

In the Name of Majority, Forgotten of Minority Yulianti Muthmainnah

Decentralization is an absolute pre-requisite for democracy that has been developing in Indonesia since the start of reformation era in 1998. Decentralization through regional autonomy, the gap between the people and their leaders is narrowed, so that the accessibility to and the accountability of all aspects of governance become more viable. But in practice, there is no guarantee that regional autonomy policy created be able to create more room for democracy but possible to produce discriminative regional policies that distract the state from its responsibilities to fulfil its citizens' constitutional rights, especially women.

14 years post **reformasi** has been done in Indonesia, to promote, to protect, and to fulfil women human right has not been implemented by state. Since June 2012, Komnas Perempuan has founded as many as 207 discrimination bylaws in the name of moral and religion enacted from Marauke to Sabang. Its mean there is 53 discrimination bylaws produced since Komnas Perempuan reported for the first time in March 2007 and 7 from 53 policy produced by national authority.

This paper will be addressed on two issues. First, discrimination religion bylaws for minority group. In this case, PNPS 1/1965 law has contributed made discrimination for minority group like Ahmadiyah¹. Its mean no right for minority group to express their religion. Secondly, implementation of pornography No. 44/ 2008 law has contributed discrimination, for freedom expression and women also. Two of this law, the last effort civil society, non government organization, and individual who agreed about freedom expression and religion tried to propose the law to Indonesia's Constitution Court (Mahkamah Konstitusi) to be judicially reviewed. It is also failed in 2010. Indonesia's Constitutional Court threw out an appeal of a controversial pornography law, in a blow to some secular parties, minorities and artists who had said it threatened freedom of expression.

In my opinion failed for judicially reviewed root of problem to minority group. In this case, not only Ahmadiyah has not been permitted to expression their religion, and also they have to come back to Islamic law, and got against from majority of muslim in Indonesia, but also for pornography law. I found no right for civil citizen. They will possible become a criminal if this law implemented. The latest issue is about someone who has porno VCD/DVD and six dancers of Bell Air Cafe Bandung, West Java.

The Pornography law originally covered a range of matters, including nudity, the female body, sex, erotic dance, pornography materials and indecent activities. Its definition of pornography was unclear and open to multiple interpretations, however. The definition included explicit photographs of anything—but mainly parts of the female anatomy—that might arouse sexual desire. This was discriminatory in so far as only female body parts were defined as sensual, thus demonising women as the root of all sexual evil.

¹ See more *Laporan Pemantauan Hak Asasi Manusia Komnas Perempuan; Perempuan dan Anak Ahmadiyah Korban Diskriminasi Berlapis* (Jakarta: Komnas Perempuan, 2008) on www.komnasperempuan.or.id and *Laporan Investigasi Kekerasan terhadap Jamaah Ahmadiyah, Jamaah al-Qiyadah dan Jamaah Gereja* (Jakarta: LBH Jakarta – Kontras, 2008) on www.lbhjakarta.com.

Penal Sanctions in the Pornography Law

Type of Infringement	Imprisonment (years)	Fine (Rp million)
Displaying genitals	6 moth – 12	250 – 6.000
Being object of porn	5	5.000
Exposing buttocks in public	6 moth – 6	250 – 3.000
Displaying female breasts in public	6 moth – 6	250 – 6.000
Intentionally becoming naked in public	6 moth – 12	250 – 6.000
Dancing erotically in public	6 moth – 12	250 – 6.000
Masturbating in public	6 moth – 12	250 – 6.000
Having sex with children	16	8.000
Organising sex shows, including financing	2 – 15	1.000 – 7.500
Watching sexually explicit performances	4	2.000
Downloading	4	2.000
Providing funds or venues for indecent acts	2 – 15	1.000 – 7.500
Forcing children being object of porn	6 moth – 6	250 – 3.000

In fact, the implementation of the law is not effective. In the case of Ariel Peterpan, a singer, he has been sentenced for six years in jail. Ariel has been accused for spreading his video porn. In other case, Arifindo, a member parliament from Islamic Oriented Partai Keadilan Sejahtera (PKS) and the founder of SABILI Magazine, an Islamic magazine. However he is free from the bill. Arifindo has been generally known by people for watching porn video when attending parliamentary meeting. No penalty or imprisonment been given to him. PKS only recalled him from a parliament member. In Bandung, West Java, 6 dancers of Bell Air Cafe have been jailed. The judge accused them as porn dancer.

The main goal of the law is not fulfilled. It was originally intended to beat industry porn. However, it only threatens the freedom and human rights. It also limits everyone to express his soul of art. In addition, the bill also ignores the fact that Indonesia was multicultural whose people has diverse attitude too sensually and sexuality like in Bali, Papua, Java and so on. My point, dancers are not criminal who perform porn dance. They are the victim from trafficking exactly as well.

At this point I agree with the opinion of Amartya Sen in his thesis on the development as freedom. For Sen, if it is associated with state responsibility, the diversity of identity is part of the development and human development as long as they are not used to trigger a conflict with other groups based on identity. Therefore, the state must protect the expression of identity, including the minority. Expressing identity is part of self-development, because identity associates with the values, cultures in general cases including in the framework of human rights.

In the context of Indonesia, the government and parliament have issued Pornography Act. The act has eliminated the rights of minorities related to the local cultures by putting a uniform standard of moral, and also the rights of risky groups such as women. Indonesia's Constitution Court did not protect minority groups from violence and discrimination by legislation. It has contributed for producing discriminative law, especially for minority religious groups.

I admitted that the four facilitators in the International Winter School have been successful in guiding me to combine the facts on the practical level with the existing theories. Bravo for them!

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