

Indigenous peoples and the right to freedom of religion or belief

A contribution to the GA report of the Special Rapporteur on Freedom of Religion or Belief

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This submission is based on the authors' research on the Indonesian experiences, from which we will draw more general conclusions on the topic.

A. The problem: on naming the “religion” of the indigenous communities

1. **Indonesian experience:** Regardless of the norms, countries show different practices of defining religion and, as a consequence, the communities that are protected. In Indonesia, while there is no explicit definition of religion in the Constitution or laws, in practice there is a tacit conception of religion. That is, simply put, what counts as religion is world religions. According to the explication of the 1965 law on defamation of religion (UU. No.1/PNS/1965), examples of religion include Islam, Christianity, Hinduism, Buddhism, Confucianism, Zoroastrianism, Taoism, etc. In 2014, Baha'i was added to this list (previously it was generally considered as a deviation of Islam, not a religion of itself, and as such practicing Baha'i might be targeted by the defamation of religion law).

What is also conspicuously excluded is local or indigenous religions. They are not even considered as religion. While the administration of religions fall under the jurisdiction of the Ministry of Religious Affairs, local religions are regarded as culture, and as such falls under the jurisdiction of the Ministry of Education and Culture.²

There are several words used to refer to the system of belief and practices of the indigenous community, such as *kepercayaan* (lit. belief), and *adat* (customary community/law). *Kepercayaan* resembles the “religion” of world religions; while *adat* is used to refer to the community, in relation to its (customary) law and its claim of *adat* lands; in general, what is considered as “religion” among the indigenous is both the cognitive, spiritual aspects, as well as the material aspects (land, forest, mountain, etc). In its history, in parallel with the democratization which started in 1998, there was a phenomenon called by scholars as “the revival of *adat*”, that is, identity-based claims of rights, which include demand for differential treatments, which include eligibility to be appointed as holders of public offices (e.g. as governor) as well as access to and use o management of particular territories designated as belonging to an *adat*. The struggle of the indigenous communities as *adat* communities, have been focused on claiming such rights. To some extent the struggle has achieved more recognition of their social and

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² The long, complicated history may be read in Samsul Maarif, *Pasang Surut Rekognisi Agama Leluhur dalam Politik Agama di Indonesia* (2017); its summary in English is available at <https://crcs.ugm.ac.id/new-publication-indigenous-religious-communities-and-the-politics-of-religion-in-indonesia-2/>. See also Zainal A. Bagir, “The Politics and Law of Religious Governance in Indonesia”, in Robert W. Hefner ed. *Routledge Companion to Contemporary Indonesia*, Routledge, 2018, pp. 284-295.

economic rights, but, until very recently, little attention was given to the “religious” aspect of the communities.

In 2017, an important decision by the Constitutional Court on the case of Civil Administrative Law, recognized that the “religious” aspect (*kepercayaan*) is different from religion but occupies equal position with religions. The petitioners of the judicial review was a group of *kepercayaan*/indigenous religion communities, who argued that their inability to fill in the religion column in the ID card with their own (indigenous) religions resulted in the denial of their basic rights, not only FORB, but also in terms of registration of marriage, birth, access to education for their children, to health services, etc. The Court accepted their petition and order the government to accommodate their religions in the ID card.³

The struggle of the Indonesian indigenous communities shows the limit of the notion of FORB, but at the same time the success of using a combination of strategies: using FORB to demand better access of certain rights, and different arguments to demand broader recognition of other rights, including recognition of their lands. This situation is not ideal. To more meaningfully protect or guarantee the rights of the indigenous communities, ideally FORB should rethink better ways to make sure that all aspects of their “religions” are accommodated.

2. **Limited/biased notion of “religion:** The above Indonesian illustration shows an important, general point that the protection of people’s rights to FORB depends very much on how “religion or belief” is defined. The human rights regime, for good reasons, does not define what “religion or belief” is. It wants to protect the right to religion, in whatever way religion is defined. The General Comment No. 22 on Article 18 of ICCPR (1993) conveys this idea; it displays quite a broad understanding of what constitutes religion or belief (theistic, non-theistic and atheistic belief, as well as none of it; traditional or new); it also encompasses thought and conscience, all of which are to be protected. (Pars. 1 and 2). Yet, it is at the same time also shows the limits of that understanding.

The General Comment’s conception of religion is still limited in the sense of its emphasis on what is (cognitively) known or believed—that is, it is personal, individual, or even private; beyond this personal or private belief, it is understood as manifestation (that is, of the private dimension). This is clearly seen in the distinction between *forum internum* and *externum* and its corollary. That is, the former is protected unconditionally and Article 18 “does not permit any limitations whatsoever”; while the latter is subject to limitations. The issue here is not simply what counts as *internum* or *externum* (though indeed, as seen in the literature, it may be argued that the boundary is porous) but the very understanding of religion which puts an emphasis on the cognitive aspect of religion, or belief.

When it comes to religion, UNDRIP too seems to still assume this idea of religion. It does not mention religion per se but use “religious” (and “spiritual”) as an attribute of

³ See Azif Anwar Fachruddin, [‘Religion’ and ‘belief’ in Indonesia: what’s the difference? - New Mandala](#) (2017) and Simon Butt, “Constitutional recognition of “beliefs” in indonesia”, *Journal of Law and Religion* (2020), pp. 1 -24.

property (Art.11 (2)), tradition, custom, ceremony, and site (Article 12 (1)) in the context of forum externum (manifestation).

What may be concluded is the limited understanding of religion which focuses on belief, and the understanding of practice, or, in general, non-belief (non-cognitive, non-theological) aspects as manifestation. This distinction may already contain a biased or limited understanding of what religion is, especially when the term is used in reference to indigenous communities. It already assumes a conception of religion (world religion paradigm) which does not adequately represent indigenous religions. As such, it does not fully capture the religion of the indigenous communities, in which there is barely any distinction between what we understand as religious and other aspects, including their natural surrounding (land, forest, mountain, river, seas) and their knowledge.

B. What is needed to make FORB inclusive?

The challenges of FoRB for indigenous religions are on how religion/the religious is conceptualized and governed. Despite of its encompassing universality, FoRB assumes a conception of what religion or belief is, which has limited the scope of FoRB, since it excludes perspectives of indigenous people. As a consequence, the exclusive notion of FoRB is not only unhelpful, but may contribute to the destruction of the life of indigenous people. The following is the examination of key related concepts to show the contrast between the current exclusive conception in FoRB and the proposals to broaden them by including the indigenous perspectives.

3. **Dignity:** In human rights and FoRB, dignity is human centered or anthropocentric. Dignity is attached to human individuals, independent from any possible forceful agencies. In contrast, dignity for indigenous people is “relational”. Human is interdependent to other non-human agencies. Human’s existence and life are shared with other non-humans’, or life is and must be shared by different beings: human and non-human. For indigenous people, non-humans like land, forest, river and others are “personal” beings whose existence and functions are to contribute and have contributed to life that humans are dependent from. Dignity as status, value and conduct is existentially and practically “relational”. It is life-centered. Human dignity is inseparable from the dignity of other non-humans. Exploitation of land and forest for human interests (or human dignity only) is considered to destroy life (of land, and other beings, including humans), and so violates not only the dignity of land, but also dignities of other personal beings, including humans.
4. **Religion/the religious:** Relational (life-centered) dignity is the conceptual reference and objective of being **religious** for indigenous people. In contrast to dominant conceptualizations of religion (the religious) that emphasize (doctrinal) belief in God(s), spirits, or supreme beings, religion/the religious by indigenous people focuses on “relatedness” that human and non-human as persons engage. To be religious is to engage in interpersonal relationship governed by three basic principles: *responsible* (what I do would affect me), *ethical* (what I do would affect others), and *reciprocal* (what have is what I give). Religion/the religious refers to the three basic principles governing interpersonal relationship. Religious ways of knowing are to comprehend “personhood” of the self (human) and other non-human beings for interpersonal relationship, religious ways of being are being in the relatedness, and religious ways of doing and behaving are to engage in interpersonal relationship for life (cosmic) balance. For those purposes,

rituals are formulated, institutionalized, and sustained. Through rituals, knowledge and commitment are reproduced. Rituals are medium (and symbolic objectives) of engaging the religious interpersonal relationship. For this point, religious freedom is not only to respect and protect rituals, but more importantly to respect and protect the objectives of rituals: the relatedness. Based on those principles, living in and/or with the land/forest is a religious commitment and practice. Against them, activities such as land grabbing or exploitation of land/forest is “irreligious”, since it separates the relatedness, and so violates the relational dignity, the dignity of human and non-human beings.

5. **Rights:** From the religious, the idea of **rights** is conceived. Human is unique, distinct but related and even inseparable from other non-human beings. The basic right, which is right to life, belongs to both human and non-human relationally. As explained, human beings depend on life, on which other non-humans are dependent. Life itself is (re)produced by both, and so right to have life is to share it with others who are engaged in the reproduction of life. (Basic) rights in this sense is therefore also relational. Other human rights like the civic, political, economic, the social, the cultural may be unique, different, and distinct, but related to and inseparable from those of the other non-human. For indigenous people, fulfilling those rights of human, but ignoring or let alone violating the rights of land/forest, for instance, to be prosperous, is a violation of rights (the relational).

Perspectives of the relational dignity, the religious, and relational rights explain the reasons why indigenous people choose to live in/with their territories (land/forest), despite of alternatives offered by industrial development, modernization and globalization. Those alternatives, conceptually speaking, are not necessary to refuse if they are not destructive to their indigenous perspective based life. What they have historically experienced in common is however that their indigenous perspective based life is not only ignored, but even destroyed through for instance land grabbing, deforestation for monocultural agrobusinesses, mining, and so forth by various forceful agencies, mainly states and corporations, national and international. Such destructions are often times argued as done for the sake of people’s interests, economic prosperity, civilization development. For indigenous people, they are directly meant to destroy life on which people are dependent. They have stood up and protested against many kinds of activities perceived to be life destructive. Doing so, many of them were criminalized. They refused to accept compensation that offers life for human only. Clean water for (human) consumption as compensation for mining is unacceptable. The simple reason for them is that it is against life, rights belonging to humans and non-humans. Needless to say, their protests are of their religious commitment and practices. In Indonesia, hundreds of indigenous communities have to be involved in agrarian conflicts against powerful corporations. Their motives are “religious”. They demand their religious freedom, but they are often times criminalized.

6. Religious experiences of indigenous people are currently beyond the scope of FoRB due to the conceptualization and governance of religion/the religious or belief. To be effectively universal and useful for all people, including the indigenous, FoRB needs to go beyond the current conceptualization and governance, dominantly and hegemonically informed by established religions, commonly categorized as the world’s religions. FoRB must also be informed by perspectives of indigenous people on religion/the religious.

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