



## Become Recognized Minority in a Multicultural Society: An- Naim's Theory in Responding to Ahmadiyyah Cases in Indonesia

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### Abstract

**Abstract:** This study aims to analyze the thoughts of Abdullah Ahmed an-Naim related of constitutionalism, human rights and citizenship based on justice in minority groups. An-Naim's thoughts on human rights can be accommodated to public expectations regarding the issue of the Ahmadiyya community in Indonesia. Read an-Naim's theory regarding women, non-Muslim status and apostasy. The issue of human rights initiated by an-Naim will be the basic foundation in the explicit explanation of this paper. Considering the existing social values based on the enforcement of human rights in Indonesia, the position of the Ahmadiyya community must be positioned equally in the law in terms of rights and obligations as part of Indonesian citizens. The state must be neutral considering the Ahmadiyya community in responding to its religious existence. The government must maintain neutrality in regulating religious life for every citizen in order to create an atmosphere of harmony and peace. This paper attempts to produce a peaceful religious discourse in the context of religious freedom in Indonesia.

**Keywords:** Abdullah Ahmed An- Naim; Ahmadiyyah Community; Human Rights ; Multicultural Society

## 1. Introduction

Basically, Indonesia has recognised as one of the country where the multicultural *within culture, religion, and ethnicity* were exist until today. *Multicultural* has seemed to be something comes up from any differences that naturally happens in all societies.<sup>1</sup> But, the goverment's position in overcoming the differences among people is usually failed in some extent. Ahmadiyya' where commonly known as *Jemaat Ahmadiyah Indonesia or Ahmadiyah Qadian* (JAI) is considered as one of the deviant of the religious group in Indonesia. Mostly the discrimination cases among the Ahmdiyah follower happened in Indonesia since they have been categorized as difference from the mainstream of majority Islam which exist until today. The religious conflicts among Ahmadiya' followers and any religious group happened over and over. So, the implementation of justice is merely about discourse not of how to really deal with sort of this idea then let the minorities group like Ahmadiyya being exist with their religiosity.

Actually, there have two mainstreams in *Ahmadiyyah community*; they are called as the *Jemaat Ahmadiyah Indonesia* (JAI) and also *Gerakan Ahmadiyah Indonesia* (GAI). Through this understanding, what I might to refer is the discrimination among Ahmadiyya as one unity. So, I will be more focused on *Ahmadiyya* which regarded as religious group even in reality it has cleared that JAI is regarded as one of the deviant religious group (*Aliran sesat*). However, the term *Ahmadiyya* still have some negative impact in society where people to try to marginalize sort of avoiding the term Ahmadiyah. Regarding with state policies, I think what must be done by state is how to really care in understanding the term of diversity not only stopped at the level of political term but also how to create justice in the sense that the minority group like *Ahmadiyya*, cane be protected same as other religious group based on human rights. In this extent, the writer regards *Ahmadiyyah* as victim on government policies. That's why the critical study from a famous scholar, Abdullah an- Naim (*state neutrality*) is needed in how state policies should be neutral in positioning the differences among people (citizens) in regarding their religious freedom or rights to exist with their community. *An- naim* will certainly help to explain what possibilities that can be built to strengthening the position of *Ahmadiyya community*. One of the discourses that the writer wants to achieve is may be regard Ahmadiyya as one of the official religion to avoid discrimination over and over. But, in this democracy

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<sup>1</sup> Bhikku Parekh, *Rethinking Multiculturalism; Cultural Diversity and Political Theory*, (Palgrave Macmillan; 2000)

nuance everyone can be free to contest their idea as long as it is suitable with the universal ethics in creating justice to all human's life.

According to *Bhikhu Parekh*, society should have tried to accommodate the Multicultural and the differences within the societies which based in Democratic state. It means that, minority group must be exist without any problems in order to establish the Human's life in better condition and far from any social conflict including religious conflicts.<sup>2</sup>

## 2. Methods

As the basic of the Theoretical Framework of this research, the writer will use an- Naim's theory which emphasizing more in civil *human rights Women rights and constitutionalism*. He proposed the idea of *state neutrality* in how human rights can be easily implemented in the nuance of diversity. The basic reflection is that how much tolerance that state should accomodated to all citizens in religious freedom. Bhikhu Parekh in his *Rethinking Multiculturalism*, will aslo used as the theory in responding to the minorities rights. What possibilities which be achieved as the minorities, I think will Kymlicka will also used in analyzing the idea of Minorities Rights and how the specific policies must be appropriated with this minority group such like; Ahmadiyya Community in Indonesia (JAI, GAI).

Another Theory, Chatrien Hertog Theory with *The Complex Reality of Religious Peacebuilding: Conceptual Contributions and Critical Analysis*<sup>3</sup> and Mohamad Zulfan Tadjoeidin, *Civil Society Engagement and Communal Violence: Reflection on Various Hypotheses in the Context of Indonesia*.<sup>4</sup> We choose those theories seems it was relevant in this topic of Minority and also their thought have also a great rule for understanding the effort and struggling of Ahmadiyah community to create peace building in differences. In her book, *Conceptual Framework of Religious Peace building*, Chatrien Hertog asserts that the parallel with the development of the concepts of violence, conflict, and peace and also

<sup>2</sup> Bikhu Parekh. *What is Multiculturalism?* dalam Jurnal India Seminar, Desember 1999. RazJ.. *Ethics in Public Domain: Essays in the Morality of Law and Politics* (Oxford: Clarendon Press, 1996), hlm. 177.

<sup>3</sup> Chatrien Hertog, *"The Complex Reality of Religious Peacebuilding: Conceptual Contributions and Critical Analysis"*

<sup>4</sup> Mohammad Zulfan Tadjoeidin, *Civil Society Engagement and Communal Violence: Reflection of Various Hypotheses in Context of Indonesia*, Politics Administration and Change, No. 42, July-December 2004, pg. 1-18.

the concept of peace building which has also been significantly refined and developed, resulting in more diversified approaches, elaborated knowledge, and a wider range of peace building methods.

The Concept peace building in Multicultural society always incorporate elements of the process that a more appropriate way to achieve the vision. The idea is to get better because it can be applied by many people who want to make peace. *Hertog explains, Actors involved in a peace building process can be state and non-state actors, individuals and communities, religious and secular actors, or theoreticians and practitioners.* In other words, peace building in differences community is not just the responsibility of a group of people, but all people. They can come from the local or grassroots level, the middle-range, or the top level, or they can be interacting and networking through all levels. Thus, the concept of peacebuilding that would be shown by Hertog is no longer about a highly theoretical concept that can only be understood by the scholars. Citing the opinion Lederach, Hertog confirmed that peacebuilding is a comprehensive concept that encompasses, generates, and sustains the full array of process, approaches and stages needed to transform conflict towards more sustainable, peaceful relationships. In this extent, what meant by peace building is that Ahmadiyya Community can sustain their religiosity without any dangerous and the state should be emphasized more in how they must be protected in order to create justice among human to implement their belief system as we called' *their truth of religion.*

### 3. Result and Discussion

#### **The Historical Aspect of *Ahmadiyyah* and the differences between *Ahmadiyah Lahore / Gerakan Ahmadiyah Indonesia (GAI)* and *Ahmadiyah Qadian / Jemaat Ahmadiyah Indonesia (JAI)***

Ahmadiyya is an Islamic religious movement which founded by Mirza Ghulam Ahmad (1835-1908) in 1889, in a small town called Qadian, where it is located in the state of punjab, India. Mirza Ghulam Ahmad claimed himself to be the Mujaddid of al Masih, The followers of Ahmadiyah, which are referred to as Ahmadist or Ahmadi Muslims. This group is also divided into two groups. The first group is the Jema'at Muslim of Ahmadiyya (JAI/ Ahmadiyya Qadian). The followers of this group in Indonesia have formed an organization which called as the Indonesian of Jemaat Ahmadiyah, which has been incorporated since 1953 (SK Menteri Kehakiman RI No.JA 5/23/13 (Tgl.13-3-1953). The

second group is the Ahmadiyya Anjuman Isha'at e Islam Lahore (or Ahmadiyya Lahore/ GAI).

The Ahmadiyya Movement emerged as motivated by the pressure from non-Muslim in South Asian region. The Ahmadiyya founders named Mirza Ghulam Ahmad. In 1914, the Ahmadiyya organization has split into two, namely the Ahmadiyya Qadian and Ahmadiyya Lahore. The entry of the Ahmadiyya Qadian in Indonesia is motivated by the departure of three college students from Sumatra, Indonesia towards South Asia. In the end, the leadership of the Ahmadiyya's center has pointed to Rahmat Ali to spread out the Ahmadiyya Qadian's teaching in Indonesia (Sumatra and Java) between the years of 1925-1950. His teachings have received much reaction from any scholars of Ulama' and also the non-Muslims. This reaction is faced with an open minded dialogue and debate, but do not produce optimal results, thus make inhibiting for the development of *Ahmadiyah* in Indonesia.<sup>5</sup>

In Indonesia, this Ahmadiyya Group's followers have formed an organization called the Indonesian Ahmadiyya Movement, which got a Legal Status by No. I dated 30 April 1930. (*Anggaran Dasar organisasi diumumkan Berita Negara tanggal 28 November 1986 Nomor 95 Lampiran Nomor 35. Atas nama Pemerintah Indonesia, Menteri Agama, Menteri Dalam Negeri dan Jaksa Agung Indonesia*). But, an accident happened directly on June 9, 2008 had issued of a joint decree, which has ordered the Ahmadist community to stop their religious activities which are contrary to Islam (*Basic Islamic Teaching*).<sup>6</sup> This is intended because the longer the Ahmadiyah group perceived as one of the cult that developed in Indonesia on the basis teaching of their religious doctrine where they (*Ahmadiyya community*) believed the prophet after Prophet Muhammad SAW. Basically, based on explicit study, the *Ahmadiyya community* is divided into two groups who have also the different backgrounds and goals which are essentially influenced by the historical setting (*between Ahmadiyya Qadian and Ahmadiyya Lahore*). In this context, there is a fundamental difference based on theological context that the Lahore Ahmadiyya community was not seen and assume that Mirtza Ghulam Achmad regarded as a prophet but only no more as an ordinary *Mujjadid of Islamic teachings*. During this basic understanding has always been a consensus in the community that the Ahmadiyya community groups have the same tendency in all respects. Thus explicit contents within the theological contends of Ahmadiyya

<sup>5</sup> Interviewed Result with Pak Mulyono, *Lahore Ahmadiyya Leader*

<sup>6</sup> SKB Ahmadiyah diterbitkan". BBCIndonesia.com. 09-06-2008. Diakses 19-05-2013

Qadian contends where mostly people in community are still considered that within *Ahmadiyyah Qadian teaching* the figure of *Mirtza Ghulam Ahmad* is still regarded as a last prophet within Islamic teaching.<sup>7</sup>

So that, through the example above of the Ahmadiyya case which treated unjustly/unfairly in this nation (Indonesia) where the justice should be maintained with objective values due to considering that this state is commonly regarded as a state where the people are so religious. Finally we have to go back to ask that is it true that religion has deals that religion has considered as media to monitor religious atmosphere in making peace and justice, or even religion become trigger conflicts, divisions and causes of injustice?. Ironically, that became an offense or problems in the case above (Ahmadiyya case) where they are also part of Muslims (*based on Islam*). Just because some differences in certain interpretation are not principled, and behold, then they are considered out of the religion of Islam, misguided, and should be judged as mislead.<sup>8</sup> More interesting again, supposedly when the raid against the *Ahmadiyya Community* is emerging proliferation (in 2006), The Minister of Religious Affairs issued a statement that it bothered our hearing, he stated that Ahmadis (*Ahmadiyah Followers*) should form a new religion because they misleader and out form Islam and must be banned in Indonesia. This action is felt to be unfair with the ideological principles in Indonesia where the state regulation or public policy should be applicable in maintaining justice values.

The case of Ahmadiyya community has given us an idea of how the state (Indonesian government), not only has not been able to realize the enforcement of religious civil rights in Indonesia, and even has a perpetrator in this sense. Presumably, it feels being ironic if we refer to the government policy as perpetrators of religious civil rights, although the reality was like that. Like what has been stated by The Indonesian Ministry of Religious Affair, indicates that the Indonesian government cannot force objective in this Ahmadiyya case. In other words, the government is still directly pro- Muslim majority without objective reason. So that, in viewing of the development Ahmadiyya discourse the Indonesia government deemed not to apply the concept of state neutrality (an-Naim 2001) in regulating the constitution state, Indonesia. How big the right

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<sup>7</sup> G.F Pijper, *Empat Penelitian Tentang Agama Islam di Indoensia Antara 1930-1950*, Terj; Tudjimah (Jakarta; UI Press, 1992) Hlm.39.

<sup>8</sup> Interviewed result with Mulyono, *Lahore Ahmadiyya Leader (Gerakan Ahmadiyyah Indonesia)*.

does has granted by the Indonesian government to accommodate the civil rights to all Indonesian citizens in religious freedom. Actually the government's role has main influence in providing special policies in the sense that the constitution government should be able to accommodate the high diversity and plurality values in regulate its region based on its governance system.

Looking at the background of the Ahmadiyya case which has gained the prolonged of violence, in this case made the writer has a very big unique interests when cases of violence in the name of religion appears to the Public sphere by continuity. One is related to the case that associated with Ahmadiyya community. When this issue related to Ahmadiyya case is started to be debatable, the religious violence began to be exist when it appears some violence cases against the Ahmadiyya community in *Cikeusik*, Bogor, Banten. In early February 2011, respond to this violence problem within Ahmadiyya community, several governmental representatives of agencies including: Ministry of Religious Affairs, Ministry of Domestic Affairs and the Supreme Court (*Mahkamah Agung*) held a series of discussions at the end of March 2011, to design a permanent decision for the existence of Jemaat Ahmadiyah in Indonesia.<sup>9</sup> It is also triggered by the MUI fatwa decision precisely on 27-29 July 2005 which has been declared that Ahmadiyya was mislead religious group in Indonesia. So, in this case the MUI fatwa no. MUI No.11/ MUNAS/VII MUI/15/2005 stated that Ahmadiyya community as follows:

1. Reaffirmed the MUI decision r in 1980, which stated that the Ahmadiyya are outside of Islam, while it regards as mislead and misleading while people or individuals who are follower Ahmadiyya teaching declared that they have been out from Islam.
2. For those who have already followed the Ahmadiyya community, as soon that he/she expected to return back to the right path (*the right of Islam way*), which is accordance with al-Quran and al-Hadith (*as-Sunnah*).

Through the above explanation, it can be concluded that the existence of the *Ahmadiyya community* in performing their religious identity through their religious values and practices will be impaired because their religious practices were considered as deviant action from the basic teaching of Islam. In this case, the center of government's policy was not fully appreciating their rights in the context of justice implementation by human rights. It was become clear that the

<sup>9</sup> Zainal Abidin Baqir, Pluralisme Kewargaan; CRCS Document 2011.

existence of Ahmadiyya Qadian has contradicted with certain government policy in actualizing their religious freedom. As a result, Ahmadiyya Qadian always gets some discrimination in performing their religious existence.

### **The Diversity in the Public Realm and Participation (*Harmonizing Politics*) (*The Political of Recognition, Representation and Redistribution*)**

Diversity in the society, regarding language, ethnicity, religion and so forth is a fact of life today that cannot be denied. Even if there is uniformity within a nation in a way, it will be vary in terms of other things. In this sense, it is difficult or even impossible to find a homogeneous country. In a pluralistic democratic society, the main issue is how to manage that diversity?

Democratic practical developments in several countries show that the life of the country indicates that the living together in differ society can stand if supported by several pillars. The first pillar is the constitution. Constitutional democracy is characterized by the division of powers between the institutions of government institutions, the principle of accountability that control the balance of power and the acceptance or recognition of the rights of citizens (*civil rights, political rights, social, economic and cultural*).

In this situation, a new democratic institutional only produce, but not followed by changes in the behavior of a democratic, even in subsequent trips to delegitimize or eliminate reliance on democratization institution which is built. Diversity management thus has several aspects. Diversity needs to be recognized, because it is inherent in democracy that wants to appreciate the authenticity (and authority) diverse citizens. In addition, the management of diversity as an instrument must be placed between the goals to fight for a common goal, namely equality and social justice. Use it as the answer for those who focus on diversity worried that would distract us from injustice. Some aspects of it can be expressed in the recognition strategy, representation and redistribution. The pillars represent the three pillars above which supporting the building of justice for all people. Namely:

#### **Political Recognition**

Recognition and respect for the other and different is the main basis of civic pluralism. At the level of everyday life, seen from the recognition measure the extent to which the entity is a plural entity in society respect and acknowledge

differences and diversity. This recognition is not limited to mere tolerance to let the others live their own, but to appreciate the existence of other groups that differ in inter-group relations. In the formal political level, recognition of the extent of country visits (at national and local levels) to respect and acknowledge the differences and diversity in society. To what extent the constitution express the recognition and to what extent the state policy confirms the constitutional guarantees? Such recognition not only in the context of civil rights and political rights, social, and cultural economy including union recognition and worship against indigenous peoples and their traditional rights and their rights (18 B Constitution Act 145) and respect for cultural identity and traditional rights (Article 28 I ). Policy that becomes uniform and it is a violation of the principle of discrimination by the state. The failure of this recognition policy violation will result in the violations of social and economic rights of the people.

### Political Representation

In managing diversity, democracy offers several models namely through participation and competition. Concerning with the involvement of citizens in decision-making about live together, and then followed by a contestation of ideas that will be chosen through elections mechanism. The political representation is needed to bring the aspirations of citizens in the public sphere.<sup>10</sup> Representation or representations in Indonesia often refer to functions of interest articulation and aggregation that is run by formal representative institutions (*parliament*). The type species among its political representation is a representation symbolic, substantive and descriptive. The representation can also be done directly (self-representation) or through an intermediary. Representation in the political context, the actors become actors who could be representative not only of political society, such as political parties but also to groups or institutions that carry out functions as an intermediary, such as civil society and political society (political parties, interest group / suppressor). As for the relation to political representation, which is a critical question we are concerned citizenship pluralism, whether religious groups could represent diverse aspirations in public space? Who or what institution is used to represent their aspirations? Through what way? How to configure the power of the institution? In looking at the case of Ahmadiyah, the political context, have the right to represents the aspirations of theists in the

<sup>10</sup> Zainal Abidin Baqir, *Pluralisme Kewargaan; Arah Baru Politik Keragaman di Indoneisa*, CRCS UGM 2011.

public space? And how to minimize the impact which occurred in this minority group?

### **Redistribution politics**

In this extent, the redistribution issues concerning some aspects of attention. In the realm of everyday life, the issue is the structure of the political economy that is built up in the community, who controls and has what? What is the pattern of production relations in society (agrarian, semi-industrial, industrial) especially concerning the religious community, whether production patterns congruent with social grouping or religious conflict? Related to the issues of religious identity, so what patterns does the economic relation appear?

In the policy realm, the state issued a public representative in performing functions within perform functions redistribution. In the eyes of the neoclassical, the state role is to overcome market failure by welfare policies, such as protection, affirmative to poor policies (subsidies, ease of access) and the provision of public services.<sup>11</sup> Welfare in state political goals is the quality of human life better question is whether there is partisanship country, and whether it is religious bias? Do religious groups have a mechanism to address the state's failure in performing the function of redistribution?

The explanation above at least be able to explain to us how significant and whether the state should be able to see the development of differences in beliefs and culture be a diversity of our nation and state in life. *Ahmadiyya apostasy* should not be worth doing even if by the state in the context of Indonesian democracy. Countries should provide space for every citizen to express his full confidence in the country will not impose build religious social integration refers to the Pancasila (*God almighty one*). Ahmadiyya community is a part of Indonesian citizens who are politically and social rights should get equal rights in any case. Space expression of the Ahmadiyya community believes should be protected in their entirety based on the political dynamics of growing religious freedom in Indonesia.<sup>12</sup>

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<sup>11</sup> *Ibid.*, p. 44

<sup>12</sup> *Ibid.*,

### **The Relation between Religion and State (*Case Descriptive*)**

A half century ago, when the founding fathers would formulate the basics that underlie the establishment of Indonesian State (*Indonesian state*), there is a big polemics on the basis foundation of the Indonesian state that must be applied. In most Muslim leaders when it wants to be an Islamic law as the basis for this country by included the seven words at the opening of the Pancasila and the Constitution of 1945, historically this event has the immortalized moment with memory of Jakarta Charter. Perhaps a bit similar to the historical Medina Charter that happened in the prophet era, despite of having a considerable difference. The succeed of our founding fathers chose Pancasila as the state ideology is certainly not a coincidence of history, but chose Pancasila as basic of Indonesian ideologically principles has certainly a decision taken with careful consideration, given the condition that Indonesia is a plural nuance and diverse society. The reality of pluralism in Indonesia within its various aspects such as *race, religion, and tribe, culture (language and so on) SARA* has regarded as main consideration before Pancasila is enforced.

Recently, after human right has precisely entered in Indonesia, it always generally in a majority religious group in Indonesia has always been to limit the rights of minorities. In the long process of contestation ironically religious violence in Indonesia after the entry of human rights in Indonesia it is increasingly regarded as a legitimate group / communal in taking over the rights or freedoms of other groups, especially religious minorities in Indonesia. Though we are aware, that demands to return to local wisdom with all uniqueness is guaranteed by the validity of the application of the state constitution, but minority groups in Indonesia have always seen from the point of view from majority points of view, even if the government's policy that accommodate the religious freedom for every citizen of this country. In this case is how to build a universal justice with some consideration of fairness values derived from the basic principles of the state constitution which is suitable become the real grounding in the dynamics of plurality. Through the ideology of Pancasila we should be able to conclude that the existence of a minority group such like; *Ahmadiyah* in Indonesia. Ahmadiyya group should be seen as part of the diversity of this state condition not as a part of the discrimination that was always legitimize the contents of religious doctrine itself. The religious freedom at least being capable to accommodate the Ahmadiyya community in perceiving their belief based on constitution and UUD 45 as the basic principles of Indonesia as State constitution.

Pancasila itself is regarded as quite unique principles among the majority opinion; it is not the ideology of theocracy, nor a secular ideology. It means that, Indonesia with the ideology of Pancasila is a religious community that recognizes the existence of God. In other side, it allows the differences of religious identity exist with its development. *Pancasila* offers the citizens to become being open and tolerant of diversity on the other condition. However, there is also a perception to Pancasila as the other form of the secular ideology; this view comes mainly from the Islamist which they preferred that Islamic Syari'ah become the basic principles of this state. For this group there is no ideology which is more feasible than Islam, the other ideology except Islam would be perceived as secular. Even though the way people look at Islamic Syari'ah as basic foundation of state principles it does not feel to damage the essence of Pancasila as an ideology that necessitates accommodate the plurality of religious beliefs. By choosing the principle of *belief in one God perhaps* more accurately, of the precepts put performs the Islamic Syari'ah despite using frills to its adherents, because it would reduce the other faith. The Language of God would be plural, religion and belief is doomed to get there. Therefore, by implemented the Pancasila ideology at least we are not discriminate against any religion and belief, nor become a barrier realization of Islamic Syari'ah itself. All the differences, religious diversity, cultural plurality will never become any matter in actualizing their own existence.

So, the violence issue among Ahmadiyah community was not judged to justified that Ahmadiyya must be banned by state authority. Regardless, actually Ahmadiyya community must have law protection as a proved from the constitution state where the Indonesian government should guarantee each religious freedom of every individuals as citizenship.

### **An- Naim's idea in response to the case of Ahmadiyya Community: the meaning of the constitution, human rights and the neutrality of the state in the midst of the diverse interests of citizens in religious freedom**

Abdullah an-Naim's idea about *constitutionalism, human rights, citizenship and secularization* is related to the idea of the state neutrality toward religions. In the case of unfair enforcement by the central government through its regulation on banning the *Ahmadiyah community* in Indonesia, in my opinion its momentum should be implemented in a fair and dignified. But the problem is the extent to which of understanding and goodwill (*goodwill*) of the country. Government policies, in implementing the idea of state neutrality towards religious diversity

in Indonesia should be able to receive and accommodate the minority groups are also demanding the same thing in the interests of rights equality. Here, An-Naim has attempted to promote the idea that the interests of the individual over communal rights recognized should be acceptable in the context of the state constitution does not eliminate and prohibit the existence of an individual in applying own religion. Through the idea of John Rawls also often referred to as *a comprehensive doctrine*,<sup>13</sup> the government should consider how much of the rights which granted to minority groups such as Ahmadiyah in performing their religious existence. As the general understanding, that any state in the nation requires a governmental authority that has power to maintain law and order. And in its development, the rule of law for the order must be clearly defined and rigorously applied. Defined set of rules that came to be called as the state constitution should be followed consistently by the government and the state apparatus as a representation. This is by An-Na'im is referred to as the state constitution. (An-Na'im, 1990:116)

Constitution can generally be understood as *Assembled laws, institutions and customs, which is derived from the principles that make up a certain standard of rationality common system is the system by which the people agree to be governed* (McIlwain, 1974:3). In connection with the above definition, Indonesia is already on the right path (on the right track), in other words, Indonesia can be called as a constitutional state, with 1945 as the constitutional basis and Pancasila as the basic ideology for more than half a century has made efforts and accept the diversity of society. Thus, in the application of constitutional values that existed. An-Naim sees that the state constitution should be able to accommodate the diversity of values with no look only at one point argument (*sharia*) but for the creation of equity values that are free from the element of discrimination. Sharia should only be applied in the context of Islam in ancient times not in the context of modern society as it is today. Balance of human rights is an important not on justifying the value of justice.<sup>14</sup>

The main characteristic of a constitutional democracy is the existence of clear guarantees against the minority groups like Ahmadiyya, including the protection against the possibility of the exercise of religion and belief. Therefore the constitution was formed to protect the minority from the arbitrariness or tyrannize majority. Further, the 1945 in the fourth amendment's (UUD 45)

<sup>13</sup> John Rawls, '*The Idea of Public Reason Revisited*', University of Chicago Law Review 64 ( Summer 1997).

<sup>14</sup> Abdullah an- Naim, , *Dekonstruksi Syariah II*, LKIS Yogyakarta; 1993.

of article 28 E 1 and 2 have very explicitly states: *Everyone is free to embrace religion and to worship according to his religion, to choose education and teaching, choose a job, choose citizenship, choosing a place to stay at the stake country and left and right to return and Every citizen has the right to freedom of belief to believe, express thoughts and attitudes in accordance with his conscience* <sup>15</sup>. So, by considered those reason actually we may have some critical analysis that Ahmadiyya which is regarded as minority group should have legal protection in the sense that their existence did not transgress the state law. At least Ahmadiyya community were free to keep exist with their religious existence because based on constitutional state, State guarantee every citizens to worship based on their belief or truth. Religious freedom is the right of everyone. So, by this critical discourse at least the government policies should capable in re-arrange the regulation which is considered as not judged with Ahmadiyya existence as minorities of religious group in Indonesia.

In the constitution chapter as the article has mentioned above, it has very firmly to put the implementation on the basis of religious belief according primarily to the conscious mind and the conscience of the individual, not because of coercion or pressure from the hands of the state. In other words, the implementation of sharia should be implemented by every Muslim on the basis of voluntary and not on the basis of coercion from state authority. Due to if the exercise of religion has formally imposed, it will caused the Sharia loss their sacred values and its authority. And respond to issues of violence in the Ahmadiyya community should the government be able to be more fair to the identification of policies deemed to create appropriate policies in order to create Indonesian society that uphold the religious and cultural values both in terms Religion, culture, or custom systems that prevail in a particular region. Whatever reason which inflicted the violence action in the name of religion; for example: the violation among Ahmadiyya community if it is seen as deviant Islamic sect is reasonably accepted as long as it does not raise any violence which will lead to the application of criminal law because crime and lawlessness that could even threaten the lives of others. As long as Ahmadiyya community does not intervene in criminal law, they must get freedom in implementing their religious values.

In this analysis, arguing the values of religious freedom in Indonesia, at least a the government should be able to be more consistent in building a state apparatus in accordance with the constitution. State neutrality (2001) is

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<sup>15</sup> See detail at UUD 1945,

a discourse in looking at the diversity cases in the sense that the state remains a crucial as control elements of a policy without giving any discrimination. The protection of religious freedom for a minority group such like; Ahmadiyah community is become the responsibility of the state in the form of religious freedom in accordance with the noble values of human rights. The idea of human rights concerns with apostasy is deemed to blame the Ahmadiyya community in which they are considered as out of the Islamic Basic teaching. At least this kind of issue can be explained through the basic concepts *state neutrality and freedom of religion in (Pasal 28 E UUD 45)*.

In connection with the above ideas, the state through apparatus both at the national and local level should consistently make the constitution as a legal basis to distinguish between the authoritarian state and the state constitution. Quoted from the legal hierarchy theory offered by *Hans Kelsen (1881-1973)*, he argued that the basic effect of the rule of law is low tiered gets legitimacy by the higher rules, then the rules of the higher gain legitimacy enactment of legislation which is higher again and so on. So, the application of the law enforcement decreased from the highest positive norms to the lowest manifestations.

In the context of constitutionalism, An-Na'im explains that the government that based on law (*rule of law*) should re-interpret the policy that will be implemented in the social life. The state policies not based on a decision that comes out of one's whims, one particular social class or caste (An-Na'im, 1990:72). The essence of his view is the right of balance between individual freedom and social justice to fully comprehensive. The implication is that the nation-state is a legitimate arena for the pursuit of freedom and social justice. So, the writer was suspected that case related to Ahmadiyya violence in Indonesia is influenced by the state political reason why the law enforcement does not work equally. The minorities right such like Ahmadiyya might be regarded as victims of state regulation. The state authority is needed in achieving justice to all minorities' right; such like Ahmadiyya case.

The constitution state's problem in the context of democracy nuances is always determined by the justice values. The right to exist is always become issue in democracy society like Indonesia. The main issue which is not less problematic is that the concept of the existence of the ban of Ahmadiyya religious community by the society and its violence also be understood as religious teaching which is deviant but also understood as a political identity, so I think the state policy through the SKB 3 Minister through the Ministry of Religion is a form of state obscenity

in the term lack of control by the state in terms of policy, so that by considering the values of justice government forget an essential element in the constitution of the country where religious diversity and plurality considered as an element of the creation of the state constitution based on the laws which governing all acts of violence in the name religious violence, including religious violence against minorities group (*Ahmadiyya Case*). Because the policy implementation always have an impact on public services for different groups which in many cases are closely linked to the issue of human rights violations (Religious violence).

In regarding to the issue of uniformity in the above, An-Na'im insisted on the importance of paying attention and the internal dynamics of the Muslims themselves. This case recalls that in the history of Islamic thought, there has great diversity on Syari'ah itself. An-Na'im noted that the issue is not with the aspiration of Syari'ah should be taken to public as a form of legal pluralism, but rather than it, the importance is how a group that has aspirations may brought it to the public. Here the internal debate within the community to formulate a conception of which commonly called as Syari'ah also must accommodate the internal diversity (Bagir, 2011:60)

From the above brief description, I agree with the idea of An-Na'im in his article entitled *A Theory of Islam, State, and Society* (2009), that the relationship between syari'ah as religious law and its implementation within the framework of democracy associated with constitutionalism, human rights, and citizenship, the discussion should begin with the idea that the state cannot be religious (An-Na'im, 2009:47).<sup>16</sup>Because the idea of an Islamic state with syari'ah imposition historically would likely counter-productive to democracy and will not be able to meet the demands of different people with different religions as well. Basically, an-Naim explains the importance of a comprehensive understanding of the issues of religion that exist where the historical conceptuality of meaning is very important.<sup>17</sup>So, very real explanation will lead to a better meaning without leaving discrimination elements. Here, I stated that through the idea of state neutrality the government policies should be implemented as long as the minority groups such like; Ahmadiyya religious group has to protect their existence through the government policies not trying to eliminate them in some particular condition. The justice enforcement is right for everyone, including within Ahmadiyya

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<sup>16</sup> Abdullah an-Naim, *A Theory of Islam, State, and Society*, (2009),

<sup>17</sup> Ibid.,

community itself. This reason is caused that state constitution has formed by its differences in all circumstances.

In this regard, I presumably get some important points from An-Na'im related to the idea of constitutionalism that there is an important relationship between constitutionalisms with the implementation of human rights. Without constitutionalism people will not be able to expect that there is respect for human rights. In short, the stabilization of constitutionalism is a pre-condition for the establishment of human rights. Due to the constitution state would never allow discrimination against citizens based on religion or sex (An-Na'im, 1990:72). So, with the idea above it might shows us that the state has not yet provide a fully security services for rights of their citizens in the context of state constitution that fair and always uphold the existence human rights values. Through this idea actually Ahmadiyya community should be positioned as part of the diversity value or the value of plurality which possibly existed. The Ideological difference interpreting at one religious doctrinal is not the main problem in providing legal justification for the other group.

So, in responding to the violence cases within the Ahmadiyya community one way is by process of interfaith dialogue. The over anxiety concerns that there could be solved in inter-religious dialogue contents. If only we could imagine a situation in which there is *deviant group*, but there was no violence, then the problem may not be as complicated as we feel right now. In a situation where the government can maintain the security and freedom of public space as a meeting place for all sorts of differences, diversity should be placed in Inter- Religious Dialogue. So that, the all differences can arise, including a mistake that would be corrected. Including the right to appear certainly was the view of a group of Muslims, such as the MUI (Indonesian Ulama Council), NU, Muhammadiyah which convey errors to Qadian Ahmadiyaa/ JAI community and also declared their error/mislead. What also emerges is entitled to self-defense from Qadian Ahmadiyya/ JAI. In an atmosphere of public spaces that are safe, civilized of dialogue can be occurred. The Government is obliged to maintain that space. Community groups shall be filled with quality and civilized. Dialogue is still the best way to complicated issues like this, where there is the perception that such a sharp disagreement even about the main principles of such state intervention on matters of religion, and restrictions of freedom which cannot be accepted, as well as an understanding of the *desecration* is not can be formulated with a sharply for each case. But the Inter- Religious dialogue is also quite difficult, and requires a

greater seriousness of all parties. Dialogue can still continue to do, but important attention to the lessons of dialogue efforts in 2007-2008 as discussed above. It's no exaggeration to say that to be effective, the framework of the dialogue should not even be part of the dialogue itself.

So through the analysis of a very long discussion, we can conclude that the existence of Ahmadiyah community was triggered simply because of the differences in the way that interprets the teachings of religious texts. In this case was not strong enough when a certain religious groups claim their absolute truth among the other religious communities. With the protection of human rights and the basic of constitution 45 and Pancasila (*Indonesian Basic Ideology*) and strengthened by the UDHR (*Universal Declaration of Human Rights*) at least Ahmadiyya got the right place in struggle their own existence. In response to this case state should be more sensible through its regulation in creating justice. The assumption that may be constructed is that Ahmadiyya community should be considered as equal before the law without any discrimination values which is applied.<sup>18</sup> State neutrality (an-Naim 2001) is a major challenge for policy makers in the country's constitution to guarantees the religious freedom which may be applicative to a minority group such like; Ahmadiyah. Without seeing what is right and what is wrong in the case of Ahmadiyya, at least the constructive thinking of people should be adapted with the times/ era and rules that can be used in the application of justice to all mankind. The difference in interpreting the religious doctrine is not totally error or mistake, but it is seen as dynamics in responsible with our truth values in accordance with the religious beliefs and truth respectively.<sup>19</sup>

### **The Efforts of Ahmadiyya Community to maintain or struggle Religious Harmony in strengthen their Religious Existence**

In this case of Ahmadiyah, the society supposed to have any responsible based on social respond that Ahmadiyah was one of the legal sect in Islam. So, their existence must be protected by the Government based on law Formulation in Indonesia. Ahmadiyah legally exist to have real existence by their own community not by marginalized them which usually done by a certain group of religious sect. Ahmadiyah as part of civil society must be protected in any circumstances. So, the point is how we do integrate and interconnected that

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<sup>18</sup> Ibid.,

<sup>19</sup> Interviewed Result with Pak Mulyono, Ahmadiyah *Lahore Leader*, Yogyakarta.

religiosity always have mutual connection to the social construction in society. Religiosity was constructed by the existence of its society in creating peacefully condition.

Self Policing (*Community Policy*); concerning with the Government Policy that Ahmadiyah Community existed since in long time ago. The controversial issue among Ahmadiyah community would resulted the Governmental Policy within this community than rather than it, Ahmadiyah must have protection from any part of Policy Leader including the Government policy or even the policy from every religious leader in built inter-religious dialogue that can decreased conflicts in any circumstances based on Human authority and how we care to the other religious belief in such differences can completed each other in achieving peacefully condition.

Elite Integration; Elite integration also has influenced on creating peace building concept. This process of elite integration has divided between the leaders of religious to control all the religious adherents in order to have mutual understanding at the same condition.<sup>20</sup>We realize that Ahmadiyah community essentially follow what their religious leader commands, that's why in this theoretical approach Ahmadiyah must position ate in social order to realize the social pressure to a certain religious sect in order not to marginalize but to respect with others among the adherents of religious and also the role of the religious leader. Elite integration supposed to clarify detail in accepting any issue related to the development of Ahmadiyah movement itself. The Ahmadiyah community should have equal position in public sphere to have the same rights to other people in achieving and expecting for peace building efforts.

So, in performing the religious sustainability, Ahmadiyah community has also played role in order to keep their religious harmony with their own society. At least, there has some efforts which has been held by the Ahmadiyah community in achieving their religious existence with their circumstances where they sometimes marginalized in certain part of social order.<sup>21</sup>Ahmadiyah community has prepared that the condition which sometimes limits their capabilities in their existence because their social condition. But, whatever it happens the Ahmadiyah community as representatives of Ahmadiyah Community in all the places in Indonesia has participated in how to pretend their religious existence with other

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<sup>20</sup> Mohammad Zulfan Tadjoeddin, *Civil Society Engagement and Communal Violence: Reflection of Various Hypotheses in Context of Indonesia*, Politics Administration and Change, No. 42, July-December 2004, pg. 1-1

<sup>21</sup> Muta' Ali Arauf, *Interviewed Result with Ahmadiyah Yogyakarta*, 2012.

societies in order to keep religious harmony. The effort of Ahmadiyah community in achieving some goals of their daily interact with others such like by having some activities where it supports the peacebuilding goal within the Ahmadiyah Community.

Those efforts have done by Ahmadiyah community in Yogyakarta since it becomes the social issue in maintaining their religious activities. So, the writer expected that Ahmadiyah Community should be protected not only as other religious group in Indonesia but they are also regarded as community which also need protection based on Human Rights *Equality before the Law*).

### **Should Ahmadiyya' become an official Religion?**

The discourse of official religions in Indonesia is pointed out to the five big religions which is recognised for long time ago. Presumably, there would be no any space for the other religioious group or even new religious mainstream to construct their own new religion except for those 5 religions (Islam, Catholic, Christian, Budha and Hindush) which existed. In this extent, what i really inferred is that by recognizing Ahmadiyya as official religion is still within Islamic mainstream which can be considered as Islamic Sunni tradition in order how to deal with sort of Ahmadiyya community as minority's group in Indonesia become more accepted and recognized legally. Ahmadiyya should regarded as Islamic group but politically there would be a space in how to respond and even recognized their existence in a simple way by referring to Indonesian constitutionalism. According to *Karel Steenbrink*,<sup>22</sup> the Abrahamic religion (*Islam and Christianity*) is tending to dominate the system of belief as religion in Indonesia rather than the indigenous religion. In simple, what must exactly done by Government as policies maker is by recognizing the sub- religion as minority to develop as what they believe and how they can be protected by the state as implementing their religious freedom not tend to discriminate them in specific.<sup>23</sup>

By considering many things, the writer is interested in how to look at the Policies from the Indonesian Government which represented by Ministry of Religious Affairs that in some extent their policies was not neutral. However, state policies must be neutral in the constitusional bases which might not to

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<sup>22</sup> Zaenal Abidin Baqir dkk, *Pluralisme Kewargaan; Arab Baru Politik Keragaman di Indonesia*, (Yogyakarta; Al Mizan and CRCS, 2011) p.146

<sup>23</sup> Will Kymlicka and Baogang he, *Multiculturalism in Asia*; (New York: Oxford University Press, 2005) p. 52

included the certain inclination to any religious adherents (*an-Naim; State Neutrality*). The SKB 3 Menteri and UUD Penodaan Agama (*Blasphemy Law*) is regarded as a position that our constitutionalism was not neutral. The point that I would like delivered in this paper is how to accommodate the minority's group as same as the other group that they should give same rights in how to get existence in their religious practices. But, the fact that usually founded in a society is that the majority is still dominated the minority and lastly there would have a religious conflict. This fact is seems to contradict with our democratically system where majority should recognized the minority in the nuance of harmony (public sphere). An-Naim stated that democracy as national system in how to balance the differences among people is by accommodating and recognizing the minority in a right way. Not as majority is tend to sort of discriminating the existence of minority. Somehow the protection of minority is needed in accordance with the development of humanity and the law enforcement as way of achieving justice to all human kind based on human rights.

The conflict among Ahmadiyya (JAI) should be avoided and the religious peace building must be upheld to maintain religious harmony in Indonesia. As democracy as our governmentally system, so everyone can have their own perspective (*freedom of speech*) in how to deal with government policies which usually not useful in a broader sense. So, regarding with the case Ahmadiyya' in Indonesia I will be really agree since they are recognized as same as the other Islamic religious group as long as they do not have sort of Law violation in Indonesia. As long as the purpose of religious peace building, Ahmadiyya community should be protected and get protection of human rights from state authority. And may be one of way recognized them as truly official religious group such like; *NU, Muhammadiyah* which be easily existed before. Hence, the writer realizes that Ahmadiyya will be impossible in becoming official religion in term of big religions in Indonesia. At least, this paper is regarded as one solution in how to struggle the voices of Ahmadiyya *in Public Sphere* in achieving protection of human rights and religious freedom. So, official religion is meant that Ahmadiyya should be existed within the Islamic core like what have been achieved by *NU and Muhammadiyah* as Majority in Indonesia. This effort is understood as way to protect Ahmadiyya to get sort of supremacy before the law and human rights protection in Indonesia as freedom of religious life.<sup>24</sup>

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<sup>24</sup> See detail on UDHR (*Universal Declaration of Human Rights*)

#### 4. Conclusion

This paper provides an introduction to some extent that has to do with the reading of the Indonesian situation as a country where the citizens or people were religious but did not reflect the spirit of religious faiths. At any religion anywhere, as long as it is still regarded as religion, it must be taught about respecting others and respect the other religious adherents in the context of inter-religious tolerance. Violence against the Ahmadiyya community is a case study which shows that the understanding of the human rights of citizens is still very weak. At least, the guarantee as assurance in performing religious freedom in this country is the responsibility of us all and should be governed by the government policies that fit or suitable within the rule of law. State Neutrality in regulating the religious existence of every citizen is a critical discourse that must be built and implemented in a comprehensive manner through justice contents which prevails in Indonesia. Religion freedom at least should be able to accommodate the existence of Ahmadiyah community in Indonesia. Intrinsically, religious freedom is the implementation of freedom of belief and become part of the human rights (HAM) for each individual that cannot be reduced at all (*Non-derogable rights*). The fundamental basis of human rights in Indonesia has guaranteed by the Constitution of 1945 (UUD 45) and Article 4 of Law no. 39 Year 1999 on Human Rights.

An-Na'im idea of constitutionalism, human rights, citizenship has been clarifying very well in elaborating the idea of human right contested at the modern state and how should the justice for religion should be well contested. However, because these terms, and the methodology used by An-Na'im is a Western idea, so sometimes his ideas are too idealistic views without looking at the real possibility of a more empirical realm. So, sometimes it was incorrectly understood by the challengers (*Islamic fundamentalists*). Nevertheless, the idea of an-Naim at least gives a chance to look inside at the religious minority groups such as Ahmadiyah group should be positioned equally in human rights.

Considering in a very clear explanation above, Based on Human Rights point of view and the universal values in the enforcement of a dynamic society with the consideration of modern times then it should be cleared stated that the Ahmadiyya community should be exist in keeping their religious existence with no any exception. Ahmadiyya community must exist without any pressure from any side, even from the government. Ahmadiyya should be seen as part of the community in the implementation of their religiosities without incurring

the slightest element of discrimination. Countries are supposed to be neutral in the set up their citizens to exist with their religious freedom in accordance with their religious beliefs which done by every individual belief system. So, in this conclusion, according to the writer the Ahmadiyah community in Indonesia should be accepted in society with some consideration of human rights, as long as the Ahmadiyah group is not committed acts of law violation or bring up specific interventions that are considered against the existing law. Indonesia is a country based on the Constitution of the applicable law and justice values that exist. So that, the Ahmadiyya community should be legally protected by the law through the government policies that can be accepted without in any situation without contained some elements of discrimination at all.

In front, the writer has offered some steps and solution which the writer thought as an appropriate solution to enforce religious rights in Indonesia. Perhaps this solution is the solution that far today has been echoed earlier before, simply because it was considered inappropriate, not even a solution that measures such as secularization and pluralism is still difficult to be enforced. However, personally I regarded myself as a person who wants a change, the writer hopes a better situation and probably one of these steps can be accomplished by understanding at the application of secular and developed the idea of pluralism without throwing all the elements of Religion and State in totality. But rather than it, it is done in order to create a more comprehensive justice for Indonesian citizens with accept all forms of diversity or plurality which is existed. I presumably argued that in some extends we need secularism in order to main good sustainability form the state's situation. Least but not last, *the harmonizing politics* which done by the Government's policy at least it can be capable in creating some policies, mechanism in accordance with the political context of religious affairs in Indonesia. Religious freedom in Indonesia should be based on justice implementation as the main goal of Human Rights in Indonesia.

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