

Strengthening Freedom of Religion or Belief through Mediation: A Case Study of the Experience of the Indonesian National Commission on Human Rights

Ihsan Ali-Fauzi and Raditya Darningtyas
Centre for the Study of Religion and Democracy (PUSAD)
Paramadina Foundation

Abstract

After more than two decades of *Reformasi* (Reformation) that started in 1998, religious conflicts continue to occur in Indonesia, particularly over the construction of houses of worship and attacks on citizens belonging to sects considered heretical. These developments have not only disrupted harmony and damaged Indonesia's reputation as the world largest Muslim democracy, but also have undermined respect for freedom of religion or belief (FoRB). One of the most frequently used method to address these issues is mediation, which is considered to be less divisive and more effective in putting the conflicting parties on an equal footing and in finding long-term solutions.

This article analyzes the role of Indonesia's National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia*) in mediating conflicts related to FoRB. This role is worth exploring for the reason that the Commission is a state institution which holds the highest mandate in dealing with human rights issues. Besides, it has a special sub-commission on mediation which handles various conflicts including those related to FoRB and has mediated numerous conflicts related to FoRB with various outcomes. We seek to answer three questions. What are the FoRB cases which have been mediated by the Commission? How did the mediation process by the Commission ensue? To what extent did the Commission's efforts to mediate FoRB conflicts end in peace agreement and why? To answer these questions, we analyzed all of FoRB cases which have been mediated by the Commission between the year of 2013 and 2020, interviewed the national commissioners and the conflicting parties, and studied the latest literature on human rights and mediation.

We found that in general, the Commission's measures to mediate FoRB cases have been positively welcomed by the conflicting parties who were willing to engage in dialogues about their shared problems on an equal footing, even though the end result of those dialogues might not necessarily satisfy all parties. This is due to the Commission's strong legitimacy as the highest institution for the promotion of human rights in Indonesia and its broad definition of mediation, which practically positions itself as a community mediator at the national level. The two main FoRB cases that the Commission has mediated are the conflicts over houses of worships and the sectarian conflicts, mainly the persecution of the Ahmadis in Indonesia. While the Commission's mediation of the former tends to be more successful in bringing about peaceful agreements than its mediation of the later, its mediation efforts have been severely hampered by two national regulations which pose as structural obstacles in resolving these two problems.

Keywords: Mediation; National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia/The Commission HAM); conflict over houses of worships; sectarian conflict; freedom of religion or belief; Indonesia.

Strengthening Freedom of Religion or Belief through Mediation: A Case Study of the Experience of the Indonesian National Commission on Human Rights

Ihsan Ali-Fauzi and Raditya Darningtyas
Centre for the Study of Religion and Democracy (PUSAD)
Paramadina Foundation

1. Background

Although the relationships between religious groups in Indonesia are generally peaceful, certain conflicts still occur and sometimes escalate into violence. Conflicts related to the construction of houses of worship still regularly occur, especially conflicts on the construction of churches in predominantly Muslim areas and mosques in predominantly Christian or Catholic areas (Wahid Foundation 2021; Setara Institute 2022; PUSAD Paramadina 2020). Meanwhile, attacks on the members of certain religious sects or beliefs considered heretical, such as the Ahmadi community in Cikeusik (Banten) in 2011 or the Shia community in Sampang (Madura, East Java) in 2012, have resulted in human casualties, a new record in Indonesian history (Panggabean and Ali-Fauzi 2015).

These developments have not only disrupted harmony and damaged Indonesia's reputation as the world largest Muslim democratic country, but also have undermined the basic rights of citizens to freedom of religion or belief (FoRB). Civil society activists working on FoRB advocacy continue to record these developments as signs of deteriorating democratic quality and increasing intolerance (YLBHI 2020; Setara Institute 2021). Similar assessments have also been made by academics, both at home and abroad (Bagir and Mubarak 2021; Jaffrey 2020; Bourchier 2019).

In the face of these challenges, one approach to conflict resolution and strengthening citizens' rights that has been used more frequently in recent years is mediation. We draw this conclusion from observation of mass media reports and information from FoRB advocates network, even though there is no statistical data detailing this. Mediation is generally preferred because the mediatory process puts the conflicting parties in an equal position, tries to fulfil the interests of all parties, and seeks long-term solutions (Panggabean 2014). Mediation is also considered more compatible with Indonesian culture, which prioritizes deliberation and *gotong royong*¹ to solve problems (Ali-Fauzi and Darningtyas 2023).

In this context, the attempts to mediate FoRB conflicts by the National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia*, Komnas HAM) are crucial and need to be studied for three reasons. First, the Commission in post-Reformasi Indonesia is the highest state institution to promote and protect human rights. Due to this position, the Commission has a strong mandate which no other institution has. Second, in three decades of its existence, the Commission has mediated multiple FoRB cases, since mediation as a means of promoting human rights has been an integral part of it since its establishment. These two reasons are reinforced by the third, namely that the Commission's definition of mediation is very broad,

¹ *Gotong royong* is the Indonesian term which literally means mutual assistance. The term is used to describe the communal habit of Indonesians who like to help each other to reach common goal.

including the issuance of letter of warnings or recommendations to one or more conflicting parties, which effectively starts the mediatory processes as we will explain later.

To the best of our knowledge, there has been no systematic study of the Commission's experience in mediating FoRB cases. We seek to fill this gap, in the hope of understanding and evaluating the Commission's efforts and drawing lessons from it. We seek to answer the following questions. What are the FoRB cases that the Commission has mediated? How was the process of mediating these cases carried out by the Commission? To what extent did the Commission's mediatory efforts result in peaceful agreements and why?

We traced all FoRB cases that the Commission mediated between 2013 and 2020, from both published and unpublished materials. We chose these years for two reasons. First, the Commission just started to have a special procedure for mediation in 2010 (which was later updated in 2011). Second, the 2013-2020 also reflects the latest two periods of the Commission's leadership. Interestingly, in 2012-2017, the Commission had a special unit dealing with FoRB, which is useful for our analysis. To complement the Commission's reports, we interviewed some of its commissioners. When we found these materials are not sufficient, we relied on media reports to obtain the necessary details. We also interviewed the conflicting parties whose cases were mediated by the Commission. Beyond these sources, we conducted a literature review on how mediation, particularly community mediation, is utilized as a way to advance FoRB and how it relates to rights-based advocacy.

We found that in general, the Commission's measures to mediate FoRB have been positively welcomed by the conflicting parties who were willing to engage in dialogues to solve their problem on an equal footing, although the end result of those dialogues might not necessarily satisfy all parties. This is due to the Commission's strong legitimacy as the highest institution for the promotion of human rights in Indonesia and its broad definition of mediation, which practically positions itself as a community mediator at the national level. The two main FoRB cases that the Commission has mediated are the conflicts over houses of worship and the sectarian conflicts, mainly the persecution of the Ahmadis in Indonesia. While the Commission's mediation of the former tends to be more successful in bringing about peaceful agreements than its mediation of the later, its mediation efforts have been severely hampered by two national regulations which pose as structural obstacles in resolving these two problems.

This article consists of six sections. Following this introduction, the second section covers the debate on the use of mediation as a strategy to promote human rights, including FoRB, which emphasizes the importance of community mediation. It is important to discuss this at the beginning of our paper to explain the choices that the Commission made in mediating FoRB conflicts. The third section discusses the Commission's general policy on mediation and FoRB cases in particular. In the fourth and fifth sections, we discuss the Commission's experience in mediating cases related to houses of worship and cases of sectarian conflict respectively. In this section we discuss what are the FoRB cases that the Commission has mediated, how did it go, and what were the final outcomes. The two tables detailing the cases that the Commission has mediated are also available for these sections, which we put as two separate appendices. Finally, the article is closed with some conclusions and reflections.

2. Mediating Human Rights Conflicts: The Commission as a Community Mediator

In order to understand and evaluate the Commission's experience in mediating conflicts related to FoRB, first we need to review the debate on mediation as a means of advancing human rights

and on community mediation, which differs from conventional mediation. Only then we can analyze the Commission' role, as a community mediator, in advancing FoRB.

2.1. Mediation and Human Rights: Expanding the Definition of Human Rights

In general, mediation is defined as an approach in which a mutually acceptable third party supports a process for those who are in conflict to move toward resolution, improve relationships, or achieve a better situation (Kadayifci-Orellana and Maassarani 2021). Without the third party, the process would be considered as direct negotiation.

But can human rights-related conflicts be mediated? Aren't human rights absolute, while mediation requires an exchange between conflicting parties?

The above question raised the controversial "justice versus peace" debate, which put justice and peace as mutually exclusive: while human rights activists prioritize the value of justice, conflict resolution practitioners concentrate on the value of peace. As identified by Parlevliet (2010: 4), the tensions between them relates to the following four aspects: (1) strategies and approaches: adversarial vs. cooperative; principled vs. pragmatic; rigid vs. flexible; emphasis on outcome vs. emphasis on process; prescriptive vs. facilitative; (2) objectives pursued: justice vs. peace; justice vs. reconciliation; human rights protection as a requisite for establishing peace or establishing peace as a requisite for human rights protection; (3) roles played: advocate, investigator, monitor vs. facilitator, mediator, convenor; (4) principles guiding the actions: speaking out on injustice and attributing responsibility vs. remaining impartial with respect to all parties, being even-handed and not judging.

Later on, the above debate was criticized for putting justice and peace in a mutually negating position. This is because the debate generally takes place in the context of an immediate (emergency) need to stop conflict in a region that, for example, is experiencing a civil war. In such situation, conflict resolution practitioners are usually pragmatic in urging an end to violence, for example through peace negotiations, and pay little attention to human rights norms. Unfortunately, in later conceptualizations, this context of emergency is often overlooked or given only little attention.

The above criticisms arise from the view that justice and peace are essentially two sides of the same coin: since justice is part of human rights and violent conflict usually stems from injustice, injustice must be addressed for peace to not only be achieved but also *be sustained*. This latter formulation may seem to prioritize justice, but what is being emphasized here is a sustainable peace, which is only possible if the structural conditions that lead to violent conflict are addressed. That is why the term "conflict transformation" is more widely used these days, rather than "conflict resolution" or "conflict management" (Kriesberg 2009: 26-27). The notion does not only refer to communities that are in (violent) conflict or just coming out of it, but also conflict prevention and peacemaking in a wider sense.

As a result of these critiques, it is now generally perceived that the promotion and protection of human rights is essential for long-term stability and peace. There is also a widespread agreement that differences in human rights discourse and conflict transformation are better understood as challenges to be addressed on a case-by-case basis, depending on the context, time frame, and normative standards prevailing in the context of each society. The question, therefore, is not which one of them (justice and peace) should be prioritized, but rather: "What type of justice and peace should take precedence? How can the achievement of both values ...

be placed in a particular time frame, in a particular sequence, and combined in the long term?” (Albin 2009: 591-592).

In this context, the debate has also begun to move away from a rigid, legal-formal understanding of human rights which made it impossible to mediate issues related to them. While it is agreed that human rights are absolute and non-negotiable, their interpretation and implementation depend on specific political, cultural and historical contexts (Gready and Ensor 2005). Here, it is possible to utilize mediation in the fight for human rights, as the National Commission has done in Indonesia.

One of the contributions towards the expansion of the meaning of human rights was made by Parlevliet (2010), who formulates the four dimensions of human rights, namely: (1) human rights as rules; (2) human rights as structures and institutions; (3) human rights as relationships; and (4) human rights as process. The first dimension of human rights is human rights as norms or legal rules as we often understand them. The second dimension of human rights is also often discussed, namely human rights as institutional infrastructure such as the National Commission on Human Rights in Indonesia, which must be independent and have the legitimacy and capacity to promote, respect and guarantee the realization of human rights values.

However, aside from being regarded as rules and institutions, human rights also need to be seen in its other dimension: human rights as relationships. This third dimension of human rights refers to the relevance of human rights in regulating social interactions not only between the state and citizens, but also between various individuals or groups of citizens. So far, more attention has been paid to the vertical relational aspect of human rights between the state as duty-bearer and citizens as rights-holders. In fact, horizontal relations among fellow citizens also show that ordinary people have roles and responsibilities in managing social relations which respect or violate human rights (Jones 2005). In turn, this horizontal relationship will also affect the willingness of state apparatus as *duty bearers* in promoting and guaranteeing human rights, which will always take the public opinion into consideration before taking any actions related to human rights issues (Parlevliet 2010).

Finally, human rights also relate to the more structural issues like how access, protection and identity are addressed in a society. This is the fourth dimension of human rights: the human rights as process (Parlevliet 2010). This stems from the realization that the sustainability of peace depends not only on the substance of a peace agreement, but also on the process that facilitates it. A conflict resolution process that is considered flawed by one or both parties will hinder the formation of an agreement or even de-legitimize the agreement produced by the process.

The last two dimensions of human rights, that is human rights as relationship and process, indicate the need for the interpretation of human rights norms as well as their integration into broader societal values such as pluralism, tolerance, and other values that encourage recognition of the equality in all levels of society. This is crucial because the protection and respect of human rights in society cannot be done only through legal-formal approaches such as legislation, or by simply establishing the institutional infrastructure, but must also be accompanied by a broader process of internalization of human rights values.

The above conceptual contribution on the expansion of the meaning of human rights is particularly relevant for Indonesian society, where the state’s willingness in guaranteeing human rights, for example, still heavily depends on public opinion. One study on the policing of religious conflict in Indonesia shows that instead of acting decisively to enforce the rule of

law, law enforcement officials such as the police tend to calculate in advance whether their action will be good in the eyes of the public (Panggabean and Ali-Fauzi 2015). In such a situation, in addition to criticizing police officers or law enforcement officials in general, for example through naming and shaming campaigns, what must also be done is to increase their leverage in ways that are adequate and necessary so that they can be neutral and decisive in taking their actions.

2.2. Community Mediation: Identity Conflicts and Mediator's Partiality

Mediation can play an important role in achieving justice and peace as mentioned above, where the two ideals are not mutually exclusive and the meaning of human rights is expanded. Mediation is considered more effective in dealing with the cases of human rights conflicts because these conflicts involve values, such as the community's religious teachings. In such conflicts, the conflicting parties risk nothing less than the integrity of their own identity, so conflicts often lead to competitive rather than cooperative conflict behavior, where win-win solutions are harder to achieve (Hinds and Mortensen 2005; Wright et al. 2008).

In the mediation of identity-related conflicts as mentioned above, the identity of the mediators plays an important role as it relates to the resources at their disposal, their motivations for mediating, and the strategies used when mediating. Mediators who gain the trust of the parties to the conflict and are perceived as having a strong mandate and sufficient skills are often the ones who can bring about peaceful agreements and concrete problem-solving outcomes (Bercovitch and Kadayifci-Orellana 2009: 178-182).

In comparison to conventional mediation, community mediation provides a space for dialogue between conflicting members of the communities to discuss their conflicting issues in a constructive manner. Unlike conventional mediation, which seeks to resolve disputes between, for example, two countries or two companies, community mediation allows the mediator to be involved in facilitating the parties to find a common solution in accordance with the norms held by the community (Wunsttin 2001). The differences between these two types of mediation can be seen in more detail in Table 1.

Table 1 is here.

It is in this context that we would like to put the National Commission of Human Rights in Indonesia as a community mediator in the resolution of FoRB conflicts. Despite its limitations (Butt and Lindsey 2018: 179-170; Setiawan 2016), the Commission' identity plays an important role, because it is the highest state institution with a mandate in human rights protection and has in fact mediated a number of FoRB cases. If we could imagine Indonesia as a large community, as Benedict Anderson has once imagined it (1983), then the Commission would be a strategic community mediator to advance the protection of FoRB in Indonesia.

Fulfilling this mandate is not an easy task for the Commission as the issue of FoRB is a sensitive and complex one in Indonesia for several reasons. First, it is related to Indonesia's religious demography and its distribution in certain regions: while the Muslim majority (86.7% of the total population) generally lives in Western Indonesia, Christians (7.6%) and Catholics (3.12%) are concentrated in Eastern Indonesia, and Hindus (1.74%) dominate the island of Bali. This has made many FoRB related conflicts to take the form of conflicts over the construction of houses of worship, particularly of churches in Muslim-dominated areas or of mosques in Christian, Catholic or Hindu-dominated areas. Second, it is also due to the fact that the majority of Muslims in Indonesia follow the Sunni school of Islam, which sometimes rejects and deems

other Muslims who follow the Ahmadi² or Shia³ schools as heretical. This has led to multiple sectarian conflicts in Indonesia (Panggabean et al. 2010).

The abovementioned facts have caused some activists to doubt the use of mediation to resolve FoRB conflicts. As Asfinawati, a legal aid activist who has worked extensively for human rights issues, has once said concerning blasphemy cases, “the [conflicting] parties have become too ‘hardened’ in their respective positions, making it difficult to find a mediator” (Asfinawati 2014: 66).

However, therein lies the problem that needs to be studied further, as we attempt to do in this article. Unlike what Asfinawati has said, in several cases related to FoRB that we have analyzed here, the Commission can and has in fact become a mediator and the positions of the parties in these cases can and has changed. All of this suggests that we need to carefully explore and evaluate the strengths and limitations of institutions such as the Commission in mediating FoRB cases. We need to learn what are the FoRB cases which have been mediated, how does the mediation process work, and why and how were some cases of FoRB conflicts successfully mediated while others were not.

3. The Commission as Community Mediator and the FoRB Cases

The Indonesian National Commission on Human Rights is an independent institution that is at the same level as other state institutions which are tasked to carry out research, education, monitoring, and mediation of human rights.⁴ Mediation by the Commission is carried out by its Sub-Commission of Mediation which is tasked with mediations’ planning and reporting. The Sub-Commission of Mediation is daily supported by the Mediation Administration Section in the Human Rights Enforcement Administration Bureau. Aside from the Sub-Commission of Mediation, the Commission has two other sub-commissions, namely the Research and the Monitoring Sub-Commissions. In addition to relying on these three sub-commissions, the Commission also has other structures such as plenary sessions, which determine the institution’s work programs and procedures, including mediating cases.

3.1. The Commission’s Mediation Procedure

Although mediation as a method of promoting human rights has been discussed since the Commission was established, the technical guidelines for its implementation only started to be regulated in 2008 through the Commission’s Regulation on the Guidelines for the Implementation of Mediation. The Commission also only had a Standard Operating Procedure

² The Ahmadi (or Ahmadiyah) is a Muslim sect who follows the teaching of Mirza Ghulam Ahmad. Originated in India in 1889, it later divided into two groups, the Lahore and Qadian branches. While the Lahore Ahmadi only recognizes Mirza Ghulam Ahmad as a *mujaddid* (Islamic reformer), the later Ahmadi believes that he is also a prophet after Muhammad, which strongly contradicts one Islamic teachings embraced by Sunni Muslim that Mohammad was the last prophet. This is the source of Sunni Muslims’ rejection to the Lahore Ahmadis, who arrived in Indonesia in 1924 through Yogyakarta and then spread out to other areas in Indonesia.

³ The division of Muslims into the Sunni and the Shia (Shi`ah) followed the dispute over the succession to Muhammad after his death, which later acquired broader political significance. According to Sunni traditions, Muhammad left no successor and the consultation among the early generation of Muslims had appointed Abu Bakr as the next-in-line (and the first caliph). Meanwhile, the Shia believed that Muhammad had appointed Ali ibn Abi Talib, his son-in-law and cousin, as his successor.

⁴ Initially, the Commission was established by Soeharto’s authoritarian New Order regime through Presidential Decree Number 50 of 1993 concerning the National Commission on Human Rights. When Indonesia began its Reformation era (1998), the Commission became more independent as mandated in Article 1 of Law No. 39 (1999) on Human Rights.

(SOP) on mediation on 22 September 2010, which was later updated on 11 September 2011 (Komnas HAM 2010 and 2011). The Commission' SOP on mediation is quite detailed, containing 8 chapters and 48 articles, with 34 annexes, some parts of which are worth mentioning here.

Article 1 of the Commission' mediation SOP states that the definition of "human rights mediation" is "a way of resolving human rights violations that occur related to a dispute and or conflict between two or more parties, through a process of consultation, negotiation, conciliation, and or expert assessment, which then continued with negotiations to create an agreement between the parties with the assistance of a mediator." The scope of this definition is very broad, especially regarding the process, which practically opens the opportunity for the Commission to do anything in order to promote human rights norms except directly taking action against violators. This scope, for instance, allows the Commission to ask for clarification from authorities who are suspected of committing human rights violations in one area or are silent about human rights violations in their area, which can be interpreted as a reprimand against them. It is important to mention in advance here that in cases related to FoRB, the authorities have generally responded positively to the Commission' requests for clarification, although there were also some who ignored the requests.

The cases which the Commission mediate might come from within the Commission (decisions made through plenary session and recommendations from the Monitoring and Investigation Sub-Commission) and/or from outside, i.e., *a request from one of the disputing parties* that the Commission has agreed to mediate (Article 5, italics added). This point has been one of the keys to the Commission' steps in implementing mediation so far, as it allows the Commission to start its mediation procedure even if one of the parties does not want to. As mentioned above, the Commission usually starts by sending a letter requesting for clarification. Meanwhile, although all cases that come to the Commission' desk are called "disputes" (*sengketa*), because they are considered conflictual, not all of them are followed up to be mediated unless the complaint document is considered to be complete and contains allegations of human rights violations.

There are seven principles in the Commission' mediation as set out in the Commission' mediation SOP (Article 4): (1) the accommodation of the interests of the parties; (2) based on the willingness and agreement of the parties; (3) flexibility; (4) the discretion of the parties to participate; (5) to be oriented towards good relationships in the future; (6) closed and confidential; and (7) excellent cooperation between the mediator and all parties involved. These principles are no different from those commonly held and applied for mediation in general. However, the Commission' mediation might be questioned especially in relation to its second principle on the willingness and agreement of the parties as well as accusing the Commission' mediation of not being impartial.

In regards to the above accusation, the Commission itself has stated that, "the Commission' mediation might not be considered as impartial, in a sense that the mediation by the Commission is implemented by prioritizing the protection and fulfilment of the victims' rights" (Komnas HAM 2019: 32). This is related to the mandate of the Commission to promote human rights in Indonesia, which in turns lead us to categorize the Commission' mediation as community mediation. From our interview with Beka Ulung Hapsara, a former commissioner of the Commission HAM, we even found the impression that mediation has been the bastion of the Commission in advancing human rights since it doesn't have a direct enforcement function (interview, 08 June 2021).

The Commission has also set a quite strict timelines on how the mediation process is carried out. For example, the team working on the case must be formed no later than seven days after the submission document is received (Article 12). Or, as stated in Article 13 of the SOP, the team working on the dispute must have reached a conclusion on whether the case should be dismissed or proceed to mediation no later than five working days after the formation of the team. The Commission' procedures also detail the things that the team must do if they have to conduct fieldwork, such as: (1) check the object of dispute; (2) meet with the parties related to the object of dispute; (3) search for and collect documents related to the object of dispute; and (4) ascertain the principals of the disputing parties.

Like other types of mediations, the Commission' mediation process consists of several stages from the pre-mediation, mediation and post-mediation. If necessary, each of these stages can be conducted more than once. However, it is important to note that disputes can also be resolved without going through all stages. If, for example, a case is managed to be resolved during the pre-mediation or mediation stage, the case will be considered closed. A dispute can also be resolved only through consultation or the issuance of a letter of recommendation from the Commission, without the need to hold a mediation meeting and/or produce an agreement (Komnas HAM 2016: 108-109).

While mediating sensitive cases such as on the issues of FoRB, the abovementioned flexibility in conducting the mediation process has helped the Commission to place the disputing parties in equal positions and enable dialogue between them, which would be difficult to achieve without the help from the Commission. This was acknowledged for example by Fitria Sumarni, the Chairperson of the Advocacy Team of the Indonesian Ahmadi Congregation (Jamaah Ahmadiyah Indonesia or JAI), whose cases have been mediated by the Commission:

We started to learn that there is a way that might be "safer" [in solving our problems] ... that is by making non-litigation efforts for example by submitting a report to the National Commission of Human Rights. The goal [was] pre-mediation and mediation. That is something we are grateful for. We can meet [with the parties in dispute with us] in a respectable space. Like in Jambi, we met in the governor's room ... Then, in Parakan Salak [Sukabumi], we met at the Commission office. There were representatives from the legal department of the Sukabumi district government, the chief of police, and the Ministry of Religious Affairs. We could have a discussion with neutral third person whom we both respected. (Interview with Sumarni, May 26th 2021)

Finally, the Commission assesses the outcome of the mediation by whether or not the process led to peace agreement. If so, the Commission mediator will register the agreement at the district court in the area where the mediation took place. Furthermore, the Commission team will monitor the implementation of this peace agreement, among others by requesting reports from the parties that the agreement has been realized (Articles 31-36). If there is a breach of agreement by one of the disputing parties, the other party can report back to the Commission. Then, based on this report, the Commission will reprimand the party who breached the agreement, for example by issuing a letter reporting this matter to the Head of the District Court where the mediation was held.

It is worth noting here that in conducting its mediation, the Commission considers the various steps which are taken towards reaching peace agreement to be important. Hairansyah, one of the commissioners, explained:

The mediation process is not completed in one go, several meetings are required. We must first see which goals are most likely [to be achieved] For example, maintaining positive conditions first, or maintaining a space for dialog. That alone is already a direction towards peace ... and then we go to the next step.... Because, if we are forced to do it all at once [to get to the core of the problem], we will definitely not find [an agreement] and in the end we will not achieve peace. (Interview, August 10th 2021)

In other words, the performance indicators of the Commission' mediation is not a one-off success or failure, but the extent to which the mediation process is able to open up the space for communication between the disputing parties. Referring to the case of the ban on the right to worship for the Ahmadi in Jambi as an example, the Commissioner Hapsara explained:

Perhaps [the criteria] is not success or failure, because mediation is a multistep process. For example, what was done [in the case of] the Ahmadi congregation in Jambi. In that case, there is now a mutual agreement that the Ahmadi should be able to perform their worship, no more security threats and disturbances, and the parties guarantee not to disturb or provoke each other. This is only a partial [achievement] ... when we talk about the fulfillment and respect of human rights. This [process] still has to be improved ... so that there is really a stronger commitment from policymakers to be able to protect the Ahmadi in Jambi. (Interview, 18 June 2021)

The aforementioned steps reflect the Commission' aspiration to ensure that its mandate to promote human rights can be carried out effectively through mediation and that the mediation process actually leads to concrete results. However, the Commission mediation SOP is quite restrictive because, for example, only the commissioners of the Commission are allowed to act as mediators (Article 2). In practice, this provision severely limits its mediation capacity, because while the number of commissioners is limited, the number of cases that must be addressed is quite large. This issue has always appeared in the Commission' annual reports.

3.2. The Mediation of FoRB Cases

The way the Commission mediates FoRB cases is no different from the way it mediates the cases on other issues such as labor, eviction, health, and so on. However, as shown in Table 2, the number of FoRB-related cases mediated by the Commission is very small compared to the other cases.⁵ The number remained generally low between 2013 and 2017, despite the fact that the Commission had a special task force dealing with the issues of FoRB, which among others issued special annual reports on FoRB cases (the Special Rapporteur on FoRB 2016 and 2017).⁶

Table 2 is here

Looking further, in the last seven years between 2013 and 2020, the average number of FoRB cases mediated by the Commission is three, with the highest number of cases happening in

⁵ In various Commission reports, the issues of FoRB are adressed using several names such as: "religious issues," "freedom of religion and belief issues," "intolerance issues," or "extremism issues." We have included and counted all of them in our analysis.

⁶ In the current period, the special rapporteur and task force on FoRB was eliminated for two reasons: (1) The Commission wants to mainstream the case handling of FoRB cases just like the other non-FoRB cases; and (2) the case handling on FoRB is returned to the monitoring and investigation function, as well as the mediation function (interview with Hapsara, June 18th 2021).

2016, with nine cases. In the same period, the three most prominent issues were cases on land dispute or agrarian conflicts, labor, and eviction.

It is unclear why the number of FoRB cases mediated by the Commission is so low in comparison to the other cases. The Commission's own reports never discuss it.

We suspect that the following three interrelated factors have contributed to this. First, since the majority of Indonesia's population is Sunni Muslim, the issue of FoRB rarely affects them due to their status as the dominant group. Muslim groups in Indonesia who are vulnerable to become the victims of FoRB violations are those who are considered heretical by the Sunni Muslim majority, such as the Ahmadiyyah. Minority groups like the Ahmadiyyah are the ones who complain about the violations of their FoRB to the Commission and are then mediated.

Second, compared to the other issues of people's daily needs, the issue of FoRB is one that is not or less popular among the average Indonesian citizen and therefore receives very little attention. This is further reinforced by the fact that the majority of Indonesians are Muslims, who may not feel the need to defend other religious groups who are the victims of FoRB violations or even forbid them to do so due to religious reasons, which also become one source of intolerance in Indonesia (Mietzner and Muhtadi 2019). For this combination of reasons, the issue of FoRB violations in Indonesia will only be campaigned for by a small group of FoRB activists or religious minorities who are suffering. This explains why the Commission accepts complaints about the conflicts on houses of worship and mediates these cases, particularly when the case has damaged Indonesia's international reputation such as the case of the Indonesian Christian Church (GKI) Yasmin in Bogor City, West Java.

Third, the Commission itself admits that it has not done enough in publicizing the fact that mediation is one of its mandates, including for the issues of freedom of religion or belief (interview with Hariansyah, 10 August 2021). However, this in itself would not necessarily guarantee more requests for mediation, as the requirements for cases to be mediated are not easy, as mentioned before.

Nevertheless, out of all FoRB cases mediated by the Commission, there are two categories of cases which stand out: conflicts on houses of worship and sectarian conflicts. In the following sections, we will analyze the Commission's experiences in mediating these two types of conflict.

4. The Commission's Experiences in Mediating Conflicts over Houses of Worship

In our investigation, we found that the Commission mediated 21 cases on houses of worship between 2013 and 2020. This number does not include cases related to mosques belonging to the Ahmadiyyah community, which will be discussed later in a separate section because the root of the problem is not the existence of the mosque itself as a house of worship but the existence of Ahmadiyyah as a whole as a sect which is considered heretical (see below).

As shown in Table 3 (Annex 1),⁷ almost all of the above cases, or 18 out of 21 cases, are originated from the complaints received by the Commission and approved to be mediated. This fact is important to highlight because it could mean that the Commission may not have been aware of these cases if they had not been reported in the first place.

⁷ Table 3 is not included in this article due to its large volume, but it is accessible on PUSAD Paramadina's website through the following link: <https://www.paramadina-pusad.or.id/memediasi-konflik-konflik-keagamaan-di-indonesia-studi-kasus-pengalaman-komisi-nasional-hak-asasi-manusia/>

Moreover, almost all of the cases on house of worships, 19 out of 21 cases to be precise, were related to the construction of churches and mosques. Interestingly, the conflicts related to the construction of churches generally took place in the Muslim-majority regions, particularly Aceh (Banda Aceh City and Aceh Singkil Regency) and West Java (Bandung City, Bekasi Regency, Bogor City, Cianjur Regency, and Sukabumi Regency). It is important to add that in some of these places, there are more than one church which were involved in the conflicts, particularly in Aceh Singkil (24 churches), Banda Aceh (five churches), and Bandung (six churches). Meanwhile, conflicts related to the construction of mosques generally occurred in non-Muslim populated areas such as in North Sulawesi (Manado City and Bitung Regency), Bali (Denpasar City), East Nusa Tenggara (Kupang City), Papua (Jayawijaya Regency), and West Papua (South Manokwari Regency).

This data strengthens other research findings that show similar trends (eg. PUSAD Paramadina, 2020). This indicates that the majority religious group in one particular place is emulating bad practices of another majority religious group in another region by making it difficult to establish houses of worship for minority groups in each place. One possible reason for this is a desire to show solidarity: the majority group is concerned about the fate of fellow members of their religious groups who are minorities elsewhere so they choose to suppress the rights of the minority groups to establish houses of worship in their own areas. For example, certain Muslim groups in Aceh or West Java were objecting the construction of churches in their areas on the grounds that certain Christian groups in Papua also refused or made it difficult for Muslims to build mosques. On the other hand, certain Christian communities in East Nusa Tenggara rejected the construction of mosques on the grounds that the establishment of churches were also made difficult in several locations in West Java. In a broader context of Indonesia, this discriminative action can also be interpreted as protest against the arbitrariness of the majority religious group in the areas where the government took no action. However, another possible explanation might be very local, namely the desire of certain local politicians to win regional elections by mobilizing the votes of those who share their intolerant religious belief by the denying the rights of religious minority groups (Panggabean and Ali-Fauzi, 2015).

In one way or another, almost all of the cases mediated by the Commission above were related to the 2006 Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs (PBM 2006) on three key issues: (1) the duties of regional heads in maintaining religious harmony; (2) the empowerment of the Religious Harmony Forum (FKUB); and (3) the establishment of houses of worship. In the section on the establishment of houses of worship, PBM 2006 states that the following requirements must be met in order to establish a house of worship: (1) a list of names and identity cards (KTP) of 90 prospective users of the house of worship, authorized by officials in accordance with local regional boundaries; (2) a list of names and identity cards of 60 members of the local community who agree to the construction of the house of worship, authorized by the village head (*lurah*); (3) a written recommendation from the local district or city Ministry of Religious Affairs office; and (4) a written recommendation from the local district or city FKUB. For the fourth requirement, the recommendation must be made through a deliberation or consensus and not through voting. PBM 2006 also states that if the requirements in the form of support from the surrounding community are not met, the government is obliged to find an alternative location that will be used for the construction of the house of worship.

In practice, these rules are not clear nor binding enough to be implemented. The provision of 90 users and 60 supporters proven by ID cards, for example, is often problematic because a person's ID card can be obtained through various means including fraud. In addition, while in

some places this provision can provide legal guarantees when there is rejection, in many other places this provision is often weaponized to make it difficult to build a house of worship, just like what happened in Bogor City with GKI Yasmin (Panggabean and Ali-Fauzi 2015). This problem became more complex when the chairman of FKUB issued a recommendation to build a house of worship without the consent of other administrators, which violated the provisions of PBM 2006, as found in the case of Nur Musafir Mosque in Kupang City (Ali-Fauzi 2019). This is why cases related to houses of worship are not easily resolved, especially when there is a temptation to politicize the case for certain purposes, such as winning the local election or *Pilkada* (Rahmat 2021: 11).

However, conflicts over houses of worships which have been mediated by the Commission are not all related to the requirements of the number of users or supporters, but are also related to the location where the houses of worship will be built or expanded. This is for example what happened with the development plan of the Jabal Nur Mosque, Adventist Church, and Pentecostal Church in Indonesia (GPDI) in Manado City (2016), which was initially opposed and the case was mediated by the Commission. The case was finally resolved when the Manado City Government promised to provide new locations for the three houses of worship. Cases like this also occurred in Kupang City, where the plan to build the Darul Hidayah Mosque in East Kupang was finally implemented along with four other houses of worship.

In some other cases, the offer of a new location does not guarantee a solution, as there is a possibility that the offer will not be accepted by the house of worship's construction committee. This is what distinguishes two high-profile cases in West Java that the Commission also mediated, namely the GKI Yasmin case in Bogor City and the Filadelfia Christian Batak Protestant Church (HKBP) case in Bekasi Regency. Although long in limbo, the development of the two cases have shown different dynamics: while the GKI Yasmin permit has been issued and the church has now been built, the HKBP Filadelfia case has yet to see the light of day. According to Jacky Manuputty, General Secretary of the Association of Churches in Indonesia (PGI), this is because while the GKI Yasmin development committee accommodated the Bogor City Government's offer to build the church in a new location, the HKBP Filadelfia development committee rejected the same offer from the Bekasi Regency Government (interview, 04 October 2022).

Beyond these general patterns, the Commission has also mediated cases where the construction of a church was rejected by local Christians from different Christian denominations. This happened, for instance, in the case of the Yahweh Holy Spirit Leadership Church in Kupang City, East Nusa Tenggara (2016-2020). The Commission has also mediated a case on the destruction of a house of worship belonging to the followers of Sapto Dharmo in Rembang Regency, Central Java (2016). The Commission's mediation of these two cases resulted in peace agreements and the problems were resolved.

In mediating the abovementioned cases, the Commission would first approach the local government (*pemerintah daerah*) at the city or regency level, depending on where the case occurred. This is because when a violation of the right to establish a house of worship occurs, the most relevant and responsible government is the city (*pemerintah kota*) or regency government (*pemerintah kabupaten*), as stipulated in PBM 2006. Interestingly, while almost all local governments responded positively to the Commission's move, there were also local governments which chose to ignore the Commission's correspondence.

The local governments' support varies from simply not covering up the problem, to providing explanations when requested, to bringing the disputing parties to mediation, to providing

necessary support towards the complete resolution of the case. One of the best examples of local government being supportive was shown by the Kupang City Government in the Nur Musafir Mosque case (2015). In this case, with the support of the Commission, the Kupang municipal government not only encouraged the relevant officials to find a solution, but also assisted the mosque construction committee to complete the requirements set out in the 2006 PBM. The mayor even urged that the issue be resolved before the next round of local elections began so that the case would not be used for political gain. Thanks to these measures, the long-deadlocked case was resolved in a relatively short time (Ali-Fauzi 2019).

In another case such as the GKI Yasmin dispute in Bogor City (2008-2021), where a peace agreement was finally reached, the Commission was not directly involved as a mediator but actively encouraged and monitored the settlement through direct negotiations between the Bogor City Government and the church construction committee. This was acknowledged by the Mayor of Bogor City in public and in a close meeting attended among others by Beka Ulung Hapsara, a member of the Commission.⁸

Meanwhile, local governments' indifference to the Commission' mediation efforts appeared in the form of trivializing the problems, even accusing the Commission of "deliberately looking for troubles." When the Commission wanted to mediate the case of Musalla As-Syafiiyah in Denpasar (2015), for instance, the Denpasar City Government did not welcome it and considered that the problem was actually minor and not comparable to the good practices that generally take place in the region, so "there is no need to exaggerate" (Rahmat, 2021: 8-9).

Overall, the results of the Commission' mediation for the cases related to houses of worships vary and some of them have been mentioned above. However, the trend is quite clear that church-related cases in predominantly Muslim areas (such as in Aceh Singkil District, Banda Aceh City, and several places in West Java) are always difficult to mediate. In Aceh Singkil, the fate of the cases involving quite a number of churches continues to be in limbo until now, even though the Commission' mediation efforts have been supported by both the Aceh Provincial Government and the Aceh Singkil Regency Government, including by bringing in officials at the most local level of government to find a resolution (Special Rapporteur on GBV 2017: 31-40). This is in contrast to mosque-related cases in non-Muslim-majority areas such as Kupang City, Manado City or Papua Province, which are generally well resolved.

In regards to the final outcome of the Commission' mediation, aside from the role of the local government, it is also important to note the role of civil society such as faith-based organizations and other organizations advocating for FoRB in supporting the efforts of the Commission and the local government. The role of such institutions has been mentioned above in the mediation of the GKI Yasmin case in Bogor City. Another example can be seen in the Nur Musafir Mosque case in Kupang City, where the efforts to resolve the issue by the Commission and the local government received strong support from the Synod of the Masehi Injili in Timor Church (GMIT) and peace activists who are members of the Kupang Peace Maker Community (KOMPAK) (Special Rapporteur 2016: 27-28; Ali-Fauzi 2019: 181-182). Such organizations can strengthen the position of vulnerable groups in defending their rights and negotiating long-term solutions to overcome their various struggles. Their involvement is

⁸ One of the authors, Ihsan Ali-Fauzi, attended this meeting, which took place in Bogor on June 6th, 2021. He was invited to this meeting by the Mayor of Bogor and the GKI Yasmin Construction Committee. They sought the support and supervision from institutions working on FoRB, including the National Commission of Human Rights and PUSAD Paramadina, before they announced their agreement a few days later.

crucial in urging governments at the city/district, provincial and even national levels to resolve the disputes fairly, so that the governments do not succumb to the dictates of intolerant groups.

5. The Commission' Experiences in Mediating Sectarian Conflicts

From 2013 to 2020, the Commission mediated 23 cases of sectarian conflicts. Sectarian conflict here is defined as conflicts which are triggered by the perception that a certain sect is spreading heretical (and misleading) teachings. Since those teachings are believed to be a danger and/or disturbance to the society, the government intervenes in the management of that teaching in order to maintain social harmony. In turn, because government regulations contain elements of vagueness or indecisiveness, they can be interpreted and/or applied in a non-uniform manner and potentially violate the rights of vulnerable groups.

Similar to the cases on house of worship, the cases on sectarian conflict which have been mediated by the Commission are almost entirely sourced from public complaints (21 out of 23 cases), as shown in Table 4 (Appendix 2 to this article). The only two sectarian cases mediated by the Commission which originated from the Commission' own monitoring were big cases like the displacement of the Ahmadi residents in Transito, Mataram, West Nusa Tenggara, and the displacement of Shia residents from Sampang, Madura, to Sidoarjo, East Java (see further below). All of this indicates that it is crucial for citizens to submit their complain to the Commission so that the Commission is aware of their cases and takes part in handling them.

Importantly, most of the above cases involved the Indonesian Ahmadi Congregation (JAI) (12 out of 23 cases). This is not surprising as the Ahmadis are the most vulnerable to stigmatization and accused of heresy. This began with the government's move to issue the 2008 Joint Ministerial Decree of 3 Ministries on the Ahmadis, which opened up many interpretations that led to discrimination.⁹ While not explicitly dissolving the Ahmadis or restricting their worship activities, the decree contains, for example, the disparaging statements such as this: "Warning and ordering JAI's followers, members, and/or leaders, as long as they claim to be Muslims, to stop spreading the interpretations and activities which deviate from the main teachings of Islam, namely the spread of ideas which recognize the existence of prophets with all their teachings after the Prophet Muhammad SAW." This statement is also vague, especially the words "stop spreading the interpretation," which can be interpreted in a wide range of ways. According to Yendra Budiana, Press Secretary and Spokesperson for the JAI, the Joint Ministerial Decree has contributed "to the birth of more than 30 regional regulations that trigger intolerance" and "is the cause of repeated brutal attacks on Ahmadi Muslims" (Prabowo 2021).

The type of the Ahmadi-related conflicts mediated by the Commission are quite diverse, but the most common are the closure, sealing, even destruction and burning of Ahmadi mosques or the prohibition of worship or activities in these places. These cases occurred mostly in West Java (Depok City, Banjar City, Sukabumi Regency, Ciamis Regency, Kendal Regency, and Subang Regency) at different times, but also in Bukit Duri (South Jakarta) in 2015 and 2016. Another type is the banning of the annual gathering (*Jalsah Salanah*) of the Ahmadi congregation in Sarolangun Regency, Jambi (2015-2016), and the threat of eviction in Bangka Regency, Bangka Belitung (2015-2016). In these cases, the Joint Ministerial Decree on the Ahmadis has always been used as a reference for waging the conflict.

⁹ The document's official title is "Joint Decree of the Minister of Religious Affairs, Attorney General, and Minister of Home Affairs, on Warnings and Orders to Followers, Members, and/or Leaders of Jemaat Ahmadiyah Indonesia (JAI) and General Society" (2008).

The Commission' reports indicate a strong impression that these cases are difficult to mediate. Although the local governments generally paid enough attention to the Commission' mediation efforts, the end result was never satisfying, even though the case was being handled for a long time. One example is the case on the ban on the activities of An-Nur Mosque in Bukit Duri, South Jakarta. The complaint on the ban had been received by the Commission since April 2015. In June and July 2015, the ban was reinstated and even escalated to violence with the destruction of the mosque gate. From August 2015, the Commission has continued to mediate this case in various ways, including asking for clarification from the South Jakarta City Government and pushing for a dialog, but no concrete agreement has been reached.

This model of mediation in the Ahmadi cases almost always happens everywhere. The best concrete result that the local government is usually able to provide is arranging temporary worship facilities and security when the worship takes place. Another alternative solution is for the Ahmadi residents themselves to unseal the mosque and start using it for worship. However, in some cases, the sealing is re-imposed and worship activities in the mosque are stopped, as exemplified recently in the case on Al Hidayah Mosque in Depok City, West Java.

Nevertheless, one of the Commission' mediation cases related to the Ahmadis has resulted in a peaceful agreement and tangible results, namely the case on the land use permit extension (*Izin Pemakaian Tanah* or IPT) owned by JAI in Surabaya, East Java, which includes the use of An-Nur Mosque. The Commission received a complaint about this case in February 2018, which stated that the case was stalled because the Surabaya City Building and Land Management Office was still waiting for recommendations from central government in regards to the Ahmadis. Armed with this information and by partnering with the Ombudsman of the Republic of Indonesia (ORI), the Commission mediated the case by inviting Surabaya City Government and JAI Surabaya. This process resulted in a mutual agreement that the IPT would be extended under the condition that the An-Nur Mosque should be open for public or not exclusively used only by the Ahmadis even though the mosque's daily operations are managed by JAI Surabaya (ORI 2021: 16-18). In this case, the 2008 Joint Ministerial Decree on the Ahmadi was not tampered with by guiding each party to lower both of their expectation and demands so that they managed to find a middle ground.

We mentioned above that the Commission also mediated the case of Ahmadi refugees in Transito, Mataram, West Nusa Tenggara. This case began in 1998-1999, but recurred in 2002, and its mediation process became more difficult after the issuance of the 2008 Joint Ministerial Decree. The Commission has long monitored this big case aside from following up on the submitted complaint. From the beginning, the Commission found elements of human rights violations, because the rights of the refugees were not fulfilled, including their rights to access public registry services. In April 2016, the Commission tried to mediate this case, by creating a roadmap for resolution, urging relevant parties to fulfill the rights of refugees and facilitating dialog between the parties. In this process, the Commission involved the victims, West Nusa Tenggara Provincial Government, Mataram City Government, and the National Police. While mediating these cases, the Commission primarily pushed for the fulfillment of the most basic rights of the refugees, especially access to administrative and civil registration services. Currently, the rights related to the administrative and civil registration for the Ahmadi residents have been restored, but other rights have not.

The difficulties in accessing civil administrative services were also experienced by Ahmadi residents in Manislor, Kuningan Regency, West Java, although the anti-Ahmadi conflict there did not escalate into violent. When the Commission started mediating this case in July 2015, they found that some local residents opposed the inclusion of the word "Islam" as the religious

identity of the Ahmadi followers by referring to the 2008 Joint Ministerial Decree. The Kuningan Regency Government also stated that they had asked the Ministry of Home Affairs about this matter, but still did not receive a firm response. The Regency Government even asked the Commission to handle this problem with the Ministry of Religious Affairs. Although the exact policy regarding this issue remains unclear, the rights to access the administrative and civil services of the Ahmadi residents were later fulfilled after the Commission mediated the parties with the support of the Regency Government and other institutions such as ORI. The Commission continues to monitor this case until now.

Another similar case that the Commission has mediated is that of Shia refugees in Sidoarjo, East Java. They fled as a result of the anti-Shia sectarian conflict in Sampang, Madura, in 2013. The Commission found elements of human rights violations and is trying to help resolving it through various mechanisms. In these efforts, the Commission involved and/or cooperated with the East Java Provincial Government, Sidoarjo Regency Government, East Java Police, the Shia victims, and a number of NGOs. In November 2016, the Commission received information that some refugees were able to access civil registration services and return to their places of origin.

In addition to the above cases on the access to administrative services, the Commission also mediated three other anti-Shia sectarian cases, namely: (1) a case of violence triggered by anti-Shia banners at the Az Zikra Mosque in Sentul, Bogor Regency, West Java (2015); (2) the case of the anti-Shia Declaration of Serambi Mekah in West Sumatra (2016); and (3) the case of the prohibition of Ashura Day celebrations for Shia residents in Bogor City, West Java (2015). In mediating these cases, the Commission received very little support from the local government or police. For instance, when the Commission requested a meeting with the Chief of Bogor Police Chief to ask for clarification on the Az Zikra case, the request was completely ignored. Meanwhile, in the latest case, the Governor of West Sumatra even responded to the Commission's reprimand by stating that the Serambi Mekah Declaration was not a form of provocation, but a form of responsibility of the ulama to guard the faith of Muslims.¹⁰

Apart from the anti-Ahmadi and anti-Shia sectarian cases, the Commission also mediated five conflicts related to the followers of other sects accused of heresy, namely: (1) the case of former followers of the Gafatar (2016); (2) the case of intimidation against the family of Tengku Ayyub in Bireun, Aceh Province (2015); (3) the case of alleged mobilization of religious conversions in Wonosobo Regency, Central Java (2015); (4) the case of the ban on the International Society for Krishna Consciousness (ISKCON) even in Bali, Indonesia (2021); and (5) the case of the ban on the Aji Saka sect worship activities in Tangerang City, Banten (2015), due to the allegations of blasphemy against Islam. The Commission's mediation of these cases resulted in peaceful agreements except for the case on Gafatar.¹¹

¹⁰ The declaration states that Minangkabau must be cleaned from Shia followers. See the report of the Regional Office of the Ministry of Religious Affairs of West Sumatra, "Submission of the Serambi Mekah Declaration Took Place at the Regional Meeting of Sawahlunto Indonesia Ulama Council (MUI)," 19 April 2016, <https://sumbar.kemenag.go.id/v2/post/22972/penyerahan-deklarasi-serambi-mekah-warnai-musda-mui-sawahlunto.html> (access 29 January 2021).

¹¹ Accused of spreading heresy, Gafatar members have been persecuted, the largest of which occurred in East Mempawah Regency, West Kalimantan, in January 2016. This year the government also issued a 2016 Joint Decree of the Minister of Religious Affairs, Minister of Home Affairs and Attorney General on Gafatar which ordered former Gafatar members to stop their activities that are considered as deviation from the basic teachings of Islam. Based on complaints from former Gafatar members, the Commission expressed the opinion that this was a form of state intervention that went too far into the religious rights of citizens. However, it is unclear if this kind of Commission's pressure has any effect on the fate of former Gafatar members.

How did the local governments respond when the Commission was mediating these cases of sectarian conflict and what was the outcome? Although we have briefly talked about some of them above, here are the general patterns.

For the anti-Ahmadi related conflicts, local governments generally welcomed the Commission's efforts, although this did not necessarily result in a peace agreement and tangible solutions. In this case, the existence of the 2008 Joint Ministerial Decree on the Ahmadi becomes a structural obstacle for the Commission and local governments who aim to resolve the conflicts. We get the impression that while local governments are disturbed by the occurrence of these cases, they are ultimately unable to do anything about it. The solutions so far have been to view and depict the Ahmadis as ordinary Indonesian citizens whose most basic rights must be fulfilled, as we saw in the resolution of cases where Ahmadi citizens were prevented from accessing administrative and civil services in Sidoarjo and Kuningan, or to lower the expectations of the parties, as we saw in the case of the Ahmadiyah IPT extension in Surabaya City.

In such situations, the Commission and the local governments often do not have enough support to mediate the anti-Ahmadi conflict, except from a handful of FoRB activists who loudly speak out but are always or often ignored. Religious communities in general, including large organizations such as Nahdlatul Ulama and Muhammadiyah, have not taken any active stance in regards to the above decree. Some of them even openly support it, as shown by the Indonesian Ulema Council (MUI) (Olle, 2009). In the midst of this, the central government has taken no significant steps, although its representatives have occasionally expressed regret at the persistence of these cases, perhaps because their international exposure has damaged Indonesia's reputation as the world's largest Muslim nation which often claims to be tolerant.

Meanwhile, in the mediation of anti-Shia conflicts, the Commission's efforts are often underestimated by local governments and security forces. This is possible due to the consequences received by the victims are not as severe as those received by, for example, victims of anti-Ahmadi cases, so the public outcry are not as loud.

Finally, in mediating other sectarian conflicts which do not involve the Ahmadi or the Shia, the Commission's efforts seem to have gone more smoothly and yielded more results. This data shows that even when it comes to religious conflicts, these conflicts can still be resolved because it is the human beings who interpret the teachings of any religion and carry them out on a daily basis, therefore reaching consensus and mutual understanding for the common goods in the case of religious conflicts are not impossible to achieve.

6. Conclusion and Reflection

From the above discussion, we wish to highlight several key conclusions. While discussing them one by one, we will also discuss the policy implications of these findings in strengthening FoRB advocacy through the Commission's mediation or other mechanisms in the future.

First, the number of cases on FoRB related conflicts mediated by the Commission is very small in comparison to other cases and were almost entirely sourced from public complaints. This conclusion suggests that communities need to continuously report the cases of FoRB violations that they experience or know about, without which the Commission may never be aware of them, let alone takes an interest in them. In a broader context, the submission of complaint in itself can be considered as an important promotion of FoRB which can be a push for the resolution of the conflict. This implies that those who are vulnerable to becoming victims of FoRB violations should be assisted in increasing their capacity to prepare the necessary

paperwork to submit a public complaint to the Commission. Moreover, the Commission also needs to inform the general public that it can help resolve FoRB-related cases through mediation, as the small number of cases may be due to the lack of awareness that the Commission has a mechanism to resolve conflicts through mediation.

Second, although submitting a report of FoRB violations to the Commission does not guarantee the resolution of these cases, the Commission's efforts to mediate the various cases have been relatively successful in bringing the parties together in an equal footing and with mediators who are mutually respected. This is evident from the testimony of Fitria Sumarni, the Chairperson of the JAI Advocacy Team, who had several cases mediated by the Commission.

These achievements were made possible by the Commission's strong legitimacy and mandate, which made its efforts to mediate conflicts generally well-received by government officials and the conflicting parties. This fact also shows that the notion of the Commission as a community mediator in Indonesia is not only operational at the practical level, but is also necessary for a more focused cases mediation.

While there may be an impression that the above conclusion is a simple, self-evident fact, the reality is far more complex: there are still government officials or conflicting parties who ignored the requests from the Commission without any consequences. In our view, they did that not because they are unaware of their obligation to protect the rights of their citizens, but rather because they are reluctant to go against public opinion which tends to favor the majority, as mentioned above. Moreover, they can also get away with it. In the context of Indonesia's democracy, going against public opinion is a disincentive to any politician who intends to win an election. This is no longer a problem of the Commission, but of Indonesia as a whole.

Nonetheless, the Commission's achievements as mentioned above are also possible due to the broad definition of mediation in its SOP, which includes stages such as facilitation and negotiation. This is what has prompted the Mayor of Bogor, for instance, to resolve the case on GKI Yasmin: although he did so through direct negotiations between himself and the church construction committee, he asked the Commission for support and the Commission provided it. In this case, the Mayor of Bogor did not object to the Commission which was urging him to resolve the GKI Yasmin case while also utilized the Commission's authority to increase his bargaining power and leverage when dealing with public opinion who opposed his policy.

The Commission's efforts in conducting mediation are not unique to Indonesia. Several Human Rights Commissions in other countries such as Australia, New Zealand, and Fiji also have the alternative dispute resolution (ADR) mechanisms with varying degree of the third party's level of intervention. They can choose mediation as one of the ADR methods. The approach in third party involvement or mediation can be categorized from facilitative to advisory. For instance, although both involve third parties and take place outside of the court process, the ADR process in Fiji is said to allow the third party to provide expert opinions to resolve conflicts rather than the more restricted role of third parties in the case of the Human Rights Commission in Australia (Raymond, 2006). In this sense, Indonesia's The Commission resembles Fiji's Human Rights Commission more than Australia's.

Third, most of the FoRB conflicts mediated by the Commission are conflicts on houses of worships, particularly over the construction of churches in Muslim-majority areas and over the construction of mosques in Christian-majority areas, and sectarian conflicts, particularly over the Ahmadi communities in Indonesia. In regards to the locations where conflicts on houses of worships take place, the data indicates weak national ties among some Indonesians, where a

dominant religious group in certain areas imitate dominant religious groups in other places to limit the religious rights of the minority groups. There is mutual threat and revenge here instead of tolerance and cooperation (Panggabean and Ali-Fauzi 2015). This shows the need to continue to increase the solidarity among the people, as the continuation of these cases will only further undermine the feeble solidarity. This is also an issue of Indonesia's overall nation-building, which clearly goes beyond the mandate of the Commission.

The large number of cases on houses of worships and sectarian conflicts as well as the protracted nature of their resolution are due to the two controversial regulations: the 2006 Joint Ministerial Decree (PBM) on houses of worships and the 2008 Joint Ministerial Decree on the Ahmadi for the sectarian conflicts. These two regulations become structural obstacles for the Commission in mediating these cases. This suggests that it is important for Indonesia as a whole to take the necessary steps to revise these regulations or abolish them altogether.

Moreover, our findings also show that the Commission' mediation on the houses of worships cases is generally more successful in bringing about peaceful agreements and concrete results than the Commission' mediation on sectarian conflicts, particularly those related to the Ahmadi. This is because the conflicts on houses of worships are not as highly charged for the conflicting parties to resolve as the sectarian conflicts which concern their core beliefs or faith. For this reason, the political cost borne by political elites in resolving the former is lesser than the later, especially in regards to the public opinion. For this combination of reasons, it is understandable if the public support in resolving the conflicts on houses of worships is much stronger than the sectarian conflicts.

Fourth, the Commission' current SOP on mediation contains internal contradictions that must be addressed. On the one hand, it strengthens the institution's activism through mediation as a community mediator. On the other, it also hinders it. This is because, while the definition of mediation is very broad, which opens up the possibility of resolving many cases, the requirement that the mediator must be a commissioner of the National Commission limits its practical capacity to mediate more cases. Apart from the small number of FoRB cases mediated by the Commission, which almost entirely come from public complaints (not The Commission' own monitoring), the commissioners themselves also share the same concerns about the last point (interview with Hairansyah, 10 August 2021).

This problem must be addressed immediately by the Commission, because its role as a community mediator of FoRB related conflicts is very strategic. In addition to strengthening the Commission' internal ranks, one solution that can be considered is for the Commission to increase its collaboration with existing interfaith forums, such as FKUB, to strengthen their capacity in mediating FoRB conflicts with human rights perspective.

Bibliography

Books, Journal Articles, Documents

- Albin, Cecilia. 2009. "Peace vs. Justice – and Beyond." In *The SAGE Handbook of Conflict Resolution*, edited by Jacob Bercovitch, Victor Kremenyuk dan I. William Zartman, page 580-593. London: Sage Publication.
- Ali-Fauzi, Ihsan. 2019. "Disputes over Places of Worship in Indonesia: Evaluating the Role of the Interreligious Harmony Forum." In *Contentious Belonging: The Place of Minorities in Indonesia*, edited by Greg Fealy and Ronit Ricci, page 175-193. Singapore: Institute of Southeast Asian Studies (ISEAS).
- Ali-Fauzi, Ihsan and Raditya Darningtyas. 2023. "Religious Freedom and Mediation: Some Notes on Three New Initiatives in Indonesia." *Interreligious Studies and Intercultural Theology* 6 (2), 213-221.
- Anderson, Benedict R.O'G. 1983. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso.
- Asfinawati. 2014. "Advokasi untuk Kebebasan Keagamaan dan Keyakinan: Peluang, Keterbatasan dan Strategi Masa Depan." In *Mengelola Keragaman dan Kebebasan Beragama di Indonesia*, editor by Zainal Abidin Bagir, page 49-63. Yogyakarta: Center for Religious and Cross-cultural Studies/CRCS, Postgraduate School, Universitas Gadjah Mada.
- Bagir, Zainal Abidin and Husni Mubarak. 2021. *Kerangka Hukum dan Kelembagaan Tata Kelola Kehidupan Keagamaan di Indonesia*. Jakarta: Center for the Study of Religions and Democracy (PUSAD), Paramadina Foundation.
- Bercovitch, Jacob and S. Ayse Kadayifci-Orellana. 2009. "Religion and Mediation: The Role of Faith-Based Actors in International Conflict Resolution." *International Negotiation* 14 (1), 175-204.
- Butt, Simon and Tim Lindsey. 2018. *Indonesian Law*. New York: Oxford University Press.
- Gready, Paul and Jonathan Ensor. 2005. "Introduction." In *Reinventing Development? Translating Rights-Based Approaches from Theory into Practice*, edited by Paul Gready and Jonathan Ensor, page 1-44. London: Zed Books.
- Hinds, Pamela and Mark Mortensen. 2005. "Understanding Conflict in Geographically Distributed Teams: The Moderating Effects of Shared Identity, Shared Context, and Spontaneous Communication." *Organization Science*, 16 (3), 290-307.
- Human Rights Watch. 2021. "Indonesia: Events of 2020." <https://www.hrw.org/world-report/2021/country-chapters/indonesia#ada87c> (accessed on 4 November 2021).
- Jaffrey, Sana. 2021. "In the State's Stead?: Vigilantism and Policing of Religious Offence in Indonesia." In *Democracy in Indonesia: From Stagnation to Regression?*, edited by Thomas Power dan Eve Warburton, 303-324. Singapore: ISEAS-Yusof Ishak Institute.
- Joint Decree of the Minister of Religious Affairs, Attorney General, and Minister of Home Affairs on Warnings and Orders to Followers, Members, and/or Leaders of Jemaat Ahmadiyah Indonesia (JAI) and General Society (2008).
- Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs on Guidelines for the Implementation of Regional Head/Deputy Regional Head Duties in Maintaining Religious Harmony, Empowering the Religious Harmony Forum and Establishing Houses of Worship (2006).
- Jones, Andrew. 2005. "The Case of CARE International in Rwanda." In *Reinventing Development? Translating Rights-Based Approaches from Theory into Practice*, edited by Paul Gready and Jonathan Ensor, page 47-62. London: Zed Books.

- Kadayifci-Orellana, Ayse and Tarek Maassarani. 2021. *Religion and Mediation: Action Guide*. Washington DC: United States Institute of Peace (USIP).
- West Sumatera Regional Office of Ministry of Religious Affairs (Kantor Wilayah Kementerian Agama Sumatera Barat). 2017 (19 April). "Penyerahan Deklarasi Serambi Mekah Warnai Musda MUI Sawahlunto."
<https://sumbar.kemenag.go.id/v2/post/22972/penyerahan-deklarasi-serambi-mekah-warnai-musda-mui-sawahlunto.html> (accessed 29 Januari 2021).
- Kriesberg, Louis. 2009. "The Evolution of Conflict Resolution." In *The SAGE Handbook of Conflict Resolution*, editor by Jacob Bercovitch, Victor Kremenyuk and I. William Zartman, page 17-32. London: Sage Publication.
- Mietzner, Marcus and Burhanudin Muhtadi. 2019. "The Mobilisation of Intolerance and its Trajectories: Indonesian Muslims' Views of Religious Minorities and Ethnic Chinese." In *Contentious Belonging: The Place of Minorities in Indonesia*, edited by Greg Fealy and Ronit Ricci, 155-174. Singapore: ISEAS – Yusof Ishak Institute.
- National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia). 2010. "National Commission on Human Rights Regulation No. 001/THE COMMISSION HAM/IX/2010 on Standard Operating Procedures for Human Rights Mediation." Jakarta: Komnas HAM.
- 2011. "Regulation of the National Commission on Human Rights No. 001/THE COMMISSION HAM/IX/2011 on Amendments to Regulation of the National Commission on Human Rights No. 001/THE COMMISSION HAM/IX/2010 on Standard Operating Procedures for Human Rights Mediation." Jakarta: Komnas HAM.
- 2014. *Annual Report 2013*. Jakarta: Komnas HAM.
- 2015. *Annual Report 2014*. Jakarta: Komnas HAM.
- 2016. *2015 Annual Report of the National Human Rights Commission: Restoring the Rights of Victims of Human Rights Violations*. Jakarta: Komnas HAM.
- 2017a. *2016 Annual Report on Freedom of Religion and Belief*. Jakarta: Komnas HAM
- 2017b. *2016 National Human Rights Commission Annual Report: Fulfilling the Rights of Minorities and Vulnerable Groups in Indonesia*. Jakarta: Komnas HAM.
- 2018a. *The Commission HAM Annual Report 2017*. Jakarta: Komnas HAM.
- 2018b. "An Analysis on the Case of the Extension of Land Use Permit (IPT) of Jemaat Ahmadiyah Indonesia Surabaya Branch, East Java." Unpublished report.
- 2019a. *2018 Annual Report of the National Human Rights Commission: Past Gross Human Rights Violations, Agrarian Conflict, Intolerance and Radicalism, and Improving the Commission HAM's Institutional Governance*. Jakarta: Komnas HAM.
- 2019b. "Case Summary of Imam Syafi'i Foundation's Right to Education in Jember, East Java." Unpublished report.
- 2020a. *2019 National Human Rights Commission Annual Report*. Jakarta: The Commission HAM.
- 2020b. "Post Mediation Report: Right to Freedom of Religion and Belief Case related to the Prohibition of Jalsah Salanah Between the Jemaat Ahmadiyah Indonesia of Sarolangun Regency and the Government of Sarolangun Regency in Sarolangun, Jambi Province." Unpublished report.
- 2020c. "Report on the Implementation of Mediation in the Case of Alleged Human Rights Violations: Case of Right to Freedom of Religion and Belief of the Yahweh Holy Spirit Leadership Church in Kupang Regency, East Nusa Tenggara." Unpublished report.

- , 2020d. "Report on the Implementation of Mediation in the Case of Alleged Human Rights Violations: Right to Freedom of Religion in the Case of Rebuilding the Tlogosari Indonesian Baptist Church (GBI) in Tlogosari, Semarang City, Central Java." Unpublished report.
- , 2021. *2020 Annual Report of the National Commission on Human Rights: The Promotion and Enforcement of Human Rights in the Era of the Covid-19 Pandemic*. Jakarta: The Commission HAM.
- National Commission on Human Rights' Special Rapporteur on Freedom of Religions and Belief. 2016. *2015 Year-End Report on Freedom of Religion and Belief*. Jakarta: The Commission HAM.
- , 2017. *2016 Year-End Report on Freedom of Religion and Belief*. Jakarta: Komnas HAM.
- Olle, John. 2009. "The Majela Ulama Indonesia versus 'heresy': The Resurgence of Authoritative Islam." In *State of Authority: The State in Society in Indonesia*, edited by Gerry van Klinken and Joshua Barker, page 95-116. Ithaca, NY: Cornell University Southeast Asia Program.
- Ombudsman of the Republic of Indonesia (Ombudsman Republik Indonesia). 2021. *Merajut Asa Keadilan dan Kesejahteraan: Beyond Legal Dalam Pelayanan Publik*. Jakarta: ORI.
- Panggabean, Rizal. 2014. "Penanganan Konflik Sosial Berlatarbelakang Agama: Kekuatan, Hak, dan Kepentingan." In *Mengelola Keragaman dan Kebebasan Beragama di Indonesia: Refleksi atas Beberapa Pendekatan Advokasi*, edited by Zainal Abidin Bagir, page 1-23. Yogyakarta: Center for Religious and Cross-cultural Studies/CRCS, Postgraduate School, Universitas Gadjah Mada.
- Panggabean, Rizal and Ihsan Ali-Fauzi. 2015. *Policing Religious Conflicts in Indonesia*. Jakarta: Center for the Study of Religions and Democracy, Paramadina Foundation.
- Panggabean, Samsu Rizal, Rudi Harisyah Alam, Ihsan Ali-Fauzi. 2010. "The Patterns of Religious Conflict in Indonesia (1990-2008). *Studia Islamika* 17(2): 233-298.
- Parlevliet, Michelle. 2010. "Rethinking Conflict Transformation from a Human Rights Perspective." In *Human Rights and Conflict Transformation: The Challenges of Just Peace*, edited by Véronique Dudouet and Beatrix Schmelzle, page 15-46. Berlin: Berghof Conflict Research.
- Prabowo, Haris. 2021 (17 September). "Pola Penyerangan ke Muslim Ahmadiyah Selalu Sama." Tirto.id, <https://tirto.id/gjAD> (access 4 November 2021).
- PUSAD Paramadina. 2020. "Revisiting the 2006 Joint Ministerial Regulation and the Role of the Religious Harmony Forum: Findings from the Database," Study Report. Jakarta: Center for the Study of Religions and Democracy (PUSAD), Paramadina Foundation.
- Rahmat, Imdadun. 2021. "Komnas HAM dan Advokasi Hak Kebebasan Beragama atau Berkeyakinan." Unpublished paper.
- Raymond, Tracey. 2006. "Alternative Dispute Resolution in the Human Rights and Anti-Discrimination Law Context: Reflections on Theory, Practice and Skills." Canberra: Australian Human Rights Commission. <https://humanrights.gov.au/our-work/complaint-information-service/publications/adr-context-anti-discrimination-and-human> (accessed on 14 Juni 2023).
- Setara Institute. 2020. *Kebebasan beragama dan pengutamaan stabilitas politik-keamanan di tahun politik: Kondisi kebebasan beragama/berkeyakinan di Indonesia tahun 2019*. Jakarta: Pustaka Masyarakat Setara.
- Setiawan, Ken. 2016. "From Hope to Disillusion: The Paradox of The Commission HAM, the Indonesian National Human Rights Commission." *Bijdragen tot de Taal-, Land- en Volkenkunde* 172 (1), 1-32.

- van Bruinessen, Martin (ed.). 2013. *Contemporary Developments in Indonesian Islam: Explaining the “Conservative Turn”*. Singapore: Institute of Southeast Asian Studies (ISEAS).
- The Wahid Foundation. 2020. *A Decade of Monitoring Freedom of Religion or Belief*. Jakarta: The Wahid Foundation. <https://wahidfoundation.org/index.php/annualreport>
- Wunstin, Maktiia. 2001. “Community Mediation: Providing Justice and Promoting Transformation.” *Conflict Resolution Quarterly*, 19 (2), 251-259.
- YLBHI. 2020. *Outlook on Freedom of Religion or Belief in Indonesia in 2020*. Jakarta: Indonesia Legal Aid Foundation (YLBHI).
- Setara Institute. 2021. *Intolerance During the Pandemic: Freedom of Religion/Belief in 2020*. Jakarta: Setara Institute.

Interviews and Personal Communication

1. Beka Ulung Hapsara (national commissioner for the 2017-2022 period), virtual discussion with PUSAD Paramadina on 18 June 2021 and personal communication with Ihsan Ali-Fauzi on 20 June 2021.
2. Firdaus (Jemaat Ahmadiyah Indonesia and *Sobat KBB*), personal communication with Ihsan Ali-Fauzi on 26 June 2021.
3. Fitria Sumarni (Chairperson of the Jamaah Ahmadiyah Indonesia/JAI Law Committee) interview on 26 May 2021.
4. Hairansyah (national commissioner for the 2017-2022 period), virtual discussion with PUSAD Paramadina.
5. Imdadun Rahmat (national commissioner for the 2012-2017 period), personal communication with Ihsan Ali-Fauzi on 23 May 2021.
6. Jacky Manuputty (General Secretary of Communion of Churches in Indonesia or PGI for the 2020-2024 period).

**Table 1:
A Comparison between Conventional and Community Mediation***

| | Conventional Mediation (individual/corporation/state) | Community Mediation (religious community/tradition/nation) |
|---|--|---|
| Treatments toward the conflicting parties | The conflicting parties are treated as individuals interacting in a private, confidential space. | The conflicting parties are treated as community members interacting in a long term relationship within a shared public space. |
| Characteristics of mediator | The mediator is an expert unaffiliated with the conflicting parties. The mediator is mostly concerned with the process and indirectly influence the outcome. | The mediator is a member of the community with relationships to the participants. The mediator is less concerned with process and may directly influence the outcome. |
| The types of conflicting parties' participation | The participation of the conflicting parties is explicitly voluntary with possible legal consequences for not participating. | The participation of the conflicting parties is implicitly voluntary with possible social and political consequences for not participating. |
| The characteristic of the mediation process | The process is linear and focused on solving problems. | The process is nonlinear and focused on maintaining relationships and community. |
| The types of settlement | Mediations result in explicit written agreements. | Mediations result in explicit and implicit understandings. |

*Adapted from Kadayifci-Orellana and Tarek Maassarani (2021: 3).

Table 2:
The Cases Mediated by The Commission HAM in 2013-2020:
The Number of FoRB Cases in Comparison to the Other Cases*

| Year | Number of All Cases Submitted for Mediation** | Number of FoRB Cases Mediated | Top Three Cases Mediated (Total Number) |
|------|---|-------------------------------|---|
| 2013 | 258 (130 new cases; 128 old cases) | 3 | Land dispute (138), labor (39), and eviction (11) |
| 2014 | 544 (336 new cases; 208 old cases) | 3 | Land dispute (137), labor 99), and eviction (21) |
| 2015 | 627 (249 new cases; 378 old cases) | 4 | Land dispute (118), labor (52), and eviction (22) |
| 2016 | 714 (234 new cases; 480 old cases) | 9 | Land dispute (71), labor (41), and education (12) |
| 2017 | 688 (175 new cases; 595 old cases) | 3 | Land dispute (65), labor (41), and eviction (18) |
| 2018 | 811 (126 new cases; 685 old cases) | 3 | Land dispute (52), labor (40), and eviction (12) |
| 2019 | 738 (174 new cases; 564 old cases) | 1 | Land dispute (71), labor (41), and education (12) |
| 2020 | 501 (78 new cases; 423 old cases) | 5 | Agrarian conflicts (27), labor (25), and eviction (8) |

*Sources: The Indonesian National Commission on Human Rights Reports from 2013 until 2020; Report of the the Commission special rapporteur in 2014 and 2015; Rahmat (2021); and Hairansyah (2021).

**Old cases are cases which have not been resolved from the previous years. Not every case submitted could proceed to be mediated due to various reasons.