



AN ALTERNATIVE APPROACH TO THE CONCEPT OF THE SEPARATION BETWEEN THE STATE AND RELIGION

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Abstract: Tulisan ini mau memeriksa hubungan yang tepat antara agama dan negara di negara demokratis yang pluralis. Pemisahan total antara agama dan negara sukar untuk diproteksi. Hal ini secara fundamental disebabkan oleh tuntutan kebebasan beragama di ruang publik, pentingnya ekspresi religius bagi integritas pribadi dan tuntutan kesetaraan di tengah realitas pluralisme. Secara praktis, agama kerap merupakan sumbangan yang signifikan dalam pembangunan bangsa. Secara politis, pemisahan total dalam konteks pluralisme sering menyembunyikan hegemoni politik dan religius dari agama-agama besar. Oleh karena itu, lebih masuk akal membentuk suatu hubungan terbatas. Hubungan terbatas, di satu sisi merupakan pengakuan akan adanya hubungan dan, di lain sisi, merupakan penerimaan terhadap perbedaan. Karena itu hubungan terbatas perlu dibangun dengan memperhitungkan konteks sosial, penghargaan timbal balik, dan etika aksesibilitas publik. Dengan model ini pada akhirnya diharapkan bahwa kita mendapat suatu model alternatif yang dapat dipertanggungjawabkan di hadapan konsep pemisahan total.

Keywords: Complete Separation• a Limited Relationship• Equality• Religious Freedom• mutual respect• social context and the public Sphere•



Introduction

One of the common solutions for protecting both religion and the state in a pluralist society is to totally separate them. On the one hand, the state must be fair to every sort of religion or form of belief. The fair ways are to reject the idea of an official




religion, to establish a neutral law which has no religious references and to avoid interfering with religious matters. On the other hand, there is free exercise or religious freedom. This means that each person is free to worship God in his or her fashion. To be free is to be absent from the force of the state. As long as believers do not violate public peace or do not disrespect other religious believers, their religious freedom ought not to be denied by any authority.

Along with these, Robert Audi provides three models of strict separation between the state and religion in a democratic state. They are the libertarian principle, the equalitarian principle and the neutrality principle. The libertarian principle is concerned with the freedom of religious practices and some combinations of banning interference from government. The equalitarian principle is concerned with the idea of fairness. To be fair to all religions, the state should not give priority to any religion. The neutrality principle is related to the equalitarian principle in terms of being equal to all. Here the issue is not to make religion the focal point. The state should neither favour nor should disfavour religion or the state neither gives positive nor negative preference to institutions or persons simply because they are religious (Audi, 2000: 32-41).

However, the implementation of strict separation has never been consistent. This is not only the result of historical facts¹ but also because of the nature of the state which consists of plural elements and the nature of religion which deals not only with afterlife but also terrestrial life. Accordingly, religion which is one of these elements has particular values which are compatible with the value of social life. Espoused by the notion of religious freedom to express religious convictions in both religious and social realms, in many places religion has been at the forefront of social actions to improve the effectiveness of the state and to urge the state not to ignore moral convictions in the process of making public policies. And more radically there is a move to establish a religion based state as a tool to achieve authority over political and social life based on religious values and norms. In addition, the consistency of employing strict separation has been challenged by modern democracy typified by pluralism which puts the

¹ The idea of strict separation between the state and religion, known as “wall of separation”, came from Thomas Jefferson’s letter to Danbury Baptists in 1802. This idea got its extreme form in 1947 when Justice Hugo Black was dealing with the case of *Everson vs. Board Education*. Jefferson stated that “the wall must be kept high and impregnable”. However since Jefferson, inconsistency has occurred as the government of the USA helped build churches and assisted missionaries working among Indians. (See Dreisbach, 2006: 1-8).





current system of relations with religion into doubt. In fact, the unity between the state and religion tends to maintain domination of a major religion and potentially induces a cultural monopoly of religion.

The natures of the state and religion which are added up by the fact of pluralism have been challenging the concept of strict separation. Then this prompts a question regarding the proper relation between the state and religion. In this essay I will argue that the appropriate relation between the state and religion is a limited relationship. Three things include in this model. Firstly the relation between the state and religion need to be promoted by maintaining the independence of its institutions. Secondly, the relationship should mirror the fact of pluralism. Here, the engagement of religion in the public sphere ought to be managed in such a way that state will be equal and neutral toward all citizens and groups in the state. Finally, the relationship should anticipate religiously and communally induced clashes.


To explore the concept of a limited relationship between the state and religion, I will divide this essay into three main parts. In the first part, I will criticize the concept of strict separation as a myth. In the second part I will give three reasons for a limited relationship based on the ideas of liberty, equality and human integrity. From these reasons, in the third part, I will design a model for a limited relationship in the context of pluralism but before that I will impose three conditions for a relationship between the state and religion. All of these aim at achieving two goals. The first is to provide the argument that the concept of strict separation between the state and religion neglects the equal participation of citizens. The second is to provide the basic standard for enlarged participation and representation of religion.

The Strict Separation as a Myth

Separation as Dualistic Concept

Separation is a dualistic concept. It is incompatible with the integrity of human beings and religious beings. Human beings live out their lives in society through different roles. A person might have many roles. They have to adjust themselves with the rule of different roles. Practical and technical rules are different from one role to another. Although the role keeps changing, human beings who have dignity will be committed to significant values such as moral values. For example, people should not get rid of honesty and love when they get involved in business, or soccer players should not forget to play fair in order to win the game. As for religion,






serious religious believers will live their convictions wherever they are. Religion is not only a doctrine but a source of energy that the person taps into and thus nurtures his or her entire life. Fundamentally religious convictions are not choices but things that believers ought to strive for with wholeness and integrity. Their religions are not for them anything other than their social and political existence (Habermas, 2006: 8-9). That is why some religious believers exercise their civic rights under their religious morals. Then, debate should not be about religious or non-religious arguments but whether each argument is against or in favor of the pluralist democratic state or not. As Michael J. Perry put it, 'nothing in the commitment to the true and full humanity of every person or in the allied commitment to certain basic human values forbid legislators or other policy makers to disfavor conduct on the basis of a religiously grounded moral belief just in virtue of the fact that the belief is religiously grounded' (Perry, 1991: 46).

Separation maintains inequality

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One of the main ideas of strict separation between the state and religion is to preserve the legacy of legal disestablishment. This means that the state should not lift the status of a certain religion to an officially recognized religion. This would infringe the equality which ought to be protected by the state toward all groups in the state. However, the commitment toward equality often ignores the pattern of cooperation between a particular religion and the state created by the history of civic piety and by the fact of homogenous religion (Thiemann, 1996: 65). Without enlarging the meaning and the practice of the principle of equality, the commitment toward the idea of separation between the state and religion will only guarantee the freedom of citizens to practice their religion but maintain the inequality in which dominant religions will get more benefits and might institutionalize their worldview and cultures in the public sphere. As a consequence, the explicit and equal participation and representation of all religions will be neglected. Religion should not only be given internal freedom to practice religion but also external freedom, that is, to have equal access and participation in the public sphere.

Moreover, the intention of embracing the notion of separation between the state and religion is to achieve neutrality of the state toward all citizens. However, there is no neutral stance between all citizens. There are several facts that signify religious bias, that is, the state gives privileges to religions over a non-religious group. In the USA, which claims the total separation between the state and religion, the supremacy of religion over non-religious groups appears in some aspects of public life. For example,





on the currency of the USA, there is the statement: *in God we trust*, and religious institutions and clerics are given assistance in education and exemptions from tax and military obligations.

Thus strict separation is a concept that has never been seriously maintained in society, and this reveals the difficulty in totally excluding religion from the public sphere in which religious contributions are still considered as an important contribution to society. Answering this difficulty, it should be acknowledged that there is no separation because religion and the state are deeply intertwined in many ways. Both institutions are differently and independently run, but one cannot separate one from the influence of the other. Given that, the solution is not to get rid of religion from the public sphere but to manage the equal participation of all elements of the state, so that the unequal relationship between the state and religion and the priority toward particular religion over others could be eliminated.

A Limited Relationship and its Reasons:

A Limited Relationship and its Reasons

Given what has been said above, neither strict separation nor the unity between the state and religion are proper models. I believe that the proper model is a limited relationship. Generally, a limited relation has three aspects. The first is the acknowledgement of religious roles in national development. The second is that in a limited relationship the independence of the state and religion in its character would be guaranteed. The third is that a limited relationship would provide proportional engagement based on the fact of pluralism. Therefore the limited relationship between the state and religion is recognition of the involvement of religion in public sphere which must be cautiously handled in order to protect the independence of each institution and in order to maintain the contribution of each institution wisely.

There are three reasons to shift from a strict separation to a limited relationship between the state and religion. The first is that religion is indispensable for developing the integrity of religious believers as human beings. The second is that religious involvement in the public sphere is based on liberal principles, particularly religious freedom. The third is that religious involvements in the public sphere are sustained by the principle of equality of participation and representation in the public sphere.



The Significance of Religion for Personal Integrity


Paul Bou-Habib explains that religious engagement in the public sphere can be justified by the right of personal integrity. For religious believers, religious conduct is a way to gain integrity as human beings. Therefore religious engagement should be protected (Bou-Habib: 2006: 119).

Integrity refers to the capacity to observe perceived duties or to act according to one's perceived duties. The perceived duty is what one has to do regardless of her or his own choice, for example, respecting the elderly, helping the sick, not killing, and keeping a promise. A perceived duty is quite different from a legal duty because of the enhancement toward personal integrity. The inability to observe a perceived duty is to cause the integrity of persons suffers. Yet, not all failure to comply with a legal duty infringes one's integrity. For example, a person has tried various decent ways to get food, but these result in nothing. The last way is to steal. Stealing is of course wrong according to many civil laws, but those who have to steal under these circumstances will not feel that their integrities are being corrupted.

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Given some religious conduct is significant for religious believers to preserve their integrity, and integrity is a basic good for everyone, the state ought to accommodate the perceived duties of religious believers. Accommodation means that religious believers ought to be freed from serious burdens on religious practices (Bou-Habib: 2006: 120). Under these conditions there must not be a law preventing them from conducting their religiously perceived duties.

How do we determine between objective duties and subjective perceived duties? How would we reconcile conflicting and competing perceived duties or the claim of integrity in a pluralist society? How would a government accommodate many claims of perceived duty in the public policy? To answer these questions, Paul Bou-Habib affirms that to claim a thing as a perceived duty requires at least two fundamental conditions. The first is that the integrity of a person will genuinely be at stake if the perceived duty cannot be fulfilled. The second is that it is true that each person has a right to an equal opportunity for well-being (Bou-Habib, 2006: 122). These conditions lead to two implications. The first is that all laws which jeopardize integrity are deplorable, whatever the law that restricts religious or non-religious behavior. The second is that given the focus is equal opportunity for well being, the perceived duty of believers has to be compatible with the well being of others.



Here religious accommodation can be justified because it encourages religious believers to enjoy their well being which is a right for human beings. However, this argument does not directly establish the basis for religious political involvement. This approach emphasizes more the freedom to practice religious duties. However, for the same reason, religious believers with their religious backgrounds can get involved in the public sphere. The prohibition harms their integrity as human beings. I think it is plausible that religion for a serious member is not about doctrines but more about the source of energy and guidance for their life. On this point Michael J. Sandel adds that we respect religion not because it will not restrict personal freedom, but because religion is so important for religious believers (Sandel, 2006: 256).

Since religion is the most important matter in the life of serious believers, one can imagine the consequence for their integrity, when their political involvements are restricted. If religious involvement is so significant for the dignity of religious believers, then trying to separate them from political involvement will be harmful. In addition, the state which restricts religion fails to fulfill its task for its citizens. The state has the task to facilitate its citizens' attainment of goodness as human beings.

However in this part we do not have a sufficient reason. The problem remains, that is, not every believer is a serious believer. Consequently we require more reasons to justify a limited relationship between the state and religion.

The Right of Individuals in a Diverse Society, and Social Responsibility


John Stuart Mill states that even if a person is in disagreement with all human beings, no human beings will be allowed to silence him or her (Mill, 1974: 76). However it does not follow that people can talk about anything. According to David van Mill, there are four guidelines for restricting freedom of speech (Mill, 2002). Firstly, freedom of speech should be restricted if the speech **directly harms the right of others**. Yet this condition is not sufficient to control speech which strongly expresses racial, class, or religious hatred. Secondly, to overcome this insufficiency, speech should be examined on **the offense principle**. This principle is problematic because it might be based on subjective assessments such as prejudice and sensitivity. Thirdly, in this context some impose another guideline that is **the equality principle**. A hate speech should be banned if it causes inequality in society. Fourthly, according to Stanley Fish freedom of speech should be restricted if it has **obviously bad consequences** (Fish, 1994:

126). He states that freedom of speech relates to other values such as privacy, security, equality and the prevention of harm. Here it is necessary to examine what is good speech and bad speech. There should be a calculation of the risk of restricting freedom of speech and the value it might offer. However, people have to provide clear arguments and even previous evidence that particular forms of speech clearly and directly cause serious problems. Otherwise it might strengthen the power of the state to limit the freedom of speech of individuals.

What is the relation between the restriction of the freedom of speech and religious involvements in the public sphere? A general principle is that the state should not impose any laws preferring a particular religion or prohibiting the freedom of religion. That the state should not impose any laws prohibiting the freedom of religion generally means that the state guarantees that religious believers may practice their religion. Religious freedom also means that the membership of a religious organization is voluntary. No one will be forced to stay, and there is freedom for people to exit from a religious group. These two things will not become the focus of this argument. The focus is about the involvement of religion in the public sphere grounded on the principle of freedom. Given that, the freedom of religion must be extended in order to include religious beliefs and religious arguments in the public sphere. The reason behind this is that the involvement of religion in the public sphere is part of religious freedom and the freedom of speech. It is part of the freedom to practice religious beliefs or the value of religion. Religious freedom should not be defined only from the area of religious practice. From the perspective of religious freedom there is no condition or particular model of public participation. Religion with its rich values is allowed to contribute for the common good of the people in a state.

However, the basis of the involvement of religion is not only the principle of the freedom. The involvement of religion should be complemented by principles such as toleration and equal opportunity. As for the involvement by means of religious argument, the restriction on the freedom of speech should be seriously considered. To consider it is to take the four guidelines of the limitation of the freedom of speech into account. Religious arguments should be employed in the public sphere by counting whether their arguments cause direct harm to others or not, whether they are offensive or not, whether they cause inequality in society or not, and whether they lead to bad consequences or not.

Those guidelines can be categorized as instruments to protect the value of humanity. On these guidelines consensus is likely achieved.




However, religious beliefs or religious arguments which will be expressed in the public sphere ought to be applied appropriately in society. To merely appeal to the freedom of speech for religious engagement in the public sphere is mistaken.

Thus, the freedom of religion is not a total freedom. The claim of religious freedom in the public sphere ought to be placed in a relation to human values and to a political system of democracy. Human values are objective values that are independent of subjective assessment. They consist of liberty, justice, solidarity, mutual respect and equality. The democratic state is the system preserving the equal rights of citizens as the fundament of equal life, participation and representation. Hence fundamentally, the role of the state in this sense is to facilitate the embodiment of human values in a social life. Thus the state is obliged to provide freedom for its citizens without reservation. However, the state should protect the nation and its citizens from the excessive claim of freedom of certain individuals or groups by continually promoting human values and the system which protect these values. The anti-democratic and the group that opposes equality either political or religious should be prohibited from spreading their doctrines in the public sphere.² As for religion, the appeal to freedom as the basis of representation and participation should not infringe the fact of humanity guarding equality of life. Hence, democracy which is believed to preserve it must not be violated. Religious freedom should be a basic right for promoting human and social life but not for domination.

Those arguments imply that religious involvements in the public sphere are always restricted. Religion cannot claim total freedom. Total freedom will end up in the domination of one over the other. To avoid it, the freedom for getting involved in public life should be directed toward the promotion of human and communal life. However, given all those principles for the freedom of religion in the public sphere, religion should not be restricted just because of its character as religious. Religion should be encouraged and assisted to exercise its rights along with, (or for the purpose of) human beings or the common good. Without those conditions, nothing could be a substantive reason to restrict the involvement of religion in the public sphere. The obligation to use public reason and merely to address moral issues is only a suggestion based on public courtesy. It is not a formal

² Here I take two extreme groups which are allowed to exist under the umbrella of freedom but obviously threaten human and social life. The first group is neo-Nazi. It is the group which promotes the superiority of certain race by removing the presence of other races. The second group is the Hizbul Tahrir. This group opposes pluralism and democracy but offers the system of the state founded on religious domination.




precondition for religious believers and groups to get involved in the political arena and it is less strong in restricting religious freedom.

The Principle of Equality in a Pluralist Environment

The third reason for religious involvement in the public sphere is that it is based on the principle of equality. Here equality refers to the appropriate representation and participation of all groups in the public sphere of a democratic state. Two aspects involve in this concept. In a pluralist society, there are many institutions which represent religious, social, economic and cultural interests of various people. Firstly, their existences and activities have to be appropriately welcomed, acknowledged, supported and restricted by the state. Secondly, they also have the right to claim this appropriate representation and participation in the political process of the state, because they are the actual institutions with real members which are also citizens. Religion is part of these institutions. The same treatment and rights must be accessible to religion as well. Religion needs to be appropriately welcomed, acknowledged, supported and restricted. Religion needs to be given the right to appropriately represent and participate in the political process of the state. The appropriate representation and participation includes the aspect of equal treatment and the empowerment of minority groups.

In a democratic state all individuals have an equal opportunity to participate in the public life through the principle 'one person one vote'. Individual political preferences depend on many things. The independence of a person and the role of background cultures influence and even determine the mode and the content of individual decision. To what extent these two aspects influence or which one of these aspects plays the more significant role we do not exactly know. However one thing is obvious that there is no pure individual political decision without direct and indirect influences from society. The decision depends on individuals, but the self is not separated from views, values and norms of a society. The self is part of the community where one lives, and one inherits the values or worldviews existing in society. There are no atomistic individuals who are free from their existence in time and place. That is why an individual identity is shaped by and provided through membership of groups of which cultural groups are perhaps the most important (Kelly, 2002: 7). It would also be said that our political acts are inseparable from the world view we inherit, develop and respect in a community. Individual participation is influenced by communal influences. The general principle of separating religion from participation and representation in society would be excessive. Actually, people with cultural backgrounds inject their views on the public. Of course, this creates a dominant culture. However, to reduce this is to





promote the appropriate participation and representation. The strategy of separation will not work. The most appropriate way is to accommodate different representations and participations in the public sphere.

Besides that, a democratic state is built upon various groups. There are groups such as political parties, labor unions, environmentalist groups, feminist groups and religious groups. Religious groups do not differ in kind from those non-religious groups that provide a basic orientation for individual beliefs and behaviors (Thiemann, 1996: 135). Those organizations have to have public protection in order to give their opinion and concepts and to participate in a process of deliberation. In a democratic state which has a strong liberal tendency, the participation of religion is often neglected and undermined. In a strong religious state, feminist or homosexual groups are often marginalized. These sorts of group, I call minority groups. Such groups need to be appropriately protected and guaranteed so that they can enjoy the same opportunity to speak out their views in the public sphere. They need to be guaranteed the right protest against the state when laws and public policy are against their views, or public policy places extra burdens on them. Thus the appropriate representation and participation can only be done if there are equal treatments and the advocacy of the 'minority' in society.

Religious commitment and political participation are interwoven. There are particular relations between the state and certain religions even in the state which claims strict separation. For example the structure of western society, which is connected to Christianity or the belief in God, provides a holiday on Sunday and the USA currency recognizes the existence of God. The increase of immigration which enlarges the complexity of society challenges the unilateral relation, church and state. Current immigration is a challenge to the state to rethink its relation to particular groups and religious groups. The system of relationships between the state and church needs to be extended toward non-Christian and non-religious groups. The state should open its political gate to all participants and forms of representation which do not tend to destroy basic human values.


Since group involvements are based on equality, this prompts a question to what extent should equality be applied. There is a debate about equality as to which principle really represents equality: an equal opportunity or an equal outcome. Many proponents of liberal egalitarianism

promote equal opportunity.³ Opportunities such as income, wealth, civil and political rights must be equally available to all citizens. The opportunity to obtain these things must not be restricted to certain people. One of the proponents of liberal egalitarianism, Brian Barry, argues that the availability of the equal opportunity indicates the degree of justice (Barry, 2001: 32). Everyone will employ his or her rights to gain benefit from available opportunities. The background cultures derived from religion, moralities, philosophies, ethnicities, and tribes in some senses determine people's decisions. However, these backgrounds are irrelevant for justice. For example, a protest against an unjust law should not be made if a government bans headscarves from public schools. Religion for Barry is a sort of preference. For him religion is not really different from many preferences. Religion is not like disabilities reducing and restricting the capacity of acting. If religion burdens someone, he or she still has the freedom to stay or to abandon religion. This is totally different from disabilities driving people in 'no choice situations'. Each person has the freedom to determine his or her preference. The outcome of personal choice is of course unequal, but an unequal outcome does not define the real inequality because all people are given the equal opportunity. For example, criminal codes will be charged on criminals but not on all people. Here only bad citizens will have unequal consequences.⁴ Therefore, it is implausible to justify the unjust outcome as the problem of equality when people are free to choose from the available opportunities (Barry, 2001: 32-40. See also Barry, 2006: 254).

However, this argument is criticized by multiculturalists such as Young, Fraser and Parekh. They want to enlarge the use of equality so that the complete meaning of equality can be embodied. For them equality is not restricted to equal opportunities. Equality has to be revaluated according to certain outcomes of opportunity. For Young quoted by Paul Kelly, the problem is not the equal opportunity but the unobvious social norm establishing opportunities. Opportunities are not neutral because opportunities are the result of a social construction. For example, Sunday is

³ According to Sterba, liberal egalitarianism is a compromise between libertarians and Marxists. Because of that liberals support the welfare state, which combines capital as freedoms and inequalities with various egalitarian welfare policies. (See Sterba, 1988: 31).

⁴ See also Jensen, 2005: 157-171. His arguments are quite similar to Barry especially in a part stating that no liberal political theory claims that a bank robber's liberty should be equally protected so he or she can still rob the bank. What happens if they believe that robbing a bank is part of religious obligation? That is why citizens will be given equal liberty if they respect the equal liberty of others.



a public holiday. This social construction gives benefit to Christians in which they can have a special time to conduct their religious services. This disadvantages others such as Muslim and Jewish people whose days of prayer are not on Sunday (Young, 2002: 11). Some groups could not obtain some goods and social positions under the principle of this equal opportunity. The equal opportunity needs to be supplemented by a politics of difference. The solution is a group representation, particularly for the disadvantaged or the oppressed groups. Through this, the emphasis is not only on the equal opportunity but also on the unequal outcome emitted from unjust construction. The purpose is to enlarge the application of the principle of equality (Kelly, 2002: 62-64).

Similarly, Parekh argues that equality has three layers. The basic one includes equality of respect and rights. The second level involves opportunities, self-esteem, and self-worth. The third level involves equality of power, well-being and the basic capacities for human flourishing. Sensitivity must be taken seriously in each level. Then, he argues that equality should be culturally and sensitively interpreted (Parekh, 2006: 240). Cultures, here, are ways of life with a normative authority binding members of a community. That is why cultures are different from lifestyles and personal practices.⁵ Cultures often change, and they are not sacrosanct. However, cultures maintain their continuity, coherence and identity. Cultures shape their members, structure their forms of thought and views of the world, organize their lives, provides a system of meaning, values and ideals and so on (Parekh, 2002: 140). Since cultures have significant roles in personal lives, equal opportunity and protection should be culturally and sensitively interpreted. For him an opportunity might be offered to all but if a person lacks the capacity to receive it, it will be meaningless for him or her. For Parekh equal protection must be conducted by giving an exemption. In England, the Sikh is given exemptions from obligations to wear a helmet in construction works or while riding a motorbike. Instead they have the freedom to wear a turban. In France, Muslims are allowed not to stun animals before slaughtering them during *Eid al Adha* festival. These sorts of exemptions aim at gaining an equal treatment. For Parekh the equal treatment is another way of embodying the same rights.

Through those explanations we have proceeded to group rights. However, in the discussion about culture and equality, Barry disagrees with multiculturalists because for him culture is incompatible with equality. Culture and equality, according to Barry, are in opposition. The effort to

⁵ Here, Parekh indirectly argues against Barry who does not distinguish between religion and other preferences.

promote multicultural rights on the principle of equality will not work. Cultural protection, communal specific rights and exemptions cause unequal treatment and injustice. Moreover, group rights deny equal treatment for individuals. The case of education would be a good example. Parents of the Amish group appeal for an exemption for their children from compulsory education.⁶ The aim is to prevent their children from outside influences that encourage them to leave the community. However, providing the exemption for a group to protect its identity is incompatible with the rights of individuals to be raised in inclusive conditions assuring a greater opportunity to make a choice in the future. That is why 'culture and equality stand in opposition, and that multiculturalism as a new approach to the politics of ethnically plural societies is mistaken' (Barry, 2001: 13-15). For Brian Barry the solution is not to give an exemption. Facing the commitment of people toward their culture, Barry suggests that it is better to modify the law causing strong restrictions than to give exemptions. It is important to avoid the difficulty of having different laws in the same society (Barry, 2001: 38-39).

From the point of view of Barry and strong multiculturalists a similar point is to reconsider the unequal structure and to enlarge the fulfilment of equality. For Barry the unequal structure is solved by loosening restrictions so communal interests will be accommodated into the liberal system. For multiculturalists the solution is to provide exemptions for cultural interests since for them liberal egalitarianism is insufficient to fulfil the fact of pluralism. Therefore both of them agree on the need to reconstruct the inhospitable system toward the interest of different groups. Fundamentally, the aim is to provide a proportional participation and representation. To take participation and representation proportionally is not only to calculate the quantity of participants but also to consider how significant the issue is for participants. The significance of the issue should not be incompatible with basic rights and the democratic system of the state. However the system of the state must be flexible enough to respond the needs of society. In addition, religion which demands appropriate participation and representation must question itself whether addressed issues are central parts of its religious convictions or not. Here both the state and religion should conduct a reformation in order to achieve a proportional equality. The proportional equality is the condition grounded on the fact of human equality and complex needs of human beings. Each and every group ought to be given equal opportunities based on its

⁶ The Amish is a Christian sect which preserves the elements of late 17 century but avoid features of modern life, such as telephones, cars, electricity. Each group has its limitation in taking aside elements of modern life.



significant needs. Here religion requires self criticism to differentiate between central and accidental parts of its belief and determine which ones should acquire public recognition. It is because equality is not about equal quantity but about representation of the need which defines the core identity of the group or individual. Thus the appropriate participation and representation is not determined by equal numbers but by the acknowledgement of the fundamental interest of the group which serves individual and social human life. Both individual and social aspects have to be emphasized in order to govern all different groups to the fundamental nature of human beings. The role of the state here is to open itself to the fact of evolving pluralism and to reconsider what kind of democracy is suitable for the value of equality between human beings with their complex differences.

Here the concept of equality is not only about the quantity of participants but about the proportion of public recognition. The proportion of putting equality into practice refers to a public recognition of a substantive dimension of religion. The outcome would be different from religion to religion. This outcome is not a justification for inequality. At least, the access is available to all religions, the unequal outcome deriving from the unjust system can be corrected, and there is a flexible system to answer the shift of a social condition, particularly the change on the constellation of pluralism. For example, since 1998 the government of Indonesia has publicly acknowledged the existence of Confucianism as one of the formal religions. One of Confucianism's celebrations has been raised to a national holiday. By this recognition the fundamental purpose promoting the equality between human beings is achieved. However, the state must not accommodate every aspect of religion in the public sphere. For example, in the rites of Catholicism there are three forms of ceremony categorised as solemnity, feasts and memorials. The most important is solemnity. Yet not all celebrations have to be accommodated. There must be some celebration that are most significant and determining the identity of Catholicism or Christians such as Christmas and Easter. Of course, different religions have different systems, but the basic purpose is to encourage each religion to consider a sort of conviction or argument addressed in the political process of deliberation. On this level, the concern of equality in pluralism must be extended toward exemptions. It is because the significant thing for one religion is different from other religions but also could infringe public law.⁷ Of course disagreement will arise, but as Thiemann put it, 'citizens who disagree over particular public policies can

⁷ See the previous example in which the British government provided exemptions for the Sikhs.



still affirm the broader consensus which they share in their commitment to a democracy dedicated to liberty, equality and mutual respect' (Thiemann, 1996: 137).

Conditions and Models for Religious Involvements

The justifications of religious involvement in the public sphere need to be balanced with the reality of pluralism. The fact of pluralism places a religion in the face of many different groups that have the same right to be involved in the public sphere.⁸ However, there is no absolute freedom and equality, and the integrity of human being is the integrity of a person in the midst of others. Given that, there should be a balance of participation and representation of religion considering aspects of individuals and society, the history of a religion in the development of the state and the interest of a group and of inter-groups. That is why it would be appropriate to develop a relation between the state and religion under the following conditions: proportional equality and freedom and a limited priority of human integrity. These conditions imply that religious involvements cannot be based only on those three general principles but that they should be promoted in the frame of pluralism. In this frame the appropriate model is 'non-constitutional but pluralistic'. This model will be elucidated in the second part.

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Four Conditions

Proportional equality and freedom will be described under four conditions: social context, mutual respect, ethic of publicity and a limited priority of human integrity.

Social context

Freedom exists together with other values, such as nondiscrimination or equal opportunity and stand in particular social conditions (McConnell, 2000: 91-100). Hence, to claim public recognition of religious arguments or convictions requires that religious believers have to take social contexts into account. It would be better if the claim of freedom is made by considering the risks and benefits. We cannot insist that we have freedom, and freedom is the only reason we present. The claim of public recognition based on the

⁸ The target of the concept of pluralism is not ethnic groups in a state or indigenous groups in a bigger culture of certain state system. The target is more the fact of religious and group pluralism. The latter is about the groups that often challenge the existence of religion in the state, such as feminist and scientific groups.



principle of the freedom should be continued by questioning the reason behind the demand of the freedom. We need to evaluate or to consider whether freedom of speech and freedom of conscience are good or bad (Fish, 1984: 123-126).

In a broad context, religious involvement in the public sphere and the imposition of requirements need to ponder complex interests. In this sense, Greenawalt explains that to deal with the place of religion in the public sphere depends much on 'history, culture, the religious and other comprehensive views that people hold, and the degree of mutual tolerance and respect. Specific principles of self restraint must be offered for particular political orders' (Greenawalt, 1998: 387). Then he adds that it is hard for most people to generate a program excluding their deepest religious convictions from their political judgments and then to rely on principles of liberal democracy and shared techniques of understanding (Greenawalt, 1998: 383). In this context, it is hard to determine a clear and distinct guideline which is workable everywhere. Principles such as freedom, equality and tolerance cannot be separately employed. Each principle exists in the relation with others. That is why the claim of religious involvement as a part of religious freedom would be appropriate if it does not disrupt others from conducting the same role. The availability of rights for others indicates that there is a fundamental stance for our claim. This will only work if a principle such as freedom is equally employed by considering other principles. One of the principles is to be prudent. However contextual prudence has to be objectively counted in order to avoid the undue contradiction between the substantive principle and local interests. Without this, it is easy to fall again into majority bias.

Mutual Respect


The growth of pluralism in society presupposes a positive approach where people are encouraged to be committed to their convictions and to respect pluralist situations. That is why mutual respect requires two things. On the one hand, religious believers should consider not only their own point of view but also the point of view of others and its presence in a pluralist democratic society. The things that religious believers should be concerned about are their rights, the rights of others, the principle of equality and social responsibility. On the other hand, mutual respect means that in the political process the state should give the chance to religion to challenge the state regarding certain issues as a part of religious freedom and political rights.



Another aspect of mutual respect is a non-violent approach. It means that whenever there is a disagreement, it should be resolved by non-coercive means. Irresolvable disagreement should not bring people into conflict. The disagreement should not be taken as a personal preference but as a moral conviction. Disagreements would not undermine the unity in a pluralist society if we still share the big picture under the values of democracy: liberty, equality and mutual respect.

The Ethic of Public Accessibility

Although sometimes it is not wrong to address religious convictions in the public sphere by using religious language, the better way to encourage people to agree on the issue is to use terms or languages which are publicly accessible. The public accessibility refers to arguments that are open to criticism, examination and scrutiny and useful for setting up an agreement between different people and groups. The encouragement to place religious arguments in a publicly accessible way is a form of the public reason of Rawls. To make our reason justifiable, there must be public reason. This is reason used by free and equal citizens in a democratic society which is likely to obtain general acceptability. It is not only a reason but also a culture for a pluralist democratic society. The structure of it is threefold: a principle of judgment, a principle of inference, and evidence (Rawls, 2005: 437-490). Along with this idea, Thomas Nagel affirms that without a justified common ground for my moral and political beliefs, I become guilty of simply appealing to my belief. The norm of publicity is the use of a rational approach (Nagel, 1987: 232). A public justification requires a commitment to the exercise of common critical rationality. With regard to this, Habermas and Maeve Cooke suggest that religious arguments which will be addressed in the public sphere for a political discussion and deliberation should be translated into generally accessible language (See, Habermas, 2006: 1-2. See also Cooks, 2006: 187-215). As a criticism to Habermas, Cooke suggests that translations should be conducted by distinguishing between epistemological non-authoritarian and epistemological authoritarian. The epistemological authoritarian refers to the truth of knowledge obtained without mediation through languages, historical context and argumentative procedures, such as 'Pope says, therefore'. The epistemological non-authoritarian regards languages, historical contexts and argumentative processes as parts of forming the truth (Cooke, 2006: 204). Semantic contents of religion must be brought into these processes in order to meet the criterion of validity. This occurs because there are multiple concepts of good life and good society. To conduct the translation as Ian Saphiro put it, religious institutions should be given incentives to think hard about whether they can reform their practices to bring them to meet the



requirement of a democratic polity: to promote inclusive participation and meaningful opposition. The state's proscription of religious practices should be triggered only by extreme practices. Anti-democratic institutions should be offered incentives to think hard and creatively about how to minimize the way in which their practices are objectionable to the values of democratic society (Saphiro, 2002: 182). However the state must work together with religious believers in setting the term of translating. If there are significant religious arguments that are hard to translate into public language, there should be a room for using religious arguments

But, public accessibility is a strategy to win people's support but not a norm for deciding public recognition. To overemphasize translation or the use of public reason might undermine the rational aspect of religion. Moreover, if the translation is the public ethic all regardless of their cultural backgrounds have to learn how to put their concept into understandable public language. All have to be ready to accommodate the other view or to shift their own view when they meet the views of others that are useful and indubitable (Bader, 1999: 614).

A Limited Priority of Human Integrity

As already stated, religion is significant for some people in order to achieve their integrity. However, not all aspects of religion are significant for human integrity. Here religious believers need to analyze those aspects in order to determine which one is more important and which one is less important. The important aspect is that where the absence prevents religious believers from having an equal opportunity for well being. The important aspect is that by which religious believers define the identity of religion. The less important aspect is the aspect lacking that condition.⁹ Therefore, I think, the less important aspects cannot be the reason for public recognition unlike the more substantive aspects. The integrity of human beings needs to be based on a solid foundation. If the state does not accommodate this aspect, and it endangers their moral integrity, then serious believers should be allowed to employ civil disobedience. As Thiemann put it, "personal freedom in a pluralistic democracy is primarily a dissociative force and voluntariness in liberal society is essentially an exit privilege. Therefore, the right to dissent must be defended in any account of proper public behavior within a democratic polity. The dissent grounded on genuine religious convictions is a fundamental right deserving of governmental protection and recognition". Then he adds that 'a dissent grounded in genuine

⁹ The example from the Catholicism can be addressed as an example for this case as well. See pp 18-19.

religious conviction is an expression of the moral integrity of pluralist citizens' (Thiemann, 1996: 138).

However, mutual respect should be employed even as the act of dissent is seeing carried out. Otherwise, it will impair their moral integrity as well. The right to dissent is compatible with freedom of speech, but in itself dissent should help people to return to the fundamental value of community (Thiemann, 1996: 140). However it must be the last thing to do if the effort to get exemption failed.

A limited priority of human integrity is based on the fact that not all aspects need to be exempted by the state. Human integrity is the integrity of human beings. That is why the exemption should not put the integrity of human beings at risk. The claim of one's integrity should not oppose the fundamental idea of integrity. The key test is whether the claim of my integrity still protects the integrity of others or not. Moreover, the demand for a special treatment or the demand of a political involvement of religion needs to be considered under these two conditions: the value of religious conviction in itself and its value for a greater community. The claim will only be justified if religion fulfills one of these conditions. As Michael Sandel put it, "the case for having a special protection to the free exercise of religion presupposes that religious convictions, as characteristically practiced in particular society, produce ways of being and acting that are worthy of honor and appreciation either because they are admirable in themselves or because they foster qualities of character that make good citizens. The case for the right cannot wholly be detached from a substantive judgment about the moral worth of practice it protects" (Sandel, 2006: 257).

Non-Constitutional but Pluralistic

The focus of this part is to establish a system which is substantially equal for all but flexible toward the growth of pluralism.¹⁰ In this system unequal condition must be corrected. The unequal system and the growth of pluralism must be fairly handled. The fair way is not "a hands off" approach but an evenhanded one (Carrens, 1997: 814-820). The hands off

¹⁰ This system is an adaptation of the associative democratic system or a relational neutrality built by Veit Bader in his two articles: (1) "Religious Diversity and Democratic Institutional Pluralism, in *Political Theory*, Vol.31 no.2, April 2003, pp 265-294; (2) "Taking Religious Pluralist Seriously- Arguing for an Institutional Turn: an Introduction", in *Ethical Theory and Moral Practice*, 6. 2003, Kluwer Academic Publisher pp., 3-22.



approach will protect a systematic inequality preserved in the homogenous history of a state. The evenhanded approach will be fair not through applying the method of sameness but giving an appropriate representation and presentation in the public sphere. Fairness must be introduced by correcting the old system which prioritizes certain groups, and this has to guarantee the equal access for all to be represented and participate in the public sphere. However the appropriate model needs to consider some aspects such as history, numbers, and the quality of the issue or claims presented by religious groups in the public sphere (Carrens, 1997: 814-818).


The model which is substantially equal for all but flexible toward the growth of pluralism has two layers. In the first layer, the emphasis is given to the constitution of the state. The constitution has to be neutral to all. Neutrality must be the “cornerstone” of equality and unity between all elements of the nation. It would be a reference point particularly when there are communal conflicts. The way to generate it is to disestablish religion from the constitution. It implies that the constitution should not establish one or few religions as official religion. From the point of view of religion, dis-establishment is the sign of welcoming the reality of the growing numbers of religions. Thus religion would be accepted as long as religion does not infringe the democratic system which preserves human rights, pluralism, equality and toleration. The constitution should become an instrument of unity. From the point of view of the state it is a sign of maintaining freedom of religion.

The second layer is flexibility toward pluralism. Here the focus is how to accommodate religion equally into the public sphere. In his model, Veit Bader offers two forms (Bader, 2003: 271). The first is to institutionalize religion into politics, the administrative and religious-cultural system. The second is the embodiment of the first form. Here religion is given the right to be informed, consulted and heard on contested issues. Religion is given the right to participate in the process of forming public policies.

Given the uneven reality of pluralism, the national system should be supplemented by the concept of decentralization. It means that particular policies should not be centrally decided. For example, in an area which does not have atheists but religious believers, let public schools in that area have a silent prayer, let the local government help the growth of religious people, because good believers will more or less support the growth of the nation.

Moreover, decentralization should not be restricted to a territorial model. It needs to be supplemented by a qualitative model. This model






refers to exemptions. If public laws put pressure on religious believers when they deal with fundamental aspects of religious convictions, there should be an exemption for the sake of religion. The claim of exemption should be open to a public criticism in order to find a foundation of a valid claim. Religious leaders should explain the issue and the place of the issue in the structure of conviction. They need to be open toward criticism. If there are unavoidable conflicts between civic virtues and limits of reason, we should learn how to live with disagreement, and it should be complemented with civic integrity and civic magnanimity (Bader, 2003a: 618-619).

Conclusion

Generally speaking it can be said that there is no fundamental reason to exclude religion in the public sphere. Strict separation is a dualistic concept and the concept maintains inequality. To maintain strict separation dooms to failure. People will keep fighting to get involved in the public sphere or to demand public recognition. Their claims are based in the principle of freedom, equality and human integrity. However, freedom, equality and human integrity are not an individual claim but the claims of all individuals. This means that the individual claim is always a claim in a society. In society, individuals are shaped by many cultural backgrounds. Religion as one of them forms the identity of persons. Among religions, there are complex even conflicting concepts of the good. This is one of the facts generating pluralist society. By reason of their cultural background, persons must not be reduced to certain principles, or individuals should not justify their claims based merely on certain principles. That is why the principle of the freedom, equality and human integrity should be presented in line with the relevant context.

In this context the claim of religious involvement or public recognition should be proportionally managed and treated. There is no absolute freedom, only equal opportunity and self-human integrity. In itself the extreme claim will destroy the whole principle. Hence, the condition for religious involvements in the public sphere or the claim of public recognition needs to stand on proportional equality and freedom and the limited priority of human integrity.

These conditions can be exemplified or described by considering the social context, promoting mutual respect and encouraging the use of public reason. The latter should not be treated as a norm. Finally, to help religious believers to embody their integrity is to encourage them not to infringe the fundamental meaning of human integrity which is able to be measured by whether this effort still protects the integrity of others or not.



In the public sphere religious involvement should be based on the significant meaning of beliefs in themselves and its meaning for society. Under these conditions, individuals, communities, and the state would be protected by mutual understanding. All of these are grounds for designing the 'non-constitutional but pluralistic' as the model for a limited relationship between the state and religion.



Daftar Rujukan

- Audi, Robert. 2000. *Religious commitment and Secular Reason*, Cambridge: Cambridge University Press.
- Bader, Veit 1999. "Religion, Toleration, and Politics: Religious Pluralism, Secularism or Priority for Democracy", in *Political Theory*, Vol. 27, No. 5, October. (597-633).
-2003. "Religious Diversity and Democratic Institutional Pluralism, in *Political Theory*, Vol.31 no.2, April, Kluwer Academic Publisher. (265-294).
-2003a. "Taking Religious Pluralist Seriously- Arguing for an Institutional Turn: an Introduction", in *Ethical Theory and Moral Practice*, 6. 2003, Kluwer Academic Publisher. (3-22).
- Barry, Brian. 2001. *Culture and Equality*, Cambridge: Polity Press
-2006. "Theory of Group Rights", in Robert E. Goodin, and Philip Pettit eds., *Contemporary Political Philosophy: an Anthology*, 2nd edition, Malden, MA: Blackwell Publishing.
- Bou-Habib, Paul. 2006. "A Theory of Religious Accommodation", in *Society for Applied Philosophy*, Vol., 23, No. 1. (119-126)
- Carens. 1997, "Two Conception of Fairness", in *Political Theory*, 25. (814-820).

- Cooke, Maeve. 2006. "Salvaging and Securing the Semantic Contents of Religion: The Limitations of Habermas Postmetaphysical Proposal", in *International Journal for Philosophy of Religion*, Vol. 60, Iss.1-3, Dordrecht. (187-215).
- Dreisbach, Daniel S. 2006. "The Mythical Wall of Separation: How a Misused Metaphor Change – State Law, Policy, and Discourse", in *First Principle Series*, No. 6, Washington: the Heritage Foundation.
- Fish, Stanley. 1994. *There is no Such Thing as Free Speech*, Oxford: Oxford University Press.
- Greenawalt, Kent. 1998. "Has Religion Any Place in the Politics and Law of Liberal Democracy", in *Proceedings of the American Philosophical Society*, Vol.142, No.3, September. (378-387).
- Habermas, Jurgen. 2006. "Religion in the Public Sphere", in *European Journal of Philosophy*, 14:1. (1-25).
- Jensen, Mark. 2005. "The Integralist Objection to Political Liberalism", in *Social Theory and Practice*, Vol. 31, No.2, April. (157-171).
- Kelly, Paul. 2002. *Rethinking Multiculturalism*, Cambridge: Polity Press and Blackwell Publishing.
- McConnell, M. 2000. "Believers as Equal Citizens", in N. Rosenblum ed., *Obligations of Citizenship and Demands of Faith*, Princeton: Princeton University Press. (91-100).
- Mill, J. S. 1974. *On Liberty*, edited with an introduction by Gertrude Himmelfarb, Middlesex England: Penguin Books.
- Mill, David van "Freedom of Speech", *The Stanford Encyclopedia of Philosophy* (Winter 2002 Edition), Edward N. Zalta (ed.), [<http://plato.stanford.edu/archives/win2002/entries/freedom-speech>].
- Nagel, Thomas. 1987. "Moral Conflict and Political Legitimacy, in *Philosophy & Public Affairs*, 16:3. (230-245).
- Parekh, Bikhu. 2002. "Barry and the Dangers of Liberalism, in Paul Kelly, ed., *Multiculturalism reconsidered*, Cambridge: Polity Press and Blackwell Publishing.

.....2006. *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Hampshire: Palgrave Macmillan.

Perry, Michael J. 1991. *Love and Power: The Role of Religion and Morality in American Politics*, Oxford: Oxford University Press.

Rawls, John. 2005 rev. *Political Liberalism*, Part Four: “The idea of Public Reason Revisited”, New York: Columbia University Press. (437-490).

Sandel, Michael J. 2006. *Public Philosophy, Essay on Morality in Politics*, Massachusetts: Harvard University Press.

Saphiro, Ian. 2002. “Democratic Justice and Multicultural Recognition”, in Paul Kelly ed., *Multiculturalism Reconsidered*, Cambridge: Polity in association with Blackwell Publisher,

Sterba, J. 1988. *How to Make People Just: A Practical Reconciliation of Alternative Conception of Justice*, Totowa, NJ: Rowman and Littlefield.

Thiemann, Ronald F. 1996. *Religion in Public Life: a Dilemma for Democracy*, Washington DC: Georgetown University Press.

Young, Irish Marion. 2002. “Justice and the Politics of Difference”, in Paul Kelly, *Multiculturalism Reconsidered*, Cambridge: Polity Press and Blackwell Publishing

