guarantees the freedom of religion/belief as the minitrial preference foundation to take adequate policy in order to recover the rights of victims. If that initiative is taken by SBY, so we cannot see the ministers with their intolerance to the minority and they will become emphatic to the victims. Also, we will see the refugee, either those who related to Syi’ah or Ahmadiyah be restored their rights and they will not be stranded in the evacuation place for many years.

Seventh, as the Head of State to coordinate the meeting for state institutional leaders, such as oftenly done by SBY to dealing with another issues, to equate the perceptions before taking the collective actions as the state administrators, and states that Indonesia is experiencing exigent intolerance. The constitution is trampled. The concordance and and social harmony are lacerated. And hundreds of minority residents become the victim and executed from their own lands.

But, what could be said, all of the basic and significant initiatives for fulfillment of Human Right in the aspect of religion/belief, not be taken. And until the end of his leadership tenure, we found the President SBY not takes initiatives at all to guarantee the freedom of religion/belief as stipulated as in 1945 Constitution to be obviously enforced in this Pancasila country. The absence of this initiative from executive leader becomes worst with lack of care from the regulation’s makers
in this country. The Parliament that has monitoring function, almost never questions about the policy and response of the government which failed to give protection on freedom of religion to the citizens. The initiative also not to be heard to review the Act on Religious Blasphemy as mandated by Constitutional Court, or to arrange a bill that will guaranteeing the freedom of religion more.

In line with the judicative element, the sensitiveness on the matter of freedom of religion must be questioned. The light of law sanction that given to the perpetrators of freedom of religion shows that the problem of freedom of religion considered as the light problem and not important. Also from some sentences that relates to the criminalization blasphemy of certain religion needs to be questioned about the capacity and the knowledge of the Judges in charging the cases. The basic law is not critical and tends to accommodate the pressure of intolerance masses group.

So, the stagnation on freedom of religion in this country is complete. The hopes of the victims of freedom of religion to get fair justice and dignity recovery is very little along there is no change in this country’s government. []
Endnotes

1. John Keane even mention violence as a form of barbarism in a democracy, where one of the main actors in it, is the state (stateviolence). See, Keane, Violence and Democracy (Cambridge: Cambridge University Press, 2004), page. 55-68.

2 The Detailed narrative of the violations that occurred over Ahmad Mushaddeq and lead flow can be seen further in Ismail Hasani and Bonar Tigor Naipospos (2007), Tunduk pada Penghakiman Massa: Pembenaran Negara atas Persekusi Kebebasan Beragama & Berkeyakinan, (Jakarta: Pustaka Masyarakat Setara, 2007).

3 The More and Detailed forms of violations, and also about the restrictive situation of Ahmadiyah after the SKB 3 Ministers issuance can be seen in the Report of SETARA Insitute in 2008.


5 See Ismail Hasani and Bonar T Naipospos, Negara Menyangkal (Jakarta: Pustaka Masyarakat Setara, 2010), page.26 and 27.

6 Read Ismail Hasani and Bonar T Naipospos, Politik Diskriminasi Rezim SBY (Jakarta: Pustaka Masyarakat Setara, 2011), page.28-29.

7 As we know the law as political product. See Moh. Mahfud MD, Politik Hukum Di Indonesia (Jakarta: Pustaka LP3ES Indonesia, 2006), page. 9.

8 The detailed chronology of this is presented in previous chapter of this report book.

9 The chronology and detailed analysis of cases of Syi’ah I and II can be red from Monitoring Report of Freedom of Religions/Beliefs of SETARA Institute in 2011 and 2012. The analysis of continued and
regularly violations are presented in Chapter III of this book.


11 SETARA Institute even expressed statement about organization’s objection of Gamawan Fauzi, through the press release on October 26, 20013.

12 Among the few cases is the role of FKUB in Wonosobo dan Purworejo. And also FKUB North Sumatera, FKUB Central Kalimantan.

13 The Statement of the President of Republic of Indonesia which was filed on June 2, 2008 in Jakarta. This statement was quoted by most of national media. See also Kompas, *Negara tidak boleh Kalah*, Edition June 3, 2008.


16 See Ismail Hasani, *op.cit*.


18 Some of national media notes the statement that society responsible to build the harmony.
