

# Reclaiming Minority's Freedom of Religion or Belief in Indonesia

Evaluating State Response to the Ahmadiyya Conflict in Lombok, Indonesia

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## **Abstract**

This study reveals a horizontal conflict in Indonesian society involving violation of the rights of a religious minority group and studies the state's response to the conflict. The case to be analyzed in this study is the conflict between Nahdlatul Wathan and Ahmadiyya in Lombok, Indonesia. The Indonesian government undertook to resolve the conflict by establishing a Joint Ministerial Decree that prohibits the Ahmadis to believe in a new prophet and prohibits them to manifest their belief. Although freedom to manifest religion might be limited under certain clauses provided in article 18 (3) of the ICCPR, this study finds that the Joint Ministerial Decree does not satisfy most of criteria of the limitation clauses. Moreover, the decree also violates freedom of religion provided for by article 18 of the ICCPR (freedom of the internal forum that may not be derogated from under any circumstances) as well as the rights of persons belonging to a minority to practice their own religion under article 27 of the ICCPR. This study furthermore proposes alternative mechanisms for resolving the conflict as well as reclaiming the Ahmadis' rights, using both a legal and a non-legal approach.

Keywords: Freedom of religion, Minority, Conflict resolution.

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# 1 Introduction

This study is designed to elucidate and evaluate state response to a horizontal conflict in present-day Indonesian society involving a religious minority's freedom of thought, conscience, religion or belief and their freedom to manifest religion or belief provided by article 18 and article 27 of the International Covenant on Civil and Political Rights (ICCPR). The framework of analysis in this study is multidisciplinary combining legal, political science, and social science perspectives. Furthermore, this study is a case study analyzing the conflict between Ahmadiyya and Nahdlatul Wathan<sup>1</sup> in the island of Lombok, Indonesia. This conflict was resolved, purportedly, by the Indonesian government by adopting a Joint Ministerial Decree that denies the Ahmadis freedom of thought and belief as well as prohibits them from manifesting their belief.

According to the ICCPR, freedom of thought, conscience, religion, and belief are absolute freedoms. These rights cannot be derogated under any circumstances, even in the time of emergency<sup>2</sup>. Furthermore, General Comment no. 22 of the ICCPR regarding freedom of thought, conscience, and religion stating that these freedoms are protected unconditionally and it does not permit any limitation on these rights under any circumstances<sup>3</sup>. On the other hand, freedom to manifest religion or belief provided by article 18 (3) of the ICCPR may be limited under certain strict conditions: only if the limitations are prescribed by law and are necessary to protect public safety, order, health, or moral, or the fundamental rights and freedom of others<sup>4</sup>. Furthermore, the General Comment also states that the limitation on freedom to manifest religion or belief must be directly related and proportionate to the specific need on which they are predicated and it may not be imposed for discriminatory

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<sup>1</sup> Nahdlatul Wathan is a local Islamic group in Lombok Island, Indonesia. Some informants in this study who are the members of the group saying that they have similarity with and related to Nahdlatul Ulama in Java and other islands in Indonesia who consider themselves as a traditionalist in oppose to the modern Islamist. However, Abdurrahman Wahid (Gusdur) as the primary leader in Nahdlatul Ulama's history stating that Ahmadiyya should have their freedom of religion and that he will support and defend the Ahmadis. Gusdur is known for his pluralism in Islam in which he argue that differences among people are natural, thus it should be accepted in the society. See. Wahid (2006) p.327. Pluralism campaign by Gudur has become the primary idea of today's Nahdlatul Ulama. This point of view is somehow in oppose to Nahdlatul Wathan who use their different Islamic ideology as a justification to attack the Ahmadis.

<sup>2</sup> ICCPR art 4(2).

<sup>3</sup> General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) : . 30.07.1993. CCPR/C/21/Rev.1/Add.4, General Comment No. 22. (General Comment) par. 3.

<sup>4</sup> Ibid., par 8.

purposes or applied in a discriminatory manner<sup>5</sup>. When a state uses moral grounds for limiting the freedom to manifest religion, it should not derive from a single tradition. In such a case, the used moral conception should derive from various social, philosophical and religious traditions<sup>6</sup>. On the other hand, article 27 of the ICCPR regarding minority rights as well as General Comment no. 23 of the ICCPR regarding article 27 do not provide any permissible limitation clause to minority rights. However, state may derogate from this article in the time of emergency.

Using the ICCPR and its General Comments<sup>7</sup> as parameter, this study will evaluate the limitation set by the Indonesian government to resolve the conflict between Ahmadiyya and its assaulters in Indonesia, with a focus to the case of Ahmadiyya and Nahdlatul Wathan in Lombok. My field research<sup>8</sup> authenticated that the government of Indonesia does not fulfill the requirement set by the General Comment no.22 of the ICCPR when it establishes the Joint Ministerial Decree denying the Ahmadis freedom of thought and belief and their freedom to manifest their belief. This means that these freedoms have been breached by the government of Indonesia by adopting the Joint Ministerial Decree.

However, since Indonesia has not ratified the first optional protocol to the ICCPR, there is no possibility to bring individual complaint against Indonesia to the United Nation Human Rights Committee (HRC) in order to examine whether the country has breached certain article in the ICCPR. The fact that there is no regional court of human rights in Asia and in particular covering the ten ASEAN<sup>9</sup> countries, makes searching for alternative mechanisms for reclaiming the Ahmadis' rights in the legal framework more difficult. Therefore this study will present other possible mechanisms of conflict resolution both in a legal and a non-legal framework.

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<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

<sup>7</sup> No. 22 regarding freedom of thought, conscience, and religion and No. 23 regarding minority rights.

<sup>8</sup> Described in the methodological part of this chapter.

<sup>9</sup> In 2009, ASEAN Intergovernmental Commission on Human Rights was established as a consultative body to promote and protect human rights, as well as become an official regional cooperation body on human rights issue within South East Asia region. However, this new commission has no corrective control to criticize its member state that violating its human rights obligations.

## **1.1 Problem statement**

Due to the above circumstances, the study will discuss these two research questions:

- 1.1.1. Does the Joint Ministerial Decree on Ahmadiyya satisfy, or conform to, article 18 and article 27 of the ICCPR?
- 1.1.2. How is it feasible to resolve such a religious conflict involving violation of minority's freedom of thought, conscience, religion and belief?

## **1.2 Legal source**

The primary legal source in this study is the Joint Ministerial Decree on Ahmadiyya established by the Indonesian government on 9 June 2008<sup>10</sup>. This decree was signed by the Indonesian Ministry of Home Affairs, Ministry of religious Affairs, and Attorney General as ordered by the Indonesian Blasphemy Law. The decree prohibits anyone under the Indonesian jurisdiction from possessing a deviant faith. In particular, the decree prohibits the Ahmadis from believing in a new prophet that have come after Prophet Muhammad and from believing in his teaching, on the grounds that the rest of Muslims in Indonesia believe in Muhammad as the last prophet. The decree also prohibits anyone from attacking the Ahmadis on the ground of their different belief. Furthermore, it states that anyone who breaches any point in the decree will be punished under the Indonesian criminal system.

This primary legal source will be assessed in light of the ICCPR and its General Comments, particularly on freedom of religion and minority rights, in order to analyze whether or not Indonesia has breached the Ahmadis' rights as provided by the ICCPR. Beside the Joint Ministerial Decree on Ahmadiyya and the ICCPR including its General Comments, I shall also refer to domestic law of several relevant other countries that have banned Ahmadiyya, for the purpose of comparative illustration.

The following list of legal sources from both domestic and international law enumerate those used in this study:

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<sup>10</sup> No. 3 Year 2008 (number by Ministry of religious Affairs), No. KEP-033/A/JA/6/2008 (number by Attorney General), and No. 199 Year 2008 (number by Ministry of Home Affairs).

Indonesian law:

1. Indonesian Constitution;
2. Indonesian Blasphemy Law;
3. Indonesian Criminal Law;
4. Joint Ministerial Decree on Ahmadiyya;
5. Municipality Decree by the government of Lombok Barat concerning banning of Ahmadiyya;
6. Provincial Decree by the government of Nusa Tenggara Barat concerning supervisory team for the Ahmadis; and
7. Decree by provincial branch office of Ministry of religious Affairs in Nusa Tenggara Barat concerning the banning of 13 deviant sects, including Ahmadiyya.

Other countries domestic law:

1. Malaysian Constitution;
2. Pakistani Constitution; and
3. Ordinance XX of the government of Pakistan and the gazette of Pakistan, extraordinarily published by authorities in Islamabad, Thursday, April 26<sup>th</sup> 1984.

International law:

1. ICCPR;
2. General Comment no. 22 of the ICCPR; and
3. General Comment no. 23 of the ICCPR.

### **1.3 Methodology**

This study involving multidisciplinary analysis since the conflict between Ahmadiyya and Nahdlatul Wathan in Lombok involves social phenomenon. I have also found it necessary to use non-legal approaches as complementary to the legal approach that covering both

domestic and international law, in order to construct feasible comprehensive alternatives for conflict resolution.

This study was conducted through three stages of research. First, I map the actors involved in the conflict into main actors and other significant parties. The main actors in the conflict are the Ahmadis, Nahdlatul Wathan, MUI<sup>11</sup> and the Indonesian government. Meanwhile, other Islamic organizations in Indonesia such as Muhammadiyah and Nahdlatul Ulama<sup>12</sup> are the other significant parties. This mapping is useful in order to understand the social construction of the phenomenon. Second, I analyzed both domestic and international law concerning human rights in this case, particularly the laws relating to freedom of thought, conscience, religion or belief; freedom to manifest religion or belief; blasphemy law; and minority rights. Third, I conducted a field research to confirm whether any of the following issues had been taken into consideration in the making of the Joint Ministerial Decree on Ahmadiyya:

1. Consultation with both parties involved in the conflict to elaborate the principle of non-discrimination;
2. Whether the religion manifestation of the Ahmadis shall be seen as a blasphemy to Islam; and
3. The use of terms ‘necessary’ and ‘preventing harm to others’ in justifying the restrictions set by the state.

The field research to answer such questions have been conducted addressing all actors mapped in the first stage of the study in order to validate each claim made by the respective parties. In this regard, I conducted interviews and discussions with the representative of the government creating the Joint Ministerial Decree; the members of Nahdlatul Wathan who attacked the Ahmadis in 2006 and the member of MUI as the major Muslim council in

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<sup>11</sup> MUI or Majelis Ulama Indonesia (Indonesian Council of Islam) is a non-governmental organization consists of representation from various Islamic organizations across Indonesia such as Muhammadiyah, Nahdlatul Ulama, Persatuan Islam/ Persis, etc. Although the council is a non-governmental body, it plays an important role in the Indonesian society as well as becoming the primary partner of the Indonesian Ministry of Religious Affairs. More about MUI can be seen in the official website of MUI, <http://mui.or.id/>.

<sup>12</sup> Muhammadiyah (<http://www.muhammadiyah.or.id/>) and Nahdlatul Ulama (<http://www.nu.or.id/>) are the two biggest and most hegemonic Islamic organizations in Indonesia. Both organizations claim to have millions of members. Muhammadiyah tends to perform modern Islam using education as its main concern while Nahdlatul Ulama prefers the traditional Islam and culture as its concern.

Indonesia who produces the Islamic legal opinion (*fatwa*<sup>13</sup>) used as a basis for justifying the attack against the Ahmadiyyah; Muhammadiyah and Nahdlatul Ulama clerics; the Ahmadiyyah who became the victims of the assaults from 1998 to 2006; Ahmadiyyah cleric; and local academics working on the issue of Ahmadiyyah in Lombok. For confidential reason, names are not mentioned in this study.

The field research has been conducted during 2013-2014 in several places in Indonesia as can be seen from the following table:

Date	Name of place	Number of people	Method of data gathering	Related institution
3 March 2013	Informant's residence	1	Interview	Nahdlatul Ulama
22 March 2013	Universitas Muhammadiyah Malang	7	Focus group discussion and Colloquium involving academician (sociologists and lawyers) and Islamic clerics.	Universitas Gadjah Mada, Universitas Muhammadiyah Malang, Universitas Brawijaya, Universitas Islam Negeri Malang, Muhammadiyah, Nahdlatul Ulama
11 April 2014	Universitas Muhammadiyah Mataram	28	Dialogue	Government, MUI, Nahdlatul Wathan, Nahdlatul Ulama, Muhammadiyah, Hindu's pandits, Christian priests.

<sup>13</sup> Fatwa is a legal opinion of an ulama (Islamic cleric). It is intended to elucidate, at the request of an inquirer, a position on a legal issue. See Aharon Layish (1996) p. 270. For further reference on the Issue of Islamic law, including its structure, development, and interpretation, see Abdullah Saeed books (Islamic Thought: An Introduction; and Interpreting the Qur'an) both published in 2006 and Mohammad Hashim Kamali books (Shari'ah Law: An Introduction, published in 2008; and Principle of Islamic Jurisprudence, published in 1991).

6 January 2014	Majelis Ulama Indonesia (MUI) office	1	Interview	MUI  Government
7 January 2014	Universitas Muhammadiyah Yogyakarta	1	Interview	Muhammadiyah  MUI
13 January 2014	Restaurant “Kemuning” Mataram	1	Interview	Nahdlatul Wathan
14 January 2014	Bandar Transito, Mataram	16 people in separated interview	Interview	Ahmadiyya
15 January 2014	Institut Agama Islam Negeri Mataram	1	Interview	Institut Agama Islam Negeri Mataram (academician/ lawyer)
5 March 2014	Universitas Gadjah Mada	82	Quick survey to students taking human rights class in the Faculty of Law	Universitas Gadjah Mada

I found a contestable statement during the field research regarding the claim about Mirza Ghulam Ahmad as a prophet. International literature on Ahmadiyya, the international community of Ahmadiyya Qadian’s websites<sup>14</sup> as well as Indonesian government official document<sup>15</sup> and the legal opinion made by MUI, Muhammadiyah clerics, and Nahdlatul

<sup>14</sup> <http://www.alislam.org/>

<sup>15</sup> Meeting result of 12 May 2005 by the Indonesian government’ team on deviant sect.

Wathan clerics<sup>16</sup> stating that Qadian believes in Mirza Ghulam Ahmad as a prophet. On the other hand, the Ahmadiyya's cleric and Ahmadis in Lombok whom I interviewed claimed that they belong to the international community of Ahmadiyya Qadian but they do not perceive Mirza Ghulam Ahmad as a prophet. They even said that any Ahmadis perceiving Mirza Ghulam Ahmad as a prophet do not belong to Islam and should not be called a Muslim. I confronted their statements with starkly conflicting informations from others. This lead me to not take the statement made by the Ahmadis whom I interviewed as a valid information due to contradictory claims: The international community of Ahmadiyya Qadian perceives Mirza Ghulam Ahmad as a prophet, the Ahmadis in Lombok claimed that they belong to the international Ahmadiyya Qadian community and in the same time they claimed that they do not perceive Mirza Ghulam Ahmad as a prophet without rejecting the statement of the international Ahmadiyya Qadian community.

## 2 Overview of the case<sup>17</sup>

Ahmadiyya is an international religious community. It is still being debated worldwide whether it should be perceived as a part of Islam or not. The movement was founded by Mirza Ghulam Ahmad in the former British Colonial in today's Pakistan and India's frontier area. Ahmadiyya has two different sects: Qadian and Lahore. The difference between the two is in the perception of Mirza Ghulam Ahmad. Qadian believes that Mirza Ghulam Ahmad is a prophet whereas Lahore perceives him as an Islamic reformer (*Mujaddid*). The last mentioned sect is considered a moderate Ahmadiyya due to its perception that Mirza Ghulam Ahmad is only an Islamic reformer and not a prophet<sup>18</sup>.

Ahmadiyya came for the first time to Indonesia in 1925 and later came to Lombok in 1970s<sup>19</sup>. They were living in harmony with the other members of the society in the neighborhood

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<sup>16</sup> Stated in the interviews conducted in the above mentioned dates.

<sup>17</sup> Summarized from the interviews I have done during the field research to the refugees in Bandar Transito Mataram, also to other informants from the assaulters' organization (Nahdlatul Wathan) and MUI's representation.

<sup>18</sup> Crouch (2009) p.5.

<sup>19</sup> The information I got from one of the Ahmadiyya's clerics who became my informant in Lombok. The interview was conducted on 14 January 2014.

although the MUI established *fatwa*/ legal opinion in 1980<sup>20</sup> declaring that Ahmadiyya is a deviant sect. The situation in Lombok was relatively peaceful in that moment due to Soeharto's authoritarian regime and other factors. People were not eager to confront each other in a visible conflict risking to be accused as rebels by Soeharto's army. Soeharto's regime did not hesitate to torture and kill civilians threatening public order.

By geographical, location of Lombok Island is situated over thousand kilometers from Jakarta as the capital of Indonesia and the underdeveloped information technology at that time also contributed to obstructing rapid and instant transfer of information throughout Indonesian thousands of islands. Therefore, the Muslim society in Lombok was not really aware of Ahmadiyya and the MUI's fatwa regarding Ahmadiyya as a deviant sect being established in Jakarta.

However, time was finally ripe to give rise the conflict. It was Wednesday, August 14<sup>th</sup> 1996 when an Islamic cleric (Tuang Guru) from Nahdlatul Wathan in Keruak, eastern part of Lombok was giving a speech in front of the Muslim mass to commemorate Prophet Muhammad's birthday. In his speech, the cleric started provoking the mass by saying that Ahmadiyya is not Islam and is harming Islam with their belief such as accepting Mirza Ghulam Ahmad as the new prophet after Prophet Muhammad, whereas the other Islamic sects believe that Prophet Muhammad was the last prophet in Islam. The cleric also said that Christians and Catholics are better than Ahmadiyya because the Ahmadiis have blasphemed Islam with their deviant faith. Such hate speech was not immediately followed by riot. The Soeharto regime was still strong enough to hold back a mass plan to attack the Ahmadiis.

The cleric needs about two years to convince his followers to attack the Ahmadiis. The chance was opened after the collapse of Soeharto regime in 1998. The assaulters were also encouraged by the spread in mass medias of news about previous attacks in Java conducted by other Islamic organizations. They used provocative informations gathered from the media as a justification for conducting a similar attack in Lombok. The first attack happened on 2 October 1998 in Pancor, the eastern part of Lombok in the afternoon right after the Friday prayer for the Muslim men. There were around fifty angry men who attacked the Ahmadiis

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<sup>20</sup> Fatwa/Legal Opinion of Indonesian Ulama Council/ MUI in the National Meeting II dated 1 June 1980.

in their houses. According to the eyewitness, the attack was similar to the attack against alleged communists in 1965. The assaulters signed targeted houses in the village, brutally hit and killed the owner of the houses, drove out the survivors who were mostly women and children from their houses, and burned down the Ahmadis' houses. Around 24 Ahmadis were being killed in a single day. Following the attack, the survivors moved to their fellow Ahmadis' houses in Keruak, a nearby village. Not even a single assaulter has ever been tried for this assumed crime<sup>21</sup>.

Two days after the attack in Pancor, similar mass consisting of around sixty men attacked the Ahmadiyya community in Keruak that was used as a refugee camp for the Ahmadis from Pancor. No one died in the second accident but all of the Ahmadis were being forced to move out from the village while their houses were burned down. Once again, the Ahmadis were driven out from one village to another village. Similar to the first accident, there was not even a single assaulter ever been tried for a crime in the second attack although there were eyewitnesses who saw the murder, persecution, and other types of criminal that were carried out at that time<sup>22</sup>. Similar attacks kept occurring in the other parts of the island of Lombok during 2001 to 2002 with various numbers of deaths and burnt houses on the Ahmadiyya side. Being forced and rejected in many parts of Lombok, the Ahmadis moved from one shelter to another until they found a vacant small housing complex in Ketapang, in the western part of Lombok.

In Ketapang, Ahmadis from different areas of Lombok island united and starting their new life. They worked wherever they got a chance to pay for the installment of the house and feed the family. The situation in Ketapang was conducive and the neighbors welcomed them to live in the area. However, the Ahmadis were not assimilated in the neighborhood. Their small housing complex consisting of around twenty houses and a mosque was within 600 meters apart from the other residential area. The Ahmadis were almost never in touch with the

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<sup>21</sup> On the other hand, the assaulters of Ahmadiyya in West Java were being sent to jail for three to six months for breaching Indonesian Criminal Law. See District Court of Serang, Verdict Number 314\_Pid.B\_2011\_PN.SRG.

<sup>22</sup> As being told by one of my respondents who is one of the primary members of Ahmadiyya in Lombok. He survived from three different assaults in 1998, 2001, and 2006. He is now living in the shelter provided by the government and work as a motorcycle-taxi driver (*ojek*) after losing almost all of his belonging including land and houses.

neighbors because of their trauma. Such behavior was gradually considered suspect by others in the neighborhood.

In 2005 the attempt to attack the Ahmadis in Ketapang was first being planned by a cleric who live nearby the Ahmadis' housing complex. He started provoking and mobilizing a mass in order to extrude the Ahmadis. In his first attempt on 19 October 2005 most of the surrounding neighbors were not eager to attack the Ahmadis. Thus the first attempt failed. However, the cleric kept intimidating his neighbors by saying that if they do not want to attack the Ahmadis, he will bring a mass from another village to attack the Ahmadis. On 4 February 2006, the cleric mobilized one thousand people from several surrounding villages in order to invade the Ahmadis housing complex. Polices were defeated by the mass who brought Molotov cocktails, stones, woods, bamboo spears, any other weapons, gasoline, and fire. In the negotiation, the mass stated that they would not kill the Ahmadis if they move out from the island of Lombok. In their response, the Ahmadis refused to be driven out from the island because they did not want to leave their homeland to an unknown and isolated island. After series of dialogue resulted in a deadlock, polices were able to secure around 185 Ahmadis while the mass of attackers destroyed and burned their houses.

In the night after the accident, the government relocated the Ahmadis to Bandar Transito, a place in the city of Mataram that was designed as a transit shelter for migrants leaving Lombok Island to move to smaller or isolated island in the government's program of transmigration. The Ahmadis were given promise by the government (police) that they will not be sent to other island. Instead, they will be placed in the shelter only for a day or two until the mass was calmed down by the police so that the Ahmadis could return to their homes safely.

Figure 1  
Shelter “Bandar Transito” in Mataram



The shelter was originally part of a branch office of the ministry of manpower and transmigration in Mataram, Lombok. However, the complex was not designed as a workplace for the ministry officers. Instead, it was being used as a transit facility for individuals who are preparing for the ministry’s program of transmigration<sup>23</sup>. In fact, only few people in Lombok willing to take part in transmigration, therefore the building is rarely used. There are two separated buildings in the complex, each has a large hall that can be used by one hundred people. Even so, the government only allocating one building for the Ahmadis and kept the other building available for the ministry officers. As a consequence that can be seen in the above pictures, around one hundred Ahmadis from thirty seven families share a big hall by creating wooden wall separating each family. Sanitary and

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<sup>23</sup> Transmigration is a national project by the Indonesian government. This project asks people from densely populated area to voluntarily moving into remote islands. The government will support those people to develop the remote area by giving each of them two hectares land to cultivate, house, and daily needs for the first two years of settlement. The goal of this project is to distribute population as well as development throughout Indonesian archipelago. However, since Lombok is not a densely populated island and in the same time also not a remote island, it does not become the primary target for transmigration.

privacy are among unreachable luxurious things for the refugees, from they moved into the shelter in 2006 until today<sup>24</sup>.

During the first days in the shelter, the Ahmadis were prohibited to leave the shelter, even only going to the market for buying daily needs. Policemen were standing outside the shelter to make sure the Ahmadis stay inside the shelter. In their new life in the shelter, there were at least three rights of the Ahmadis that have been breached by the government: their right to standard living<sup>25</sup>, right to privacy<sup>26</sup>, and their freedom of movement<sup>27</sup>. Not to mention their freedom of religion<sup>28</sup> which has been violated by the assaulters. After a series of negotiations, policemen left the shelter and the Ahmadis were free to go anywhere during the day to work, although they had to return to the shelter at night and remain in the shelter as their house.

Facing a manner new life, the Ahmadis started to work in whatever job they could get. Although the surrounding society still discriminated them, some of the Ahmadis were able to get positions in several public institutions such as becoming police officers<sup>29</sup> and lectures. Other Ahmadis who were refused to get back to their office or were unable to start over their business chose to work in the private sector. They become driver, food seller, labor and other got lower-class urban jobs that they never had before as villagers. Some of them actually still owned land and ruined-houses in their place of origin. However, they could not go back there to cultivate the soil and feed the family, as they had before, because they were threatened by the members of Nahdlatul Wathan who hindered them from going back to the village.

In addition to their misery caused by having to rebuild their economy, the government still does not fulfill their civil rights as citizens<sup>30</sup>, such as providing identity card needed for civil recognition in administrative matters<sup>31</sup>, birth certificate for the new-born baby<sup>32</sup>, and

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<sup>24</sup> The pictures were taken during my field research in the shelter on 14 January 2014. Argument valid for the date during thesis writing and submission in May 2014.

<sup>25</sup> ICESR art.11.

<sup>26</sup> ICCPR art.17.

<sup>27</sup> ICCPR art.12.

<sup>28</sup> ICCPR art.18.

<sup>29</sup> A lady was stabbed 7 times in her chest during the 2001 assault, she survived and now working in the provincial police office.

<sup>30</sup> ICCPR art. 25 (C)

<sup>31</sup> ICCPR art. 16.

<sup>32</sup> ICCPR art. 24 (2).

marriage certificate to recognize their marriage<sup>33</sup>. Lacking such identity documents makes it hard for children of the Ahmadis to get access of education. Some of these children have been taken care of by the national office of Jamaah Ahmadiyah Indonesia (JAI). The organization moved the children to West Java in order to give them access to education in *pesantren*<sup>34</sup> organized by the JAI where the children can get education without having to show their identity card. After years of struggle, in early January 2014 local government in Mataram start to loosening their discrimination against Ahmadis and their children by promising them identity card, including birth certificate<sup>35</sup>.

It has been eight years since the Ahmadis moved into the shelter. They were not allowed to go back home since their neighbors as well as the government prefer to relocate them to another island. In January 2014, the Ahmadis stating that they are now ready to migrate to another island. They propose a small uninhabited island in the Lombok strait called “Gili Tangkong” as their new homeland. However, the negotiation about their relocation is still unclear. Today, the Ahmadis in Lombok are still refugees in their own land, they have not been given identity card needed for them not to lose their administrative and civil rights. On the other hand, assaulters who have attacked the Ahmadis in Lombok have never been prosecuted although they have committed the crimes reported in this thesis.

Lombok is not the only place in Indonesia where the Ahmadis have been assaulted. Their fellows in Java, Kalimantan, Sumatra and other islands throughout Indonesia have also being attacked, intimidated, and killed<sup>36</sup>. Such social conflict is actually calling for a reconciliation. Unfortunately, the Indonesian government and the MUI do not play neutral or constructive

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<sup>33</sup> ICCPR art. 23 (2).

<sup>34</sup> Private islamic education as a substitute to elementary school. Some of *pesantren* that have been recognized and approved by the government (such as for their curriculum and teaching method) are able to conduct national examination and getting their students equal degree approved by the government that being used by public school. However, since Ahmadiyya is forbidden, their *pesantren* is not being recognized by the government. Therefore, students in their *pesantren* only learn without getting accredited degree. Meanwhile, Ahmadiyya in Yogyakarta has and run an accredited educational institution called “PIRI” which has numbers of junior and senior high schools. However, the Ahmadiyya organization in Yogyakarta is the Lahore sect and it does not relate or cooperate with the Ahmadis in Lombok who belong to the Qadian sect.

<sup>35</sup> On 13 January 2014 when I was interviewing the Ahmadis in their shelter, they told me that they went to the administrative bureau one week before the interview in order to ask any policy concerning the identity card. In that occasion, the bureau officer promised them to process their identity card, including birth certificate. However, since the process take times, the officer were only able to give them (children in that case) official letter as a substitute to birth certificate to fulfill administrative requirement of school enrollment.

<sup>36</sup> More comprehensive report on the attack to the adherent of Ahmadiyya in Indonesia can be seen in Bagir (2013) and Crouch (2009).

roles in resolving the conflict. Even though MUI consists of representations from most of Indonesian Islamic organizations, Ahmadiyya have never become member. The Ahmadis have demanded to be included in MUI, but the members of MUI have always refuse to include them in the council. Instead, MUI has produced another *fatwa* (legal opinion) stating that Ahmadiyya is a deviating faith<sup>37</sup>.

This phenomenon somehow confirms what Arend Lijphart has warned against: the danger of majoritarian democracy in which minorities who are denied access to power will feel excluded and discriminated<sup>38</sup>. MUI is not a state actor, but as an officially recognized Muslims representation throughout the country its policy has the political power to influence the government.

## **2.1 Other state responses to Ahmadiyya**

Some Islamic countries, such as Pakistan<sup>39</sup> and Malaysia<sup>40</sup> that explicitly proclaim Islam as the official religion of the countries tend to limit Ahmadiyya's freedom of religion. Pakistan limits Ahmadiyya's freedom of religion under its amended constitution stating that Ahmadiyya is not Islam, its adherent shall not call themselves Muslim, and whoever breach the constitutional regulation shall be punished by a maximum three years in prison<sup>41</sup>. In fact, the Ahmadis refers to themselves as an Islamic sect and perceive themselves as Muslims, while the Pakistani government rejects to admit that they are Muslims. This constitutional article explicitly violates the Ahmadis' freedom of religion and moreover, the government provides criminal sanctions against any Ahmadis practicing their belief.

Malaysia also limits Ahmadiyya's freedom of religion. The Selangor Islamic religious council of Malaysia in a letter dated April 2009 prohibits the Ahmadis from offering Friday

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<sup>37</sup> Fatwa/ Legal Opinion of Indonesian Ulama Council/ MUI Number 11/MUNAS VII/MUI/15/2005.

<sup>38</sup> Lijphart (1999) pp.32-33.

<sup>39</sup> The official name of Pakistan is the Islamic Republic of Pakistan as provided in article 1 of the Pakistani Constitution. Moreover, article 2 of the Constitution stating that Islam shall be the state religion of Pakistan. The Constitution also dedicates special part about Islamic provisions in its article 227-231.

<sup>40</sup> Article 3 of the Malaysian Constitution stating, "Islam is the religion of the Federation." Although it based on English common law, Islamic law is applicable to Muslim and restricted to family law and religious observance.

<sup>41</sup> See ordinance XX of the government of Pakistan and the gazette of Pakistan, extraordinary published by authority of Islamabad, Thursday, April 26<sup>th</sup> 1984.

prayers at their mosque and threatening them with a sanction of one year imprisonment and fine up to 3000 Malaysian ringgit<sup>42</sup>. I am not suggesting that the model of an Islamic state can be used to justify any limitation of the Ahmadiis freedom of religion. However, from the practice in Pakistan and Malaysia, it can be argued that if an Islamic state prefers Islam over other religions, it might establish a national law based on their interpretation of Islamic law. It is possible that their interpretation of Islamic Law leads to banning of the Ahmadiyya, where the state might justify this in the name of their constitution making Islamic law a source of national legislation.

On the contrary, a non-Islamic state such as Indonesia that does not explicitly proclaim that it based on Islamic law, shall not prefer Islam, or a particular Islamic sect over other religions or sects. Although Indonesia has the largest number of Islamic adherent in the world, its constitution as well as its laws never proclaimed it to be an Islamic state. Instead, the Indonesian constitution guarantees freedom of religion of its citizen, including freedom of worship according to a person's belief<sup>43</sup>. Arskal Salim elaborates this issue in his paper in which he finds that no single religion has been officially referred-to in the Indonesian Constitution and therefore the Indonesian government shall follow a policy of state neutrality towards all religions and provide a mechanism to afford equal rights to all citizen regardless of their religions<sup>44</sup>.

However, this constitutional article does not really work effectively in practice. The Indonesian government does limit Ahmadiyya freedom of religion as well as their freedom to manifest religion under the Joint Ministerial Decree on Ahmadiyya. Although the Lahore sect of Ahmadiyya only perceive Mirza Ghulam Ahmad as an Islamic reformer, the government of Indonesia does not differentiate here and considers them identical to the Qadian sect who believe that Mirza Ghulam Ahmad is a prophet. Thus, the Lahore sect is also being banned from teaching and spreading their belief.

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<sup>42</sup> Press release of the Islamic council in Malaysia issues notice to Ahmadiyya Muslim Jamaat preventive use of central Mosque, 28 April 2009.

<sup>43</sup> Article 29 (2) of the Indonesian Constitution.

<sup>44</sup> Salim (2007) pp. 115-116.

I would argue that the Indonesian Joint Ministerial Decree on Ahmadiyah is explicitly against the Indonesian Constitution, particularly article 28 (E) and article 29 regarding freedom of religion or belief. However, the decree has legitimate authority from the Indonesian Blasphemy Law<sup>45</sup> that has been constitutionally reviewed in the Indonesian Constitutional court resulting in giving legitimacy to the law<sup>46</sup>. This means that today's status quo of Indonesian Blasphemy Law is valid and legitimate under the Indonesian Constitution. Therefore, any regulation substantially derived from the Indonesian Blasphemy Law cannot be easily declared unconstitutional. This discourse will be one of the main discussion in next chapter. However, I mostly argue that a single law, in this case Joint Ministerial Decree, could not and should not be justified only because its source of authority is legitimate. To the contrary, it has to be reviewed for its own substance.

## **2.2 The role of media in a democratic transition**

The assault to the Ahmadi in Lombok can be seen as an example of mass frenzy in Indonesia. An interesting framework for understanding mass frenzy in Indonesia is the emergence of democracy and the collapse of authoritarian regime in the end of 1990s. In his book, "Riots, Pogroms, and Jihad", John Sidel explains varieties of violent conflict in Indonesia after the collapse of the Soeharto regime. He argues that violent conflicts particularly those related to horizontal conflict in the society involving two or more different religious groups is the result of the loosening and shifting of collective identities boundaries that were previously tightly upheld by the Soeharto regime<sup>47</sup>.

During Soeharto regime until 1997, Indonesia was apparently a peaceful country. Almost no bad news was reported in the international world, while economic growth and political stability were the mostly known description about this largest Muslim country in the world. Even so, this gives no guarantee that the real situation was that smooth. Soeharto's authoritarian regime was controlling every movement in the society in order to create

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<sup>45</sup> Indonesian law number 1/PNPS/1965.

<sup>46</sup> Indonesian Constitutional Court decision, Case No. 140/PUU-VII/2009.

<sup>47</sup> Sidel (2007) pp.140-141.

stability in the society. During Soeharto regime lasting for about 32 years (*orde baru*), most people knew little about what was happening in their surroundings. Even if someone knew something, he would prefer to remain silent to avoid malicious action by Soeharto's forces<sup>48</sup>.

The situation changed dramatically after 1998 when Indonesia began its reform (*reformasi*). The reform opens up freedom and democracy in Indonesia, including freedom of press. In their study, Laksmi and Haryanto found that less than a decade after the Indonesian reform in 1998, the number of television station and printed media publication were doubled<sup>49</sup>, not to mention the uncountable number of online media in the internet used to spread news all over the country. Freedom of press on one hand opens the right to receive and impart information<sup>50</sup>, but on the other hand, the massive information distributed and shared in the media makes it hard to control the validity of each information. There is no neutrality in media, and the owner or the sponsor of a media can determine what news are to be distributed to the public. A big media corporation can distribute information faster than a weaker one. Moreover, false or manipulated information shared by such influential media may provoke large sections of society with little or no opportunity to verify the information.

In the case of Ahmadiyya, numerous medias are reporting the accident, but each of them have a different angle framing. Although the Ahmadis have international television<sup>51</sup>, the number of Indonesian watching such exclusive television is rare. Most Indonesians prefer accessing information from mainstream media that are easily accessible. Moreover, people in Lombok have harder access to information compared with people in Java, due to lack of infrastructure. This situation makes it easier for the provocateur to manipulate information reaching people in Lombok. As a result, in 1998 the members of Nahdlatul Wathan in Lombok were easily provoked by the news distributed in mainstream media of attacks against the Ahmadis.

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<sup>48</sup> Törnquist (2009) p.13.

<sup>49</sup> Laksmi and Haryanto (2007) p.53.

<sup>50</sup> ICCPR art. 19 (2).

<sup>51</sup> Muslim television Ahmadiyya (MTA).

### **2.3 The power of majority in a violent country**

Yet the media might be provocative. But if the people targeted by provocations can digest the information with a clear and peaceful mind, violence would not appear. Therefore, there must be something more to drive the mass to frenzy or run amok. I have found another feature in the Indonesian context to explain such violence: the role of leaders or local elites in driving majority opinion. Common people in Lombok tend to believe in whatever is being said by their leader or by influential figure in their society. Moreover, compared with other local elites religious leaders in the Indonesian community have a more strategic role<sup>52</sup>. Religious leader often use religious arguments, such as sin, to intimidate their fellows who do not want to follow their order. This may explain why the mass in Lombok can easily be mobilized by the cleric during 2001 - 2006.

In his book “Perang Kota Kecil”<sup>53</sup>, Gerry Van Klinken exposes that the number of riot and religiously based mass frenzy driven by local agents interested in enhancing their power in the local community is steeply rising in Indonesia after the collapse of Soeharto’s regime<sup>54</sup>. Such power of a local actor gets more powerful the more followers he can recruit. The cleric in the 2006 event was able to recruit over a thousand people to attack the Ahmadis. This huge mass was linked to the Nahdlatul Wathan members and rooters who regularly listened to the cleric’s speech. As the biggest Muslim organization in Lombok, it was not hard for the organization to mobilize such a number of people. As I have explained in the overview of the case, even policemen, the symbol of the state who hold the mandate to protect the Ahmadis, were overwhelmed by this huge number of people. It indicates that anarchism has hijacked the democratic transition in Indonesia and created a situation where the state actors are defeated by non-state actor. It could rarely occur or was almost impossible to happen under the Soeharto regime with its authoritarian characteristics.

It is not only the weakness of the state that triggered the accident in Lombok. I found the situation in the society also contribute to trigger the conflict. Despite being famous for its

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<sup>52</sup> Turmudi (2006) p. 68.

<sup>53</sup> Bahasa version translated from English version, “Communal Violence and Democratization in Indonesia: Small Town Wars.”

<sup>54</sup> Klinken (2007) p.11.

hospitality, Indonesia also has a culture of violence<sup>55</sup> that can be used as a power by the majority to oppress minority. In their study, Colombijn and Linblad explain that the term culture of violence in Indonesia does not represent Indonesians as a whole but there is a set of alternative ways or behavior in certain situation that involve violence. It might be changed but that would not be easy because the culture has deep roots in the society.<sup>56</sup>

The culture of violence in Indonesia is reflected in daily communal-behavior as well as in traditional folktales. In most of places in Indonesia, if there is a person who commits a crime and somebody else spot him, it is likely that he will be bullied by the eyewitness before being sent to the police. The word 'amok' ('frenzy') in 'running amok' itself was originally a word in Bahasa Indonesia, "amuk", which quite often happens in Indonesia when non official police take over state official to punish individuals who are considered criminals or traitors. How may such psychopathological behavior become a culture in Indonesia? An interesting explanation is found in Henk M.J. Maier's paper "Telling Tales, Cutting Throats; The Guts of Putu Wijaya" exploring Indonesian folktales that describe violence in a clear scene. There are indeed numerous stories in Indonesian folktales that consist of violence and celebrate the pride of being a hero who successfully kills a traitor or even just a thief.

"Kancil Nyolong Timun" is one of the most famous kid stories. It tells a story of an honored and smart farmer who kills a thief in a violent description of axing, beheading, and bloodshed. "Banyuwangi" is a famous story that officially functions as the origin story of a city in Java by the same name. This story also contains violent scenes between husband and wife in which the wife kills herself to prove that her husband's accusation of her cheating is not true. Such stories are even being taught in elementary schools throughout the city in order to conserve local wisdom. "Malin Kundang" is another famous story telling about a mother who cursed her son into becoming a stone because he refused to admit she was his mother. Until now parents, teachers, and even televisios in Indonesia keep using this story to convince children to respect their parents and the elderly by scaring them to believe that once the parents get angry, they can be cursed into becoming a stone.

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<sup>55</sup> Colombijn and Lindblad (2002) p. 14.

<sup>56</sup> *ibid.*

In his paper, Maier states that such violence stories plays a destructive role in the society<sup>57</sup>. It can be argued that hidden morale of the stories builds the mentality of children, while on the other hand people justify the recourse to violence as a legitimate part of culture because they are familiar with the story that they have been told repeatedly from their childhood. Furthermore, most people tend to practice the story in their lives without giving elaboration on the morale of the story. For example, in every part of Indonesia, whenever a thief is caught by eyewitness, it is likely that the eyewitness will assault or even kill him just like in the story of “Kancil Nyolong Timun.” In this phenomenon, the focus is the interest of bigger part in the societ and the justification for such manner is based on culture. However, the real morale of the story in “Kancil Nyolong Timun” is not to promote killing, but to teach a person not to become a thief.

As communitarians, Indonesians tend to focus on the bigger interest rather than on the smaller one. This may explain the framework of the society in mediating the morale of the story. They do not focus on the reason or condition of the thief. On the contrary, they prefer to look at the danger or threat to the community whenever a theft occurs. In the discourse of philosophy of human rights, Indonesian<sup>58</sup> tends to use Utilitarian type ethics than a Kantian type ethics. As Bentham said, “The greatest happiness of the greatest number is the measure of right and wrong.”<sup>59</sup>. This choice of ethics leads the society in Indonesia to justify the use of violence in order to gain greatest happiness, the happiness of the society although it has to be reached by sacrificing the thief’s rights. In the case of Ahmadiyya in Lombok, the attack against the Ahmadis is justified by the interest of the bigger number of people in the society who do not share the same interest as the Ahmadis.

In this analysis, I argue that the real challenge within Indonesian society triggering horizontal conflict is the plural society in Indonesia. Although “Unity in Diversity” is the national motto of Indonesia, a sense of togetherness still facing threats from group definition and boundaries<sup>60</sup> which is in a way reflecting the so called minimal group paradigm. Social

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<sup>57</sup> Maier,(2002) p. 79.

<sup>58</sup> Based on my quick survey with around 80 law students in Universitas Gadjah Mada on 5 March 2014. I asked them to analyze the case of Mignonette ship reflecting their reference of the ethics. Almost all of the students prefer to agree with the killing of a boy so that the body can be eaten by the other three mens in order to survive.

<sup>59</sup> Bentham (1776) p. vi.

<sup>60</sup> Colombijn and Linblad, Op. Cit., p. 16.

Psychologist Henri Tajfel and his colleagues elaborates this phenomenon in their paper “Social Categorization and Intergroup Behavior” by arguing that even the very least differentiating of groups identity is sufficient for in-group favoritism and out-group discrimination<sup>61</sup>.

This categorization of in-and-out group leads to the social stigma of “us against them”, especially when the two groups are in controversy or are competing with each other. In the case of Ahmadiyya and Nahdlatul Wathan, the two groups share the same religious basis with different manifestation and additional beliefs on the Ahmadiyya side, while Nahdlatul Wathan and the rest Islam Sunni communities in Indonesia are convinced there should be no additional beliefs in Islam. The fact that Ahmadiyya adds additional doctrines in Islam, such as Mirza Ghulam Ahmad as a new prophet after Prophet Muhammad, drives Nahdlatul Wathan and other Sunni groups in Indonesia to violently attack the Ahmadis without any sympathy.

## **2.4 Joint Ministerial Decree on Ahmadiyya**

In responding to the conflict between Ahmadiyya and the Sunni communities all over Indonesia, the government of Indonesia adopted the Joint Ministerial Decree signed by the Ministry of Home Affairs, the Ministry of religious Affairs, and the Attorney General on 9 June 2008. By this decree, the government explicitly warns all individual under its jurisdiction, and in particular the Ahmadis to stop declaring, suggesting, or attempting to gain public support for any deviant activities of religious principles. The government also warns and orders the Ahmadis, as long as they consider themselves as Muslims, to discontinue activities that deviate from the principal teaching of Islam, such as believing anyone is a prophet after Muhammad or believing, practicing, and spreading his thought. As an enforcement mechanism, Ahmadis who infringe the decree will be punished under the Indonesian Criminal Law. The government will also give sanction to the Jamaah Ahmadiyya Indonesia as the Ahmadiyya organization if the government finds any infringement of the

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<sup>61</sup> Tajfel (1971) p.173.

decree by the organization. Furthermore, the decree also order everyone under the Indonesian jurisdiction to protect and maintain harmonious religious life as well as peace and public order, particularly by not conducting unlawful actions against the Ahmadis. As a consequence, the government will give criminal sanction to anyone who attacks the Ahmadis according to Indonesian Criminal Law.

From the content of the Joint Ministerial Decree, it can be seen that the government is trying to be neutral in the conflict by giving order and warn to the both parties in the conflict. The Ahmadis are ordered to stop believing in Mirza Ghulam Ahmad as a prophet as well as ordering them to stop manifesting their belief. On the other hand, the assaulters are ordered to not attack the Ahmadis. However, it seems that the government oversimplifies the problem by giving exactly same treatment for two different acts. According to the Indonesian Criminal Law, attacking other person is already qualified as a criminal offense<sup>62</sup>. The clause requires no specific reason for the attacker that can be qualified as a crime thus any reason would not be counted. Instead, it is the real act that determine the qualification of a crime, thus the attack agaisnt the Ahmadis cannot be justified by the reason that the Ahmadis has done something that drive the perpetrator to attack him.

In fact, the Joint Ministerial Decree on Ahmadiyya actually positioning the attack equal to belief and religious manifestation by criminalizing all of these actions. In this regard, there are two critical failures I found in the Decree. First, that the government is limiting the Ahmadis freedom of thought and belief which should not be limited. Secondly, the government also misconstrues the action in which threatening public order<sup>63</sup>. It is provided in the decree that the Ahmadis' religious manifestation is what threatens public order. To the contrary, it is obviously that the attack from the assaulters is what threatens the Ahmadis as members of society, thus these attacks also threaten public order if we objectively see both conflicting parties as members of society. As members of society, the Ahmadis were attacked, thus their peaceful life in the society has been harmed.

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<sup>62</sup> Article 351-358 of the Indonesian Criminal Law.

<sup>63</sup> Safety and peacefulness of the society.

It is obvious that the Indonesian government has a preference in the conflict of Ahmadiyya. It can be seen even before the decree is formalized. Under the Soeharto authoritarian regime in 1961, the state attorney of Indonesia was given a task to observe deviant religious sects in order to maintain public order<sup>64</sup>. Therefore, a task force on deviant religious sects was established by the state attorney. Until today, this team keeps monitoring religious sects in Indonesia and makes a recommendation to the government whenever the team finds that any of the religious sect. On 18 January 2005, the team concluded a recommendation to the Indonesian government that Ahmadiyya is a deviant sect and therefore it should be banned by the government. On 12 May 2005 the team officially sent a document of a recommendation to the president of Indonesia to ban Ahmadiyya. The government then inviting the Ahmadis to clarify their religious manifestation on 15 January 2008. After series of discussion and negotiation, the Ahmadis and the government created a memorandum of understanding containing 12 articles in which the Ahmadis proclaimed themselves:

1. We, the adherent of Ahmadiyya since the very beginning, believe and saying *syahadah* (promise, declaration of becoming Muslim) in the way Prophet Muhammad teach us: *Asyhaduanlaa-ilaaha illallahu wa asyahdu anna Muhammadar Rasullullah* which means I declare that there is no God but Allah and Muhammad is the Prophet;
2. Since the very beginning we, the adherent of Ahmadiyya, believe that Prophet Muhammad is *Khatamun Nabiyyin* (the last prophet);
3. It is our belief that Hadrat Mirza Ghulam Ahmad is a teacher, *mursyid* (leader/ adviser), Messenger, *mubasysyirat* (good seeing), founder, and leader of Ahmadiyya assigned to strengthen *dakwah* and *syiar* (missionary endeavor) of Prophet Muhmaad SAW (may peace be upon him);
4. To clarify that the word *Rasulullah* (prophet) in our 10 oaths of allegiance should be read after the word Muhammad;
5. We, the adherent of Ahmadiyya believe that there is no revelation after *Al Quranul Karim* (Quran) that belong to Prophet Muhammad. Quran and *sunnah* (way of life) of the Prophet are the sources of Islam that we use;

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<sup>64</sup> Article 2 (3) of Indonesian law on state attorney.

6. Tadzkirah is not the scripture of Ahmadiyya. It is a spiritual experience of Mirza Ghulam Ahmad that codified into a book and given a name of Tadzkirah by his fellow in 1935, 27 years after his death;
7. We, the adherents of Ahmadiyya never claimed and would never claim Muslim outside Ahmadiyya as a non-believer (*kafir*), by words or action;
8. We, the adherent of Ahmadiyya never did call and would never call a mosque that we build as Mosque of Ahmadiyya;
9. We declare that every mosque built by and managed by Ahmadis always is open to all Muslim from any sects;
10. We, the adherents of Ahmadiyya as Muslims record our marriages in the office of religious Affairs and record our divorces and other related disputes to the Islamic court as regulated by state law;
11. We, the adherent of Ahmadiyya will always keep our hospitality and cooperation with all groups/ sects of Islam and society in our social life for the advance of Islam, nation, and *Negara Kesatuan Republik Indonesia* (the unitarian republic state of Indonesia);
12. With this statement, we, the organizer of Jemaat Ahmadiyya Indonesia hope that the Ahmadis, the rest Muslims, and all of the people in Indonesia will understand this statement with the spirit of *ukhuwah Islamiyah* (Muslim brotherhood) and the unity of our nation.

After the Ahmadis signing the statement in front of the government and representation of Islamic organizations, the government team on deviant religious sects gave the Ahmadis three months notice to prove that they are not deviant sect. After three months, the team found that the Ahmadis did not change their religious manifestation and in the team's opinion, that the Ahmadis had breached their statement. Thus, on 18 April 2008, the team along with the leaders in state attorney's office, police leaders, and army leaders establishes a concluding remark of their three months investigation containing a statement that the Ahmadis have failed to live up to the statement made in January. Furthermore, the team proposed to the government to give a serious warning to Ahmadiyya and prohibit their activities throughout the country. The government then adopted the Joint Ministerial Decree as a follow up of the team's recommendation.

Before the decree was adopted, there were already two regulations banning the activity of Ahmadiyya in Lombok: a municipal decree by the government of Lombok Barat banning of Ahmadiyya dated 10 June 2001 and a decree by the provincial branch of the Ministry of religious Affairs in Nusa Tenggara Barat banning of 13 deviant sects, including Ahmadiyya in 2005. The first decree was made when the mass frenzy against the Ahmadis occurred in Lombok Timur municipality (eastern part of Lombok island) located next to Lombok Barat (western part of Lombok Island). By this decree, the government of Lombok Barat refused to allow the Ahmadis, who became refugees after the attack in Lombok Timur, to move into its territory. It took almost one year for the Ahmadis to be allowed to settle in Lombok Barat where they bought the housing complex in Ketapang before it was ruined in 2006. The second decree was made as a follow up of MUI's fatwa declaring that Ahmadiyya is a deviant sect. This decree triggered the attack in 2006 that forced the Ahmadis to live in the shelter in Bandar Transito, until today. Here, we can see that a regulation was actually used as a legitimation by the assaulters for committing a crime. They wanted to enforce the law by using their own power and rule out the state apparatus since the law gave no concrete sanction to the Ahmadis who breach the law.

This situation was actually seen by the creator of the Joint Ministerial Decree, thus the government in this case wanted to recover the enforcement of the law from anarchy introduced by the assaulters. Therefore, the government included clauses on penalty to anyone attacking the Ahmadis. Such a clause was not included in the decrees in Lombok although attacking people in general is a criminal act regulated in the Indonesian Criminal Law, but not a single assaulter in the attack against the Ahmadis in Lombok have ever been punished by law enforcement. Although the Joint Ministerial Decree has made significant progress compare to the previous decrees on Ahmadiyya, particularly in Lombok, the Joint Ministerial Decree on Ahmadiyya still emphasizing the method oppression instead of prevention. Such an old paradigm of criminal law is actually never able to solve the very sense of criminal reason, the mental sickness of the criminal. Oppression method in criminal law punished the crime committed but cannot stop similar crime from recurring in the future.

I argue that a prevention mechanism would be better in managing this phenomenon because it can help prevent damage that cannot be restored such as death and burnt houses, as in the

case of Ahmadiyya and Nahdlatul Wathan in Lombok. The provincial government of Nusa Tenggara Barat governing the island of Lombok has also tried to take preventive action by creating a provincial decree about a supervisory team to deal with Ahmadiyya in 2012. This team consists of clerics from different Islamic organizations throughout the province such as Nahdlatul Wathan, Muhammadiyah, and Nahdlatul Ulama<sup>65</sup>. The government chose such composition because it wanted to include third parties outside Nahdlatul Wathan and Ahmadiyya, who were caught in the conflict. This team was mandated by the government to bring back the Ahmadis to Islam (Sunni) using peaceful dialogues and giving the Ahmadis an Islamic education generally accepted by Indonesian society, so that they are moved to give up their diverging manifestation. Substantially, it is obvious that the provincial decree violates the Ahmadis freedom of thought, conscience, religion and belief since article 18 (2) of the ICCPR provides that no one shall be subjected to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Although the government tried hard to change the Ahmadis' belief, I argue that it would be an almost impossible target since the dimension of thought, conscience, religion and belief is in the *forum internum* that cannot be directly reached by other persons. It is located inside one's mind and could only be managed a person's own willingness and awareness. In fact, the team failed to change the Ahmadis' belief. The representative of Muhammadiyah in supervisory team dealing with the Ahmadiyya claimed that he could not restrain his patience any longer after having visited the Ahmadiyya for a year. He felt betrayed and cheated by the Ahmadis. Every time he came to supervise the Ahmadis, they would comply with whatever he asked but they would suddenly change back to their own belief and manifestation, after he had left. At last, the team rarely came back to the shelter and the situation there remains the same until today.

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<sup>65</sup> Muhammadiyah and Nahdlatul Ulama are the two biggest Islamic organizations in Indonesia. However, both organizations are minorities in Lombok since Nahdlatul Wathan dominate the society.

### **3 Human rights dilemma**

This chapter elaborates several rights belong to both parties in conflict provided by the ICCPR. Indonesia has ratified the ICCPR, thus as a consequence, it agreed to be bound by the covenant<sup>66</sup>. Therefore, the government of Indonesia guarantees that all of the rights provided in the ICCPR will be protected, fulfilled, and promoted throughout its jurisdiction. In the conflict between Ahmadiyya and Nahdlatul Wathan in Lombok both parties in the conflict claimed that their rights have been violated by the other. The Ahmadis perceive that their freedom of thought, conscience, religion and belief, including their freedom to manifest religion has been violated by the assaulters. They also claimed that their minority rights have been violated. On the other hand, the members of Nahdlatul Wathan attacking the Ahmadis justify their attack with their perception that the Ahmadis has blaspheme their religion, thus Ahmadiyya has become a threat to public order.

To understand the dilemma involving two or more human rights, any adequate approach to the dilemma has to start by measuring the values on both sides<sup>67</sup>. Thus, I breakdown this chapter into three separate sections. The first two sections will elaborate the rights of the two conflicting parties, while the last section will elaborate the dilemma of the Indonesian government in accommodating those rights by assessing limitation clause set by ICCPR and its application in the Joint Ministerial Decree regarding Ahmadiyya.

#### **3.1 The rights of the Ahmadis**

Using the ICCPR as a standard, there are two major articles relating to the Ahmadis that have been violated: their freedom of religion, in particular freedom to manifest religion, and also their minority rights. Although so, there are other rights that also have been breached during their stay in the shelter as a refugee for eight years such as the right to sanitary facilities, health, education, recognition, identity, and so forth. However, these rights are not directly related to the conflict between Ahmadiyya and Nahdlatul Wathan. It is merely a post-conflict

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<sup>66</sup> Martin (2006) p. 24.

<sup>67</sup> Nussbaum (2000) p.187.

human rights abuse by the government in managing refugees. Thus I will only focus on freedom of religion and minority rights in this chapter.

### 3.1.1 Freedom of religion

Article 18 of the ICPPR guarantees everyone freedom of thought, conscience, and religion. It includes freedom to have or adopt religion or belief of his choice and freedom as an individual or in community to manifest his religion and belief such as worship, observance, practice, and teaching. No one shall be subjected to coercion which would impair his freedom to have or adopt religion or belief as his choice. However, this article also permitting certain limitation of freedom to manifest religion: if it is prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights or freedoms of others.

Every single Ahmadi as a human being possesses this freedom of religion or belief including the freedom of manifestation. The Ahmadis proclaim themselves as Muslims, the appellation for adherents of Islam. Besides Ahmadiyya, there are many sects of Islam in the world with Sunni and Shia as the two biggest sects. Islamic sects share the same principles such as pillar of the faith, pillar of Islam, the prophet, and the scripture and its sharia. It means that Shia and Sunni for example share the same belief that Muhammad is the last prophet and Al Quran is the scripture. Apart from the principles, it is normal and generally accepted that each of the sect or school has its own interpretation or manifestation which is called the *furu'* or branches. For example, Sunni will ask a woman to be guided by her father in marriage, while Shia gives more freedom to woman in marriage. Since the branches are not principles, it is all right to be different.

However, the differences believed by the Ahmadis touch on matters of principle in Islam. Ahmadis perceive Mirza Ghulam Ahmad to be a prophet though he was born long after Prophet Muhammad, whereas the other Islamic sects believe that Muhammad is the last prophet and there would never be a prophet after him. The Ahmadis also perceive Tadzkirah to be a scripture, whereas the rest of Muslims believe there is no other scripture than Quran. For this reasons, MUI perceives that Ahmadiyya is not only conducting different manifestation but it also has different principles and thus is a deviant sect, should not be

called Islam, and its adherents not be called Muslim<sup>68</sup>. Such differentiations triggered the simultaneous attacks against the Ahmadis in Lombok and other parts of Indonesia.

The government team on deviant religious sects has submitted their recommendation to the president of Indonesia. The document submitted states that Ahmadiyya is a deviant sect and should be given a warning. The team, as well as the president and the ministries did still not declaring that Ahmadiyya is not Islam. Therefore no formal government prohibition stop the Ahmadis from calling themselves Muslims. In a sense, the government has not limited their freedom to have and adopt a religion or belief based on their choice. However, the decree also prohibit the Ahmadis who consider themselves to be Muslims from believing in Mirza Ghulam Ahmad as a prophet who came after Prophet Muhammad. In this regard, the government obviously violates freedom of thought and belief, since all of the Ahmadis perceiving themselves as Muslims, as well as of the other Muslims from different Islamic sects. When the government prohibits the Ahmadis to believe in Mirza Ghulam Ahmad as a prophet, and furthermore prohibit them to believe and following his thought, it obviously is violating the Ahmadis' freedom of thought and belief.

When it comes to freedom to manifest religion, the Joint Ministerial Decree explicitly limits the Ahmadis' rights, especially their right to conduct any activities based on their belief which might deviate from Islam in general and also their right to declare, suggest, and attempting to gain public support of their belief. Ahmadiyya was claimed<sup>69</sup> to believe that Mirza Ghulam Ahmad is a prophet and the Indonesian government prohibit them to have such belief as well as to spread it for the reason that it becomes a threat to peace in society. The spreading, campaigning, teaching, and any other activities to gain public support might be seen as a manifestation and therefore it might be limited under certain condition. However, the choice to believe in Mirza Ghulam Ahmad as a prophet is not properly considered as a manifestation of religion as the issue of belief in a prophet is a doctrinal principle in Islam and not a manifestation.

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<sup>68</sup> MUI's fatwa/ legal opinion 28 July 2005.

<sup>69</sup> By the MUI, Nahdlatul Wathan and Muhammadiyah, as well as by the government of Indonesia based on my interview.

The dimension of belief falls under the *forum internum* and cannot be seen or verified. To differ with respect to campaigning or teaching and any other activities that is categorized as a manifestation can be clearly seen and verified. Matter of *forum internum* should enjoy absolute protection<sup>70</sup> as this is not a manifestation. When the Ahmadis believe that Mirza Ghulam Ahmad is a prophet, they might lie by denying it and the government can limit them by prohibiting them to say it but it would not change anything in their mind and heart, if they do believe. Furthermore, there is nothing that can be used to clarify anything in the inner dimension of *forum internum* of thought and belief. Yet the government may create a law to prohibit the Ahmadis' belief but the government cannot enforce such a law. In this regard, I argue that the Joint Ministerial Decree on Ahmadiyya should not restrict the Ahmadis in believing in Mirza Ghulam Ahmad, as it would never be able to verify this and it is a part of freedom of belief and not of the manifestation of belief.

Unfortunately, the Ahmadis in Lombok seem to follow the inappropriate game played by the government by claiming that they do not perceive Mirza Ghulam Ahmad to be a prophet. This is a strategy by the Ahmadis to not confront the rest of Muslims in Indonesia. However, I argue that they should not have said this, for two reasons. One, because it only drives the Muslim communities to perceive them as liars and hypocrites (*munafiq*) whereas some hard core Islamic movements such as FPI claimed that a hypocrite is a danger and should be combated. This is the main reason why the assaulters in Lombok never regret the killing of the Ahmadis. Two, because they only hurt their own feeling by saying something that does not align with their belief.

### 3.1.2 Minority rights

Article 27 of the ICCPR states that in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. Moreover, General Comment no. 23 of the ICCPR which specifically explained in article 27 gives a clear statement to the

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<sup>70</sup> Plesner (2005) p. 558.

effect that the rights mentioned in article 27 are group rights<sup>71</sup> of those who belong to a group and share in common a culture, a religion, and/or a language. The claim whether a group belong to minority or not should not be determined by the state party of the ICCPR. Instead, the claim should be based on objective criteria. In this regard, the United Nations (UN) minorities declaration can be used as an objective measurement. This UN document defining minorities based on their national or ethnic, cultural, religious and linguistic identity<sup>72</sup>.

However, there is no mechanism in the document for measuring which group should be regarded as minority. To fill in the lacunae, Francesco Capotorti, who was a special rapporteur of the UN sub-commission on prevention of discrimination and protection of minorities, proposes a definition of minority as a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members - being nationals of the state - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language<sup>73</sup>.

Capotorti's definition of minority can be used as an objective measurement required by General Comment no. 23 to determine whether a group might constitute a minority or not, since a UN rapporteur does not work for any state parties' interest. Using this definition, Ahmadis in Lombok and their fellows throughout Indonesia in general can claim to be a minority group based on the following four arguments:

The first argument is that the Ahmadis are numerically inferior. Ahmadiyya cleric claimed that the number of Ahmadis in Indonesia reaches half a million people, while in Lombok there are around two hundreds Ahmadis. Comparing these two numbers to the population of Indonesia that exceeds two hundred and thirty millions in 2010 and population of Lombok which around three millions<sup>74</sup> in 2010 as well as comparing the sum of Ahmadis to the number of Muslim from the other sects of Islam in Indonesia exceeding two hundreds

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<sup>71</sup> To differ and as additional to individual rights.

<sup>72</sup> Article 1 of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN Declaration on Minorities).

<sup>73</sup> United Nations Human Rights Office of the High Commission (2010) p.2.

<sup>74</sup> Based on Indonesian Bureau of Statistic. [http://www.bps.go.id/tab\\_sub/view.php?tabel=1&id\\_subyek=12](http://www.bps.go.id/tab_sub/view.php?tabel=1&id_subyek=12) [Visited 7 April 2014]

millions in 2010 and around three millions in Lombok in 2010<sup>75</sup> definitely results in an inferior number: All Ahmadis in Indonesia equivalent to 0,21% of the Indonesian population in 2010 and equivalent to 0,25% of the Indonesian Muslim. In Lombok, the Ahmadis are among 0,006 of the population of which around 90% belong to Islam.

The second argument is that Ahmadiyya does not hold a dominant position. MUI as the biggest Islamic organization in Indonesia which consist of almost all of Indonesian Islamic sects refused to include Ahmadiyya in the council for the reason that the members of MUI consider it as a deviant sect and its members should not call themselves Muslims. Meanwhile, the government of Indonesia always cooperating with MUI in dealing with Islamic issues, including in the making of Joint Ministerial Decree on Ahmadiyya. Being refused by MUI also resulted in an offensive discrimination against the Ahmadis by the rest of Islamic organizations in Indonesia. Some of those organizations even do not hesitate to kill them in the name of difference.

The third argument is that the Ahmadis possess religious characteristic differing from those of the rest of the population. Although the Ahmadis verbally claim that they are Muslims and claim they adopt Islam as their religion, they have different principles of Islam from the rest of Muslims in Indonesia. It can be seen that religious character differentiation should not only be claimed using a verbal confession but has to be clarified consistently through their principles. It can be argued that religious manifestation might be distinct to each other while they still share the same religion. However in the Ahmadiyya case, the differences are part of the principles of Islam, and Islam uses its principle to differ its adherent with the other religion's adherent. Therefore, it can be concluded that Ahmadis possess religious characteristic differing from the rest of Muslims in Indonesia.

The fourth argument is that the Ahmadis show their sense of solidarity directed towards preserving their religion. It can be seen in the way the Ahmadis helped each other in the conflict. In 1998 when the first attack hit them in the eastern part of Lombok, the survival flight was to other Ahmadis' houses in a different village. They were also cooperating and support each other in paying their new houses in Ketapang that were burned down in 2006.

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<sup>75</sup> Based on Indonesian Bureau of Statistic. <http://sp2010.bps.go.id/index.php/site/tabel?tid=321> [Visited 7 April 2014].

In the shelter, they share everything they have and help each other in need. Ahmadis children who are rejected from schools due to the lack of identity cards are also helped by Ahmadis in West Java who adopted them and moved them to Java to get a proper education. The Ahmadis choose to depend on the Ahmadiyya organization and not asking the government or any other organizations to help them for reason of their commitment and tloyalty to Ahmadiyya.

Based on the four arguments above, we may confirm that the Ahmadis belong to a religious minority in Indonesia and thus should not be denied their group right to profess and practice their own religion. The Indonesian government should protect their minority rights although they are in conflict with the other Islamic sects in Indonesia. Ahmadiyya in Lombok and generally in Indonesia should also be seen as new religious movement within Islam which might have different interpretation of the religion compare to conservative Islamic sects. In this regard, HRC stresses the importance of state neutrality in managing conflict that might occur between such groups and the pre-dominant religious communities. Therefore, new religious movement must be protected equally with the majority or traditional religious groups<sup>76</sup>.

The coercion exercised by MUI and other Islamic sects in Indonesia in order to make adherents of Ahmadiyya repent and bring them back to the alleged real Islam of the rest of Indonesian Muslims is an example of a threat caused by majoritarian democracy. In this case, the majority violates the rights of the minority in order to create a homogeneous society, not resepecting the nature of differences within Indonesian societies. The Indonesian government whose duty is to manage this conflict should not prefer the majority side. Instead, it should accommodate both sides' interests and find a reasonable balance between the parties. The government may establish laws regulating the Ahmadis as well regulating the rest of the society in Indonesia. However, it should consult the Ahmadis as they will be affected by the law. Furthermore, in the law-making procedure, the government should resepect the rights of the Ahmadis, particularly their right to possess and practice their religion as provided for by the ICCPR.

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<sup>76</sup> Plesner. Op. Cit., p.561.

### 3.2 The rights of the Muslim majority

Nahdlatul Wathan as well as MUI and other Islamic organizations who justify their attack against the Ahmadiyya never explicitly claimed that Ahmadiyya or the government of Indonesia<sup>77</sup> have breached their human-rights<sup>78</sup> as the reason behind their anarchical behavior. Hence, there is no single article in the ICCPR that justifies the right of the assaulters. However, Nahdlatul Wathan as well as MUI and the rest Islamic communities who oppose Ahmadiyya argue that Ahmadis has blasphemed Islam. As a response to this, the government claimed that Ahmadiyya has become a threat to public order. Both claims, by the Islamic organizations and by Indonesian government, are actually based on the Indonesian Blasphemy Law<sup>79</sup> whose first article provides that everyone is prohibited in public to intentionally declare, suggest or attempt to gain public support for any deviant interpretations of religious principles or for corresponding activities. Furthermore, the law authorizes the Indonesian Ministry of Home Affairs, the Ministry of religious Affairs, and the Attorney General to recommend to the Indonesian president whether any organization or religious sect should be prohibited due to its deviant interpretations and/or activities. In this regard, the Indonesian Blasphemy Law was used as the source of authority and legitimation for the adoption of the Joint Ministerial Decree on Ahmadiyya. Thus, I shall explore the claim of a threat to public order and the claim of religious blasphemy in the next two sections.

#### 3.2.1 Threat to public order

The Indonesian Blasphemy Law that was the source of authority of the Joint Ministerial Decree on Ahmadiyya has been tried by the Indonesian constitutional court in 2009 for

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<sup>77</sup> As a passive actor who does not protect the the right of others in the case of Ahmadiyya.

<sup>78</sup> In my interview to the member of Nahdlatul Wathan, MUI representation, and the member of Muhammadiyah, all of them did not want to claim their justification of the attack because the Ahmadis has breached their human rights as a term even when I translate the words into Bahasa (Hak Asasi Manusia/HAM). It is not because they do not aware of freedom of religion as a right provided in the ICCPR. It is merely because they do not want to refer to western idea. They prefer to justify their attack by their interpretation of Islamic law that allowing them to fight against anyone blaspheming Islam and they believe that the Ahmadis has blaspheme Islam with their deviant belief.

<sup>79</sup> Law no. 1/PNPS/1965.

breaching constitutional articles on human rights and freedom of religion. In its judgment, the constitutional judges decided that the law is obviously constitutional for the reason that it is a legal tool for limiting freedom to manifest religion, one of several human rights that can be limited by the state under certain conditions. Noting the main article of the Blasphemy Law that prohibits any publication of religious interpretations that differ from those adopted by the Indonesian society, the court decided that this article as well as the law is necessary and important as a preventive mechanism for dealing with any possible horizontal conflict in the society<sup>80</sup>.

It can be seen in the decision as well as in the Joint Ministerial Decree on Ahmadiyya that both the Indonesian government and the Constitutional Court perceive Ahmadiyya as the threat to public order, in particular by triggering horizontal conflicts in the society. If we look at the conflict between the Ahmadis and Nahdlatul Wathan in Lombok, the victims of such horizontal conflict are the Ahmadis, not the members of Nahdlatul Wathan attacking them. The Ahmadis were being persecuted, killed and humiliated, their houses were burned down and they were forced to move to other places several times. On the other side, Nahdlatul Wathan and the other members of the society were not physically harmed by the Ahmadis who did not counter the attackers. However, the Indonesian government argues that the real reason behind the attacks is the deviant religious interpretation and activities conducted by the Ahmadis. The assaulters would not have attacked the Ahmadis if they were not blaspheming Islam.

In this sense, there are two rights of the Ahmadis involved in the conflict: their freedom of religion and their right to security. If their freedom of religion had been accommodated by the state, their right to security would have been harmed by others, and the state cannot protect Ahmadis' right to security if they exercise their freedom of religion. The situation is not easy for the government since there is a threat from other religious group against the Ahmadis demanding that their freedom of religion be banned. The government then chose to sacrifice the Ahmadis freedom of religion for the sake of their own safety.

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<sup>80</sup> Indonesian Constitutional court decision. Case number 140/PUU-VII/2009, par.358.

### 3.2.2 Religious blasphemy

The main reason for Nahdaltul Wathan in Lombok as well as other Islamic groups throughout Indonesia for attacking the Ahmadis is that they hold that the Ahmadis has blasphemed Islam by believing in Mirza Ghulam Ahmad as a prophet born after Prophet Muhammad and perceiving their book titled Tadzkirah as a scripture beside the Al Quran. It is interesting to see how majority Muslims unite in opposing the Ahmadis. Some of them claimed that the Ahmadis are hypocrites (*munafiq*) which is worse than being non-Muslim (*kafir*), thus they are allowed to be killed, whereas others regard them as apostates (*murtad*) which can lead to two different interpretations: it is allowed (*halal*) that they be killed or it is allowed that they live separated as adherent of a different religion.

Muslims who perceive that Ahmadis are allowed to be killed for reason of their hypocrisy or apostasy are mostly related to the hardcore Islamic organizations with their strict interpretation of sharia, such as FPI and FUI<sup>81</sup>, while the last group of Muslim which argue that the Ahmadis have the right to life as non-Muslim use one of the verse in Quran: *Lakum dinukum wa liyadin* which means “your religion is for you, my religion is for me”. They interpret the verse as a freedom of choice in adopting one’s religion and therefore religion should not be imposed. It is hard to claim which Islamic organization in Indonesia having this expression as their official statement. Even Nahdlatul Ulama which considered as a moderate Islamic organizations has dissenting opinion in this regard. Therefore, such statements usually come up as a personal opinion of a Muslim.

It is also interesting to note that actually each of the Islamic sects, schools, or organizations in Indonesia share different Islamic doctrines which to some degree of interpretation may appear as principle in Islam. But they never kill one another in the name of differences. For example, Muslim belong to Nahdlatul Ulama tends to do commemoration of death every certain periods while Muhammadiyah perceive it as *bid’ah* (exercising non-religious activity as a religious activity) which leads to shirk or idolatry that is forbidden and an unforgivable crime in Islam according to the Quran. Another example of their differences is the calculation method of Islamic calendar that lead to different date of the fasting month and *Ied* (Islamic

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<sup>81</sup> Forum Umat Islam (Indonesian Islamic Forum).

holyday). It is commonly found in recent years that the members of Muhammadiyah already celebrate the *Ied* when Nahdlatul Ulama members are still fasting. However, they never attack each other for this reason or due to other differences.

The fact that these differences do not trigger warfare between the two organizations lead me to analyze reasons behind it. As two biggest Islamic organizations in Indonesia, Muhammadiyah and Nahdlatul Ulama compete with each other over numbers of followers. They dominating MUI, the Indonesian government, as well as Indonesian society. Although they disagree in some crucial points of Islam, they do not want to be in conflict with each other. Conflicts between the two major powers in t society will give an immense impact, not only to the members of the conflicting organizations but also to the rest of Indonesia, since they do dominate society.

Another reason for not taking differences between Islamic sects, schools, or organizations in Indonesia seriously except for the case of Ahmadiyya is the level of deviance. Indonesian Sunni Muslims both belonging to Muhammadiyah and to Nahdlatul Ulama tolerate what they perceive as small differences. In the scale of one to three, they perceive the difference among Sunni groups is on level one, the difference between Sunni and Shia is on level two, while the difference between Sunni and other Islamic sects, including Ahmadiyya is on level three. Level one is tolerable as they share the same crucial points, level two is tolerable if Shia does not commit further provocative activities, while level three is not tolerable due to the high level of deviance involved, deviance that has turned into religious blasphemy.

### **3.3 Permissible limitation clause**

The Indonesian government is aware that it has to balance the interests of both conflicting parties in the case of Ahmadiyya as well as accommodate the interest of the rest of Indonesian society. In balancing the interests, the government choses to limit the Ahmadis freedom of conscience and belief along with their right to manifest religion under the Joint Ministerial Decree on Ahmadiyya. The decree warns and orders the Ahmadis to discontinue their activities that deviate from the principal teaching of Islam, such as believing anyone as a prophet after Muhammad including the corrpoding teaching. It can be seen that the decree

is actually mixing up the terms of thought, conscience and belief with the manifestation of religion. Activities might be counted as manifestation as it may include campaigning and attempting to gain public support, as elaborated in the decree. Those activities is part of *forum externum* that when expressed in the public sphere might trigger conflict in society. However, believing anyone as a prophet is not a manifestation as it cannot be seen from outside. It falls under freedom of thought, belief and conscience which is exercised in *forum internum* and cannot be measured, verified, or even punished<sup>82</sup>.

ICCPR in this regard only permit limitation of the right to manifest religion and not of the right to belief. Freedom of thought and conscience, and freedom to have or adopt religion or belief are protected unconditionally and no one can be compelled to reveal his thoughts or adherence to a religion or belief<sup>83</sup>. According to the ICCPR, Indonesian government should not force the Ahmadis to discontinue their belief in Mirza Ghulam Ahmad as a prophet. Such order stated in the decree should be erased and the decree should only focus on the limitation of their freedom to manifest religion.

In adopting limitations on freedom to manifest religion, the Indonesian government should also comply with the strict requirements set by HRC in the General Comment 22 to the ICCPR. They are to be:

1. Necessary to protect public safety, order, health, or morals, or the fundamental rights and freedom of others<sup>84</sup>;
2. Protect equality and non-discrimination on all grounds specified by article 2, article 3 and article 26<sup>85</sup>;
3. Not vitiate rights guaranteed in article 18<sup>86</sup>;
4. Be directly related and proportionate to the specific need on which they are predicated<sup>87</sup>;
5. Their moral grounds should derive from many social, philosophical, and religious traditions<sup>88</sup>;

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<sup>82</sup> There is a legal principle of *Cogitationis Poenam Nemo Patitur* which means no one can be punished of his thought.

<sup>83</sup> General Comment 22 of the ICCPR, par.3.

<sup>84</sup> General Comment 22 of the ICCPR, par.8.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

6. Provide equal protection<sup>89</sup>;
7. Not impair minority rights and safeguard against infringement of the rights of religious minorities<sup>90</sup>; and
8. Protect against acts of violence and persecution directed towards religious minorities<sup>91</sup>.

These eight requirements are hardly to be found in the Joint Ministerial Decree on Ahmadiyya in Indonesia. First, the Indonesian government has failed to recognize which actor is a threat to public safety, order, health, morals, and fundamental rights and freedoms of others. The government perceives the Ahmadiyya is the threat. Instead, it is obviously that the threat came from the assaulters.

Regarding equality and non-discrimination, article 2, article 3 and article 26 of the ICCPR provide that the state party should respect and ensure all individuals, men and women equally, within its territory and subject to its jurisdiction, all the civil and political rights provided in the ICCPR without distinction of any ground, including religion as well as political and other opinion. The law of the state should also prohibit any discrimination on any ground mentioned above. In fact, the Joint Ministerial Decree on Ahmadiyya in Indonesia treats the Ahmadiyya's freedom to manifest religion as well as their freedom of belief differently from the similar rights belong to other Muslims who are not warned nor ordered to stop their belief. As a law, the decree gives a legal basis for discriminating against the Ahmadiyya on the ground of their religion and opinion. Therefore, such a decree does not conform to the second limitation clause.

The third clause is that the limitation shall not vitiate the rights guaranteed by article 18. The fact that the decree has limited not only the Ahmadiyya's right to manifest religion, but also their freedom of belief prove that the decree has vitiated the essential right provided by article 18 and thus fails to conform with the third clause.

The fourth clause requires that the Joint Ministerial Decree be directly related and proportionate to the specific need on which they are predicated. In the preamble of the decree,

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<sup>89</sup> General Comment 22 of the ICCPR, par.9.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

it is stated that the main purpose of the decree is to protect and promote peaceful of religious life and public order. However, it is obvious that the decree does not proportionately protect and promote peaceful religious life, although it is directly controlling public order back in the track by freezing the tension between two conflicting parties. The decree does not proportionately protect and promote peaceful of religious life because it only based on the majority's interest and ignoring the belief of the Ahmadis in their religion.

The fifth requirement on the limitation on freedom to manifest religion is that the concept of moral should derives from many social, philosophical and religious traditions. In fact, it is only based on the religious traditions of Sunni Islam and thus ignoring the religious traditions of Ahmadiyya in which case become the party of interest and in particular, the victim of the conflict. The situation gets worse since the government uses the Decree to also violate the Ahmadis freedom of belief.

The sixth clause concerns equal protection. In quantity, the decree gives equal protection to the both sides as it warn and order both sides to hold its activities with penalties available for anyone who breach the decree. The Ahmadis are ordered to discontinue their belief and manifestation, while the assaulters are ordered to stop attacking the Ahmadis. However, the quality measurement of the order and penalty for both sides is not fair because they are different level of activities and should be treated differently.

The seventh clause concerns impairment of minority rights, particularly safeguarding against infringement of the right of religious minority. The fact related to this clause is that Ahmadiyya is a religious minority in Indonesia. However, the Joint Ministerial Decree has vitiates the Ahmadis rights as religious minority by ordering them to stop their belief in Mirza Ghulam Ahmad as a prophet with all of his teaching on religion. Therefore, the decree not only tolerates the infringement of the Ahmadis rights by the assaulters, it also infringe the Ahmadis rights.

The last clause requires a decree to protect against acts of violence and persecution directed towards a religious minority. The decree has satisfied this clause by ordering the assaulters to stop attacking the Ahmadis and by providing penalties for those breaching the decree.

In conclusion, the decree has conformed to the last requirement on the limitations of freedom to manifest religion, that is: protect against acts of violence and persecution directed towards a religious minority. However, the decree does not conform to the other seven requirements and thus is not an appropriate limitation on freedom to manifest religion as set by article 18 (3) of the ICCPR. Moreover, the decree is not only limiting the Ahmadi's right to manifest religion but also limiting their freedom of belief which should be given absolute protection without any limitation.

#### **4 Recommendation for conflict resolution**

The important task of this study is to find a proper conflict resolution for the Ahmadi's and Nahdlatul Wathan in Lombok as well as the other Islamic organizations in Indonesia which have the same opinion and attitude as Nahdlatul Wathan with respect to Ahmadiyya. As the previous chapter has concluded that Indonesian Joint Ministerial Decree on Ahmadiyya does not satisfy the limitation clauses set by article 18 (3) of the ICCPR, an effort could be made to communicate an objection to this law to HRC who has capacity to evaluate state party of the ICCPR in regard to their compliance with the ICCPR. There are various advantages that can be achieved through HRC although it is not a judicial body. Canada for example has a number of times being brought before HRC by individuals under its jurisdiction for breaching their rights as provided for by ICCPR. In the case of Sandra Lovelace versus Canada<sup>92</sup>, the HRC found that Canada has breached Lovelace's rights and the decision by HRC moved Canada to change their domestic law in accordance with the requirements of the ICCPR.

Unfortunately, Indonesia has not ratified the first optional protocol to the ICCPR that recognizes the competence of HRC to receive and consider communications from individuals of a state party under the optional protocol, claiming to be victims of a violation by the state party to the ICCPR<sup>93</sup>. As a consequence, HRC may not receive any communication

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<sup>92</sup> Communication no. 24/197: Canada. 30.07.1981. CCPR/C/13/D/24/1977.

<sup>93</sup> Article 1 of the optional protocol to the ICCPR.

concerning Indonesia as a state party<sup>94</sup>. Therefore, other mechanism for settling the conflict must be found both in the international and national legal framework. In addition, non-legal conflict resolution will also necessary to establish comprehensive settlement. Thus the chapter will elaborate possible recommendations for a conflict resolution.

## **4.1 Legal recommendation**

The section on legal recommendation will be elaborated using legal framework in the international law for the first part and Indonesian domestic law in the second part.

### **4.1.1 International law**

The main question in this section is how to encounter the Indonesian government's violation of the Ahmadis' freedom of religion or belief and their freedom to manifest religion provided for by the ICCPR. It should be noted that although HRC could not receive any individual complain regarding Indonesia due to its failure to ratify the first optional protocol to the ICCPR, it does not mean that HRC could not contribute to restoring the Ahmadis' freedom of religion in Indonesia. Indonesia has ratified the ICCPR and has an obligation to regularly report human rights condition within its territory. HRC could also assign its rapporteur to investigate human rights violation in this case. HRC then may establish a concluding observation or comment to Indonesia in which it may recommend Indonesia to change its law pertaining to Ahmadis. Yet the concluding remark from HRC is only a recommendation, and it might not be strong enough to make Indonesia change its law and policy towards Ahmadiyya. However, the role of HRC as a UN body could exert a strong pressure on Indonesia to follow its recommendation. Although it cannot give any legal penalty, political sanctions may threatening Indonesia's reputation in its international relations<sup>95</sup>.

In the legal framework, a court decision is obviously a more effective mean of implementation than a recommendation. However, there is no regional court of human rights

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<sup>94</sup> *ibid.*

<sup>95</sup> See Simons (2009) p.117.

nor any supervisory institution in Asia that can be used to resolve the case of Ahmadiyya in Indonesia. As a point of comparison, individuals in Europe are able to bring a case against their state of residence state before the European Court of Human Rights (ECtHR) whenever the state breaches their human rights as provided by the European Convention on Human Rights (ECHR). Individuals from states belonging to the African Union may similarly sue their state of residence through the African Court on Human and People's Rights for breaching their human rights as provided by the regional covenant. Individuals on the America continent (outside the US) can also bring a case against their government to the Inter-American Court of Human Rights for breaching their rights provided for by the American Convention on Human Rights. As a supplement, the American system on human rights also includes the Inter-American Commission on Human Rights that receives, analyzes, and investigates individual petitions alleging violation of human rights provided for by the American Convention on Human Rights. These regional mechanisms on human rights dispute are necessary and helpful for the citizen in the respective region for claiming their human rights violated by the state in cases that cannot be settled through the UN system.

Although Asia has no regional mechanism on human rights issue, ASEAN<sup>96</sup> started to build regional cooperation on human rights in 2009 by establishing the Asian Intergovernmental Commission on Human Rights (AICHR). Furthermore, ASEANs heads of state have on 19 November 2012 adopted the ASEAN Human Rights Declarations that among its principles including a statement concerning the right to freedom of thought, conscience and religion and thus any forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated<sup>97</sup>.

Recently, AICHR focuses on preventive mechanism such as educating human rights in its country members. There is no judicial mechanism in this institution. But one should have in mind that the organization was established only five years ago and there is a vision to create judicial mechanism on human rights in the future. However, the existing role of the institution as a regional commission makes it possible for the institution to facilitate dialogue

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<sup>96</sup> Association of Southeast Asia Nations which is formally an economic and political regional cooperation body.

<sup>97</sup> ASEAN Human Rights Declaration art.22.

or arbitration between the conflicting parties in the case of Ahmadiyya with the government of Indonesia.

Arbitration facilitated by AICHR would be important to balance the interest from all of the conflicting parties since the Indonesian government failed to be fair in balancing both parties' interest in its domestic law. As a regional commission, AICHR has a strong potential for persuading Indonesia in strengthening its commitment to human rights remembering that the regional cooperation within ASEAN is not only relating to human rights issues, but also economic and political issues. If the Indonesian government does not follow the AICHR's recommendation, its political and economic cooperation with the neighboring countries in ASEAN might be jeopardized.

#### 4.1.2 Domestic law

The Indonesian Joint Ministerial Decree of Ahmadiyya and the Indonesian Blasphemy Law are both violating the Ahmadi's freedom of religion or belief and their freedom to manifest religion. There are three different mechanisms to challenge such unjust law in the Indonesian domestic legal system: first, submitting judicial review of a law for breaching Constitutional article in the Indonesian Constitutional court; secondly, submitting judicial review of a lower law for breaching law in the Indonesian supreme court; and thirdly, submitting individual complaint to revoke a decree that violating any of his right to the administrative court. The Constitutional court and Supreme Court decisions for judicial review are final. It means that the reviewed law or article cannot be reviewed for the second time using similar consideration. On the other hand, individual complaint against the unjust decree in the administrative court can be tried for three times in the city/ municipality level, provincial level, and national level of administrative court which is one of the rooms in the Indonesian Supreme Court.

The Indonesian Blasphemy Law was reviewed in the Indonesian Constitutional court in 2009, as reported above. Judges found no violation of human rights articles of the Constitution by the Indonesian Blasphemy Law; thus it was declared Constitutional. The Indonesian Blasphemy Law cannot be reviewed for the second time in the Constitutional

court thus the domestic remedy regarding the law is exhausted. The only way to revoke the law can be done by the government by establishing a new law declaring that the current Blasphemy Law is no longer in effect. However, it needs political will from the government as well as the parliament as the Indonesian law making procedure requires both institutions to work together in establishing a law. If the law concerns controversial issues it might take years to promulgate the law.

The Joint Ministerial Decree on the other hand had never been reviewed in the Supreme Court nor been complained in the administrative court. There is a debate about where to address a complaint since the form of the law is a decree, but its substance is a lower level of law or regulation. In this regard, I argue that both courts are worth a try since the submission to the both courts would not be disputed. If one court rejects the admissibility of the decree, the other court must accept it for giving justice for the conflicting parties. Thus according to Indonesian law, a court should not refuse to examine and adjudicate every single case brought before it by the reason that there is no law or that the law is unclear<sup>98</sup>.

However, in the decision of the Constitutionality of Indonesian Blasphemy Law, the Constitutional court argues in regard of the Joint Ministerial Decree by saying that the order to Indonesian Ministry of Home Affairs, Ministry of religious Affairs, and Attorney General to establish Joint Ministerial Decree is legal and correct because it is ordered by a legitimate law. Substantially, the Constitutional court agree with the decree as it proves that the government has been cautious in conducting its mandate to protect society from deviant religious sect using legal instrument<sup>99</sup>.

Despite of using judicial mechanism in court, the Joint Ministerial Decree could also be challenged by the Indonesian ombudsman. Although it will not give legal decision, ombudsman may investigate and give recommendation to the government to revise or withdraw the decree if finding any unjust decision in the making of the decree. The Indonesian human rights commission also has an authority to investigate any violation of human rights committed by the Indonesian government. Thus if the commission finds any

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<sup>98</sup> Article 16 of the Indonesian Law on Judicial Authority, vide Indonesian Constitutional Court Decision on Case Number 061/PUU-II/2004.

<sup>99</sup> Indonesian Constitutional Court Decision. Case Number 140/PUU-VII/2009, par.359.

violation of human rights by the Joint Ministerial Decree on Ahmadiyya, the commission will order the Indonesian government to revoke or revise the decree.

On 13 July 2013, the Indonesian human rights commission, Ombudsman, and several others institutions concern on human rights violations visited the Ahmadis in their shelter in Lombok. They concluded that there have been major violation of human rights in the case of Ahmadiyya in Lombok alongside with the others Ahmadiyya conflict throughout Indonesia. Thus they will report to the Indonesian president and to Indonesian parliament (DPR) requesting they take serious action in restoring the Ahmadis' rights, including their right to access justice and their citizen rights. The Ahmadis' access to justice was violated by the fact that the assaulters never have been tried in a court and they have not been punished by the court order although they have murdered numerous Ahmadis in the recent years during the conflict. In this case, the access to justice should not only be granted to the accused criminal, but also to the victim who has been injured by the attack.

The Ahmadis citizen rights were violated, particularly in the shelter where they were being refused to get an identity card. In this occasion, the Ombudsman promised that they will order the local government to not discriminate the Ahmadis by denying them identity cards and access to other civil rights. In January 2014, the local government finally agreed to give identity card to the Ahmadis. It shows that the out of court settlement conducted by the Indonesian Ombudsman and human rights committee could also be significantly helpful to solve the problem of Ahmadiyya in Indonesia.

## **4.2 Non-legal recommendation**

To create a comprehensive dispute settlement, I argue that all of the possible ways to solve a conflict by peaceful mechanisms are worth a try. Non legal mechanisms are necessary in this regard, remembering that the nature of legal settlement, particularly judicial mechanism in court is a win-lose settlement that might leave hatred and malicious attitudes in society. For example, if the assaulters were being sent to jail for committing a crime that they never regret, they will hate the Ahmadis more than ever because the Ahmadis were the reason that sent them to jail. After they being released, they could be more dangerous than before. It

happened in West Java in 2011 when the assaulters in the attack against the Ahmadis in the province were sentenced in jail for three to six months. After being released, they return to their hardcore Islamic organization and repeat their hatred campaign against the Ahmadiyya including re-attacking the Ahmadis several times. The judicial punishment in this case did not give a deterrent effect in society<sup>100</sup>. Thus I shall argue that non legal mechanism such as a reframing of multicultural society in the direction of a consociational democracy and a strengthening of community engagement will contribute to solve the conflict between the Ahmadis and the hardcore Islamic organizations attacking them, while at the same time, such sociological treatment may build a better society and prevent similar attacks from happening in the future.

#### 4.2.1 Consociational democracy

According to Beetham, there are two core principles of democracy: popular control and political equity<sup>101</sup>. Other differentiating aspects might be found in the so called adjectives of democracy such as deliberative democracy, liberal democracy, social democracy, and so forth, however the two core principles should always remain. In the studies of Indonesian democracy, lack of these core principles is obvious whereas Indonesia tends to focus on formalities of democracy such as the numbers of democratic institutions. In his study of Indonesian democracy after the fall of the Soeharto regime, Olle Törnquist found problems of Indonesian democracy, such as deteriorating freedom<sup>102</sup> and monopolization of representation<sup>103</sup> that in somehow opposing the two core principles of democracy stated by Beetham.

These problems can be related to the relationship between majority and minority in Indonesia, particularly as regards the persecution of Ahmadiyya in Lombok and other parts of Indonesia in recent years. It is obvious that MUI as the nation-wide Islamic council has been infected by the problem of deteriorating freedom and monopolization of representation,

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<sup>100</sup> Bagir, (2012) p.67.

<sup>101</sup> Beetham (1999) p.5.

<sup>102</sup> Törnquist (2009) p.7.

<sup>103</sup> Ibid., p.9.

particularly in the making of its fatwa regarding Ahmadiyya. Islamic Sunni organizations dominate MUI and the removal of the interests of other groups from it. At the state level, the adoption of the Joint Ministerial Decree limiting the Ahmadis' rights was also made in a majority-driven perspective. It shows that Indonesian model of liberal democracy has failed to accommodate, respect, protect, and promote minority rights. As Indonesia is a multicultural nation, there is no need to compel the heterogeneous society to become homogeneous society such as the point in the Joint Ministerial Decree that prohibits the Ahmadis from believing and acting in different way as Muslims.

I argue that there is a need to reframe the model of democracy in Indonesia introducing a consociational model of democracy. Consociational democracy was popularized by Arend Lijphart, Dutch-American political scientist who studied the model of democracy in Netherland, Switzerland and small neighboring countries to the two countries mentioned. He used the term consociational democracy to explain the model he found in those countries and compared it with the American liberal model of majoritarian democracy. In his paper, Lijphart argues that consociational democracy is a fragmented yet stable democracy<sup>104</sup> because it generally scores high on a kinder and gentler democracy<sup>105</sup> with its reliance upon political accommodation among different segments of society<sup>106</sup>. By accommodating minorities in the making of decisions affecting them, popular control and political equity as the two core principles of democracy can be regained.

Reframing the Indonesian framework of democracy using a consociational model of democracy is not a proposal that can be easily practiced in Indonesia. Paradigm shift cannot be done in a single night, while removing existing well-build instruments of democracy in Indonesia also not an easy job. However, I suggest that reframing Indonesian democracy is possible by giving access to minorities, including Ahmadiyya, to be involve in decision making that affect them although they may not win political election, for example. However, their political right to run for any governmental, senate, or parliamentary candidacy should not be limited because all citizens should have political equity. Furthermore, the Ahmadis do

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<sup>104</sup> Lijphart (1969) p.211.

<sup>105</sup> In which he uses social welfare, protection of the environment, criminal justice, and foreign aid as points of measurement. See, Lijphart (1999) Op.Cit., p.294.

<sup>106</sup> Hueglin (2003) p.67.

not have to recruit a senator or member of parliament in order to be involved in every decision making that affects them. Senators, members of parliament, and government agencies can just consult with them instead of creating laws applied to them while ignoring their core interests.

#### 4.2.2 Community engagement

In the Indonesian framework, society as a whole has a more important role than the individual. In this framework, rebuilding or strengthening community engagement is necessary for conflict resolution, remembering that conflicts are socially constructed<sup>107</sup>. Still, it is a crucial challenge for Indonesian divided and fragmented society whose community ego and the sense of belonging as well as group exclusion are obvious. However, if the Indonesian society can rebuild their community engagement without focusing on their differences, the future of a peaceful country is not impossible. As being mentioned before, Indonesia has a national motto of “Bhineka Tunggal Ika” which means unity in diversity. The national motto indicates differences among Indonesian that are normal. The founding fathers of Indonesia have recognizing such a predicament when they agreed to unite the nation. They agreed to unite the differences among Indonesian in order to build a nation state. They undertook to leave partial and self-centered group interests behind in order to merge the nation. The spirit of the motto should be awakened in and internalized by all Indonesian nowadays in order to resolve horizontal conflicts between divided societies.

In their study about civil engagement and peace-building process, Paffenholz and Spurk concluded that civil society, in particular traditional groups, social movements and mass organizations, have important roles to play in peace-building process<sup>108</sup>. One of the important roles of civil society in a peace-building process being elaborated in their study is socialization which aims to inculcate a culture of peace in societies affected by conflict. It can be done using several activities: dialogue projects; reconciliation initiatives; peace education through different channels (radio or TV soap operas, street theater, peace

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<sup>107</sup> Lederach (1995) p.41.

<sup>108</sup> Paffenholz and Spurk (2006) p.2.

campaigns, school books, poetry festivals, etc); exchange programs and peace camps; conflict resolution or negotiation training or capacity building; and joint vision building workshops for a future peaceful society<sup>109</sup>.

To relate with the culture of violence in Indonesia that has been elaborated in chapter two, I argue that this cultivation of culture of peace in the society is the perfect counter activity. Pop culture containing peace-building message will counter local folktale containing violent scenes. Peace education through books, radio, television, and so forth can also influencing the way people behave towards other in a peace framework. Such external stimulus is helpful whenever the assaulter or one of the conflicting parties does not want to conduct peaceful dialogue to end the conflict. However, such cultural campaign needs long time to be internalized in the society remembering the deep root of violent culture in Indonesian society.

In the middle of 2013, I was participating in a peace-building dialogue in Lombok regarding the conflict of Ahmadiyya and Nahdlatul Wathan. We invited other Islamic groups such as Nahdlatul Ulama and Muhammadiyah as well as other religious group representations such as Christian priests and Hindu pandits. However, the Nahdlatul Wathan representatives were hegemonic in the dialogue and kept provoking the forum by justifying their assault. They even threatening and intimidating the Ahmadis so that the Ahmadis were afraid to join the dialogue. Some of the participants tried to give second opinion in the dialogue but it did not change the assaulters' hatred of Ahmadiyya.

There are some critical failures in the 2013 peace-building dialogue in Lombok. First, the facilitator try to be neutral and give no opinion in the dialogue. It was designed to avoid bias in the dialogue, but it turn out that the assaulters thought that the silence from the facilitator is a permission and acceptance of their opinion. Secondly, there was a mistake on the timeframe perspective. We thought that dialogue can contribute to conflict resolution immediately such as arbitration. In fact, although formally the word of peace might be explicitly spoken in the forum, it does not guarantee its implementation outside the forum. The conflict itself was deeply rooted in the society and it did not occur in one night, thus a one day dialogue is rarely possible to settle the conflict deeply into its root. As Lederach

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<sup>109</sup>Ibid., p.29.

suggests, we must think about the healing of people and the rebuilding of their relationship reversing what it took to create the hatred and violence that has divided them<sup>110</sup>.

Therefore, a peace-building process through civil society should not be limited only to dialogue and cultural peace campaign. In addition to those two mechanisms, civil engagement can also be performed in any activity conducted by people in the society regardless their groups, race, religious preferences, and so forth. Such activity will maximize inclusion and gather solidarity in the society. Indonesia has a long tradition of community service where people gather to work on their society such as building bridges connecting separated land in the area, repairing public facilities, and helping family who celebrate commemoration. It is not hard to restore such local wisdom in the society in order to rebuild solidarity and inclusion since it already has a root in the tradition. Once the society is solid, people would not be easily provoked to hate each other in the name of differences.

## **5 Conclusion**

This study reveals the unsettled religious conflict between Ahmadiyya and Nahdlatul Wathan in Lombok, Indonesia. The conflict involving human rights violation against Ahmadiyya, a religious minority group in Indonesia that being persecuted throughout the country. The members of Nahdlatul Wathan attacked, murdered, and drove the Ahmadis out of their village and burned their houses. The assaulters brutally attack the Ahmadis because they perceive that the Ahmadis have blasphemed Islam with their deviant belief. The Indonesian government's response to the conflict was by adopting a Joint Ministerial Decree ordering both sides to stop their provocative actions threatening with sanctions anyone breaching the law. The assaulters were ordered to stop attacking the Ahmadis while the Ahmadis were ordered to discontinue their religious belief. Furthermore, the government relocated the Ahmadis into a shelter with minimum quality of human rights standard such as sanitary facilities, privacy, and even denying their civil identity card.

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<sup>110</sup> Lederach (1997) p.78.

Using ICCPR as a measurement, this study found that the Indonesian government has breached article 18 and 18 (3) regarding freedom of religion or belief and freedom to manifest religion as well as article 27 regarding minority rights. Article 18 provides that everyone has freedom of thought, conscience, religion or belief. Those freedoms are absolute and cannot be derogated even in the time of public emergency. Article 18 (3) provides freedom to manifest religion that can be limited in certain and strict condition, thus are: prescribed by law, necessary to protect public safety, order, health, or morals, or fundamental rights and freedom of others. Moreover, the concept of moral should not derives from single tradition. Article 27 provided that in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

The Joint Ministerial Decree on Ahmadiyya that was being adopted by the Indonesian government violates the Ahmadis' freedom of belief by ordering them to end believing that Mirza Ghulam Ahmad is a prophet. Moreover, the government also provided criminal sanction against the Ahmadis who refused to follow the order. The government also ordered the Ahmadis to stop declaring, campaigning for public support, and conducting other activities that constitute their religious manifestation. Such limitation of freedom to manifest religion does not conform to the ICCPR and its General Comment no 22.

This study finds that the Joint Ministerial Decree on Ahmadiyya does not conform most of the strict requirements of limitation clause set by ICCPR. The decree only conform two out of eight points in the General Comment no. 22, those are: prescribed by law and against the act of violence and persecution towards religious minority. However, the Decree has failed to conform the rest requirements. It failed to recognize the actors who threatening public safety and public order. It also confronting the principle of equality and non-discrimination, vitiating freedom of belief, does not proportionate to the specific needs and aims that were being predicated, deriving the concept of moral from single religious tradition, does not give equal protection to the both parties in the conflict, and infringing religious minority rights. Moreover, the Joint Ministerial Decree on Ahmadiyya also violates article 27 of the ICCPR

and its General Comment regarding minority rights by denying the Ahmadis' group right as a minority to have and practice their religion.

Although it is obvious that the Indonesian government, in particular by the Joint Ministerial Decree in Ahmadiyya has breached article 18, article 18 (3), and article 27 of the ICCPR, an individual complaint against Indonesia regarding these articles cannot be brought to the HRC because Indonesia has not ratified the first optional protocol to the ICCPR that giving jurisdiction to the HRC to examine and decide in any case referring to the ICCPR. In this regard, there is a need to find out other solutions to restore the Ahmadis freedom of belief and freedom to manifest religion that have been violated. HRC can examine the Indonesian report on human rights and in the meantime can also assign rapporteur to investigate human rights violation in Indonesia. HRC may recommend Indonesia through its concluding observation to better its commitment to human rights. In the regional level, the role of AICHR can be useful to facilitate arbitration and any other out of court settlements between the Indonesian government and conflicting parties to find a proper conflict resolution. These two mechanisms at the international level will influence Indonesian reputation in international relations, thus the Indonesian government will not ignoring their role.

In the domestic legal framework, the Joint Ministerial Decree should be tried in the Indonesian Supreme Court for breaching ICCPR which has become part of the Indonesian domestic law. The decree could also be tried in the administrative court for being unjust. Out of court settlements in the Indonesian domestic law mechanism such as complaint mechanism to the national human rights committee and Ombudsman can also be used to gain assistance in reclaiming the Ahmadis' rights.

Beside those legal actions, non-legal mechanisms should also be done to gain comprehensive conflict resolution. I propose to change the Indonesian framework of democracy from liberal majoritarian democracy to a more consociational democracy appropriate for a fragmented society such as Indonesia. Minority groups will be able to participate in decision making, particularly in making the decisions affecting them. In the current model of Indonesian democracy, the majority will take over all or most of political and regulative power and tends to abuse its power such as in the case of the adoption of the Joint Ministerial Decree. In

addition to changing the model of democracy in Indonesia, I also propose rebuilding Indonesian civil engagement based on the national motto and on local wisdom that is rooted in Indonesian tradition. Civil engagement and cultural peace campaign will strengthen society's solidarity and the inclusion of minorities and hopefully prevent vicious horizontal conflicts from recurring.

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