

# THE MISUNDERSTANDING IN RESTRICTING JEMAAT AHMADIYAH INDONESIA'S RIGHT TO FREEDOM OF RELIGION

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## Abstract

*Jemaat Ahmadiyah Indonesia ("JAI") in Sintang became the victim of an intolerant action by several members of the Muslim Alliance. They attacked and destroyed the Miftahul Huda mosque belonging to the JAI. The root of the problem is not anchored in intolerant actions by certain religious groups, instead it lies in government policies, namely SKB Sintang which source from the JAI's Joint Decree, that tend to restrict JAI's right to freedom of religion. This paper discusses the suitability of restrictions on freedom of religion in the JAI's Joint Decree from a human rights perspective. The restrictions in JAI's Joint Decree are in violation of the ICCPR and the principles of the right to freedom of religion. First, the government has intervened JAI's forum internum by determining that JAI's interpretation deviates from Islamic teachings, which is prohibited due to any reason. Second, the government has erroneously imposed forum externum's restriction by prohibiting JAI to spread its interpretation. This restriction is also prohibited because the JAI's forum externum has no direct relation with the disturbance of public safety, order, health, morals, or the fundamental rights and freedoms of others. This paper clarifies the misunderstanding in restricting JAI, which has implications for ensuring JAI's right to freedom of religion.*

**Keywords:** *The Right to Freedom of Religion, Jemaat Ahmadiyah Indonesia (JAI), Forum Internum and Forum Externum.*

## 1. INTRODUCTION

Jemaat Ahmadiyah Indonesia ("**JAI**") in Sintang experienced the discrimination on the right to freedom of religion. The discrimination they feel occurs in the form of implementing the beliefs they hold. Recently, the intolerant action carried out by 200 people from the Islamic Ummah Alliance was to attack and damage the Miftahul Huda mosque belonging to the JAI which resulted in the destruction of the mosque and the burning of a building behind it.<sup>1</sup> The background of the attack is that the Miftahul Huda mosque, which was established in Harapan Jaya Hamlet, Balai Harapan Village, Tempunak District, Sintang Regency in 2007 deemed for reconstruction.<sup>2</sup> However, several community groups have strongly opposed to the new building's construction since November 2020, so the Sintang District Muslim Alliance sent a letter to the Sintang Regency Government with an ultimatum demanding that authorities take action against JAI in Sintang within 3x24 hours, threatening to act alone if the ultimatum was not met.<sup>3</sup> In reaction to the threat, the Sintang Police Chief

<sup>1</sup> Adi Briantika, "SKB 3 Menteri Dinilai Biang Masalah Intoleransi ke Jemaat Ahmadiyah," *Tirto.id*, September 13, 2021, <https://tirto.id/skb-3-menteri-dinilai-biang-masalah-intoleransi-ke-jemaat-ahmadiyah-gjsG>.

<sup>2</sup> KontraS, "Penyegelan Masjid JAI di Kabupaten Sintang memperparah kondisi Kebebasan Beragama dan Berkeyakinan di Indonesia," *Kontras.org*, August 20, 2021, <https://kontras.org/2021/08/20/penyegelan-masjid-jai-di-kabupaten-sintang-memperparah-kondisi-kebebasan-beragama-dan-berkeyakinan-di-indonesia/>

<sup>3</sup> *Ibid.*

received a letter from the local JAI management demanding legal protection. Instead, Sintang's Acting Regent On August 13, the district government forcibly closed and sealed the Miftahul Huda Mosque after sending a notice to the Sintang District JAI management to discontinue prayer activities.<sup>4</sup> The Sintang incident demonstrates that the government has failed to prevent acts of intolerance against JAI and has even participated in limiting JAI's right to religious freedom.

Restrictions on the right to freedom of religion as well as various discriminatory actions against JAI in Sintang are based on Surat Keputusan Bersama Bupati Sintang, Kepala Kejaksaan Negeri Sintang, Kepala Kepolisian Resor Sintang, Komandan Komando Distrik Militer 1205 Sintang, dan Kepala Kantor Kementerian Agama Kabupaten Sintang Nomor: 450/10/KESBANGPOL/2021 Nomor: B-803/0.1.12/Dsb.2/4/2021 Nomor: KEP/12/iv/2021 Nomor: B-1299/KK.14.10.1/BA.01.2/04/2021 Nomor: Keb/02/IV/2021 tentang Peringatan dan Perintah Kepada Penganut, Anggota, dan/atau Anggota Pengurus Jemaat Ahmadiyah Indonesia (JAI) dan Warga Masyarakat di Kabupaten Sintang (“**JAI Sintang’s Joint Decree**”).<sup>5</sup> Notwithstanding, Komisi Nasional untuk Hak Asasi Manusia (“Komnas HAM”), Indonesia's national human rights institution, stated that the signing of JAI Sintang’s Joint Decree by stakeholders in Sintang Regency resulted in the demolition of mosque and buildings belonging to members of the JAI.<sup>7</sup> Not only was it a catalyst for other people's hostility toward JAI, but Komnas HAM, through its commissioner, Beka Ulung Hapsara, also stated the JAI Sintang’s Joint Decree contained restrictions on JAI religious activity. The Sintang SKB essentially stated that JAI in Sintang Regency were not permitted to spread their interpretation or religious affiliation.<sup>8</sup> Moreover, what should be emphasized from the issue is that JAI’s Sintang Joint Decree contains the same restrictions on right to freedom of religion in Indonesia as the Surat Keputusan Bersama Menteri Agama, Jaksa Agung, dan Menteri Dalam Negeri Republik Indonesia Nomor: 3 Tahun 2008, Nomor: KEP-033/AIJA/6/2008 Nomor: 199 Tahun 2008 tentang Peringatan dan Perintah Kepada Penganut, Anggota, dan/atau Anggota Pengurus Jemaat Ahmadiyah Indonesia (JAI) dan Warga Masyarakat (“**JAI’s Joint Decree**”).

According to research conducted by the SETARA Institute in 2007-2020, JAI was a minority group that experienced the most frequent violations of religious freedom, with 570 cases.<sup>9</sup> After the JAI's Joint Decree was enacted, there was an increase in the number of

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<sup>4</sup> *Ibid.*

<sup>5</sup> The JAI’s Sintang’s Joint Decree was enacted on April 29, 2021 by the Regent of Sintang, the Head of the Sintang District Attorney's Office, and the Head of the Office of the Ministry of Religion of the Sintang Regency.

<sup>6</sup> Friski Riana, “Pemerintah Sintang Segel Masjid Ahmadiyah, Setara Desak Pusat Turun Tangan,” *Tempo.co*, August 14, 2021, <https://nasional.tempo.co/amp/1494523/pemerintah-sintang-segel-masjid-ahmadiyah-setara-desak-pusat-turun-tangan>

<sup>7</sup> Achmad Nasrudin Yahya, “Komnas HAM Sebut SKB Jadi Pemicu Perusakan Rumah Ibadah Ahmadiyah di Sintang,” *Kompas.com*, September 6, 2021, <https://nasional.kompas.com/read/2021/09/06/18595441/komnas-ham-sebut-skb-jadi-pemicu-perusakan-rumah-ibadah-ahmadiyah-di-sintang?page=all>

<sup>8</sup> KontraS, “Penyegehan Masjid JAI di Kabupaten Sintang memperparah kondisi Kebebasan Beragama dan Berkeyakinan di Indonesia,” *Kontras.org*, August 20, 2021, <https://kontras.org/2021/08/20/penyegehan-masjid-jai-di-kabupaten-sintang-memperparah-kondisi-kebebasan-beragama-dan-berkeyakinan-di-indonesia/>

<sup>9</sup> Ikhsan Yosarie, *et al.*, *Inklusi Jemaat Ahmadiyah Indonesia Dalam Keindonesiaan* (Jakarta: Pustaka Masyarakat Setara, 2021), pg. 11.

regulations limiting JAI's right to freedom of religion in various regions. According to the ELSA report, there were only 18 rules related to the limitation of JAI, while after the issuance of the JAI's Joint Decree, until 2021 there were at least 65 rules spread from the provincial to sub-district levels.<sup>10</sup> This means that after the issuance of the JAI's Joint Decree, there are at least 45 legal instruments issued to restrict JAI's right to freedom of religion. Several provinces that make similar regulations include South Sulawesi, East Java, Banten, West Java, West Sumatra, Bengkulu, South Kalimantan, Jambi, and South Sumatra.<sup>11</sup>

The JAI's Joint Decree can also be cited as one of the roots of discrimination and intolerance towards JAI. According to research from the SETARA Institute, the JAI's Joint Decree has been the trigger for hundreds of incidents of violations of the rights of the Ahmadiyya community and has been used as a justification for the practice of intolerance, discrimination, exclusion, restriction, persecution, and even violence against JAI.<sup>12</sup> Even though the fourth dictum of the JAI's Joint Decree has stated that the public should not take unlawful actions against JAI,<sup>13</sup> the other dictums tend to foster intolerance and discrimination.

The second and third dictums have implicitly stated that the Ahmadiyya teachings deviate from Islam which then provoke intolerant actions such as attacks and destruction of property belonging to JAI, as happened in Sintang, Garut, and Cikeusik.<sup>14</sup> In addition, the sixth dictum stipulates that the government and local governments must take steps to develop in the context of securing and supervising the implementation of this JAI's Joint Decree,<sup>15</sup> which later became the basis for the issuance of regulations in various regions, many of which then exceeded the restrictions on the right to freedom of religion in this JAI's Joint Decree. For example, West Java Governor Regulation No. 12 Year 2011 which prohibits the Ahmadiyya congregation from spreading teachings orally, in writing, or through electronic media; put up the nameplate of the Indonesian Ahmadiyya congregation organization in public places; and use the attributes of the Indonesian Ahmadiyya Congregation in any form,<sup>16</sup> which is similar to that in East Java through the Decree of the Governor of East Java No.

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<sup>10</sup> M. Sidik Purnomo, Rusda Khoiruz Zaman, and Tedi Khoiludin, *ELSA Report on Religious Freedom* (Semarang: Yayasan Pemberdayaan Komunitas ELSA, 2021), 8, [https://drive.google.com/file/d/18\\_zHAYxask8ivUcZHVhGN\\_4bU2KQvjPs/view](https://drive.google.com/file/d/18_zHAYxask8ivUcZHVhGN_4bU2KQvjPs/view).

<sup>11</sup> *Ibid.*, Pg. 9.

<sup>12</sup> "Penyegehan Masjid Ahmadiyah Di Kabupaten Sintang: Pemerintah Kabupaten Inkonstitusional, Pemerintah Pusat Jangan Cuci Tangan." SETARA Institute, accessed January 21, 2022, <https://setara-institute.org/penyegehan-masjid-ahmadiyah-di-kabupaten-sintang-pemerintah-kabupaten-inkonstitusional-pemerintah-pusat-jangan-cuci-tangan/>.

<sup>13</sup> Indonesia, Minister of Religion, Attorney General, and Minister of Home Affairs, *Keputusan Bersama Menteri Agama, Jaksa Agung, dan Menteri Dalam Negeri Republik Indonesia Nomor: 3 Tahun 2008, Nomor: KEP-033/AIJA/6/2008 Nomor: 199 Tahun 2008 tentang Peringatan dan Perintah Kepada Penganut, Anggota, dan/atau Anggota Pengurus Jemaat Ahmadiyah Indonesia (JAI) dan Warga Masyarakat*, Fourth Dictum.

<sup>14</sup> Purnomo, Zaman, and Khoiludin, *ELSA Report on Religious Freedom*, 4

<sup>15</sup> Indonesia, Minister of Religion, Attorney General, and Minister of Home Affairs, *Keputusan Bersama Menteri Agama, Jaksa Agung, dan Menteri Dalam Negeri Republik Indonesia Nomor: 3 Tahun 2008, Nomor: KEP-033/AIJA/6/2008 Nomor: 199 Tahun 2008 tentang Peringatan dan Perintah Kepada Penganut, Anggota, dan/atau Anggota Pengurus Jemaat Ahmadiyah Indonesia (JAI) dan Warga Masyarakat*, Sixth Dictum.

<sup>16</sup> Indonesia, Governor of West Java, *Peraturan Gubernur Jawa Barat tentang Larangan Kegiatan Jemaat Ahmadiyah Indonesia Di Jawa Barat*, Number 12 Year 2011, Art. 3 paragraph (2).

199/94/KTPS/013/2011 concerning the Prohibition of Indonesian Ahmadiyya in East Java.<sup>17</sup> These prohibitions have exceeded the restriction in the JAI's Joint Decree. Apart from being in the form of regulations, the JAI's Joint Decree is also used as the basis for various measures to limit JAI's religious freedom rights, such as the sealing of the mosque in Depok since 2012,<sup>18</sup> the disbandment of book review discussions in Bandung in 2019,<sup>19</sup> and the ban on the construction of mosques in Garut in 2021.<sup>20</sup>

Based on this background, the issue to be discussed is whether the restriction of JAI's right to freedom of religion through the JAI's Joint Decree is suitable when examined from the legal instruments and principles related to the right to freedom of religion. Given the fact that the JAI's Joint Decree has a huge influence and correlation on increasing restrictions on JAI's rights to freedom of religion until these days, whether in the form of regulations, government actions, or community actions, this issue is urgent to be solved.

This paper is intended to determine the suitability of restrictions on freedom of religion in the JAI's Joint Decree from a human rights perspective. The analysis and discussion will be divided into two parts, the first part will discuss the role of the state in limiting the right to freedom of religion based on various human rights instruments and principles, such as Undang-Undang Dasar 1945, International Covenant on Civil and Political Rights (“**ICCPR**”) which has been ratified in Law No. 12 Year 2005, The Siracusa Principle, harm principle, and the concept of forum externum and forum internum. Then, the second part will analyze the suitability of restrictions on the right to freedom of religion in the JAI's Joint Decree.

## 2. RESEARCH METHODS

This research uses juridical-normative methods, which examine regulations, books, legal theories, and principles of restricting the right to freedom of religion. This method interprets secondary data for the sources using secondary data. The secondary data are including but not limited to the Undang-Undang Dasar Negara Republik Indonesia 1945, Universal Declaration of Human Rights, Law No. 39 Year 1999 on Human Rights, Law No. 12 Year 2005 on Ratification of International Covenant on Civil and Political Rights, Keputusan Bersama Menteri Agama, Jaksa Agung, dan Menteri Dalam Negeri Republik Indonesia Nomor: 3 Tahun 2008, Nomor: KEP-033/AIJA/6/2008 Nomor: 199 Tahun 2008 tentang Peringatan dan Perintah Kepada Penganut, Anggota, dan/atau Anggota Pengurus Jemaat Ahmadiyah Indonesia (JAI) dan Warga Masyarakat (“**JAI's Joint Decree**”) and other

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<sup>17</sup> Purnomo, Zaman, and Khoiludin, *ELSA Report on Religious Freedom*, 9.

<sup>18</sup> Admin, “Masjid disegel, jemaah Ahmadiyah Depok salat Jumat di pelataran,” *BBC News Indonesia*, February 24, 2017, <https://www.bbc.com/indonesia/indonesia-39076611>.

<sup>19</sup> Ign. L. Adhi Bhaskara, “Yang Terjadi di Balik Pembubaran Diskusi Buku Ahmadiyah Bandung,” *Tirto.id*, January 13, 2019, <https://tirto.id/yang-terjadi-di-balik-pembubaran-diskusi-buku-ahmadiyah-bandung-dd9e>.

<sup>20</sup> Purnomo, Zaman, and Khoiludin, *ELSA Report on Religious Freedom*, 15.

implemented regulations. Through this research method, the authors seek to analyze the suitability of restrictions on the right to freedom of religion in the JAI's Joint Decree based on the human rights perspective.

### 3. THEORETICAL FRAMEWORK

#### 3.1. The Right to Freedom of Religion

##### 3.1.1. The Right to Freedom of Religion in Indonesia

The right to freedom of religion is a fundamental right that has been regulated in several positive legal instruments in Indonesia. Some protection of this right is established in The 1945 Constitution of the Republic of Indonesia and Law No. 39 Year 1999 on Human Rights. Article 28E of The 1945 Constitution of the Republic of Indonesia expressly stated that:

*“(1) Setiap orang bebas memeluk agama dan beribadat menurut agamanya, memilih pendidikan dan pengajaran, memilih pekerjaan, memilih kewarganegaraan, memilih tempat tinggal diwilayah negara dan meninggalkannya, serta berhak kembali.  
(2) Setiap orang atas kebebasan meyakini kepercayaan, menyatakan pikiran dan sikap, sesuai dengan hati nuraninya.”<sup>21</sup>*

Being translated into English, the meaning would be as follows: Everyone is free to embrace a religion and worship according to his religion, choose education and teaching, choose a job, choose a nationality, choose a place to live in the territory of the country and leave it, and has the right to return. and everyone has the freedom to believe in beliefs, to express thoughts and attitudes, according to his conscience. Also, Article 22 of Law No. 39 Year 1999 on Human Rights stated that:

*“(1) Setiap orang bebas memeluk agamanya masing-masing dan untuk beribadah menurut agamanya dan kepercayaannya itu.  
(2) Negara menjamin kemerdekaan setiap orang memeluk agamanya masing-masing dan untuk beribadat menurut agamanya dan kepercayaannya itu.”<sup>22</sup>*

In English translation, it reads as follows: Everyone is free to embrace his own religion and to worship according to his religion and belief. The state guarantees the freedom of everyone to embrace their own religion and to worship according to their religion and beliefs.

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<sup>21</sup> Indonesia, *Undang-undang Dasar (UUD) Tahun 1945 dan Amandemen tentang UUD 1945 dan Amandemen*, Art. 28E.

<sup>22</sup> Indonesia, *Undang-undang tentang Hak Asasi Manusia*, Law No. 39 Year 1999, LN.No. 165 Year 1999, TLN No. 3886, Art. 22

Based on the above provisions, it is definite that Indonesia, in its positive law, is committed to protecting the right to freedom of religion and its implementation through the country's policies. Furthermore, Indonesia also ratified the International Covenant on Civil and Political Rights (“**ICCPR**”) through Undang-Undang Republik Indonesia Nomor 12 Tahun 2005 Tentang Pengesahan International Covenant On Civil And Political Rights (Kovenan Internasional Tentang Hak-Hak Sipil dan Politik). The ICCPR expressly states that the right to freedom of religion is a non-derogable right that cannot be reduced under any circumstances. The statement is explicitly stated in Article 4 of the ICCPR, which narrates that no derogation from articles 6, 7, 8 (Paragraphs I and 2), 11, 15, 16, and 18 of the ICCPR may be made under this provision. Article 18 (1) and 18 (2) of the ICCPR asserted that:

- “1. Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”<sup>23</sup>

According to the statement of that article, everyone should have the freedom to have or adopt a religion or belief of their choice and the freedom to manifest their religion or belief. Not only that, the government also must protect its citizen from being subject to coercion regarding their choice of religion or belief.

### **3.1.2 Classification on The Right to Freedom of Religion**

The right to freedom of religion as regulated in Article 18 of the Universal Declaration of Human Rights states:

- “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”<sup>24</sup>

The statement of that article indicates that the right to freedom of religion is classified into an *forum internum* and an *forum externum*. *Forum internum* is an aspect of one's spiritual dimension, so *forum internum*'s freedom includes freedom of thought, conscience, and religion, as well as freedom to change

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<sup>23</sup> Indonesia, *Undang-Undang Pengesahan International Covenant On Civil and Political Rights*, Law No. 12 Year 2005, LN No. 119 Year 2005, TLN No. 4558, Art 18 paragraph (1) and (2).

<sup>24</sup> United Nations, General Assembly, *Universal Declaration of Human Rights*, General Assembly resolution 217 A (10 December 1948), Art. 18.

religion or belief.<sup>25</sup> Meanwhile, forum externum is a dimension of a person's existence in implementing and defending his spiritual existence in public.<sup>26</sup> As a result, freedom over the forum externum includes the freedom to express one's religion or belief through teaching, practice, worship, and observation.<sup>27</sup> The distinction between forum internum and forum externum in the right to religious freedom is also recognized in the ICCPR, which is clarified in Paragraf 3 General Comment Adopted by The Human Rights Committee Under Article 40, Paragraph 4, Of The International Covenant On Civil And Political Rights (“**General Comment No. 22**”), that freedom of thought, conscience, religion, or belief is distinguish from freedom to manifest religion or belief.<sup>28</sup>

The freedom of forum internum is also emphasized in General Comment No. 22, which states that any restrictions on the freedom of thought and conscience, as well as the freedom to adopt or adhere to a religion or belief of one's own choosing, are not permissible.<sup>29</sup> So, the freedom of forum internum is unconditionally protected, as is everyone's right to hold opinions without interference. Therefore, the internum forum is widely regarded as absolute freedom.<sup>30</sup> As a result, states can't interfere with the forum internum through religious or ideological indoctrination, "brainwashing," or other forms of manipulation.<sup>31</sup> The distinction between forum internum and forum externum in the right to freedom of religion is essential to determine which aspects the state may restrict and which areas the state may not restrict.<sup>32</sup>

### 3.1.3 Restriction on The Right to Freedom of Religion

As previously stated, the different aspects of the right to freedom of religion, namely the forum internum and the forum externum, are important in determining the extent to which the state can limit its citizens rights to religious freedom. In fact, the implementation of the right to freedom of religion in a country is not completely non-derogable. There may be inter-religious or intra-religious conflicts that require the state to intervene and control the situation.<sup>33</sup> As a result, it is important to emphasize that in the case of the right to freedom of

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<sup>25</sup> Komisi Nasional Hak Asasi Manusia, *Pemaksaan Terselubung Hak Atas Kebebasan Beragama dan Berkeyakinan* (Jakarta Pusat: Komisi Nasional Hak Asasi Manusia, 2009), 5.

<sup>26</sup> *Ibid*, 6.

<sup>27</sup> *Ibid*, 6.

<sup>28</sup> Office Of The High Commissioner For Human Rights, *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience, or Religion)*, para 3.

<sup>29</sup> *Ibid*.

<sup>30</sup> Manfred Nowak and Tanja Vospernik, "Permissible Restrictions On Freedom Of Religion Or Belief." In *Facilitating Freedom of Religion or Belief: A Deskbook*, edited by Tore Lindhlohm, et. al. eds. (Leiden : Martinus Nijhoff Publishers, 2004), 148.

<sup>31</sup> *Ibid*, 149.

<sup>32</sup> Komisi Nasional Hak Asasi Manusia, *Pemaksaan*, 6.

<sup>33</sup> Manfred Nowak and Tanja Vospernik, "Permissible Restrictions On Freedom Of Religion Or Belief," In *Facilitating Freedom of Religion or Belief: A Deskbook*, edited by Tore Lindhlohm, et. al. eds. (Leiden : Martinus Nijhoff Publishers, 2004), 147.

religion, the state has the authority to intervene or limit the implementation of the right to freedom of religion.<sup>34</sup> The limitation of the freedom to manifest one's religion is also stated in Article 18 (3) ICCPR:

"Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect **public safety, order, health, or morals** or the **fundamental rights and freedoms of others**."<sup>35</sup>

Based on the article's statement, it is definite that the area of 'exercise' or the manifestation of the rights and freedoms of religion and belief (forum externum) that can be restricted.<sup>36</sup> Moreover, the government's restrictions on the right to freedom of religion should not be arbitrary. These restrictions, however, must also meet the criteria established in various derivative provisions of the ICCPR itself. The limitations of the right to religious established in Siracusa Principle and General Comment No. 22.

According to the Saracusa principle, the limitation of rights must not harm the essence of the rights themselves, so the clauses of limitation of rights must be interpreted expressly and are intended to support rights.<sup>37</sup> Besides that, Paragraf 3 of General Comment No. 22 also stated:

"Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19 (1). In accordance with articles 18 (2) and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief."<sup>38</sup>

According to that statement, Article 18 (3) of the ICCPR freedom of religion or belief is permitted to be limited only to the extent required by law and necessary to public safety, security, health or morals, or basic rights and the freedom of others. However, the article also continues to emphasize that freedom from coercion to embrace or adhere to a religion or belief and freedom of parents and guardians to guarantee religion and moral education cannot be limited. Consequently, the restrictions imposed must be established by law and may not be applied in a manner that would undermine the rights guaranteed in Article 18

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<sup>34</sup> *Ibid.*

<sup>35</sup> Indonesia, *Undang-Undang Pengesahan International Covenant On Civil and Political Rights*, Law No. 12 Year 2005, LN No. 119 Year 2005, TLN No. 4558, Art 18 paragraf (3).

<sup>36</sup> Komisi Nasional Hak Asasi Manusia, *Pemaksaan*, 6.

<sup>37</sup> American Association for the International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*.

<sup>38</sup> Office Of The High Commissioner For Human Rights, *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience, or Religion)*, para 3.



ICCPR and the limitation can only be applied to defined goals and must be directly related and proportionate to the specific needs on which they are based.<sup>39</sup>

According to the elucidation of Article 18 (3) ICCPR, General Comments No. 22, and the Siracusa Principle, restrictions on the right to freedom of religion can be executed out under the conditions of public safety, public order, health, or morals, or the fundamental rights and freedoms of others. However, the discussion in this paper will only discuss the arguments of public safety and public order. According to Article 22 of the Siracusa Principle, public order (*ordre public*) is defined as the set of fundamental principles on which society is founded or the sum of rules that ensure the functioning of society. Furthermore, the article states that respect for human rights is an essential component of public order (*ordre public*). Nowak and Vospemik, on the other hand, revealed that the term "public order" should be interpreted narrowly to mean the prevention of public disorder.<sup>40</sup>

Further explanation about public safety as the reason for limitation of the freedom of religion stated by Nowak in United Nation Covenant on Civil, that the main purpose of the "public safety" clause is to allow restrictions on the public manifestation of religion, for example religious assembly, procession, burial ceremony, etc., if a specific danger arises threatening the safety of persons, such as their life, integrity, or health.<sup>41</sup> This sort of issue usually occurs when two or more hostile religious groups clash, or when religion is used to further political motives.<sup>42</sup> As a result, if the implementation of religion displays a direct threat to the safety of people or property, the state has the authority to take absolutely necessary and proportionate measures to protect public safety, such as prohibiting or dissolving religious assemblies.<sup>43</sup> In fact, in extreme cases, the state takes action against very dangerous religious groups, namely groups that incite religious hatred or war propaganda that violates Article 20 of the ICCPR, as well as criminal acts against the perpetrators.<sup>44</sup> An example of a restriction on the implementation of religion based on the public safety argument.<sup>45</sup>

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<sup>39</sup> *Ibid*, para 8.

<sup>40</sup> Nowak and Vospemik, "Permissible Restrictions On Freedom Of Religion Or Belief," 147.

<sup>41</sup> *Ibid*, 152.

<sup>42</sup> *Ibid*, 151.

<sup>43</sup> *Ibid*.

<sup>44</sup> *Ibid*.

<sup>45</sup> *Ibid*.

## 4. ANALYSIS AND DISCUSSION

### 4.1. Restrictions on The Right to Freedom of Religion in The JAI's Joint Decree

The government, even though, through JAI's Joint Decree, has restricted JAI's right to freedom of religion in both forum internum and forum externum, denies the fact that it has intervened on the beliefs of the citizens or the forum internum by arguing that JAI's Joint Decree is just a government's effort to maintain the security and public order of the citizens which are disturbed due to the spread of deviant religious interpretation.<sup>46</sup> This argument is in line with the purpose of JAI's Joint Decree, which is to maintain and foster religious peace and public order.<sup>47</sup> However, all of these arguments and purpose are unjustifiable. The restrictions of JAI's right to freedom of religion in the JAI's Joint Decree are not in accordance with the ICCPR and the principles of the right to freedom of religion because at least two things, namely the forum internum's intervention and misunderstanding of forum externum's restriction.

#### 4.1.1. The Forum Internum's Intervention

The intervention of forum internum in JAI's Joint Decree can be seen on its first dictum, which states:

*“Memberi peringatan dan memerintahkan kepada warga masyarakat untuk tidak menceritakan, menganjurkan atau mengusahakan dukungan umum melakukan **penafsiran** tentang suatu agama yang dianut di Indonesia atau melakukan kegiatan keagamaan yang menyerupai kegiatan keagamaan dari agama itu yang menyimpang dari pokok-pokok ajaran agama itu”<sup>48</sup>*

This dictum prohibits Indonesian citizens to support any religion's interpretation that has deviated from the main teaching of the religion itself. Furthermore, the deviated interpretation from the religion in the first dictum is specifically explained in the second dictum as the JAI's interpretation about the existence of a prophet after the Prophet Muhammad SAW. If we combine these two dictums, the government, through the first and second dictums, has determined that the JAI interpretation, which recognizes the existence of a prophet after the Prophet Muhammad SAW, deviates from the main teachings of Islam. That is exactly what can be called a forum internum's intervention.

The government is not permitted to intervene or limit the forum internum for any reason because the limitation clauses in the ICCPR, as stated in Article 18 (3), only apply to the freedom to manifest one's religion or beliefs, which is forum externum, and cannot be applied to the internal dimension of thought, conscience,

<sup>46</sup> Kementerian Agama RI, *Buku Sosialisasi Surat Keputusan Bersama Menteri Agama, Jaksa Agung, dan Menteri Dalam Negeri Republik Indonesia Nomor: 3 Tahun 2008, Nomor: KEP-033/AIJA/6/2008 Nomor: 199 Tahun 2008 tentang Peringatan dan Perintah Kepada Penganut, Anggota, dan/atau Anggota Pengurus Jemaat Ahmadiyah Indonesia (JAI) dan Warga Masyarakat* (Jakarta: Direktorat Jenderal Bimbingan Masyarakat Islam), 74-75.

<sup>47</sup> Indonesia, Minister of Religion, Attorney General, and Minister of Home Affairs, *Keputusan Bersama Menteri Agama, Jaksa Agung, dan Menteri Dalam Negeri Republik Indonesia Nomor: 3 Tahun 2008, Nomor: KEP-033/AIJA/6/2008 Nomor: 199 Tahun 2008 tentang Peringatan dan Perintah Kepada Penganut, Anggota, dan/atau Anggota Pengurus Jemaat Ahmadiyah Indonesia (JAI) dan Warga Masyarakat*, Consideration (f).

<sup>48</sup> *Ibid.*, First Dictum.

religion, or belief, which is forum internum.<sup>49</sup> In this context, the government shall not determine whether the JAI's interpretation has deviated from Islamic teachings. Furthermore, the government has the responsibility to prevent any parties from interfering with the forum internum, as explained by Manfred Nowak and Tanja Vospernik:

“In any event, the freedoms of the forum internum are, therefore, widely regarded as absolute freedoms. States are under an absolute obligation to refrain from interfering with the forum internum by means of religious or ideological indoctrination, "brainwashing," or other forms of manipulation. At the same time, they have responsibility to prevent private parties, including religious groups, from engaging in coercive, manipulative, or fraudulent forms of indoctrination. This obligation is underscored by the right of everybody in Article 18(2) ICCPR.”<sup>50</sup>

In this case, the government has engaged in religious indoctrination and brainwashing by determining that Ahmadiyya's interpretation deviates from Islamic teachings. It has not only failed to prevent any parties from interfering with the JAI's forum internum, but it has also failed to comply with its absolute obligation not to intervene in the JAI's forum internum. In short, through the intervention of forum internum in JAI's Joint Decree, the government has violated JAI's right to freedom of religion, especially the one stated in Article 18(2) of the ICCPR.

#### 4.1.2. The Misunderstanding of Forum Externum's Restriction

The restrictions of forum externum in JAI's Joint Decree can be seen on its second dictum, which states:

*“Memberi peringatan dan memerintahkan kepada penganut, anggota, dan/atau anggota pengurus Jemaat Ahmadiyah Indonesia (JAI), sepanjang mengaku beragama Islam, untuk menghentikan penyebaran penafsiran dan kegiatan yang menyimpang dari pokok-pokok ajaran Agama Islam yaitu penyebaran faham yang mengakui adanya nabi dengan segala ajarannya setelah Nabi Muhammad SAW.”*<sup>51</sup>

The second dictum prohibits JAI to spread the interpretation and carry out activities that deviate from Islamic teachings, which refers to the notion that there is a prophet after the Prophet Muhammad SAW. Furthermore, the government linked the interpretation which it determines as deviant interpretation with the disturbance of public safety and order:

*“Perlu ditegaskan bahwa SKB itu bukanlah bentuk intervensi Pemerintah terhadap keyakinan warga masyarakat, melainkan upaya Pemerintah untuk*

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<sup>49</sup> Nowak and Vospernik, “Permissible Restrictions On Freedom Of Religion Or Belief,” 148.

<sup>50</sup> *Ibid.*, 148-149.

<sup>51</sup> Indonesia, Minister of Religion, Attorney General, and Minister of Home Affairs, *Keputusan Bersama Menteri Agama, Jaksa Agung, dan Menteri Dalam Negeri Republik Indonesia Nomor: 3 Tahun 2008, Nomor: KEP-033/AIJA/6/2008 Nomor: 199 Tahun 2008 tentang Peringatan dan Perintah Kepada Penganut, Anggota, dan/atau Anggota Pengurus Jemaat Ahmadiyah Indonesia (JAI) dan Warga Masyarakat*, Second Dictum.

*memelihara keamanan dan ketertiban masyarakat yang terganggu karena adanya pertentangan dalam masyarakat yang terjadi akibat penyebaran paham keagamaan menyimpang. Bagi Pemerintah, masalah Jemaat Ahmadiyah Indonesia mempunyai dua sisi. Pertama, Ahmadiyah adalah penyebab lahirnya pertentangan dalam masyarakat yang berakibat terganggunya keamanan dan ketertiban masyarakat. Sisi kedua, warga JAI adalah korban tindakan kekerasan sebagian masyarakat. Kedua sisi ini harus ditangani Pemerintah.”<sup>52</sup>*

The government has roughly explained that JAI's Joint Decree is just a government's effort to maintain the security and public order of the citizens which are disturbed due to the spread of deviant religious interpretation by Ahmadiyya. However, this explanation shows that there is a misunderstanding in forum externum's restriction by the government.

Spreading religious interpretations is indeed a manifestation of a religion that can be restricted by the government if it causes the consequences mentioned in Article 18 (3) of the ICCPR. However, it should be noted that restrictions may only be imposed if the spread of religious teachings has a direct effect of causing the forbidden consequences and these restrictions shall not be imposed for discriminatory purposes or applied in a discriminatory manner, as stated in the General Comment No. 22:

“Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”<sup>53</sup>

Restricting JAI's forum externum is a misunderstanding because spreading the interpretation that there is a prophet after Prophet Muhammad SAW does not have a direct relation with the disturbance of public safety, order, health, morals, or the fundamental rights and freedoms of others. The government shall not simply link the spreading of the interpretation and the disturbance of public safety and order because the disturbance of these things occurs when there are intolerant actions against JAI, which are failed to be prevented by the government, such as the attack and destruction of the Ahmadiyya mosque in Cikeusik in 2011 which resulted in six deaths, properties damage, such as mosques, houses, and cars<sup>54</sup> and the destruction of the Ahmadiyya mosque in Sintang in 2021 which resulted in the destruction of the mosque and the warehouse building behind it.<sup>55</sup>

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<sup>52</sup> Kementerian Agama RI, *Buku Sosialisasi Surat Keputusan Bersama Menteri Agama, Jaksa Agung, dan Menteri Dalam Negeri Republik Indonesia*, 74-75.

<sup>53</sup> Office Of The High Commissioner For Human Rights, *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, para. 8.

<sup>54</sup> RZR, “Deretan Penyerangan terhadap Ahmadiyah, Cikeusik hingga NTB,” *CNN Indonesia*, September 8, 2021, <https://www.cnnindonesia.com/nasional/20210908142815-20-691467/deretan-penyerangan-terhadap-ahmadiyah-cikeusik-hingga-ntb>.

<sup>55</sup> Yoa, “Kronologi Perusakan Masjid Ahmadiyah di Sintang,” *CNN Indonesia*, September 3, 2021, <https://www.cnnindonesia.com/nasional/20210903225102-20-689598/kronologi-perusakan-masjid-ahmadiyah-di-sintang>.

Besides that, the restrictions of the JAI's forum externum in JAI's Joint Decree are applied in a discriminatory manner because they do not have a basis justified by Article 18 (3) of the ICCPR and the restrictions are just based on differences in the interpretations between Ahmadiyya and the majority group in Indonesia, which is a classic pattern for the government, as explained by Manfred Nowak and Tanja Vospernik:

“Governments may be key actors in such discriminatory policies by clearly siding with one (usually the majority) religion and by assisting or exploiting this religion in its policy of restricting and discriminating against other religions, beliefs, or philosophies.”<sup>56</sup>

In this case, the government is an actor who sided with the majority group and produced a discriminatory policy in the form of a JAI's Joint Decree. Apart from that, JAI's Joint Decree also becomes discriminative because to achieve its noble purposes, which are to maintain and foster religious peace and public order,<sup>57</sup> the government sacrifices the right of the innocent and the minority of JAI. Before JAI's Joint Decree was enacted, there were rejections of JAI from intolerant groups, one of which was the attack by Laskar Islam against the National Alliance for Freedom of Religion and Belief (AKKBB) who supported JAI.<sup>58</sup> Unfortunately, rather than suppressing intolerant acts by intolerant groups, the government chose to restrict JAI's right to freedom of religion as a minority group in Indonesia.

The restrictions have contradicted the principle of the restriction of public order itself in Siracusa Principles which stated that respect for human rights is part of public order.<sup>59</sup> In this context, the government has violated the public order by not respecting the JAI's right to freedom of religion. Besides that, this government action also contradicts the Harm Principle by John Stuart Mill, which roughly stated that the state may coerce a person only if it can thereby prevent harm to others.<sup>60</sup> The government was supposed to prevent the intolerant actions because they had harmed others, instead of restricting JAI's rights.

## 5. CONCLUSION

The JAI's Joint Decree's restrictions on JAI's right to freedom of religion are in violation of the ICCPR and the principles of the right to freedom of religion because of two reasons, encompass the forum internum's intervention and misunderstanding of forum externum's

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<sup>56</sup> Nowak and Vospernik, “Permissible Restrictions On Freedom Of Religion Or Belief,” 147.

<sup>57</sup> Indonesia, Minister of Religion, Attorney General, and Minister of Home Affairs, *Keputusan Bersama Menteri Agama, Jaksa Agung, dan Menteri Dalam Negeri Republik Indonesia Nomor: 3 Tahun 2008, Nomor: KEP-033/AIJA/6/2008 Nomor: 199 Tahun 2008 tentang Peringatan dan Perintah Kepada Penganut, Anggota, dan/atau Anggota Pengurus Jemaat Ahmadiyah Indonesia (JAI) dan Warga Masyarakat*, Considerations (f).

<sup>58</sup> Purnomo, Zaman, and Khoiludin, *ELSA Report on Religious Freedom*, 2.

<sup>59</sup> American Association for the International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, Article 22.

<sup>60</sup> Nils Holtug, “The Harm Principle,” *Ethical Theory and Moral Practice* 5, no. 4 (2002): 357. <https://doi.org/10.1023/A:1021328520077>.

restriction. In fact, the government has intervened in JAI's forum internum by determining that JAI's interpretation deviates from Islamic teachings, which is prohibited due to any reason. In addition, the government has erroneously imposed forum externum's restriction by prohibiting JAI to spread its interpretation, which is also prohibited because the JAI's forum externum has no direct relation with the disturbance of public safety, order, health, morals, or the fundamental rights and freedoms of others.

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