Human Rights and Democratisation Research Seminar 2019

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Human Rights and Democratisation
Research Seminar
Yogyakarta, 23 July 2019

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CHALLENGES OF RIGHTS TO EMPLOYMENT FACED BY TRANSGENDER *HIJRA* IN THE FORMAL SECTOR OF BANGLADESH

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Abstract

Employment is a right of every citizen of the people's republic of Bangladesh who is capable of working according to his or her abilities. The main purpose of this paper is to look into the major challenges of right to employment which is faced by Transgender Hijra in the formal sector of Bangladesh. The thesis employed the qualitative methodology data collection tools such as field observation, Face to Face Interview (Key Informant Interview, In-depth Interview) and Focus Group Discussion (FGD) as primary source of data. Observation has been used to understand the Transgender Hijra's everyday way of life and their works. Relevant secondary literatures had been reviewed to understand the Hijra identity, exclusion process from the formal employment sector. The study participants are the administrative officials of Social Welfare Ministry, Hijra Leaders, and Hijra victims of employment initiative in 2014. The thesis findings finds that there are three major challenges of right to employment of Hijra people faced in entering the formal jobs sectors: institutional, social prejudices and cultural, and religious factors. The thesis suggests some recommendations for promoting employment rights of Transgender Hijra in the formal sector of Bangladesh, such as the consolidated employment policy for Hijra should be addressed and the existing policy should be amended and the gender recognizing policy of Hijra should be constructed and prepared properly on the basis of international standard principles like Yogyakarta principles and ICCPR article 16.

Keywords: Transgender *Hijra*, employment rights, challenges, formal sector, Bangladesh.

Introduction

In Bangladesh, transgender *Hijra* are looked down upon for a long time because they do not have the gender identity approved by the society. Transgender *Hijra* are known as *xaniths* in Oman, *serrers* in Kenya, and '*hijra*', '*jogappas*', '*jogtas*', or '*shiv-shaktis*'(Khan

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et al., 2009, p-441). In South Asia, "*hijra*" refers to an identity category for people assigned male at birth who develop a feminine gender identity (Human Rights Watch, 2016, p.4). They are also recognized as 'third gender' in South Asia.

In Bangladesh, the term "hermaphrodite" or "eunuch", is commonly applied to the *hijra*, and their gender expression is 'female psyche in male physique' (Khan et al., 2009, p.444). *Hijras*' expressions of what they are often take the form of stating that they are in-between, neither men nor women (Nanda, 1999, p.15). These behavior roles include feminine mannerisms like dressing, wearing hair long, plucking facial hair, taking on women's name and kinship terms and using feminized vocabulary. The mainstream society of Bangladesh, as a Muslim dominated country accepts only the 'male-female' gender dichotomy and males are considered as the center of authority. However, beyond the dichotomous 'male-female' gender range, *hijra* have different sexual identity, orientation and practice (Khan et al., 2009, p.441). As a result, their vulnerabilities, dissatisfactions, and socio-political uncertainties remain in touched, and their socio-economic conditions, social networks and mobility produce discrimination that leads them to have low self-esteem, low income and poor social dignity.

In 2016, the Ministry of Health and Family Welfare of Bangladesh conducted the mapping study where showed that the hijra population size is 10,000 according to the official source of Social Welfare Ministry in Bangladesh. The *Hijra* community identified themselves into three categories as '*badhai*' who bless newborn child through singing and dancing, *cholla manga* and sex worker. Their traditional occupation is '*hijragiri*' which includes *badhai* (*bachcha nachano* which literally means bestowing blessings new born babies and weddings ceremonies in exchange for donations), and *cholla manga* (*bazar tola* which literally means collecting money from markets, shops and bus, train), doing sex work and *Raduni* which means cooking in restaurants (Khan et al., 2008, p.129; Human Rights Watch, 2016). Some *hijra* work in garments factories; the *hijra* who work in restaurants and garment factories are generally unable to continue these jobs for long time due to experiences of sexual assault, teasing, or harassment arising from their 'feminine behavior' (Human Rights Watch, 2016, p.7). Some *hijra* worked in garments factories; but eventually they were dismissed when employers learned of their feminine attitudes. In some cases, many *hijra* were abused verbally, physically and sexually at workplaces for which they never received any justice (Khan et al., 2009, p.445).

The *Hijra* groups, human rights activists and some human rights-based organizations have been demanding the *hijra* recognition as the 'third gender' for a long time. In November

2013, the GoB granted '*Hijra*' legal status as members of a 'third gender'. They became entitled to identity their gender as '*Hijra*' in the national legal documents like Passport and ID card, rather male and female category (New York Times, 2 July, 2015). Finally, in 26th January 2014, Ministry of Social Welfare, Bangladesh published a gazette with the declaration that "the government has officially recognized *Hijra* population of Bangladesh as '*Hijra* sex' or 'Third Gender"- which was approved by the Cabinet in 2013 (Government of People's Republic of Bangladesh [GoB], 2014). The Independent United News Agencies through the daily star newspaper (Bangladesh) reported on 24July 2016 that the Election Commission (EC) had not yet enrolled *Hijra* voters as a third gender, and a third gender category had not yet been included on the NID (National Identity) card. Even in the last 11th national parliamentary election on 30 December, 2018, *Hijra* or Third Gender identity was not reflected on the voter list or National Identity Card (NID) alongside the male and female category. So, although the government declared this *Hijra* people as third gender, it has not formalized in the reality.

In December 2014, Ministry of Social Welfare, Government of People's Republic of Bangladesh took an initiative for inclusion of *Hijra* population in governmental employment sector. The Social Welfare Ministry invited *Hijra* to apply for governmental job in different sectors. Some of *Hijra* applied for this invitation and maintained examination procedures. They had been primarily selected for those posts. For the first time, the transgender *Hijra* had been welcomed for empowerment and mainstreaming in governmental sectors for employment. Things did not go well from the start. They had to face a lot of difficulties after the initial selection. One of the main processes of medical examination was to identify the "Authentic *Hijra*" identity. They had been abused in various ways through this examination. They had been harassed physically in the name of medical investigation. They had been stigmatized and questioned about their actual identity by the medical team. And finally, they did not get their governmental jobs what were supposed to give some *Hijra* of Bangladesh. (Human Rights Watch, 2016, pp.15-26). So, after this event, the *Hijra* people had been lost their dignity and their human rights. They also had been victimized and questioned regarding their *Hijra* identity. Even it also hindered their entire employment right which was not initiated yet.

The state has established constitution law for the protection of every citizen's rights of Bangladesh. The state has also ratified the ICESCR in 1998 and the ICCPR in 2000 as well. According to the constitution of Bangladesh, Article 20 (1) clearly states that 'work is a right, a duty and a matter of honor for every citizen who is capable of working'. Article 28(1)

also asserts that 'the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place or birth'. Universal Declaration of Human Rights mentions article 23 that 'right to work, to free choice of employment, to just and favorable condition of work and to protection against unemployment'. Article 7 of ICESCR says that 'right of everyone to the enjoyment of just and favorable conditions of work'.

In spite of these laws, conventions, the transgender *Hijra* have been excluded from the fundamental rights of the state for a long time. But, as a citizen of Bangladesh, every *Hijra* has the right to work in a favorable condition in the formal and informal sector. Even the state has also the transgender recognition declaration gazette; the reality is totally different in the society especially for Transgender *Hijra* group. This paper will mainly focus on the major challenges of employment inclusion in the formal sector which are faced by transgender *Hijra* in Bangladesh.

Methods and Materials

Qualitative method and tools had been be used for this study in order to seek the possible answers to the research question as a primary source of data. Purposive sampling had been used for this study. For interviewing participants as scheduled activity, Semi-structured questionnaire guideline had been applied for Face to Face In-depth interview (IDI) and Key Informant Interview (KII). In-depth interview had been used for general officials of Department of Social Service to understand the initiatives and present status of employment of Transgender Hijra in the formal sector and KII had been applied for GOB policy makers in the Ministry of Social Welfare to understand the expert knowledge, the existing 'Transgender Recognition declaration gazette 2014, the initiatives of employment and the implementation process of Employment of Transgender *Hijra*. KII had been also employed for Transgender *Hijra* leaders who are known about the whole Transgender *Hijra* Community, the Transgender recognition declaration 2014 and the total process of inclusion employment status which was initiated from GoB. In-depth interview had also been employed for *Hijra* victims for understanding the existing status of government and non-government employment of Transgender *Hijra*. Field observation has been used to understand the Transgender *Hijra's* everyday way of life and their works

20 respondents (5 policy makers, 5 general officers, 5 *Hijra* leaders and 5 *Hijra* who were the government employment opportunity's victims) had be recruited for conducting data collection as a primary source of data. For getting access to the *Hijra* leaders and *Hijra*

Victims, the two renowned sexual minority rights based NGOs – Shoceton Shomajsheba *Hijra* Shongho and Diner Alo *Hijra* Shongha had been selected. The ethical consideration had been strictly maintained in this study. Relevant secondary data had been used in this paper.

Social Exclusion as a Framework

According to United Nations Development program in India (2010, p.6), 'social exclusion is used in highlighting the issues and problems faced by disadvantaged and disenfranchised groups. Social exclusion to *hijra* women, one can understand how TG communities have been excluded from effectively participating in social and cultural life; economy, and politics and decision-making processes. Piron & Curran (2005) defines social exclusion that 'a group of people who are excluded from social, economic, political processes and institutions based on their social identity'. So, social exclusion is a process which systematically eliminated and discriminated because of sexual orientation, social identity, caste, race, religion, gender and etc.

According to the Social Exclusion Knowledge Network (SEKN) model which is developed by Popay et al., 'Social exclusion is directed by unequal power dynamics and functioned it four interconnected and relational dimensions such as cultural, economic, political and social at various forms like individual level, groups, households, communities, countries and the world as a whole'. So, through this model, we can see the social exclusion process of *Hijra* community of Bangladesh.

Transgender *Hijra* are one of the most excluded and vulnerable group of Bangladesh. They are discriminated and excluded from their fundamental rights in every sphere of social life. They do not have smooth access to employment, education, health, public ceremony, living with the mainstream society. They cannot participate in any kind of social, economic, political sphere in the society because of their gender identity although the state has already recognized them as 'Third gender'. 'Social Exclusion' concept as a framework has been used in this paper.

Findings and Discussion

This paper mainly focuses on to reveal the major challenges of right to employment of Transgender *Hijra* in the formal employment sector of Bangladesh. As a citizen of nation, everyone has the right to get the employment opportunity in equally. *Hijra*, as a citizen of Bangladesh, is supposed to get the equal access to have jab in the formal and informal sector

of Bangladesh. But the reality is totally different for the case of *Hijra* people in Bangladesh. This paper will try to figure out the major barriers of rights to employment of *Hijra* in the formal sector of Bangladesh through experiences of the government officials and *hijra* participants.

Absence of Employment Policy for *Hijra*

Employment policy is very important for mainstreaming *Hijra* jobs in the formal sector in Bangladesh. But there is no specific employment policy for this group. The state has only declared this group as *Hijra* Sex or Third Gender. But the state did not make any rules and regulations for mainstreaming in the formal sector job for this group. There is no clarification how the state will contribute and develop for this group in the government jobs. One of the Government official participants shared that…

> *If we want to provide the job of this excluded group, we have to have the specific law and employment policy of this group. Actually, we do not have any employment policy for mainstreaming Hijra people in the government sector. Now, we are working for making the consolidated law and employment policy for them. And we are in the final stage. I think, there should be specific employment policy for Hijra so that the state can get engaged them in the employment sector. (KII with Government Official of Department of Social Service, 7th May 2019, Agargoan, Dhaka)*

Lack of Education for Accessing Jobs in Formal Sector

Education is inevitable for every sphere of the society especially in the institutional level of the state for accessing job. Education is must for getting governmental jobs in any level. The government official's perception about *Hijra* education is very poor. *Hijra* people are unable to complete their education in the long run. Most of *Hijra* participants of this study could not finish their study at least class five and in the primary level. One of the official participants of this research reported that---

> *The government wants to provide them the job opportunities but they are not educated. The government is very enthusiastic to mainstream this group in the employment sector but how the government will provide job for them. So, the government has taken a significant initiative for providing the education scholarship for Hijra student. The government is giving the education scholarship for them right now. (KII with Government Official of Department of Social Service, 7th May 2019, Agargoan, Dhaka).*

On the contrary, one of *Hijra* participants explained why she could not continue her study----

> *I know educational qualification is compulsory for getting government job. But when I went to school, the school environment was not congenial and smooth for me. Everyday my classmates used to look down upon me. They used to criticize me. They often used say 'maiga ploa'(effeminate boy). I reported to my teachers but they asked me to give up my feminine attitude. Sometime I was assaulted and kicked by my classmates. Then I could not continue my study at the long run. Actually, my classmates, teachers, guards and peon's behavior were not comfortable for me. (KII with Hijra Leader, 9th May 2019, Ganderia Slum, Dhaka).*

Poor education condition of *Hijra* is one of the significant barriers of mainstreaming employment of *Hijra* people in Bangladesh. The finding stated that most of the *Hijra* participants of this study could not complete their education at least class six. That's why they cannot come to mainstream into the formal job sector. The finding also claimed that there is no congenial atmosphere for continuing her education because of the identity. When their identity is disclosed, the whole environment of the education institute is being changed which are not easy going and smooth for their study. So, they are automatically dropped out from the early career of their education life.

Not Recognized of *Hijra* Identity in the Legal Documents

After the declaration of recognition, *Hijra* identity as a third gender was supposed to engage or to be on board in the legal documents like Passport and NID. But still it was not established in the state legal documents because of the normative thinking of gender and religious conservatism. The government officials' mindset is driven by the conservative values although the state declared as a secular state after its independence. The government is always reluctant for engaging their identity in the passport and NID because of mainstream society's conservative values. In reality, there is no incorporation of *Hijra* identity in the passport and National Identity Card (NID). For this reason, any kind of job circular of the state, there is no presence of this distinct identity group. When the circulation of formal sector job is published, there are only male and female identity groups existed. So, they are automatically excluded from government employment opportunity. One of the government officials had been asked why the 'third gender' identity did not establish in the NID card and Passport yet after their recognition. The official replied regarding this issue…..

The government had already done a lot of things for this group. The Hijra had been recognized officially as a third gender. The government had taken a lot of initiatives for their improvement like training program, old age salary, education scholarship and etc. It will take time for the complete recognition like in the presence of NID and Passport beside male and female category. Still we are working for the policy formulation of Hjira people. Besides, the mainstream society does not accept them. Even the third gender identity is not normal in the society. Actually they are sexually and genitally handicapped. Religion also does not support the different identify except male and female category. So, we have a lot of constraints but still we are trying to engage them in the legal documents. . (KII with Government Official of Ministry of Social Welfare, 8th May 2019, Secretariat Bhabon, Dhaka)

One of the Hijra leaders narrated that…

This recognition was just like an eye wash. There is no reflection of the gazette in the legal documents. Even there is no Hijra gender identification in the job circular. We thought, our identity would be included in every sphere of our society. But everything is constructed on the basis of male and female gender category (KII with Hijra Leader, 9th May 2019, Ganderia Slum, Dhaka.

No Clarification Regarding Formal Employment of *Hijra* in Gazette

This is the first time of Bangladesh history; the state had officially recognized *Hijra* as *Hijra* Sex or Third gender. After that, the government had taken some initiatives for development of *Hijra* people in Bangladesh. One of the initiatives was to provide government jobs for *Hijra* people in 2014. But finally, it had not been formalized and implemented. Actually there was no clarification about the job rights, education rights, health rights, right to food and human rights of this group in this recognition gazette. From the very beginning of this recognition gazette, the state was not proactive in the reality.

One of the official participants said that…

Actually we don't have any policy for mainstreaming government job of Hijra people. So, how can we initiate again for mainstreaming in the government jobs. Even we do not have any instructions from the Ministry of Social Welfare for giving the job opportunities of Hijra group. In 2014, we took a

pilot project for mainstreaming in the government job but finally it was not effective because of their fake Hijra identity. (KII with Government Official of Ministry of Social Welfare, 8th May 2019, Secretariat Bhabon, Dhaka)

Unacceptability of *Hijra* in the Official Environment as Colleague

Bangladesh is a Muslim country in terms of majority. Most of the officials are religiously conservative. They cannot imagine about distinct gender identity alongside the male and female category. The government officials were trying to explain about the unacceptability of *Hijra* people from the official decorum and the mainstream societal perspectives. They also were trying to say about the religious value regarding the male and female gender identity. Even they were depicting their understanding and perception about gender dimension like only on the basis of sex; male and female category. Besides, officials were also trying to say that they don't know how to behave with other colleagues and even they don't know the official manner and decorum in the office environment. They also added that the other colleague do not want to work together with the *Hijra* people.

One of the participants of Government official claimed as follows----

The Hijra identity is not normal and acceptable for the mainstream society. Even the religion does not support this type of identity and there are many religious superstations regarding them. Is there any sex or identity group beyond male and female? I think it's really funny for identity construction. I cannot understand how a male imitate himself as like as Hijra or like women? We took an initiative for providing job to this group but according to medical test, they were not real Hijra, they all were fake Hijra. Actually, they were physically male. Even the Hijra people are severely disturbing to mainstream people. So, the mainstream people are not accepting as normal people. They do not know how to talk with others. The other colleagues are not interested to work together with Hijra people. (KII with Government Official of Department of Social Service, 7th May 2019, Agargoan, Dhaka).

The distinct identity of Hijra as a Third gender still did not formalize in the legal or official documents and the institutional papers. Although this identity was supposed to formalize in the state apparatus, no remarkable initiative had been taken yet. One of the reasons is social conservatism because most of the Bangladeshi people are Muslim. So, this kind of recognition is not reflected in the everyday life of *Hijra* people and has no impact of it.

Discriminatory Practices of Established Laws and Ratified Conventions

The government has already recognized them as their distinct gender identity. The state has established constitution law for the protection of every citizen's rights. The state has also ratified the ICESCR in 1998 and the ICCPR in 2000 as well. *Hijra*, as a citizen of Bangladesh, the recognized law and ratified convention are not practiced for the protection of *Hijra* people's formal sector job in Bangladesh.

One of the government officials expressed that:

> *The government has a constitutional law, act, and ordinance and ratified international conventions but there is no specific law and policy for Hijra people. There is no employment policy and law for Hijra. Even there is no instruction for Hijra people's job mainstreaming in the formal sector from the Ministry of Social Affairs. So, how will we do for Hijra people employment mainstreaming in the formal sector? (KII with Government Official of Ministry of Social Welfare, 8th May 2019, Secretariat Bhabon, Dhaka)*

As a citizen of Bangladesh, constitution stated that everyone has the right to work or right to get the equal opportunity of work in every places of the state, but in the reality *Hijra* have been denied this fundamental right for a long time. As a consequence, they are unemployed and under-employment in the formal sector.

Official's Perception about *Hijra* Identity

The government official's perceptions are very poor understanding regarding the *Hijra* identity. They do not have clear perception about the gender diversity. In the Social Welfare Ministry in Bangladesh, most of the government officials and policy makers are from the conventional mainstream society. They actually believe in only two types of gender identity of the society. To some extent, they cannot imagine the different gender identity beyond the male and female category. Even there are two kind of gender are normatively approved by the society. Even the existing legal documents of livelihood living standard *Hijra* community project in the Social Welfare Ministry of Bangladesh, *Hijra* are defined '*jouno o lingo protibondhi*', literally sexually and genitally handicapped.

One of the official participants defined them as follows…

> *Basically those who are sexually and genitally handicapped are called Hijra. Naturally I am a boy but I wouldn't want to belong to as a boy. By the medical treatment or operation I want to change my gender and I want to be a*

feminine gender. Is it a normal phenomenon or thinking? Actually their identity is not normal and acceptable for the mainstream society. Basically they are abnormal and they are always disturbing for the mainstreaming non-Hijra people. (KII with Government Official of Department of Social Service, 7th May 2019, Agargoan, Dhaka)

One of the participants from *Hijra* community said about the Hijra identity that:

Hijra is an umbrella term of the South Asian perspective. I think, Hijra is a culture and tradition. Those who belong to this culture are called Hijra. I am physically male, I mean I have a penis but I am mentally female. Those who talks and acts as a feminine attitudes like sexual desire and psychologically just like a woman. I will emphasize on the mentality. Mentally what I feel, what attracts me, what I wear and how I feel and communicate. These are more important for identifying Hijra. (KII with Hijra Leader, 9th May 2019, Ganderia Slum, Dhaka)

Prejudices against Hijra

Attitudes and behave are very important for accepting people in the society. The government official's attitudes are not engaging the positive way of thinking regarding the *Hijra* people. Most of the government officials are negative attitudes about this excluded group because of the gender identity. In the legal documents, *Hijra* people are represented as sexually and genitally handicapped. The official's attitudes to *Hijra* people are deviant, immoral, deceitful, mentally ill, abnormal, insane, annoying, and disabled. These sorts of attitudes are affecting the *Hijra* people development program.

One of the participants of government officials claimed---

Hijra are also largely goonda as well as they always annoy and disturb people. Basically they are abnormal people. They are doing extortion for collecting money by force in the street and using slang for most of the conversation and disturb to other people. One male imitate himself as like as Hijra, why a male person imitate himself as Hijra? Then how will the society accept them? How is it possible? (KII with Government Official of Department of Social Service, 7th May 2019, Agargoan, Dhaka)

On the contrary, one of the informants of *Hijra* participants claimed that –

When a Hijra wants to be a woman, then the society stigmatizes as a mad, insane and abnormal. Everybody hates them. The society not only beat the

Hijra but also abhors her. Even, the government official's attitudes about us are like abnormal, mentally sick and deceitful. This is the reality of this country about Hijra community. (FGD with Hijra, 27th April 2019, Nobi Nagor Slum, Savar,Dhaka).

Prejudices against *Hijra* people are the common phenomena in the government official mindset. Normative thinking, cultural and religious belief system are main causes of this perception of officials. People from the mainstream society cannot imagine the distinct identity beyond the male and female dichotomy. The study findings explored that all of the government are the mainstream society. The findings revealed from the official perspective that the *Hijra* people are abnormal, mentally sick, deviant, immoral, deceitful, insane, annoying and even disabled in terms of sexually and genitally handicapped. The study findings also shown from the government official context that the *Hijra* are aggressive, manipulative, goonda for collecting money from bus, train, shops in the Bazaar by force. These sorts of prejudices of government officials are embedded in their mindset. Therefore, the attitudes and prejudices of the government officials are reflected in their cognitive orientation and the *Hijra* people are excluded and discriminated from their rights like employment rights in the formal sector.

Government Employment Initiative for *Hijra* in 2014: A Case

After the recognition of Transgender *Hijra* as "Third Gender", in December 2014, Ministry of Social Welfare, Government of People's Republic of Bangladesh took an initiative for inclusion of *Hijra* population in governmental employment sector. The Social Welfare Ministry invited *Hijra* to apply for governmental job in different sectors. The positions were low-level of government jobs like peon, gourd and cleaners for 14 posts in Schools, orphanages and daycare centers. That was the first initiative for providing jobs of *Hijra* in the Bangladeshi history. Around forty *Hijra* applicants applied for this invitation and maintained examination procedures. They had been primarily selected for those posts. But things did not go well from the start. They had to face a lot of difficulties after the initial selection. One of the main processes of medical examination was to identify the authentic *Hijra* identity.

Mandatory Medical Checkup for Conforming Hijra Identity

For identifying the *Hijra* people, the government officials think that medical examination is mandatory for government job and also identifying real *Hijra*. On January 27, 2015, the Ministry of Health and Family Welfare had to be sent a memorandum request "those necessary steps are taken to identify authentic *Hijra*s by conducting a through medical check-up." Actually the memo did not clarify or delineate *Hijra* or indicate any specific instructions about the procedures by which medical examiners were to identify "authentic *Hijra*s" leaving the order open for interpretation and abuse (HRW, 2016, p.17).

One of the *Hijra* victims participant explained her experiences that..

> We had been called for medical examination in the Dhaka Medical College. Then we went to medical college for our health checkup. But by the name of medical test, we had been harassed and made bad comments about our sensitive organs.
>
> It was really embarrassed because they touched our sensitive body parts. They took off our clothes and touched our sensitive organ, chest and back, belly and even our penis. When they held my penis, and loudly said no, no, you are male. What type of Hijra you are? Is it a medical test for health checkup? They assumed that a Hijra would be like a woman and a Hijra would have the same features as a woman. So, the doctors finally said, you are not Hijra, you are men; you all are fake Hijra. Therefore, we had to be stigmatized and we did not get our government jobs. (IDI with Hijra Victim, 8th May 2019, Shampur Slum, Dhaka)

Encountering Harassment and Discriminations in the Employment Initiative

Most of the *Hijra* applicants were encountered harassment and discriminated in the 'Interview Session' and 'Medical Test'. They were encountered through the approaches, body languages and verbal language by the interview board members. There was no gender experts in that interview committee. They faced a lot of unusual and offensive questions from the interview board. There were huge misperceptions about this *Hijra* people.

One of the victims explained the interview situation that….

> One of the board members asked me, "When you come to the formal interview, you want to seem beautiful and good-looking. Then he asked again, "why did you come like very informal way, why did you do so makeup? If you

want to do the job in the government office, you have to wear pant and cut off
your hair. I replied, okay if I get the job, I will do everything. (IDI with Hijra
Victim, 8th May 2019, Mogbazaar Slum, Dhaka)

Misperception regarding *Hijra* identity is one of the reasons for excluding *Hijra* job in the formal sector. There were huge knowledge gaps of the government officials regarding the *Hijra* identity. 12 *Hijra* applicants fulfilled the requirement of those jobs. But they all were discriminated and stigmatized several times for the total employment appointment process. In the viva board, they were verbally insulted through the different type offensive and very embarrassing questions. In spite of that, they had been finally selected for circulated job in the government jobs. The study explored that the identification instrument of *Hijra* identity is the medical examination. So, after the final selection, they had been sent to Dhaka Medical College for mandatory health checkup. In the name of medical examination, they were harassed, encountered and discriminated and even they had been violated their human rights. After going to the Medical College, *Hijra* applicants understood that they would be examined for identifying for 'Authentic *Hijra*'. The medical examination was carried out by the materiality of body not on 'self-feeling or self-determination' or the psychology and gender diversity. Basically, the government official had zero understanding about *Hijra* identity like who are *Hijra*, how hijra identity develop, what are the basic ideas or characteristics of *Hijra*. That's why; the government officials took the decision for identifying the authentic *Hijra*. Finally, medical report was negative for the selected 12 *Hijra* candidates. The medical report published that they were not real *Hijra* but they all are men who tried to claim themselves as *Hijra*.

Discussion

The paper is mainly focused on the challenges of right to employment of Transgender *Hijra* people in the formal sector of Bangladesh. In the discussion section, the paper will try to analyze and discuss on the basis of major findings. The discussion part has been explored and categorized into three major factors which are as follows…..

Institutional Factors

Institutional factors are one of the challenges of ensuring the employment rights of transgender *Hijra* in the formal sector in Bangladesh. Institutional factors encompass the gap of the proper employment policy formulation of *Hijra* people, the discriminatory practices of

the constitutional law and the international conventions and covenants, the gap of the proper *Hijra* identification policy formulation.

Proper employment policy is inevitable for *Hijra* people's mainstreaming job in the formal sector of Bangladesh. The study findings explored that no employment policy had been prepared for the *Hijra* people. The study revealed that the government had only officially declared *Hijra* people as a *Hijra* sex and Third gender in the gazette. The study also found that it was the only one sentence of the declaration. After this declaration, *Hijra* identity was supposed to be in the national identity card (NID) and passport beside the male and female category but still it was not established in the legal documents. The study also asserted that there was no clarification regarding the employment rights of *Hijra* in the gazette.

On the other hand, there are some existing constitutional laws and international standards which are not effectively practiced for ensuring the employment rights of *Hijra* people. Universal Declaration of Human Rights states Article 23 that 'everyone has the right to work, to free choice of employment, to just and favorable condition of work without any discrimination'. According to the constitution of Bangladesh, Article 29(1) clearly states that 'equality of opportunity for all citizens in respect of employment will be ensured. No citizen will be discriminated on ground only religion, race, caste, sex or place of birth in respect of any employment in the republic'. The constitution has also ensured Article 20(1) that 'work as a right, a duty and a matter of honor for every citizen who is capable of working'. According to Article 6 the ICESCR, 'the state recognizes the right to work, which includes the right of everyone to the opportunity to gain his or her living by work'. These sorts of laws and convention are not practiced for the right to employment of *Hijra* people in Bangladesh.

The study findings pointed that *Hijra* had been officially defined and represented in the legal documents as *'jouno o lingo protibondhi*', literally sexually and genitally handicapped. The employment initiative in the government sector was taken in 2014 and every *Hijra* eligible candidates were selected for the final appointment. But eventually the government officials decided to send them to Dhaka Medical College for identifying the "Authentic *Hijra*". The medical test result published later and declared that all of *Hijra* candidates are fake Hijra/ all are male. No Hijra recognizing policy had been formulated yet. So, the findings also claimed that the official's perception level of *Hijra* identity is not clear and recognizing process of identifying *Hijra*. These sorts of thinking are excluding from the formal sector job of *Hijra* people in Bangladesh.

Hijra refers to culturally acceptable socio-sexual groups of people of the Indian subcontinent who do not conform to conventional notions of male-female gender dichotomy but combine or move between the two (Khan et al. 2009, p.441). Article 16 under the ICCPR mentioned that "everyone shall have the right to recognition everywhere as a person before the law". In 2015, according to Delhi High Court reinforced that, "Everyone has a fundamental right to be recognized in their gender" and that "gender identity and sexual orientation are fundamental to the right of self-determination, dignity and freedom." According to the Nepal Supreme Court, the definition of third gender is that the sole criterion for being legally recognized as Third Gender on documents and in government registers was an individual's "Self-feeling". In the broader context, principles 3 of Yogyakarta principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity clearly clarified (pp.11-12) that "each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom".

Factor of Social Prejudices

Prejudices against *Hijra* are one of the challenges to mainstream of government job. The study findings stated through the officials perception that *Hijra* people are aggressive, and goonda for collecting money from bus, train, shops in the market. The findings also explored from the official point of view that *Hijra* people are abnormal, mentally sick, deviant, immoral, deceitful, insane, annoying, and disabled. These sorts of prejudices of government officials are embedded in their mindset. These sorts of negative connotations in the government officials are reflected in the negative image about *Hijra* identity. The normative discourses of society always produce the binary thinking of human cognition. This dichotomous ideological mechanism functions through the norms and beliefs of the existing society. These binary norms are 'normal vs abnormal', 'sane vs insane, 'Man vs Women' and 'Gender conformity vs Gender non-conformity'. Foucault argued (Skinner, 1985, p. 67) that a new regime of truth and power exercised through the disciplinary mechanisms the stipulation of norms for human behavior. Foucault also explained that the knowledge claim always try to establish the 'normality' of human norms which are reproduced and legitimated the rule of life. So, this pattern of binary thinking of society produce some discursive truths which always distinguish what is bad and good, what is normal and abnormal, what is acceptable and not acceptable, who is Man and Women.

Butler also mentions that "the normative society constitutes reality through language, gesture, and all manner of symbolic social agents" (Butler, 1988, pp.519-531). The general norms of society are sanctioned modes of behavior. The normative society not only identify people but also vocabulary, speech patterns, gestures, and behaviors, objects and activities as either 'masculine 'or 'feminine' is called gender typing (Waters & Ellis,1996,p.94). So, the *Hijra* identity is constructed and categorized as an abnormal and absurd identity in the government official's perspective as well as in mainstream society.

Cultural and Religious Factors

Cultural and religious beliefs systems are also the important challenges of inclusion *Hijra* employment in the formal sector of Bangladesh. The cultural norm of the mainstream society is heteronormativity regarding sex. Heteronormativity is a belief that gender identity falls into a binary opposition between male and female, both of which are supposed to be heterosexual (Butler, 2004). The idea of heteronormativity arbitrarily creates the cultural norms and truths that support the two gender existence of Bangladeshi society. There are two predominant normative thinking of gender which is based on the materiality of body. Sex is always constructed by heterosexual pattern of attitude and reproductive functions in Bangladeshi society. The notion of normative pattern of gender is male and female category and this is the truth of gender construction of the mainstream Bangladeshi society. For the case of Transgender *Hijra* in Bangladesh, there is no gender conformity beyond the binary moral code. This gender existence is not normal but also deviant. The predominant norms exist in the Bangladeshi society have more or less always forced the *Hijra* to give up their families, as discrimination and abuse are common features in *Hijra* life (Khan et al.2009, p.444).

The findings also revealed that the perception about *Hijra* of government officials was belonging to the normative form. The government officials claimed that it is not normal thing beyond male and female dichotomy. They also added that the religion would not support the different kind of identity except male and female category. So, heteronormativity is an acceptance which is normally excluding the formal employment sector in Bangladesh.

Conclusion and Recommendations

This paper revealed three kinds of challenges of employment of *Hijra* in the government sector in the broad context. The challenges are the institutional challenges which

are included absence of *Hijra* employment policy; discriminatory practices of established laws and ratified conversions and absence of proper *Hijra* identification/recognizing policy. The other challenges are social prejudices against *Hijra* and existing cultural and religious norms of the mainstream society.

After the third gender identity recognition of Transgender Hijra, no employment policy of *Hijra* had been formulated and even the *Hijra* identity is still excluded from the legal documents like national identity card, passport and the job circulation of the formal and informal employment sector. The existing employment policy is based on the male and female category. The established laws and conventions are not functioning for ensuring their employment rights in the formal sector as a citizen of this state.

Hijra identity is still ambiguous and unclear from the state perspective and the mainstream point of view. In spite of their official recognition, *Hijra* identity crisis is still prevailing in the mainstream society and especially in the government officials of the Ministry of Social Welfare. Because of the lack of proper understanding regarding *Hijra* people of government officials in 2014, the eligible *Hijra* candidates were excluded from the government employment of Bangladesh. The government did not follow any international mechanism for identifying the sexual minority group like Yogyakarta principles and ICCPR article 16. So, they were excluded from their employment because of identity crisis. After the recognition, no gender recognizing policy had been formulated.

Prejudices against *Hijra* are also the challenges to mainstream of government job. The study explored through the officials lens that *Hijra* people are aggressive, goonda for collecting money from bus, train, shops in the market and of immoral personal and also abnormal, mentally sick, deviant, immoral, deceitful, insane, annoying, and disabled. These sorts of prejudices of government officials are still embedded in their mindset. These sorts of negative connotations in the government officials are reflected on their basic rights. So, they are automatically excluded from their employment rights in the formal sector of Bangladesh.

Religious belief systems and cultural norms are one of the vibrant and significant challenges of right to employment of *Hijra* in the formal sector of Bangladesh. Religious values and conservatism are the common norms of Bangladeshi people although the State declared as a Secular State after its independence. Islam is the major contribution of the gender binary imposition in not only the society but also the state machineries. The idea of heteronormativity arbitrarily creates the cultural norms and truths that support the two gender existence of Bangladeshi society. There are two predominant normative thinking of gender which is based on the materiality of body. The study shows that the perception about *Hijra*

of government officials was belonging to the normative pattern of gender. The research also explored from the official perspective that the religion does not support the different kind of gender identity except male and female. So, the cultural and religious beliefs of government officials are indirectly affecting to the *Hijra* identity and which is normally excluded from the formal employment sector in Bangladesh.

The paper suggests some recommendations on the basis of research findings for promoting the employment rights of Transgender *Hijra* in the formal sector of Bangladesh. The recommendations are as follows:

- The consolidated employment policy for *Hijra* should be addressed and the existing policy should be amended. The *Hijra* employment process in the formal sector like employment rules and regulations should be included into the existing policy for ensuring the *Hijra* employment rights of *Hijra* in Bangladesh.

- The gender recognizing policy of *Hijra* should be constructed and prepared properly on the basis of international standard principles like Yogyakarta principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, article 16 of ICCPR and Nepal *Hijra* recognition bill. For identifying *Hijra* identity, *Hijra* leaders, gender experts, psychologists and medical expert should be included for that committee.

- National Human Rights Commission, the Ministry of Social Welfare, Ministry of Labor and Employment and the Ministry of Health and Family Welfare should be worked together to make a draft for legal recognition on the following of rights-based approach so that this excluded *Hijra* group would be identified through the clear perception.

- For clear perception of *Hijra* identity, some sensitivity workshop and gender/identity recognizing policy training should be arranged for the Officials and staffs who are working in the Department of Social Service in Bangladesh so that the officials can get the transparent perception regarding this group.

- The state should make sure the implementation of constitutional laws and specifically articles 20(1), 27, 28(1), 29(1) and article 19 (1) and ratified international covenants like article 23 under UDHR, article 6(1) under ICCPR and articles 6 and 7 under ICESCR for protecting the employment rights of *Hijra* in Bangladesh.

- The Hijra recognition declaration gazette should be implemented in the legal documents as a distinct identity group on the NID card, Passport, in the formal sector job circulation beside male and female gender identity.

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ENFORCING CIVIL RIGHTS IN INDONESIA'S DEMOCRACY: STATE'S INCLUSIVE RESPONSE TO RELIGIOUS VIOLENCE AGAINST SHI'A MINORITY GROUPS

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Abstract

This study discusses state inclusive polity in supporting a religious freedom in the context of Indonesia's democracy post-reform era. It particularly focuses on the attitude of local government, state representation, in response to religious violence against Shi'a minority groups. However, there has been an intense scholarly debate about what caused the government to be exclusive in response to the religious violence. Some scholars have argued that the states agencies commonly tend to take a safe position by no taking contradictory policies with the conservative Muslim aspirations. In this study, I argue that not all government agencies were exclusive in response to the violence against minority communities. By taking case study of Sunni-Shi'a tension in Bondowoso (East Java), it found that the local government showed inclusive attitudes to protect the rights of Shi'a adherents to practice their faiths respectively. In this study, I argue that these such attitudes arise more base on their interests to maintain well-developed religious freedom and harmony in Bondowoso. Finally, this study confirms the view that the presence of inclusive or good government agencies is a key factor for sustainability keeping human rights (including religious freedom) and democratization.

Keywords: Sunni, Shia, Indonesia, State, Civil Islam, intolerance, and religious pluralism

Introduction

Entering the democratic era, Indonesia's social-religious life faced a new challenge of violence against minorities communities. In the 1999, deadly conflicts between Muslims and Christians, for example, broke out in the religiously divided cites of Ambon and Poso. And in the second part of the 2000s decade, a strong religious conflict occurred within internal Muslim, especially between Sunni groups, the majority of Indonesian Muslims, and Shi'a

groups. However, the rise of these conflicts have challenged long standing spirit of pluralism and also democratization in the Post-New Order Indonesia (A'an Suryana, 2017: 71-103; Ahmad Najib Burhani, Vol. 8, No. 2, 2014: 134; Al Makin, Studia Islamika, Vol. 24, No. 1, 2017: 1-32).

As known, violence against minority groups does not take a limited form of stigmatization (such as Shi'a as a heretical and deviant group), but also discrimination, persecution, exclusion, and even expulsion from their homes (Setara Institute, 2010; The Wahid Institute, 2010). Violence also involves a variety of actors from state agencies (such as local government, police, military, law enforcement officers, etc.) and intolerant groups of civil society. However, these various kinds of violence with non-singular actors have actually been experienced by Shi'a minority groups in several regions such as in Batang (Central Java) in 2000 and 2006, Bondowoso and Bangil (East Java) in 2006 and 2016, Sampang, Madura (East Java) in 2011, Jember (East Java) in 2012, Yogyakarta in 2013, and others (Fauziah, 2011; Formichi, 2014; Hilmy, 2015; Akmaliah, 2015; Miichi, 2016; Makin, 2017; A'an Suryana, 2017).

However, the increasing of religious violence against Shi'a has drawn a significant attention and intensive debate of some scholars. Most of these scholarly debate have overwhelmingly put their emphasis on state's agencies response to violence against religious minority groups. Some have argued that the state is ideally in neutral position from any influences of social groups. The duty of the state is giving services democratically for every individual as a citizen, including the Shi'a. But in reality, what the state to do is still far from ideality. Rather than being an autonomous and immune political institution from the influence of social forces (Max Weber, 1968: 54), the state actually looks like powerless in the face of religious violence against Shi'a sponsored by intolerant groups (Al Makin, Studia Islamika, 2017).

Some scholars have suggested that the weaknesses (not to say 'failure') of the state agencies in protecting the Shi'a minority are caused by their inability in maintaining autonomy, independence and neutrality in dealing with intolerant groups. Sunni-Shi'a conflict in Sampang, for example, intolerant groups succeeded in pressing the state to take public policies in line with its religious aspirations. The issuance of East Java Governor Regulation No. 55 of 2012 concerning with Fostering Religious Activities and Supervision of Heretics, the local government polity to relocate Shi'a community to the Puspa Agro Flat Housing (Sidoarjo), and a two-year prison sentence by the District Court to cleric Tajul Muluk, were a clear evidence of strong influence of conservative groups on the state.

(Khoirul Mustamir, Ma'arif, Vol. 10, No. 2, December 2015, pp. 269-295; Johan Wahyudi, Ma'arif, pp. 243-268)

In addition, the failure of the state agencies to protect the Shi'a, intertwined closely with their accommodative and cooperative attitudes with intolerant groups. Such an attitude is clearly demonstrated by, for example, the government regime of Susilo Bambang Yudoyono (SBY). In some scholars views, SBY tends to be accommodative with FPI, MUI and similar Islamic militant groups. Even, SBY often made policies that benefited these conservative Islamic groups. For example, when MUI issued a fatwa against groups suspected of being heretical in 2005 - the first years of the SBY government - the attacks on minority groups increased. Ironically, SBY has limited ability to condemning the incident and described it as a horizontal clash between the two antagonistic groups in society, and it was not as an attack which caused a law carried out by Islamist groups against minorities (A'an Suryana, Al-Jami'ah, Vol. 55, No. 1 (2017) pp. 71-104; Marcus Mietzner and Burhanuddin Muhtadi, Asian Studies Review, 2018, pp. 1-19).

In this article, I argue that the existence of state agencies, especially at the local level, in the post-New Order Indonesia, does not draw a homogeneous and monolithic picture as in previous periods. In the era of autonomy and decentralization, the practice of local government describe the dynamics of its plural political dimensions. It's not a few that local governments (state representation) have succeeded in building an inclusive, clean and good governance; a government system based on the principles of openness, accountability and non-discrimination (http : //www.coe.int).

Theoretically, this paper conceptualizes an inclusive state as a system and practice of government institutions characterized by accountability, responsiveness and integrity among public sector service providers by ensuring social inclusion in policies, programs and services. Such governance practices give birth to ideal ideas about what is called good governance. In various literature, good governance presupposes a government that has full respect for human rights, adheres to legal rules, encourage effective community participation, guarantees political pluralism, ensures transparency and accountability in every institutional process, strengthens equity, behavior and values that encourage the creation of responsibility, solidarity and tolerance in the community ("Good Governance and Human Rights", in http://www.ohchr.org)

However, between good governance and human rights has a close connection and mutual affirmation. Human rights principles provide a set of values that guide how in a government social-political actors work to realize, among other things, social inclusion in the

community. At the same time, without good governance, human rights can almost certainly be respected, guaranteed, and protected. And the implementation of human rights can only be realized through a conducive government. At least, there are four areas that can be used as a mechanism for carrying out mutual relationship between good governance and human rights, namely democratic institutions, public services, rule of law, and anti-corruption ("Good Governance and Human Rights", in http: // www .ohchr.org)

Specifically, this paper seeks to analyze the state's agencies response to the Sunni-Shi'a conflict in Bondowoso, East Java. However, what happened in this region have affirmed the inclusive attitude of the local government in responding to the Sunni-Shi'a conflict. Even though the Governor's Regulation based on MUI fatwa, recommended to government institutions in East Java to be actively involved in guiding and supervising mainly religious groups categorized as heretical. Nevertheless, local government in Bondowoso chose strict position in giving permission and also protection to both Shi's group and anti-Shi'a group to do their religious agenda in the same time and of course in the different places. By doing so, this paper offer a new explanation of the role of state agencies in responding religious violence against Shi'a minority groups in different line of similar previous studies (Masdar Hilmy, 2015; Al-Makin, 2017; A'an Suryana, 2017; Fawaizul Umam, 2017). In order to do so, this paper will address a discussion of the Sunni-Shi'a tension in local contexts, rising anti-Shi'a movement, and local government's inclusive response to the intolerance activism.

Sunni-Shi'a Tension in Local Contexts

Some scholars have argued that the Sunni-Shi'a tension strengthened at the end of New Order and the beginning of reform era. During the New Order era, the tensions between the two groups began to emerge as political changes in the global context. An Iranian revolution (1979) which led to the success of the Shiite Islamism group in overthrowing the regime of Muhammad Reza Pahlevi and at the same time establishing the Islamic State of Iran (Asef Bayat, 2011: 37-45), had a serious impact on strengthening identity politics in various parts of the Muslim world, including Indonesia. After that incident, Shi'a followers who had been hiding their identities (known as secrecy/ *taqiyyah*), began to openly display their beliefs. From here, the formation of Sunni-Shi'a identities and polarization in Indonesia start to decorate Islamic public life (Al-Makin, 2017; Formichi, 2014).

Sunni-Shi'a polarization in New Order era did not caused conflicts by sectarianism violence. This was not because each group has a tolerant attitude to accept differences and/or

to live together. But it's more related to the restrictive policies of the New Order regime. As known, the New Order's authoritarian regime did not tolerate conflict in society at all that could endanger the nation's integration and also the stability of the power. Through a militaristic approach, the New Order regime exercised strict control and even penetration in managing society. However, by this political approach, the New Order regime succeeded in suppressing the diversities and differences in society.

Furthermore, Sunni-Shi'a polarization and conflict with a variety of causes, both theological, social, economic and political (Al-Makin, 2017; Masdar Hilmy, 2015; Chiara Formichi, 2014), increased sharply in a long with the emergence of an openness and freedom in the post-New Order era. What happen in Sampang (Madura), Bangil (Pasuruan), Yogyakarta, Puger (Jember), and others, is a lot of bloody conflict involving the two groups. Along with other religious conflicts such as the tragedies in Poso and Ambon, the Bali Bombings 1 and 2, terrorist attacks in various regions, however, the Sunni-Shi'a conflict contributed significantly to increasing religious violence which had a direct impact to the Indonesian Islam. Because of such sectarianism conflict and violence, the face of moderate Indonesian Islam is no longer dominant. Today, Indonesian Islam doesn't show it's smile face (Kees vand Dijk and Nico JG Kaptein, 13-18; Martin van Bruinessen, 1-20).

Bondowoso, one of the eastern regions of East Java, is one of the areas where Sunni-Shi'a sectarianism occurs. In contras with an other regions, as mention above, the Sunni-Shi'a tension in this area did not turn into a bloody conflict which led to social disintegration. In general, conflicts between the two groups can be resolved through peaceful means. The presence of the government with its accommodative and inclusive attitude towards minority groups is one of the keys factors of the successful management of diversity, differences and social harmony in Bondowoso.

Meanwhile, the phenomenon of Shi'a's emergence, polarization and conflict with Sunni groups in Bondowoso occurred in the 1990s. In this area, the story of the development of Shi'a group identity formation cannot be separated from the role of Habib Hamzah bin Ali Al-Habsy; a charismatic *habib,* teacher of the *kyai* and at the same time a role model for most Muslims life in Bondowoso. According to a number of informants, Habib Hamzah began to promote his Shi'a identity in the early 1990s. According to them, Habib Hamzah's admiration for the pioneering leader of the Iranian revolution (1979), Ayatollah Imam Khomeini and his intensive contact with the ideas of Shi'a-based scholars such as Shari'ati, Muthahari, Thabathaba'i and others, constitute a number of factors that drive Habib Hamzah to become Shi'a (Interview with Habib Umar, September 8, 2017). For Shi'a followers themselves, the

Shi'a of habib Hamzah, as well as the *habaib* in the Arab villages in Bondowoso, has actually been going on for a long time. The Iranian revolution was limited as a momentum for the *habaib* to affirm their Shi'ite identity (Interview with Habib Baqir, September 8, 2017).

After Habib Hamzah declared himself as a Shi'a, which was followed by his followers, polarization and religious tensions have emerged in Muslims society in Bondowoso. Not a few Muslims who are aware of being lovers of Habib Hamzah, then later left him. They boycotted and no longer invited him to fill religious events. They also took distance from the Shi'a group which had emerged under the leadership of Habib Hamzah. The rest, there are no excessive reactions that are accompanied by violence such as intimidation and persecution of the Shi'a group.

After the 1998 reforms, the Shi'a community is growing rapidly. The momentum of openness and freedom is fully utilized by this community, to assert its identity and role in the public sphere. At least, the development of Shi'a can be observed in two main aspects, firstly, community; and secondly, institutional. In terms of the community, Shi'a followers grew rapidly in the Arab villages, especially among *habaib*. In this Indo-Arab village, the number of Shi'a followers is no longer a minority compared to the Sunni *habaib*. Outside of this village, Shia also developed rapidly in a number of areas, one of which was Jambesari village. Since the beginning of its development in 2005 until now, the number of Shia followers in Jambesari has reached around 500 people (Interview with Ustadz Musowir and Ustadz Matrawi, October 12, 2017).

Viewed from the institutional aspect, the Shi'a development can be observed from the presence of IJABI (Association of *Jama'at Ahlul Bait*) in 2006 which was directly connected with the central IJABI under leader of Jalaluddin Rahmat which was established on July 1, 2000 (Latief, 2008: 300-335; Hasim, 2012; Formichi, 2014). In addition, the Shi'a group in Bondowoso also has the As-Sadiq Foundation which was established directly by Habib Hamzah in the 2000s affiliated to ABI (Ahalul Bait Indonesia). After the death of Habib Hamzah, the leadership of the As-Shodiq Foundation was continued by his son, Abu Talib bin Hamzah. However, these two religious institutions are not merely a symbol of the existence of the Shia community, but also an effective instrument for the development of Shia in Bondowoso (Interview with Habib Muhsin bin Alwy Al-Habsy, Habib Ali Zaenal Abidin, Abu Thalib bin Hamzah, 1 December 2018).

In line with the development of Shi'a, polarization, tension and conflict between Sunni versus Shi'a groups also increased. It was noted that there were a number of tensions and conflicts involving the two groups throughout the post-New Order period. First, incidents

of rejection and attempts at forced dissolution by a group of radicals conservative-radical groups who were attacked by the inauguration of Regional Administrators IJABI on June 4, 2006. A day after, a number of scholars came to the Bondowoso District Ministry of Religion to submit a statement of objection to the existence of IJABI. Secondly, the incident of mass tensions caused by the beating of a *santri* (Islamic pupil) of the Al-Wafa Islamic boarding school in Jambesari belonging to the Kyai Musowir, the Shi'a group leader in the village, on 12 August 2006. Third, there was a mass rage that attacked the Shi'a religious congregation and the burning of the house of Kyai Musowir on September 12, 2006. Fourth, the tragedy of forced dissolution by the masses at the routine IJABI haul and recitation program in Jambesari on December 23-24, 2006 (Syaukani, Harmoni, Vol. VIII, No. 31, 2009: 85-87)

2016 Rising Anti-Shi'a Movement

The events of the Sunni-Shi'a clash which were no less powerful than the previous events were the emergence of mass action against the 2016 Milad Fatimah event. It is important to note that Milad Fatimah was a routine activity to commemorate the historical moment for the birth of Sayyidah Fatimah Az-Zahra, daughter of the Prophet Muhammad and the mother of the grandson of the Prophet, Hasan and Hussein, and the wife of Ali bin Abi Talib. Almost all Shi'a communities everywhere, including in Bondowoso, have never been absent from the annual ritual. During that time, the event of Milad Fatimah almost never gave rise to significant tension, especially with the Sunni community. However, in the 2016 period, the celebration of Milad Fatimah (April 4-6) gave rise to opposition and resistance from conservative-radicals Sunnis in general.

In its refusal, anti-Milad Fatimah groups mobilized the masses to carry out street demonstrations to protest the planned activities of the Shi'a community. Even before the "H" day of the Milad (April 3, 2016), a large numbers of people carried out long march chants of rejection accompanied by hate speech and threats of violence. Not limited to that, the anti-Milad ban also mobilizes the masses to conduct counter-rituals in the form of recitation or *istighatsah* and pray together which are centered at the Jami 'At-Taqwa Mosque. In addition to rivaling Milad, this religious event was also intended to deter most of the grassroots Muslims from participating in the Milad Fatimah program.

Furthermore, in its resistance, anti-Milad groups used a variety of issues including the heresy and danger of Shi'a to the teachings of Sunni Islam that were adopted by the majority of Indonesian Muslims, *nikah mut'ah* (marriage contract), insults against the companions of the Prophet. In addition, the danger of the Shia issue is also related to national issues. In

various banners and posters during the demonstration the expressions stated that "the existence of Shia in Indonesia was a factor in dividing the people, a real threat to the integrity of the nation (NKRI) and national disintegration". For this reason, the crowd urged the government to revoke the license to organize the Milad Fatimah event. For them, giving permission for the holding of the Milad event is tantamount to legitimizing the Shia community with heresy (Interview with Kyai Mudassir, 24 November 2017 and K. Hasan, 30 September 2017).

Even though it is classic, the use of religious sectarianism issues has proven to be still powerful enough to encourage the emotions of Muslims across groups to engage in mass action. Framing these issues reminds us of the success of Islamic defense in Jakarta. Both of them use religious sentiments to mobilize the masses in order to achieve their political goals. The number of masses reaching 3,500 people is quite large for the size of the district. Even the anti-Milad mass action was recorded as the biggest Islamic demonstration in the history of Shi'a rejection in Bondowoso. In this action, an alliance between various conservative-radicals Islamic groups could be realized. One common thread that can unite them in a religious coalition is none other than anti-Shi'ah sentiment (Ichwan, 2012; Al Makin, 2017).

An anti-Milad Fatimah collective action not only involved large masses of various socio-religious backgrounds, but also fellowship among groups known as the term - borrowing the term Jeremy Menchik - Godly Muslim (Menchik, 2014, 56 (3): 591-621). They consist of conservative elements of NU, FPI, Wahabi / Salafi wing of Al-Irsyad organization, PKS activists, and HTI. Unlike the *Aksi Bela Islam* in Jakarta which put FPI as its main spokesperson, Milad Fatimah's refusal in Bondowoso was spearheaded by conservative elite groups. Among the central figures is K.H. Mohammad Hasan Abdul Muiz son of K.H. Abdul Muiz Tirmidzi, caretaker of the Sayyid Muhammad Alawi al-Maliki Islamic boarding school, Koncer, Bondowoso. For the record, while serving as MUI chairman Bondowoso, Kyai Abdul Muiz was known as the most vocal figure in guarding the MUI fatwa related to Shi'a heresy. On behalf of the fatwa of the MUI, he often backs up anti-Shi'a actions and legitimizes them as actions to defend *Aswaja* from the desecration of Shia heresy (Interview with KH Abd. Qodir Syams, 18 November 2017; Bahar, 25 November 2017; and Matkur, November 6, 2017).

After the death of the cleric Abdul Muiz al-Tirmidzi, anti-Shi'a actions were continued by his son, the cleric Mohammad Hasan Muiz. Like his father, he is also famous for being very vocal in voicing anti-Shiite sentiments and propaganda. Even when the minority Shi'a group wanted to show its existence by holding Milad Fatimah activities by

inviting national Shia figures, he also refused firmly. Together with other anti-Shiite Sunni figures, he gathered himself into a forum called FOCUS (Sunni *Ulama* Communication Forum). Through this forum, they mobilized strengths from among the clerics, clerics and alumni networks of Islamic boarding schools in Bondowoso district. Among the alumni network joining FOKUS included IKSASS (Santri Association and Alumni Salafiyyah Syafiiyyah Situbondo), IAS (Islamic Boarding School Alumni Association of Sidogiri), TANAZZAHA (Zainul Hasan Islamic Boarding School Alumni Association), IKAPETE (Tebu Ireng Islamic Boarding School Alumni Association), Sarang Islamic Boarding School Alumni Association (Central Java), Egyptian Al-Azhar Alumni Association, and others. Through this forum, they mobilized santri and Muslims to be involved in anti-Milad Fatimah mass action (Interview with clerics Mudassir, 24 November 2017 and K.H. Hasan, 30 September 2017).

At the same time, conservative NU young people also took initiatives and similar steps. They formed their own movement forum called GERPAS (Anti-Shi'a Youth Movement). This organization was initiated by the young scholars of the Sidogiri boarding school alumni who were rising in prestige, the Mudassir clerics. According to him, the formation of this organization was inspired by *ijtihad* national Muslim leaders in forming the Anti-Shia National Alliance (ANNAS), an alliance that emerged as a response to the Sunni-Shi'a Sampang conflict case in 2011 (Sharif, 2017: 24-37) Through GERPAS, he was actively involved in socializing, gathering and mobilizing the millennial Muslim generation to join and engage the *Aswaja* defense action against the Milad Fatimah program (Interview with Mudassir and the results of the FGD, September 25 & October 15, 2017).

The two mainline anti-Shia organizations, FOKUS and GERPAS, were the locomotives of anti-Milad Fatimah actions. Proponents of this movement are aware that social movements will not succeed and have strong pressure if they do not get support from other groups. In this context, they then expanded their allies by establishing alliances with other groups. Muslim elites from the Islamic Defenders Front (FPI), conservative *pesantren* elites, Wahabi/Salafi groups from the wing of the Al-Irshad organization, PKS activists, and HTI are a number of groups involved in the alliance. It is this combination of various Islamic groups that has made mass action successful in forcing the Bondowoso district government and East Java province to respond seriously by deploying security forces in large numbers, around 1,700 personnel (FGD, 15 October 2017; http: //www.timesindonesia .co.id).

The conservative and radicals groups labeled Shi'a as the enemy of Islam in extreme way. And this is legitimate to be fought even by using methods of violence. They argued that

the removal of the enemies of Islam would protect the authenticity of Islamic teachings. According to them, the destruction of Islam was due to the indecisiveness of Muslim leaders in responding to the existence of enemies of Islam. For this reason, they also strongly criticized the tolerant and accommodating attitude of the Muslim groups who helped protect the enemies of Islam (Interview with Kyai Mudassir, 24 November 2017; KH Hasan, 30 September and Supriyadi, 2 December 2017)

Local Government's Response

In his research on the Sunni-Shi'a conflict in Sampang, Johan Wahyudi (Ma'arif, Vol. 10, No. 2, December 2015: 243-268) argued that the state was unable or failed to protect minority groups. That is because of the state institution has been taken over by mainstream religious groups. At least, the state's inability to maintain its autonomy is indicated by a number of public policies taken by the State in addressing the Sunni-Shi'a conflict in Sampang. Among the policies that were considered discriminatory was the decision of local government of Sampang -the representation of State institutions- to relocate the Shi'a minority group to Sampang stadium and were later forcibly relocated 20 Juni 2013 to government apartment building near Surabaya (in Puspo Agro Flats, Sidoarjo Regency, East Java Province). This policy was taken as a realistic choice so that regional conditions were maintained, as well as in response to the fatwa of the *kyai* in Sampang, especially those belonging to the MUI.

In contrast to the local government policy of Sampang, the regency government of Bondowoso actually showed its inclusive attitude. Faced with a similar case, namely the Sunni-Shi'a conflict triggered by the 2016 Milad Fatimah, regent of Bondowoso, Amin Said Husni, took an accommodative public policy all community groups interests (Zsuzsanna Lonti, 2015: 31-38) . In the midst of the crowd's insistence on the banning of the Milad Fatimah program and at the same time limiting the Shi'a movement in Bondowoso, the Amin Said actually acted firmly while giving permission to the minority Shi'a group to carry out the religious program. Even the Amin Said guaranteed the security of the implementation of the Shi'a activities from various forms of intimidation and persecution, especially from mainstream anti-Shi'a religious groups (Interview with Kyai Abdul Qodir Syams, Nov. 18, 2017; Mas'ud, October 17, 2017 ; Saiful Bahar, Nov. 25, 2017).

At the same time, Amin Said also gave space for freedom, the openness of similar security guarantees for anti-Milad Fatimah groups to express their demands without having to impose their will. As known, these counter-groups carried out a series of large-scale

demonstrations in order to foil the Milad Fatimah program. According to them, giving permission means the government supports the development of Shi'a teachings which are deemed heretical, misleading and at the same time endangering the sustainability of the NKRI (Interview with Kyai Hasan bin Abdul Muiz, 30 Sept 2017; Ustadz Muhsi, 30 Sept 2017). In addition, Amin Said also gave permission and security guarantees to the anti-Milad Fatimah group to hold recitals and pray together at the same time in different places (at the Jami 'At-Taqwa Mosque) (Interview with Matkur, 6 November 2017; Saiful Bahar Sept. 25, 2017).

An interesting thing is that in the inclusive policy making process, Amin Said involved various related elements in a participatory manner. On several occasions, Amin Said intensively conducted discussions, communication and coordination, mainly with other formal government institutions such as Bakesbangpol (The Body of National and Political Unity), DPRD, Ministry of Religion, security forces (TNI/Polri). Many positive inputs conveyed by State organizers to Amin Said were input to overcome Sunni-Shi'a tensions. The Head of the National and Political Unity Agency (Bakesbangpol), for example, gave input to Amin Said not to worry too much about threats from certain groups. The important task of the local government is to maintain social harmony and harmony in Bondowoso while considering diversity and differences, including in belief (Interview with Abdul Manan / Head of Bakesbangpol, 5 October 2017).

Security forces (TNI/Polri) include state institutions that are very pro-active in responding to the issue of the Sunni-Shi'a conflict triggered by Milad Fatimah. The two institutions gave input to the Amin Said to immediately respond to the heated conflict situation, while still prioritizing aspects of security and peace (Interview, AKBP Afrisal /Head of the Police, September 25, 2017). The DPRD also has a similar attitude. According to Ahmad Fauzan (Chairperson of Commission IV of the DPRD), the insistence of anti-Milad Fatimah groups which forced the Regency Government of Bondowoso to follows the Governor Regulation *(Pergub)* related to the supervision and formation of religious schools which are deemed heretical, not absolutely followed as a basis for taking policy in the context of handling the Sunni-Shi'a conflict in Bondowoso. Because, the gubernatorial regulation is not strong in law considering its foundation is not based on the legal rules above, but is limited to the fatwa of branch of MUI in East Java Province which is not a representation of state institutions (Interview, 10 October 2017).

Basically, all elements of the existing government provide constructive input to the regent to take policies by a good effect on all groups. They want Bondowoso whose

community has been known to be harmonious, peaceful and tolerant in addressing differences, and can be maintained. They did not want diversity of Bondowoso that had been well-knit to fall apart due to policy making. Learning from the handling of existing social conflicts, such as the case of the Sunni-Shi'a conflict in the village Jambesari, the government is expected to put forward peaceful ways in resolving theological nuances of the conflict in the 2016 Fadmah Milad case (Agung Tri H, Assistant I Regent, 21 October 2017).

Not limited to capturing communication with elements of State institutions, Regency Government also opens up to discuss and communicate with social elements. MUI, FKUB, PCNU, Muhammadiyah, and Islamic boarding school's *kyai* in Bondowoso, are a number of civil society organizations that have been asked for consideration by the regent to be able to take policies that can truly benefit the public. According to a number of PCNU board members, his organization was asked for consideration by the regent to be able to contribute his thoughts. And the PCNU itself encourages the regent to adopt a moderate policy, tolerant and non-discriminatory for all groups. A similar statement was suggested by branch of MUI elites in Bondowoso who wanted the regency government not to be too fixated on the results of the branch of MUI in East Java Province fatwa and *Pergub* which tended to discredit one group, in this case the Shi'a minority (Interview with kyai Abdul Qodir Syams / Chair of MUI, 18 September 2017)

In this case, an informant said that:
> *"This is a great regent. Police and Dandim are summoned. The regent himself was blasphemed by the right group, but he succeeded in resolving it culturally. The regent is such a language that Shi'ah is indeed not in line with our beliefs / understandings (Aswaja), but we must not deny and let alone expel them. The more they are pressured, the more they have the opportunity to be big, because I know that the Chief of Police at that time was called by the regent, may not do this and that, so the basis of the rules is used"*

Taking into account the various existing rules, the results of coordination and consolidation with State institutions, as well as communication with various elements of civil society, regent of Bondowoso, Amin Said Husni, then took an inclusive attitude by giving permission to the Shi'a minority groups to carry out their religious rituals (Milad Fatimah). This policy can run quite effectively because it is supported by various elements of government and society. The police and security for example, deployed large numbers of personnel to guard the security of religious activities carried out by both Sunni and Shi'a groups. Branch of MUI in Bondowoso plays an important role in reducing the escalation of the conflict by not affirming the fatwa of the central MUI and branch of MUI in East Java

Province (No. Kep-01 / SKF-MUI / JTM / I / 2012) to public about the dangers and heresies of Shi'a. Likewise with the PCNU who issued an appeal that residents of *nahdliyin* be able to put forward their tolerance and moderation (Interview with Kyai Abdul Qodir Syams, September 18, 2017).

However, the policies issued by the local government proved to be quite strategic in easing Sunni-Shi'a tensions triggered by the Milad Fatimah 2016 activities. Friction between the two groups that differed in their religious beliefs, proved not to escalate into bloody conflicts as a case in Sampang (Madura). Even though not all groups are satisfied with the local government's policy, the decision taken can be said to be quite accommodating to the interests of both groups involved in the conflict.

Related to this, an informant said that:

... ... "indeed, if the state / district government mistakenly conflicts, this conflict will not be latent, but manifest. Police and security forces from the Koramil and Kodim also play an important role. In addition, the MUI and PCNU were very influential too. These latter two institutions helped encourage the government to be wise in responding to conflict, the basis of which is the most important is none other than the normative rules of legislation, policies that are made are not discriminatory".

Concluding Remarks

Unlike the criticism of most experts who considered that the State tended to be exclusive and even discriminatory in responding to religious-based social conflicts involving mainstream versus minority groups, what was shown by the local government of Bondowoso -as a representation of the State- was inclusive. This inclusive attitude is reflected not only in the form of the policy product, but also in the process. In terms of the process, the attitude of the local government of Bondowoso to the Sunni-Shi'a conflict can be seen from the openness of this State institution to communicate with various elements ranging from government (Bakesbangpol, DPRD, Ministry of Religion), semi-state religious elements (MUI) up to NGO's (NU, Muhammadiyah, FKUB, and pesantren scholars).

Meanwhile, judging from the product, the local government policies by giving permission and protection to the two groups (Sunni-Shi'a) expressed their beliefs. The Shi'a minority group can still carry out annual rituals in commemorating Milad Fatimah, and Sunni groups also can express their aspirations of rejection of the programs carried out by the Shi'a community as well as religious activities (recitation and prayer) as a counter-culture for Shi'a religious activities. Although all groups involved in the conflict, both directly and indirectly, are not satisfied with the policies of the regional government, especially those who are anti-Milad Fatimah, but this policy is inevitably accepted by all.

However, the local government policies supported by state institutions and NGO's are not limited to being effective in reducing social conflict. The potential for tension which continues to escalate and actually potentially turns into a conflict accompanied by physical violence can ultimately be avoided. Moreover, the local government polity reflect the State's commitment to protect minorities in particular and civil rights in general. The inclusive local governments policies are considered to strengthen tolerance, harmony, human rights and democracy, especially in the field of religious freedom. Therefore, it is not surprising that a number of institutions that are committed to fighting for peace and human rights like AMAN, place Bondowoso as a relatively tolerant area, especially for minority groups such as Shi'a.

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HOW DOES PUBLIC POLICY AND PUBLIC OPINION INFLUENCE JUDICIAL DECISIPM MAKING IN HIV/AIDS DICRIMINATION CASES IN CHINA

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Abstract

In China, with the emergence of specific HIV/AIDS discrimination lawsuits in 2010, HIV/AIDS discrimination has attracted the attention of the academic community, but the discussion of specific HIV/AIDS discrimination litigations, especially the factors that may affect judicial decision making are under-explored. This research analyses 12 selected court decisions related to HIV/AIDS discrimination in workplace, transportation and insurance service from 2010 to 2018 in China, we primarily found that at the changes in public policies and changes in public opinion, the law application and the law interpretation of the judge has also changed, as well as their attitudes towards HIV/AIDS discrimination, which has brought important changes to the court decisions. We use case analyzation to study the influences of public policy and public opinion on judicial decision making. We find that public policy interacts with public opinion and affects judicial decisions. We summarize the direct and indirect effects of public policy and public opinion on judicial decision making, as well as positive and negative influences. This thesis does not advocate comprehensive elimination or promotion of the application of public policy and public opinion in the judicial decision-making of HIV/AIDS discrimination litigations, but suggests improving public policies related to HIV/AIDS, developing public opinion in a positive direction, eliminating stigma and improving the rights protection mechanism for people living with HIV/AIDS.

Keywords：HIV/AIDS, PLWHA , Public Policy, Public Opinion, Judical Decision Making

Introduction

Current data comes from Chinese Center for Disease Control and Prevention (hereinafter referred to as CDC) indicate that there are more than 850,000 persons living with HIV in China BY December, 2018. Whereas, there are only 12 cases of HIV discrimination cases.

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Within these cases, 9 cases relate to employment, one case involves commercial insurance, the other two cases relate to transportation service and medical service for HIV positive person. The number of lawsuits is inconsistent with the number of HIV positive persons and the status of discrimination against them in China.

Through the analysis of existing cases, we found that the HIV discrimination case has a low success rate. Among the 12 lawsuits, only two plaintiffs (HIV positive persons) won the cases and received some compensation or reinstated positions. In the remaining cases, although the plaintiffs received compensation for reconciliation, the amount of compensation is not large, and most of the plaintiffs couldn't get jobs after litigation. Compared with the huge compensation and possible job opportunities of the existing HIV discrimination cases in foreign countries, the protection provided by the Chinese judiciary for those who are discriminated against is far from sufficient for prohibiting discrimination and reimbursing discrimination victims.

Although different countries have different laws and judicial systems for prohibiting discrimination. For China, comparing the development of 12 cases of HIV discrimination, we can find that the latest case has made great progress compared to the first case of 2010. We can guess that at the changes in public policies and changes in public opinion, the law application and the law interpretation of the judge has also changed, as well as their attitudes to HIV discrimination, which has brought important changes to the judgment on the case.

Objective

This research aims to examine the influences of public policy and public opinion on interpretation of law and decisions making in HIV discrimination cases.

This paper will examine the interpretation of law in HIV discrimination litigations, to find out how does public policy and public opinion influence judicial decision making, in order to provide suggestions on the development of policies and opinion against discrimination.

Methods

In order to visualize the influences of public policy and public opinion on HIV discrimination cases, we used case analysis methods to collect judgments, through the interpretation of the judgment documents, to find public factors in the referee, to prove that

public policy and public opinion are actually for HIV. Discrimination cases Most of the judicial decision making has an impact. This research analyses 12 selected court decisions related to HIV/AIDS discrimination in workplace, transportation and insurance service from 2010 to 2018 in China.

Literature Review

The public policies and public opinion that influence judicial decision have been the subject of extensive debate in china. Judiciaries actively seek to promote a perception of the public that the courts are independent and that they can be fair and impartial. According to the principle of judicial independence, no administrative organ, social group or individual may interfere in the independent trial of the court, judge has the right of independent adjudication. However, the influence of public policies and public opinion on the referee is inevitable, although it may be invisible. Academic debates have identified several innate elements of the non-legal factors that may play a role in judicial decision making, including the gender of Judge (Elaine Martin, Barry Pyle, 2004), personal values (Rachel J. Cahill, 2013) and public opinion (Micheal, Bethany, Richard, 2008). When a judge applies the law and interprets the law in the referee, it inevitably contains its own understanding of the text, and the judge's understanding stems from his gender perspective, personality, educational background and other factors. The public policies and public opinion information accepted by the judge will also have invisible influences on the interpretation of the law.

2. Discussion

2.1 Progress of HIV Litigations in China

The first lawsuit occurred in 2010. Wu successfully passed the teacher recruitment examination in a school because it was found to be HIV positive during the medical examination and was rejected by the local education bureau. The court held that although the education administration department of the State Council has not issued a nationally applicable teacher recruitment regulation, the defendant Anqing Education Bureau and the Human Resources and Social Security Bureau have referred to the General Measures for the Public Recruitment and Selection of Personnel by Public Institutions. For Civil Service Recruitment Examination (Trial) (hereinafter referred to as GSCSRE), it is not inappropriate to not hire Wu. Article 18 of the GSCSRE mentioned in the court's judgment stipulates that those who have been tested for HIV/AIDS during the medical examination apply to the civil

servant and are deemed to have failed the medical examination.[4] But there are many unclear places. First of all, from the point of view of the law, the word "Aizibing" is used in the text, which is actually regarded as HIV and AIDS in Chinese. That is to say, from the legal text, once infected with HIV, it will be regarded as a medical examination. qualified. There is no distinction between HIV and AIDS, and there is a lack of protection for PLWHA. And it does not distinguish between the concept of HIV and AIDS, and the medical research progress on HIV/AIDS and the requirements of international human rights protection. Secondly, judging from the judge's judgment, the judge believes that although there is no general standard for teacher's medical examination at the national level, it refers to the applicable GSCSRE. In China, public schools belong to institutions. In terms of management and treatment, the nature of the work of teachers is similar to the nature of work of civil servants. And the recruitment of teachers is carried out by the local education bureau and the Human Resources and Social Security Bureau. This may be the reason why the traditional medical standards for teachers are equivalent to the medical examination standards for civil servants. However, the judge did not explain the legal reasons for the trial of the GSCSRE, and this legal reason may not be true. Therefore, in this lawsuit, the judge used the GSCSRE as the main referee of the departmental regulation as a specific public policy, and decided that the HIV-positive person lost the case.

In the second lawsuit in 2010, Jun applied for the post of music teacher in the primary school in Yanbian County and successfully passed the written test and re-examination. However, in the subsequent physical examination, the HIV test was positive, and Jun received a phone call and was verbally informed that it would not be accepted. Moreover, the local Education Bureau and the Personnel Bureau also disclosed the status of Jun HIV positive, leaking his privacy and causing him to be alienated. Therefore, Jun was prosecuted by the Education Bureau under tremendous psychological pressure, requesting the court to order that the act of non-admission was illegal, and to eliminate the impact of leaking privacy, and apologize. However, this case passed the first and second trials and ended with Jun's losing.

In the case of Hai V. Sandu County People's Government and Sandu County Personnel Labor and Social Security Bureau in 2011, Hai was also rejected as a teacher because he was tested positive for HIV. When Hai filed a lawsuit in the court, the junior court did not file a

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[4] General Standards for the Examination of Civil Servants (Trial) (Chinese Ministry of Health [2005] No. 1) .
Article 18. Gonorrhea, syphilis, chancroid, sexually transmitted lymphogranuloma, condyloma acuminata, genital herpes, AIDS, unqualified.

case for this because the judge held that "the party sued the county government, the county personnel and labor and social security bureau employment discrimination did not fall within the scope of the court case", nor did it issue a certificate that was not filed. Since then, the plaintiff has filed a filing request with the Intermediate Court and the High Court, but the court refused for the same reason, and Courts claimed that there is no ruling on the next court. However, with the reform of the civil filing system, from the case review system to the filing system,[5] we can find that since the registration system was implemented in 2015, the problem of the discriminatory PLWHA being difficult to obtain judicial protection was initially solved.

In another recruitment discrimination case in 2012, Qi also successfully passed the teacher recruitment examination, but was rejected for HIV-positive tests. Qi sued the Jinxian County Education and Sports Bureau to the court on the grounds of infringement of equal employment rights. Eventually, under the mediation of the court, the plaintiff and the defendant reached a mediation agreement. The agreement stipulated that: 1. The plaintiff agreed to withdraw the case, and the defendant was compensated for humanitarian and human care, and compensated Xiaoqi for the preparation cost of 3,000 yuan. 2. Due to the actual difficulties of the plaintiff, the defendant gave the plaintiff "economic help" of 42,000 yuan. 3. The plaintiff must agree that the matter ends here. 4. The parties shall not make any negative publicity on this agreement and jointly safeguard social harmony. In this case, although the plaintiff received a total of 45,000 yuan in compensation and help, the judge did not hear the fact that the plaintiff was discriminated against, and it is obvious that the plaintiff's right to employment cannot be guaranteed. In the case of Xin V. Zhenjiang New District Management Committee and Zhenjiang New District Service Industry Development Bureau in 2013, the plaintiff applied for civil servants who were considered HIV-positive and were considered unqualified. In the end, the court also reached a settlement through mediation, and the plaintiff withdrew the lawsuit after receiving compensation of 40,000 yuan.

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[5] The filing review system means that when a party files a lawsuit with the court, the court decides whether to accept the case after substantive examination of the lawsuit. The content of the review mainly includes subject qualification, legal relationship, litigation request and jurisdiction. The registration system for filing documents means that the court does not conduct substantive examination of the prosecution of the parties, and only checks the formal requirements. Except in the case that the opinion stipulates that the case is not registered, the complaint filed by the parties will be accepted and a written certificate will be issued. If the bill of complaint and relevant evidentiary materials meet the conditions stipulated in the procedural law, they shall be registered on the spot.

The above two cases were settled through mediation. The discriminated persons received a small amount of compensation, but the lawsuit did not properly address their need for equal employment rights. In the case of the 6th HIV/AIDS discrimination lawsuit in China, Cheng V. Liping County Education and Technology Bureau (2013), Cheng was appointed as a special post teacher who has worked in the school for three years and passed the examination. Application, but was rejected because of HIV positive in the physical examination. In October of the same year, he filed a civil lawsuit in the primary court. The court ruled that the dispute in the case was within the scope of policy adjustment and was not within the scope of the court. Until the advent of the registration system two years later, the lawsuit was accepted by the court, and the court heard the case and decided that the defendant paid the plaintiff 9800 yuan in economic compensation. The case was initially rejected for "policy reasons" but eventually entered the court and won the case. This is also the first case of HIV/AIDS discrimination in China that won the court's successful judgment. In the 2016 Ke V. Shangrao Human Resources and Social Security Bureau, Ke filed a lawsuit against the defendant and the court immediately filed the case. During the trial, the plaintiff also appeared in court. He was the first plaintiff to appear in court. However, it is regrettable that the case was lost in the first instance. In the second instance, the court passed the mediation to urge the parties to reach a settlement agreement, and the plaintiff received economic compensation of 50,000 yuan. As for the case of Ming, a food testing organization in 2016, Ming was asked to leave the job because of the HIV-positive being tested, and was isolated at home. Ming therefore filed a lawsuit. Although the court of first instance supported the claim that "HIV-infected persons should not be treated in isolation, "they found that the defendant asked Ming to" get off the job and leave the wages and benefits as usual", which was considered as "internal management matters" and that the defendant did not Infringe on the rights of laborers and sentenced Ming to lose the case. However, the second trial of the court provided a turning point for this case. The judgment of the second instance court clarified that the employer unilaterally requested that Amin "retire from work" violated the Labor Contract Law, and "not providing labor conditions and changing labor contract behavior"; The law stipulates that the voluntary testing system for HIV/AIDS is not enforced. The reasons for the employer's claim to stop working in Amin are not established. It is clear that although Amin is engaged in food inspection, the current laws, regulations, other normative documents and industry requirements are not prohibited. People living with HIV are engaged in this position. Employers use this reason to essentially exclude HIV-infected people from employment. The laws, regulations and policies of China emphasize the

protection of the legitimate employment rights of people living with HIV and AIDS. The position clearly does not match. The judgment stated that the full payment of wages does not constitute discrimination in itself, but because Amin is infected with HIV and does not allow its normal work to constitute discrimination. HIV/AIDS itself is not terrible, terrible is ignorance and prejudice against HIV/AIDS, and discrimination against PLWHA. In this lawsuit, the issue of employment discrimination has undergone substantive review by the court. For the first time, the court referred to "voluntary testing of HIV/AIDS" and the law did not prohibit food testing for people living with HIV, and found that the plaintiff was discriminated against. It is particularly noteworthy that the judgment also mentions China's basic position on safeguarding PLWHA's employment rights, and distinguishes between AIDS patients and HIV-infected people. We can say that public policy has played a noteworthy positive role in this case. As the first eight HIV/AIDS discrimination lawsuits have made some progress in the protection of PLWHA rights, in the ninth HIV employment discrimination lawsuit, the discriminated persons obtained employment opportunities and became the first to obtain other claims in addition to economic compensation. In a case of Xie, in the case of Xie facing the defendant in the face of HIV/AIDS discrimination, the court reached a mediation agreement through mediation. According to the agreement, the plaintiff signed a two-year written labor contract with the defendant and paid double wages that were not previously paid. Behind the signing of the labor contract between the two parties, the opinions of the employees from the defendant also played an important role. According to Xie, in recent times, it has been obvious that the attitude of the public has changed. In his case, whether it is the leader or a colleague, everyone is very concerned about him, and his attitude is not much different from that At the same time, Xie Peng that one thing made him very moved "what surprised me was that I learned that the leaders of the unit had convened a meeting of the department heads, and the colleagues who The meeting unanimously voted to be willing to work with HIV-infected people." This is also the main reason why court mediation in the case can encourage both parties to continue to sign labor contracts.

In addition to the above nine HIV employment discrimination lawsuits, there are three other cases of discrimination. In Wei V. China Life Insurance Co., Ltd., Wei purchased the defendant's accidental injury insurance, but the insurance contract's exemption clause states that "the insured person's death, disability or medical expenses are caused by one of the following circumstances: If the expenses are incurred, the company will not pay the insurance liability... The insured person suffers from AIDS or HIV-positive period.

According to this clause, Li Wei, who is an HIV-infected person, has no legal rights to purchase insurance from the beginning, and cannot reduce the loss by changing insurance and surrender. Wei filed a lawsuit in court. The court found that PLWHA could not get compensation after the accident, and Wei lost the case. In 2014, three HIV-infected people were affected by the HIV-positive status of Spring Airlines. The refusal to carry, the three sued to the court, the plaintiff defendant reached a settlement, the defendant compensated the plaintiff for 87,000 yuan, the plaintiff withdrew the lawsuit. In another HIV/AIDS discrimination lawsuit related to medical services, the leaders' attention and instructions made the case get a lot of attention. On October 11, 2012, Xiaofeng (pseudonym) was admitted to Tianjin Cancer Hospital for lung cancer. A few days later, he was diagnosed as HIV-positive. The hospital asked him to discharge from hospital on the grounds that it was not suitable for surgical treatment. Later, Xiaofeng went to Beijing Ditan Hospital (this is an infectious disease hospital), but because the Ditan Hospital has no thoracic surgery and does not have the qualification to do lung cancer surgery, Xiaofeng can only leave again. After returning to Tianjin, Xiaofeng found a third hospital. He thought that if he told the hospital that he infected with HIV then he would be rejected. When he was admitted to the hospital, he covered up the HIV-positive test results of the first hospital, and then copied the health casebook and handed it over. A blood test was performed and the operation was performed smoothly in this hospital. After the matter was disclosed by the media, Li Keqiang, the vice premier of the State Council, called the former Ministry of Health and demanded measures to "protect the rights of PLWHA to receive medical treatment, not to discriminate, but also to ensure the safety of medical personnel who are exposed to PLWHA." On February 17, 2013, Xiaofeng sued the Cancer Hospital to the court on the grounds that the general personality rights were violated. Two years later, after mediation by the court, the two sides reached an agreement that the cancer hospital paid the plaintiff Xiaofeng 95,000 yuan as compensation in the name of "the general personality rights were violated."

2.2 Public Policies and Public Awareness of HIV/AIDS

Public policy is the political action or prescribed code of conduct adopted by state (government) and other political groups to achieve certain socio-political, economic, and cultural goals at specific times. It is the main means by which the government performs its functions. A major aspect of public policy is law. In a general sense, the law includes specific legislation and more broadly defined provisions of constitutional or international law.

American scholar Theodore J. Lowi divides public policy into distributive policy, redistributive policy and regulation policy. (Theodore, 1964) Robert Salisbury added a self-regulatory policy to this. (Robert, 1968) where distributive policy refers to policies that government agencies allocate or benefit from benefits, services, costs, or obligations to different populations, such as social welfare policies. Specific types of public policy include political policy, economic policy, social policy, cultural policy and resource policy, under which there are classifications such as ethnic policy, foreign policy, and education policy. The term of "public policy" applied in this research mainly relates to social security policies, education policies, and health and health policies.

2.2.1 Definition of Public Policy and Public Opinion

The term of "public opinion" was derived from the French opinion "publique", which was first used in 1588 by Michel de Montaigne. In his treatise An Essay Concerning Human Understanding, John Locke considered that man was subject to three laws: the divine law, the civil law and most importantly in Locke's judgement, the law of opinion or reputation. He enjoyed the latter as the highest importance because dislike and ill opinion force people to conform in their behavior to social norms, however he didn't consider public opinion as a suitable Influence for governments. The German sociologist Ferdinand Tönnies, by using the conceptional tools of his theory of Gemeinschaft and Gesellschaft, argued (Kritik der öffentlichen Meinung, 1922), that "public opinion" has the equivalent social function in societies (Gesellschaft) which religion Has in communities (Gemeinschaft). The American sociologist Herbert Blumer has proposed an altogether different conception of the "public". Public opinion is discussed as a form of collective behavior (another specialized term) which is made up of those who are discussing a given public issue at any one time. Given this definition, there are many publics, each of them comes into when an issue arises and ceases to exist when the issue is resolved. Blumer claims that people participate in public in different capacities and to different degrees. So, public opinion polling cannot measure the public. Numerous theories and substantial evidence exist to explain the formation And dynamics of individuals' opinions. Much of this research draws on psychological research on attitudes. In communications studies and political science, mass media are often seen as influential forces on public opinion. Factors affecting or causing public opinion also include Media effects, social Desirability, political socialization and behavioral genetics. In this

article, we will cover the impact of public policy and the media on public opinion. A key component in the formation of public opinion is framing. Framing is when a story or piece of news is portrayed in a particular way and is meant to sway the consumers attitude one way or the other.

2.2.2 Public Policies of HIV/AIDS

China's People's Congresses, the State Council to the Health Planning Commission and other departments have introduced laws, regulations, rules and policies to intervene in HIV/AIDS social discrimination, clarifying that the legitimate rights and interests of PLWHA are protected by law and prohibit any discrimination against PLWHA.

The "12th Five-Year Plan for China's Containment and Prevention of HIV/AIDS" issued by the General Office of the State Council in February 2012 also contains provisions on interventions for HIV/AIDS social discrimination. The goal is to "reduce new HIV infections and reduce AIDS." Mortality rate, reduce discrimination against people affected by HIV, improve the quality of life of infected people and patients"; the document requires the creation of an anti-discrimination atmosphere for HIV/AIDS, and proposes to give full play to the role of public figures with social influence, encourage and mobilize and other people affected by HIV/AIDS Participate in publicity and education work and create a good atmosphere against social discrimination in HIV/AIDS. At the same time, the document also clearly stipulates the authorities that guarantee the legitimate rights and interests of family members, such as health, education, human resources and social security, and so on. "Free care" policy, and efforts to eliminate discrimination against family members in medical treatment, employment, admission, etc. The State Council issued the "Notice on Further Strengthening HIV/AIDS Prevention and Control Work" in 2010, Article 11 requires all government departments to implement it earnestly Relevant policies, eliminate social discrimination, and protect the legitimate rights and interests of their families in medical treatment, employment, and enrollment.

Institutional discrimination against HIV/AIDS has not been or has been removed in our laws and regulations, but there are still several types of discrimination that are specified in the Protocol for the identification of discrimination against people living with HIV. (UNAIDS, 2000) There are no laws, regulations or formal regulations as the basis, but in fact these are violations of the "procedures", which are in the category of institutional

discrimination; Articles of the Regulations: forcibly testing HIV when imprisoned; mandatory testing of HIV/AIDS during prison sentences Virus; mandatory testing of HIV/AIDS when the sentence is released, but the State Council issued the "Notice on Further Strengthening HIV/AIDS Prevention and Control Work" (2011) clearly stipulates "To incorporate HIV/AIDS prevention and control work in prisons and other regulatory sites into national and local HIV/AIDS prevention and treatment plans, and to strengthen the knowledge of HIV/AIDS prevention and control of supervised personnel. Publicity and education, virus testing and anti-viral treatment of patients are also clearly classified as institutional discrimination listed in the Regulations."

At present, the laws, regulations, rules and policies related to HIV/AIDS and against discrimination in different provinces and cities in China are different, and the level and intensity of their work against HIV/AIDS discrimination are also different. In terms of local people's congress legislation, Jiangsu Province, Zhejiang Province, Shaanxi Province, Yunnan Province and other provinces and municipalities passed the provincial regulations through the Provincial People's Congress Standing Committee. Among them, Jiangsu Province was first legislated in 2004, and the other three provinces were all legislation at the end of 2006. In the same year as the State Council's "Reulations on HIV/AIDS Prevention and Control". The Standing Committee of the Sichuan Provincial People's Congress formulated the Sichuan Regulations on Prevention and Control of STDs and HIV/AIDS in 1995. It was abolished in 2006 and has not yet completed the legislative work of follow-up regulations.

The local government legislation level, Shandong Province (developed in 2006), Hubei Province (developed in 2007), Shanghai (developed in 1998, revised in 2010) respectively developed local HIV/AIDS prevention and control measures, Hunan Province in 2012 formulated "Hunan The Provincial Measures for the Implementation of HIV/AIDS Prevention and Control. Article 4 of the "Measures for the Prevention and Control of HIV/AIDS in Shandong Province" stipulates that the legitimate rights and interests of marriage, employment, medical treatment, and enrollment enjoyed by PLWHA and their families are protected by law.

Most provinces and cities like Beijing, Tianjin, Anhui, Gansu, Sichuan, Shaanxi, Guizhou, Henan, Guangdong, Jiangsu, Hubei, Xinjiang, Fujian, Heilongjiang, Hainan, Guangxi, Liaoning, Hebei, Qinghai, Guizhou, etc. The local government and the central government have consistently formulated the "Twelfth Five-Year Plan" for the prevention and control of HIV/AIDS in the province (city), Jiangxi Province has formulated the "Action

Plan for Containment and Prevention of HIV/AIDS in Jiangxi Province (2013-2015)",
Shanghai The "Shanghai Medium and Long-Term Plan for Prevention and Control of
HIV/AIDS (2001-2015) was formulated, and Shanxi Province has formulated the "Shanxi
Province HIV/AIDS Prevention and Control Action Plan Implementation Plan (2006-2010)."
These local policies may have more or less mentioning the protection of legitimate rights and
interests, and opposing the discrimination of HIV/AIDS social discrimination. However, due
to institutional discrimination in a few national laws, regulations, rules and policies, it is
difficult to be a local legislature that closely follows the country's legislation. Or simply not
aware of the correction of these institutional discriminations.

As mentioned above, the publicity measures for HIV are included in the policies of the
national level and even local governments. However, in general, these measures clearly
reflect the policy model of "heavy prevention and light education". The "13th Five-Year Plan
of Action for Containment and Prevention of HIV/AIDS in Shanghai" promulgated by the
above-mentioned seas, the plan will "improve the awareness of publicity and education and
enhance public awareness of HIV/AIDS prevention" as a link in prevention and control
measures. Among the specific publicity contents, including "Towards universal awareness of
basic knowledge of HIV/AIDS prevention" and "enhance the risk of HIV infection and
education on moral rule of law". That is, the government's advocacy policy on HIV/AIDS is
mainly about "prevention and treatment". Although the government intends to "create non-
discriminating infected people and social atmosphere", it lacks a systematic introduction to
HIV/AIDS and the current progress in its treatment. The promotion of HIV prevention will
inevitably increase citizens' fear of HIV/AIDS, not conducive to eliminating the stigma of
HIV/AIDS.

2.2.2 Public Opinion of HIV/AIDS

As mentioned earlier, HIV/AIDS was initially widely known to Chinese nationals
because of the emergence of the village of HIV/AIDS. People in these villages are infected
with HIV/AIDS because they sell blood in the illegal market. For a time, everyone panicked
because of HIV/AIDS. Even in 2006, there were rumors that people infected with HIV
infected more people and injected their blood into watermelons, causing people who ate
watermelon to get infected.[6] At present, there are still common misconceptions about
HIV/AIDS in the public. A 2009 study pointed out that in the survey of 5063 people in

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[6] Li Jie, "Watermelon is injected into the blood of AIDS patients? , Jianghuai Morning News, June 23, 2006.

Lishui, Zhejiang, the HIV/AIDS comprehensive knowledge rate of respondents was 70.1%, of which the awareness rate of HIV/AIDS transmission was higher, but for "early treatment" Only 51% of people who reduce HIV infection, only 23.2% know that they will not get sick immediately after HIV infection.[7] A study of medical staff, hospital administrators and general staff in rural high-incidence areas in rural areas of Henan Province showed that in the high-risk areas of HIV/AIDS, the general population has a higher awareness of HIV/AIDS, but interventions on HIV/AIDS, The level of understanding of preventive measures, related policies, and privacy protection is low. The medical staff surveyed had a high awareness of HIV/AIDS-related knowledge and a positive attitude towards HIV/AIDS, but lacked psychological care for HIV/AIDS people at work. Hospital administrators have a high awareness of HIV/AIDS, but they have insufficient knowledge of HIV status in China and discriminate against PLWHA. Overall, the HIV/AIDS knowledge awareness rate is influenced by the level of education and access to knowledge; there is an individual's stigma and discrimination against PLWHA. (Xv,2012) [8]

Due to the spread of the HIV epidemic in China, the public believes that one of the reasons is due to China's opening restrictions on PLWHA in 2010, and the sexual contact of international students has led to an increase in the number of people infected. In this process, why is the public misled by simple and rude assertions on the Internet? One of the answers lies in the lack of public awareness. Fear often comes from ignorance. Human beings have fears because they don't understand certain things or phenomena, such as asking for rain by religious rituals or sacrifices, or responding to natural disasters and sinful ways. The plague, which existed from the ancestors' era; in the era of the black death in Europe, some cities in Italy publicly blamed the Jewish people for the epidemic of the disease; in the early days of the epidemic, people named AIDS "Gay cancer" (Gay cancer), later called the "Acquired Immunodeficiency Syndrome" (AIDS) because of the advocacy of the gay community (especially some organizations in New York).

It can be seen that public awareness and public cognition will not only be affected by the authority, but also adversely affect the authority. For example, people often associate pornography, gambling, and drugs. This is because the experience of everyday life gives ordinary people the impression. However, when the authorities impose penalties on these

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[7] Chen Weijian, Wu Zhenyu, Chen Furong, Zhang Deyong, "Cognitive Survey of AIDS in Residents in Lishui City, Zhejiang Province", Lishui City Center for Disease Control and Prevention, December 1, 2004.
[8] Xu Feifei, A Survey of AIDS Awareness, attitudes, behaviors and policy measures among different populations in rural high-incidence areas in Henan Province, Nanjing University of Traditional Chinese Medicine, master's thesis, 2012.

phenomena and instill or spread them to the public through official ideology, they stigmatize these phenomena, thereby strengthening the public's belief in the moral construction of authoritative institutions. Over time, when people perceive it, they should pass When public health orientation and rights protection are viewed from a new perspective to deal with the problems that arise, the practices of authoritative organizations may even be obstructed and pressured by the public's concept and cannot be carried out smoothly (in some areas, such as Korean law, the crime of adultery) Traditional power is difficult to abolish). The public response and understanding of a specific problem is often drawn in a country/society/ethnic specific living environment. In other words, public awareness is often closely related to the environment in which it survives and its changes. The public's concern about the HIV/AIDS epidemic caused by the entry of HIV-infected people and the so-called international students' sexual disorder reflects to some extent their psychological injection of the changing social environment: social order and social phenomena in the transition, due to lack of access A more reasonable explanation has brought anxiety to people. In China, the HIV/AIDS epidemic is also facing a changing social environment. The public's response actually implies that the HIV/AIDS response policy should be further adapted to the changing social environment.

Therefore, in the HIV/AIDS discrimination lawsuit, the judges judge according to the statute law, but when the law does not provide the corresponding basis, the judge finds a foothold in the policies advocated by the state. But judges can't make defamation judgments, so for most cases of legal loopholes, both policy support and the social impact of the case are considered. For example, in the case of mediation settlement, the defendant company re-admitted the plaintiff, the defendant company held a department head meeting, and the participating colleagues unanimously voted to work with the plaintiff (HIV infected person). In this case, the public (colleague) opinion allowed the case to be settled smoothly. On the other hand, being a teacher for HIV-infected people has caused a lot of controversy in society. In 2013, the Guangdong Provincial Department of Education issued the "Physical Examination Standard for Guangdong Teachers' Qualification Applicants", which deleted "Sexually Illness, HIV/AIDS, Unqualified", which means that PLWHA can also apply for teacher qualification in Guangdong from September 2013. A network survey in Shenzhen said that 72.99% of the people did not support PLWHA as a teacher. For the question of whether PLWHA should be a teacher, whether they should disclose their identity, 58.48% of the respondents believe that they should be open. They think that "only when they are public, parents can be assured." A further 60.09% of respondents believe that PLWHA is not

suitable for child-related service industries. It can be seen that PLWHA is also facing a large resistance from the public opinion when applying for a teacher profession.

2.3 Influences on Judicial Decision Making

2.3.1 Direct and Indirect Influences on Judicial Decision Making

First, the public policy and the public opinion have a direct impact on the judicial decision making. In the specific case, the judge considered the provisions from the law on prohibiting discrimination, the promotion of the basic policy to protect the PLWHA, and the leaders' instructions on the policy. For example, the implementation of the registration system in 2015 has made the HIV/AIDS discrimination lawsuit more accessible to judicial referees. Before 2015, there were cases where the court considered "not subject to the scope of the court" or "belonging to the scope of policy adjustment" and "belonging to the internal matters of the employer". After the implementation of the registration system, the cases were successfully filed. In the case of discrimination in medical services, for example, the attention of leaders has promoted the resolution of cases.

The second is the indirect impact of public policy and public opinion on judicial decision making. The specific impact methods include lack of social welfare system for PLWHA in public policy, such as providing medical assistance including treatment and medical insurance, and providing HIV/AIDS blocking drugs (PrEP and PEP). Policy makers' awareness also lacks attention to PLWHA and its rights, and there is a lack of court rules that can be directly applied. At the same time that policy makers and lawmakers were constructing the modern heterosexual and its antithesis, they also built the nation's public and private social safety net around similar heteronormative tropes. The system of PLWHA rights protection is not perfect, and these environmental factors affect the development of HIV/AIDS discrimination lawsuits and affects judicial decision making.

Even the public policy and the public opinion interact and influence the judicial decision making. For example, the public policy does not distinguish between PLWHA, which causes the general misunderstanding of the people infected with HIV, leading to the widespread stigma of PLWHA. And a public opinion that is not friendly and unwelcome. For example, the well-known "Denver Principles" adopted at the Denver National Gay Health Conference in July 1983 proposed the label "People with aids" rather than "patients" or "victims" as a

term of reference for those affected By the virus, rejecting "attempts to label us as 'victims', a term which impedance defeat, and we are only occasionally 'patients', a term which implies passivity, helplessness, and dependence upon the care of others."[9] Public opinion links HIV/AIDS with sexual contact, homosexuality, and drugs. At this time, the public policy should play a role in de-staining, but in fact, the propaganda policy focuses on promoting HIV/AIDS prevention and treatment, ignoring relevant medical knowledge and medical progress. This deviating propaganda policy did not play a role in eliminating stigma. As a California aids bureaucrat declared, aids "embraces not one but several traditional taboos. It is sexually transmitted, it involves the homosexual subculture and it is incurable. You add that to the fact that it is mainly spread out of the homosexual community to the Iv drug abusers to the minority population and that's strike five. It is an exceedingly difficult issue for public policy types to address." (Jonathan, 2018) Therefore, for the decontamination of HIV/AIDS and PLWHA, public policy and public opinion are required. Mutual promotion.

2.3.2 Positive and Negative Influences on Judicial Decision Making

The positive and negative effects of Public policy and public opinion on judicial decision making can be seen with the progress of 12 cases. The first is the negative impact of the mechanism. It can be found that the emergence of HIV/AIDS discrimination lawsuits stems from the unequal treatment of PLWHA in employment and medical services. The root cause of this treatment is the public opinion's lack of understanding of HIV/AIDS. When they sought legal protection, the legal system at that time could not provide them with corresponding judicial protection. Even the discrimination they encountered was also derived from the system. For example, the GSCSRE regulations made it difficult for HIV/AIDS discrimination cases to enter the proceedings, and the privacy of the parties was faced. The risk of infringement, no specific law for applying. The implementation of the registration system in 2015 and the basic position of the state to protect PLWHA rights have contributed to the development of HIV discrimination lawsuits. Public opinion has also played an

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9 "Kaposi's Sarcoma in Gay Males," Bay Area Physicians for Human Rights Official Newsletter, July 1981, folder 3, box 4, Robert K. Bolan Papers (Special Collections, University of California, San Francisco). "The Denver Principles (1983)," ACT UP: aids Coalition to Unleash Power, http://www.actupny.org/documents/Denver.html.

important role in cases where PLWHA return to work. These are the positive effects of public policy and public opinion on judicial decision making.

3. Conclusion

HIV/AIDS discrimination cases usually involve equal access to rights and discrimination. In order to apply the principle of prohibition of discrimination to specific disputes, judges often need to rely on their own understanding of business realities and human behavior. The cases discussed in this paper show that under the current Chinese law is still not perfect for the protection of PLWHA, PLWHA's rights protection is faced with obstacles. This barrier includes public policy and public opinion. But to a certain extent, with the change of social consciousness, public policy and public opinion have also shown positive effects.

Despite the widespread HIV/AIDS discrimination in China, public policy and public opinion are not comprehensive about HIV/AIDS publicity. There is also a stereotype of HIV/AIDS, but in the existing HIV/AIDS discrimination lawsuit, the government's policy to reduce discrimination against PLWHA and protect workers, and the public opinion began to include goodwill and acceptance of PLWHA.

The cases of Cheng, Ming and Xie were all reached progress in rights protection. An analysis of these cases suggests that judicial decision making were relying, at least in part, on how the judge apply and interpret the law, which was influenced by public policy and public opinion. These court decisions may well have been different if the interpretation of the judges had been seriously challenged by changing public policy and public opinion in different situation and time.

This thesis has drawn attention to a significant collection of HIV/AIDS discrimination cases in China that has examined the influences of public policy and public opinion on judicial decision making through sociological interpretation of law. In Chinese discrimination cases, access to social science information is rare, and scholars have not yet examined the potential significance of these factors to inform judicial decision making in discrimination cases. Subsequent, this thesis does not define this kind of influence is correct or wrong. Nor does it advocate comprehensive elimination or promotion of the application of public policy and public opinion in the judicial decision-making of HIV/AIDS discrimination litigations, but suggests improving public policies related to HIV/AIDS, developing public

opinion in a positive direction, eliminating stigma and improving the rights protection mechanism for people living with HIV/AIDS.

First of all, in terms of public policy, the government should change the propaganda policy of "heavier prevention and control" in the past, and strengthen the propaganda and education on information such as HIV/AIDS transmission routes and treatment methods to remove stigma. In the social security of PLWHA, the corresponding drugs are included in the scope of medical insurance, providing treatment for HIV/AIDS, improving the treatment mechanism for other diseases of PLWHA, reducing the economic burden of HIV/AIDS treatment and the difficulty to access medical treatment. Improve the protection of PLWHA's equal rights and fill the gaps where the legislative rules have failed to keep pace with the rapid development of social awareness and situation, so that they can access legal remedies when their rights are violated. In public opinion, the law prohibits dissuading and discriminating against HIV/AIDS and PLWHA. In addition, by developing a public policy to play the role of public opinion in eliminate stigma of HIV/AIDS, the protection of PLWHA's rights will be extremely important. Strengthening the promotion of HIV/AIDS treatment progress, eliminating PLWHA and drug users, Stereotypes of sex workers. It is also possible to convey the protection attitude of the state and the law to PLWHA to the society through the establishment of typical cases by court judgments, and to influence the judges' awareness of the protection of equal rights in other HIV/AIDS discrimination cases.

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CHARACTER EDUCATION AND THE CHALLENGES TO CULTIVATE TOLERANCE IN INDONESIA

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Abstract

Radicalisation and tolerance are two crucial issues in Indonesia, especially in dealing with religious violence and radicalism. Education, hence, plays a key role to raise understanding for the young generation to acknowledge differences and be more tolerant. This paper attempts to scrutinise the character education implemented in Indonesia, along with the challenges to cultivate tolerance in the educational context. A critical literature review is done by collecting secondary data and readings about what tolerance is and some possible approaches that could be done to teach tolerance. It is found that there are many interpretations of what tolerance is; multicultural education and religiosity, although seems promising needs to be implemented contextually; and more humanistic approach of learning through dialogue and critical thinking could increase the tendency of being tolerant.

Keywords: Character Education, Religion, Tolerance, Critical Thinking, Humanity

INTRODUCTION

Education has a vital role to make sure that the young generation has competences dealing with social and intercultural problems in order to successfully participate in society (Isac, Sandoval-Hernández, & Miranda, 2018). Morality is one of the aims of education (Mukhid, 2016). However, the sudden political change after the fall of the new order increases the polarisation based on ethnicity, religion, race, social class. Further, democratisation after the reformation era is not easy, such as anti-Chinese sentiment and the hatred, and ethno-communal fights (Argon, 2018). Indonesia has a long story of crimes and battles among ethnic groups such as in Poso and other regions. Recently, radicalism becomes a new problem to solve, and ironically, it is in the name of religion.

Religion has some function as a source of education, saviour, peace, social control, solidarity, and transformation, creativity, and sublimation (Jalaludin, 2008, as cited in Isnawati, 2016). It has some rules of what the followers should do to be righteous and divine.

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Besides, many religion portrays humanity, nonviolence, and interdependent to one and another (de Rivera, 2009b). However, religions have a long history of conquest and war that makes us unable to imagine what kind of peaceful culture in the past. Indeed, the different interpretations of doctrine and faith appear on various religious rituals in human civilisation (Muslimin, 2011). The different theologies followed by fanatism could be harmful. The truth claiming is also common in all religions and if it is not wisely conveyed by religious leaders, it could raise a problem in religious groups. When one group of people claim they are the purest and most religious, there would be another claim that the other group should follow them or should be excluded. Thus, people in multireligious society tend to have a conflict with other believers such as a leader of certain religion insulting other people who embrace other religions, discrimination based on the religion, jealousy of economic status, and political conflicts (Yasin, 2005, as cited in Tamsir, 2018).

Radicalisation appears in society and becomes the concern of the government. Radicalisation is forcing someone else to embrace ideological or political goals undemocratically (Aslan & Rausch, 2018). Schweitzer (2018) argues that both violence and tolerance might be potentially taken from all religions. Therefore, the task of religious education could be either persuading students to embrace tolerance or risks and conflict based on the insecurity and confusion feeling of religious diversity and non-binding faith. Those who suffered from radicalisation are not only the wounded people and their families who become the victims, but also the group of people labelled as the radicals. Terrorists by the name of Islam, for example, has changed the image of Islam; Islam that should be openminded and inclusive to teach peace has been interpreted to be politically exclusive and not universal (Mawarti, 2017). 'Modern khawarij' or the rebels against the legitimate government, murder and terrorism by the slogan of building divine civilisation becomes transnational issues (Sukring, 2016). Islamophobia, then, has spread around the world and Indonesia, a country with the majority of Muslim is often assumed as an Islamic country with a high potency of religious violence.

The problem of radicalisation and violence in the name of religion becomes a crucial problem. To tackle this problem, the minister of Education, Muhadjir Effendy states that the issues of tolerance need to be included in the religious subject because Indonesia is a multicultural country (Rizqa, 2019). Tolerance could be cultivated by education, democracy, and the decrease of threat perception (Doorn, 2012). A program to build the students' good character called Program Penguatan Pendidikan Karakter (PPK) is conducted by the government to encourage character education (Oebaidillah, 2018). However, Jaringan

Gusdurian, an organisation concerning about building tolerance found that the intolerance in the society increases (Wardah, 2018). It is then unclear whether character education that has been implemented by the government since 2013 has run successfully.

The problem of the study is then: what does it mean by being both tolerant and intolerant? What is character education? and what are the possible approaches to teach tolerant and the challenges that might appear? To find the answers, secondary data in the form of various kinds of literatures are collected and scrutinised. A critical literature review is then conducted to find the definition of tolerance, character education, and some possible improvements along with its possible challenges.

DISCUSSION

The study finds that the definition of tolerance varies from one society and others; character education could consider multiculturalism and religiosity important to teach tolerance but its implementation is limited to the condition of each school; another solution by having dialogue and critical thinking could be another option of improving character education at school although it may take bigger teachers' and students' cognitive effort. The explanation of these points is as follow:

Definition of Tolerance

The definition of tolerance is controversial and multifaceted depending on the context (Schweitzer, 2018). The controversy itself appears when people have a different opinion but limited information about a certain thing (Cam, 2011). The aspect of tolerance is complex including the disagreement, the dislike, or disapproval to important differences in the internally contradicting elements of an individual cognitive, affective, and behaviour (Doorn, 2012). It has paradox nature of the people because an individual with his or her belief, value, and norm should deal with others who might have completely different perspectives and the ways of life. In addition, he or she should be aware that the differences, that might be confronting, are considered normal and natural while they also should respect on what they feel 'not right'. Basically, an individual attempt to be tolerant when she or he is aware that she or he is unable to understand everything or not capable of sufficiently understand everything, and, therefore, consciously consider that everyone else also experiences the same (Davids & Waghid, 2017).

According to Vogt (1997, as cited in Doorn, 2012), there are three types of tolerance: political, moral, and social. Political tolerance deals with the public sphere, especially liberty for the unpopular or disliked groups of people such as by freedom of speech, demonstration,

meetings, and others. It supports the people who are discriminated due to related to their ethnicities, genders, and cultural differences. The second is moral tolerance that deals with personal matters, such as homosexual rights, and pornography. The moral tolerance is more about whether something is sinful or not, and whether it could be accepted. Another type is social tolerance that changes over time-related to the characteristics of certain people, such as accepting people from different skin colours to use certain facilities.

Many researchers found that the conceptualisation of tolerance and the groups involved influence the various forms of attitudes of tolerance. It means that an individual could experience different attitudes of tolerance based on the context, situation, and other factors such as ethnicity, gender, and social status (Isac et al., 2018). Hence, the measurement of tolerance also varied and its findings could not be generalised due to different conditions of each population (Doorn, 2012). The definition of a tolerant person in Europe, for example, is different from people in Indonesia. In liberal countries, a society can be called tolerant if there is a low level of intolerant acts, such as public discrimination or crimes because of hate (Balint, 2011). Further, in the United Kingdom and Europe, people can freely interpret morality and philosophy, and plurality is natural (Mendus, 2011). Nevertheless, Indonesian people, due to different social condition, might have both different definitions of tolerance and the level of tolerance. In other words, what might be tolerated in liberal countries could be disliked in Indonesia and vice versa.

A survey by Convey Indonesia, for instance, found that more than half of the total number of respondents have radical religious perspective and there is a correlation between radical opinion about people from other religions. However, Dr Mohammad Iqbal Ahnaf from the Centre for Religious and Cross-Cultural Studies (CRCS) states that it is hard for teachers living in a homogenous area tend to not accept activities of people from other religions to have activities surrounding them (Bhaskara, 2018). Another survey by International Civic and Citizenship Education Study (ICCS) in 2009 towards 8th grade students among 38 countries Conversely that found that Indonesia has a negative relationship between attitudes and percentage of ethnic groups, also warns that some bias could happen due to pluri-ethnic societies and the proportion of sample (Treviño, Béjares, Wyman, & Villalobos, 2018). Students attitude towards diversity by the school structure; the students' academic, social, and emotional development; and the teachers' attitudes and practice. Indeed, the more homogenous the students in a school, the lower the opportunity for the students to have intergroup contact.

Religious Intolerance, according to, Schweitzer (2018). is not about "too much religion" but the insecurity of their faith, being defensive and fundamentalist. However, some scholars in Indonesia do not entirely agree with Schweitzer. Believing that there is a huge outer power, like most of the Indonesian people, makes an individual needs God and glorify in religion (Muhammaddin, 2013). Specifically, in Islam, tolerance in Koran is recognising towards plurality, interreligious communication, and justice (Tamsir, 2018). Further, *tasamuh* (tolerance) has the component of love (*rahmah*), justice (*'adalah*), safety (*salam*), and the Islamic monotheism (*tauhid*) (Ismail, 2012). Believing monotheism is a must in Islam, the way to maintaining the social relation is a different matter. Mawarti (2017) argues that many Islamic religious textbooks containing Koran, Hadith, and Fiqh do not completely reflect the values of tolerance. They mostly contain the rules of good and bad deeds but very few discussing how to interact with other people who do not embrace the same religion or theology.

de Rivera (2009a) states that a number of national celebrations or festivals in which different groups participate can promote social cohesion and tolerance. Indonesia with the *Pancasila* as the five pillars of Indonesian ideology and *Bhineka Tunggal Ika* that supports diversity tries to accommodate different ethnic groups and people from different religions. Indonesia has many holidays for religious celebrations and ceremonies. The government also gives right for the people to do religious rituals, yet it is not enough. In 2017, the Minister of Religious Affairs or Kemenag, Lukman Hakim Saifuddin, state that the government plans to make the standardisation of religious preachers and those who are qualified will obtain a certificate by the government (Sohuturon, 2017). This regulation is to prevent the spread of hate speech but might be interpreted as an act to ban social critiques toward the government which is more frequent in mosques by religious leaders. It also indirectly makes a dichotomy between 'standardised' and 'non-standardised' preachers, or 'acceptable' and 'non-acceptable' preachers. More generally, it leads to an assumption that the religious groups who do to listen to standardised preachers are the community who do not support tolerance. Instead of building tolerance, the government creates another intolerance.

The rules of being tolerant by authorities are called toleration. One of the ways is to build social cohesion through understanding and tolerance. (Fry, Bonta, & Baszarkiewicz, 2009). However, if an attempt to social cohesion is destructively done by the authority, it could lead to the exclusion of people who are unable to meet the 'standard' or treated like an enemy (Vollhardt, Migacheva, & Tropp, 2009). The problem of toleration, although could be

seen by individuals, is more fundamental due to the construction of many people's contribution that accumulates it (Balint, 2011). Thus, toleration to build tolerance should consider both individual and societal with the criteria of tolerance considered carefully.

Improvement of Character Education

Character education is officially mandated by the government in 2013. It is expected that by having a character education, the young generation could avoid pornography, criminality, violence, drugs, and other moral degradation activities. There are many positive attitudes to teach including tolerance (Suyitno, 2012). In teaching character education at school, teachers could implement it not only the classroom, but also in extracurricular, and co-curricular activities (Maunah, 2015). In making character education successful, it needs cooperation between the educational institutions, the government, and the society.

To improve character education, new approaches are necessary. Balint (2011) suggests two alternatives to teach respect that students can attempt and apply. The first is to gain knowledge and understanding, although it might not be followed by appreciation. Another alternative is through emotional training and transformation to raise empathy. Another researcher, Mendus (2011) states that to embrace tolerance, there are two options: assimilation or diversity. In an educational setting, multicultural education and religiosity, as well as critical thinking and dialogue could be implemented in the school to teach tolerance.

Multiculturalism and Religiosity

Multicultural society emphasises that it is necessary that everyone, despite differences, should have rights and responsibilities live together peacefully (Dursun-Bilgin, Çelik, & Kasımoğlu, 2018). It is based on the belief that plurality is not to make every religion become one, but to admit and respect the differences among them (Sugianto, 2019). Multicultural education is a system build in an educational institution to build inclusivity in order to promote diversity and tolerance. Research by Sari (2017) found that Islamic religious gathering which allows outsiders to come and join, prohibits insulting other believers, encourages helping others despite different religions could spread the values of tolerance. Another program is students exchange initiated by SabangMerauke gives the opportunity to 20 students to live with people from different religions and visit worship places such as mosque, church, pura and vihara. The program is to decrease prejudice (Ramadhan, 2019).

Multicultural education is claimed suitable for multicultural communities and avoid bullying due different social backgrounds. The introduction of symbols of religions, ethnic groups, and culture should be done since early childhood to form inclusive character and tolerance. Letting the students learn other religions could also be done to broaden the understanding of religious subjects (Jazuli, 2011). An example is a catholic high school in Yogyakarta that does not teach religious subjects specifically but religiosity. The religiosity does not only discusses religious rituals but also social issues (Jati, 2014). It is aimed to find the similarities of religions in dealing with the issues.

Multicultural approach and religiosity, despite the advantage, is not free from critique. Ismail (2012) states that multicultural education is not suitable for Islamic education. Multicultural education that tries to know other culture and to raise empathy could lead to the combination of faith among the learners. It could blur the Islamic religious truth. Being tolerance does not mean embracing other peoples' religions but to respect the other peoples' faith. Besides, it could not accommodate the school affiliating with certain religious groups, the type of schools and the parents' consent. The public schools, for instance, are not the same if they are compared to religious boarding schools. The practice of multicultural approach might be considered extreme to teach understanding and respect. Hence, critical thinking and dialogue could be another option.

Critical Thinking and Dialogue

Recently, the survey of intolerant teachers becomes the concern of the ministry of education, Muhadjir Effendy. He encourages both teachers and students to do more research and science and to minimise hoax or false news (Saputra, 2019). To avoid hoax, especially the provoking issues that could lead to violence, it is important to have critical thinking ability. Building learning skills, indeed, need focus and clarity of thinking to gather different information from sources and disciplines, followed by scrutiny, reflection, and contemplation (de Silva, 2011).

Reflective judgment is the ability to do a critical analysis of the multi-faceted problem, conclude information, and justify a response systematically (Bruning, Schraw, & Norby, 2011 cited King, 2004). It shows the reflective thinking development, a critical thinking ability to focus on controversial problems or ill-structured problems that are annoying while the solutions are unknown, incomplete, uncertain, or incorrect (Love & Guthrie, 1999). The criteria of reflective judgment are *certainty* of knowledge, *by which we*

acquire knowledge, and *type of evidence (Kitchener and King, 1981, as cited in Bruning et al., 2011).* A person who has a lower level of reflective judgment tends to have unchanging, absolute knowledge while those with higher reflective judgment believe that knowledge is relative and constructed based on a certain context. In other words, the higher the reflective judgment, the more tolerant he or she is because of the ability to think constructively and contextually. They understand that interpretation can be greater than the truth.

Knowledge is not simply to remember and repeat but to stimulate a learner to ask, to prove the assumption, and be open-minded towards inconclusive case (Cam, 2011). Religious teaching that tends to be a monologue and taking for granted should begin to encourage critical thinking (Isnawati, 2016). Truth claiming in religion could also raise intolerance if the people is a passive listener (Said, 2017). The values of tolerance education can be developed through learning in differences, building trust, building understanding, and respecting others (Tamsir, 2018). Therefore, the mutual understanding and coexistence to address tolerance could be raised from dialogue to see a different point of views (Lamb, 2011). The limit of tolerance is the absence of coercion especially when a teacher forces a student to accept his or her viewpoints uncritically. Instead, education should promote every student to participate. Being tolerant for when an educator encourages to pursue human growth and flourishing (Davids & Waghid, 2017).

Islamic education should be oriented on humanism to prioritise moral values over fiqh (rules of what is allowed and forbidden) (Said, 2017). Teaching the values of tolerance could be done by having a religious discussion and giving the example of the prophet Muhammad as the model (Rahmawati & Munadi, 2019). The spirituality of Sufism that encourages students to be more mindful, to examine themselves, to contemplate, and to be modest. The practice has the purpose to achieve wisdom that leads to humble and open-minded attitudes (al-Daghistani, 2018). Every teacher should respect differences, support the similarities, and empower the national identity especially through religious subjects and civics (Oebaidillah, 2017). Tolerant, flexible, and open Islam called inclusive Islam which does not only emphasise on symbols but also its values; uses non-orthodoxy ways of interpreting Islam; questions and proves the Islamic faith; has tolerant dialogues; and uses the modern principles of democracy, human right, and justice (Abidin, 2003).

To enhance critical thinking needs good literacy should focus on student-centred learning by the teachers (Solekhah, 2018). The schools and the parents should provide different types of reading materials to discuss, while the teachers should encourage students

to question their understanding. This approach needs both students' enthusiasm and teachers' open-mindedness to different opinions and interpretation.

CONCLUSION

Tolerance has no absolute definition. Monopolising the definition might have the potency to raise the new intolerance. The government or authorities should consider what tolerance is based on the context seriously and cannot generalised it. To teach the tolerance based on the current curriculum, then, character education could be improved by multiculturalism and religiosity, where students could develop understanding and change their behaviours after they are exposed to different faiths. However, this approach needs careful consideration based on the character of the schools and the parents' religious expectation. Another alternative is dialogue and critical thinking to stimulate cognitive domain of both learners and teachers. Being open-minded is vitally important to support the humanistic approach of learning and build respect.

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THE ROLES OF NGOS WORKING ON
INDIGENOUS' LAND RIGHTS ISSUE IN INDONESIA

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Abstract

In Indonesia, one of the national serious issues is indigenous peoples' rights on land and the problem of the tenure system. Over centuries of being under colonial power, land laws became combined use between western land laws and traditional land laws. In the areas where western land laws applied, land registration was completely supported with agrarian maps and surveys. While on the other hand, many Indonesian kingdoms were imposed their own regulations. Many Non-governmental organizations (NGOs) working to mobilize those indigenous peoples and recall the rights for them, especially rights on land. The land conflicts are keep rising in many areas, especially for vulnerable indigenous communities. This research aims to study recent works of one case study of NGO namely The Indigenous Peoples' Alliance of the Archipelago (AMAN)' who working on this issue for more than twenty years. AMAN drawn and organized indigenous peoples together, and raised up their issues to the state. Although they have been facing many challenges, they can successfully push stronger pressure on the government as well as working to support indigenous communities. NGOs have proved crucial roles to political and social development of the democratization of Indonesia.

Keywords: NGOs' roles, indigenous' land rights, AMAN, Indonesia.

INTRODUCTION

Indonesia is one of the countries having the most ethnic minority diversity. One of the national serious issues is indigenous peoples' rights on land and the problem of the tenure system. Over centuries of being under colonial power, land laws became merge between western land laws and traditional land laws. In the areas where western land laws applied, land registration was completely supported with agrarian maps and surveys. While on the other hand, many Indonesian kingdoms were imposed their own regulations. Failure of administration systems caused ineffective on implementation as well as traditional laws and

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various and different from region to another. The government failed to solve a land management problem. The land conflicts are keep rising in many areas, especially for vulnerable indigenous communities. The Non-Governmental Organizations (NGOs) working to support those communities. Those NGOs aimed to draw and organized indigenous peoples together and addressed their issue, then they can press stronger pressure on the government. As the indigenous communities have no legal rights over their land, NGOs who work on this issue are facing different difficulties, in order to mobilize those communities.

Non-governmental organizations (NGOs) have proved crucial to political and social development in developing countries, and perhaps none more so than Indonesia. Indonesia is one of the countries having the most ethnic diversity. The issue of indigenous peoples' rights is not a new issue for the country, whereas it is existing over the decades. Many NGOs working to mobilize those peoples and recall the rights for them, especially rights on land. Indigenous peoples have a deep connection with their lands, territories, and resources, which are basic to their identity and livelihood. The collective rights of indigenous peoples to lands are embedded in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which Indonesian government refuses to accept the concept of indigenous peoples. In 1991, the International Labour Organization (ILO) established Convention No.169 concerns about indigenous peoples' rights in independent countries, Indonesia also did not consider to ratifying lately. The government argues that the concept of indigenous peoples cannot apply to all Indonesians. Consequently, the Indonesian government rejected calls for needs by indigenous groups (AMAN, 2019).

One of the national serious issues is indigenous peoples' rights on land and the problem of the tenure system. Over 350 years of being under colonial power, land laws became combined use between western land law and traditional land laws. In the areas where western land laws applied, land registration was completely supported with agrarian maps and surveys. On the other hand, many Indonesian kingdoms were imposed their own customary laws. Both administration systems caused unstable on implementation because traditional laws are various and different from region to another. In 1960, the government tried to end this situation by creating a National Land Law based on the utilization of traditional concepts. The National Land Law divided land status into state land and private land. State land can be land that has been designated to person legally or state land without any right attached to it. For private land is a land with certain right on it either registered or not yet register (Heryani, 2004). However, land titles and ownership is assigned due to state interests neither standard

qualification nor formal regulation. The government failed to solve a land management problem. The land conflicts are keep rising in many, especially for vulnerable communities.

There are several Non-Governmental Organizations (NGOs) working to working to support those indigenous communities. Those NGOs aimed to draw and organized indigenous peoples together and addressed their issue, then they can press stronger pressure on the government. Recently, NGOs in Indonesia involving an issue of property and land rights got involved more from the global perspective, which influenced their perception of the issue. Back in the late 1990s, many NGOs had successfully influenced the government to have new agrarian reform which at that time thousands of hectares of lands had redistributed to indigenous communities. However, after the agrarian reform, as the government has emphasized economic developing and promote more investment in the country. This leads to a more complex conflict of land grabbing issue. While the issue of weakening land law and land administration which cause the conflict between the communities and the government still remains unsolved. Other sector had joint in, business sectors. As mentioned that the government can assign land to any sector or person according to its interest, here become an issue. As the indigenous communities have no legal rights over their land, the government can turn their land into the business sector for investment. The NGOs working on this issue are facing different situation compared with the 1990s, in order to mobilize those communities.

The research aims to study recent works of NGOs in Indonesia who working on Indigenous' land rights issue. In order to have a better understanding of how those NGOs works help to mobilize indigenous peoples on this particular issue. Also, to learn about their challenges that threatening their work achievement. This research conducted based on a qualitative ethnographic case study approach. The research aims to study on the roles of non-governmental organizations (NGOs) working on indigenous land rights, the data collecting for this research is the works of a only one case study of NGO namely 'Aliansi Masyarakat Adat Nusantara (AMAN)' or Indigenous Peoples Alliance of the Archipelago in English. As qualitative method is the best for describing, contextualizing, and gaining in-depth insight into their specific works and issue that they are working on. The analysis involve contextual analysis of NGO's role in this particular issue which this thesis will demonstrate by providing case example of AMAN's work. In addition, the research also tries to draw a connection between their works and impacts on the issues on how the organization mobilize indigenous people's rights on land in the country, as well as the challenges on their works.

THE RISE OF NGOS AND INDIGENOUS' LAND RIGHTS ISSUE

The rise of civil society institutes happened significantly after Indonesia' declaration of independence in 1945. The country recalled for a transformation in many aspects; political, economic, and social reformation. In the past three decades, NGOs have a substantial increase in the number, size, and scope. These organizations have established themselves in social, economic and political landscapes across the globe. Non-governmental organizations or NGOs, were first called in the United Nations' Charter in 1945. They have no formal definition, they generally defined as nonprofit or independent governmental influence (Grant Space, 2019). In Indonesia, the number of NGOs has grew significantly from 10,000 in 1996 to around 70,000 in 2000 (BPS, 2000 cited in Hadiwinata, 2003, p. 1). The history of NGOs more widely in Indonesia since back in the colonial era. NGOs are part of civil society and continued to be important despite the repression of political expression and engagement, and laws limiting the right of people during the New Order era from 1965-1998. In transitions to democracy, by the mid-1980s, international donor agencies and international non-governmental organizations (INGOs) provided some funding and support for Indonesian NGOs, with a motivation of promotion of the role of civil society in transitions to democracy. Megan McGlynn Scanlon and Tuti Alawiyah (2012) state that such a transition of democracy led to the decentralization of power and gave rise to new generation of NGOs with a local focus on governance and public services. The collapse of President Soeharto's authoritarian New Order regime in 1998, the ensuing transition towards democracy has brought many changes in the country, including a rapid growth in civil society. The spread of democracy has opened up opportunities for civil society groups to participate in establishing rights, institutions of accountability in a society. However, their statement is challenged by an earlier paper by Christopher R. Duncan. Duncan (2007) argues that when Indonesia began a new form of decentralization in order to making government more accountable to local population. In fact, the decentralization in Indonesia led to the empowerment of the local authorities to be more control over their regional natural resources. The decentralization promises that the benefit of ethnic minorities and other marginal groups within the state will be better protected but it seems contradictory, after centralized power to the local level, it made the local especially indigenous groups are even more marginalized. Therefore, in Indonesia case, the rise of NGOs is not actually because of the decentralization itself, but decentralization led to a marginalization of ethnic minorities. Consequently, NGO sector in Indonesia started to grow in order to support and mobilize those marginalized groups.

Recently, the NGO network in Indonesia is influenced by the evolution of the NGO sector back in the New Order era. In the last 40 to 50 years, Bob S. Hadiwinata (2003 cited in Lessa and Li, 2015, p.2) explains that civil activists and Indonesian public intellectuals formed organizations to deal with development problems. Back in 1970s, the government acknowledged its limited capacity to deal with deeply rooted poverty problems, and realized that NGOs' interventions could be more efficient in terms of capacity development for poor communities. Despite the growth of the NGO sector is now a part of broader civil society in Indonesia, it is important to understand that the impact of a prolonged experience of repression is still very significant. For more than four decades of authoritarian rule, civil society was seen as a part of the problem in Indonesia, not as the solution. Back then, state saw civil society as there to be controlled, neither to be listened or as a partner to work with. The uncertain position and strategies of civil society is compounded by the increasing call for accountability. As a result, civil society institute like NGOs are being seen as political opposition in state's perspective.

The state under Soeharto's government at that time attempted to limit the capacity and expression space, as well as donors of NGOs. Within this limitation, NGOs active in human rights and environmental protection began to emerge. These NGOs started to delivery out their advocacy activities in support of those whose right were violated by the regime, for instance, indigenous communities, women, and workers (Antlov, Ibrahim and Tuijl, 2005). It is clearly see that NGO sector subsequently played a significant role in the transition to democracy. The fall of the Soeharto regime and the ensuring democratization process in Indonesia led to the emergence discourse on good governance, accountability and transparency. During the reign of Soeharto's presidency, his policies related to the natural resources abundance for the national economic development, had led to many serious environmental issues and it has had huge impacts on the indigenous peoples. In the very beginning, the NGOs that emerged during that time, response to the marginalism of Indigenous peoples and have less interest on the environmentalism. Therefore, the NGOs were active focus on monitoring the activities of state and other political institutions as well as engaging more effectively in promoting public policies, carry out advocacy to change, influence and draft new laws.

the NGOs at that time is aimed to draw and organized indigenous peoples together as the national level, so they can address their issue and press stronger pressure to the government (DTE, 1999). In order to deal with indigenous people land issue is not as simple

as stated in principle. Indonesia national law is based on the primary colonial powers, Netherlands, British and Holland (Szczepanski, 2002). With its colonized history that shaped national law, tenure system and the complexity of indigenous groups in the country, dealing with this particular issue is a tough work since it requires many aspects involved. Recently, NGOs involved in the issues of property rights, especially land rights got involved from the more global perspective, which influenced their perception of the issue.

INDONESIA'S LAND LAW AND LAND ADMINISTRATION

After being independent of colonial power in 1947, land rights in Indonesia encountered transformative changes to encourage homogeneity of land tenure systems (Szczepanski, 2002). In 1960, the government had set the conversion provisions of the Basic Agrarian Law (BAL). This transformation of land law aimed to avoid creating a legal vacuum as a consequence of the invalidation of colonial land law, at the same time ensuring the protection of existing property rights. Also, the transformation helped to protect the existing landholder interests from arbitrary and unjust revocation and land grabbing. The transformation of land rights in the post-colonial era involves an action to transform and alert existing land rights into statutory rights. Indonesia applies two control models for its revolutionary changes: the private law model and state control model. Both models have their own limitations and advantages. The private model leads to greater economic benefits while state control might enable greater protection against the manipulation of land by non-state actors (Daryono, 2010). By using mix models, Indonesia allows administrative control to intervene in the transformation process. Daryano Daryano states that this makes the transformation process even more complex, as it relies not only on private law system to convert the existing land rights into statutory rights, but also uses public law systems to tight administrative controls against monopolization by non-state actors. As consequences, in many cases, state control has benefited from this rather than society at large. The state failed to protect the interests in land for the entire community, especially vulnerable populations.

The commandment of the Basic Agrarian Law (BAL) was attempted to bridge the gap between Western law from the colonial powers and customary law (*adat* law) by providing registration of individual land rights, while at the same time continuing to recognize customary land law concepts (Wright, 2012). Under the passage of the Basic Agrarian Law, two systems of land law continued in force, civil law and *adat* law. Civil law applies for

foreigners and *adat* law for Indonesians which more than 90 percent of the land is controlled by the principle of *adat* system. *Adat* law also known as customary law and still remains a part of modern Indonesia legal system. Each indigenous group has a system of *adat* laws, which developed over time to meet their individual group needs and to meet with particular culture and environment of the community (Szczepanski, 2002). As *adat* law is unwritten, recognition of *adat* land rights and customary of tenure, have become a critical element of contention in the country. Erna Heryani and Chris Grant (2004) explains that the root of the problem is that most of the existing implementing regulations of BAL failed to elaborate, and sometimes even contradictory to the principle of *adat*. The government had attempted to recognize the existence of customary land but still not effective. After decades of failure of the agrarian law, there was a second wave of land reform in 1999. In response to civil society complaints and requests for land reform. After the Reformation, the government at that time re-distributed land to peasants and indigenous communities. However, as customary laws are still not much being legally recognized, the conflict over land is continuing.

CAUSES OF INDIGENOUS LAND'S RIGHTS ISSUE IN INDONESIA

- *Unrecognition of Indigenous Peoples' Rights*

What does it mean by unrecognition? They have no citizen status? These questions may raise in our mind when we think about someone's rights. According to the interview with the Deputy of General Secretary on Political Affairs, Eramus Cahyadi from the Aliansi Masyarakat Adat Nusantara (AMAN)' or Indigenous Peoples Alliance of the Archipelago Organization, explained that from 2,366 indigenous communities members they have all of people in those communities holding Indonesian citizen card, they have all rights as other Indonesians. It may bring you to the confusion that if they have all rights as other Indonesians, so why they are unrecognized. Cahyadi explains that although they have citizen card, but because of many limitations such as literacy ability, remote geographical difficulty, and different cultural practice and way of lives, they are unable to fully exercise their rights as the majority. Indigenous peoples need to get 'collective rights' recognition. Most of the indigenous communities' cultural and traditional practices, including their way of lives, are tightly rely on their lands and forests.

The government argues that the international legal category of 'indigenous people' is not applicable to Indonesia, as all Indonesians are indigenous. As the result, the government

often lease indigenous lands to private sectors for industrial investment or palm oil plantation. AMAN saw the issue and realized that this happened because the government does not recognize indigenous peoples in the national legislation. Therefore, AMAN seeks to represent indigenous peoples and attempt to gain recognition and land rights from the government. AMAN defines indigenous peoples as '*communities which have ancestral lands in certain geographic locations and their own value systems, ideologies, economies, politics, cultures and societies in their respective homelands*' (AMAN, 2019). AMAN has putted the effort to strengthen the position of those politically marginalized groups that were harmed by the politics of development. The communities most adversely affected by the natural resource policies often lived on land that was needed for natural resources extraction and plantation expansion. The state and bureaucrats usually saw them as obstacles to development which needed to be removed. Without collective rights recognized in the law, indigenous peoples hardly claim their lands back when the extraction happened.

- **Decentralization and Regional Autonomy on Indigenous Ethnic Minorities' Land**

    In the past decades, Indonesia began a new form of decentralization with the passage of new legislation that shifted political and fiscal authority from the national government in the capital city, Jakarta to sub-provincial level government throughout the country. On the national level, politicians and policy makers saw decentralization and regional autonomy as a way to stabilize the country by making government more accountable to local populations and by addressing demands from regional leaders who want more control over their regional natural resources. Local communities had complained that the wealth generated by their natural resources had enriched politicians and their cronies in Jakarta rather than benefiting local communities. Policy makers thought that transferring authority and responsibility for administrative functions to the local government would make government more responsive to local concerns.

    The promises of decentralization is the belief that the interest of ethnic minorities and other marginal groups within the state are better protected as local communities gain more control over their own affairs. However, on the other hand, decentralization allows local elites to capture more benefits while still excluding ethnic minorities and other vulnerable groups of people. This is because ethnic minorities are saw as not important groups in political process representatives and downwardly accountable local authorities may over exploit resources and

ignore minority interest. These local elites have little liability to include ethnic minorities in the political process as their future election hopes are often tied to majority communities that have different needs and desires (Duncan, 2007). Although decentralization provides new opportunities for ethnic minorities to participate in local politics, they are often still excluded from the decision-making process. Whether decentralization policies have helped indigenous ethnic minorities remains a debate. Some camps argue that indigenous ethnic minorities have benefited from this new arrangement, while others have noted that it was the failures.

As mentioned in the earlier part, the Indonesian government has a strict policy of not officially recognizing indigenous peoples, consequently, ethnicity is also not recognized or considered in the government discourse or policy making. Therefore, this new legislation could affect indigenous ethnic minorities throughout the country. The indigenous rights movements hope that this change towards regional autonomy will allow indigenous communities in Indonesia to retain, or regain, control over natural resources through local-level politics. In addition, some ethnic minorities see this change as an opportunity to return a local forms of governance, land tenure, and resource management practices that had been ignored by the national government. In contrast, the new fiscal arrangements encourage district-level governments to generate revenue through natural resource extraction, as they will receive a large percentage of income from this business. The local authorities now need these new revenues that they are responsible for a large portion of their own budgets, which have increased significantly since the national government has started the decentralization process. Unfortunately, the extraction of natural resources often works against the best interest of indigenous peoples as these resources such as timber, minerals, and many more, are often found on their land.

- **Natural resources dependence for national economic development**

Indonesia has been known as one of the most richness in natural resources. Indonesia relies on natural resources for its economic development since during Soeharto's era, through natural resources extraction, Indonesia is able to finance its development. During Soeharto, Indonesia's second president, the development of the country was highly dependent on oil, gas, mining, and timber because they are the value sources of national income. Soeharto passed laws on foreign investment, forestry, and mining because he knew that the extraction of the resource abundance could not be done by local corporations and should involve

international corporations (Resosudarmo, 2005; cited in Stenly, 2015). This is the starting point where natural resources in Indonesia are over exploited. However, after the fall Soeharto in the late 1990s together with the Asian financial crisis in 1998, the contribution of the natural resource has become less contributed to the income source of the country.

Figure 1: Indonesia's Natural Resource Rents as a percentage of
Gross Domestic Product (GDP)
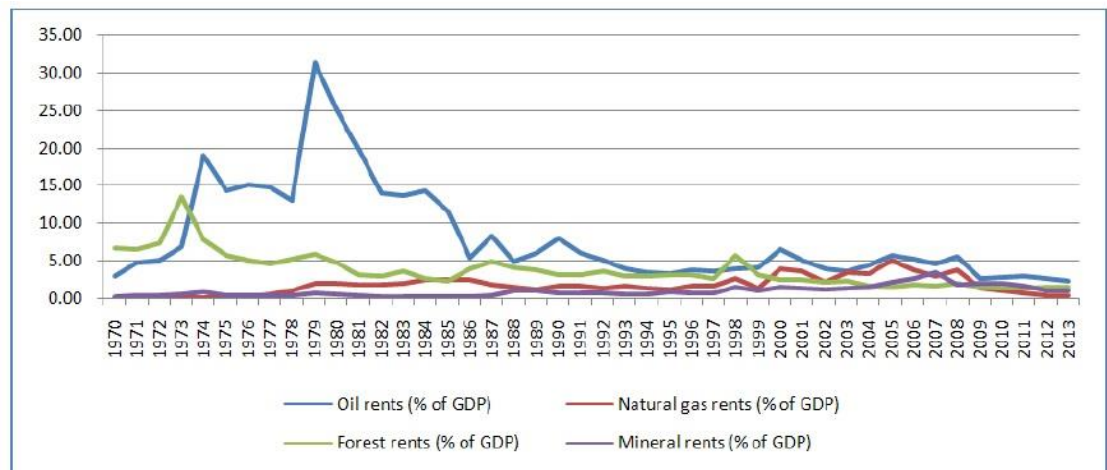
Source: World Bank Data, as cited in Stenly, 2015

As shown in Figure 1, after 1990, Indonesia's natural resource contribution to the national income had negatively gone down and kept staying in very low rate, especially from oil and gas. Contradictory, coal production has rapidly increased since 2004 as shown in Figure 2. Over the course of Susilo Bambang Yudhoyono's presidency (from 2004-2014), the national economic boost is focusing on mining and plantations. As the result, land grabbing happened all over the country for mining investment and plantation of private sector, which most of them are where indigenous communities located. In 2013 alone, land conflict caused 22 deaths due to violent clashes and involved almost 140,000 households. According to Agrarian Reform Consortium record, there are 1,391 land conflicts causing 70 deaths, involving five million hectares of disputed land and 926,700 households (Kurniawan, 2014). Most of the land disputed involves land designated as forest area then later converted to non-forest land for economic purposes such as mining and plantation.

Figure 2: Coal Production in 2004-2011
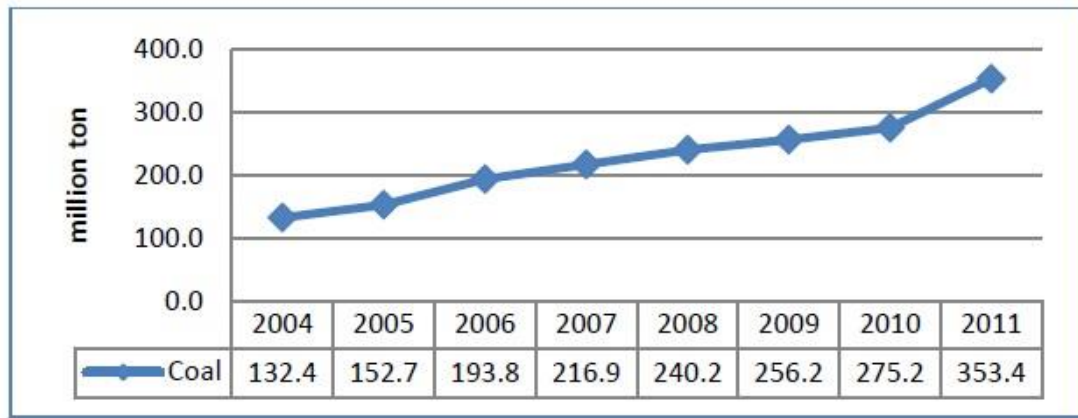
Source: Directorate General of Oil and Gas, cited in Stenly, 2015

Indigenous peoples' rights to land are significantly affected from these conflicts, because large tracts of indigenous customary lands are located within forest area, which control by the government and sometime designated as forest conservation area. Frequently, the government has claimed such customary lands to be empty and transferred them to private investors. One of AMAN's current policy is working on advocating for the One Map initiative. This policy came out of the fact that land ownership, land use, and land tenure, are the main factor of indigenous peoples' issues. Aaron Burr from University of Maryland of Public Policy, Indonesia (2017) explains that In Indonesia, different levels of government and government agencies have maps that show conflicting data. Those maps include data of forest cover, territorial boundaries, land use categories, and the local use of natural resources. These mapping differences led to the wrongful use to take advantage of indigenous groups who rarely hold formal land titles on the land they occupied. The One Map policy is very contentious throughout the country. Various competing interests across the government and business sector regarding their benefits, while indigenous communities argue over traditional borders. The goal of the One Map initiative is to bring together land use, land tenure, and other spatial data into a single incorporated database for Indonesia to ensure that conflicts are adjudicated fairly and openly.

**THE ROLES OF NGOS IN MOBLIZING INDIGENOUS PEOPLES' RIGHTS**

As we all known that in many developing countries the presence of non-governmental organizations (NGOs) can no longer be ignored. They are engaged in extensive formation of activities, including philanthropic work to people left out of the developmental process as well as efforts at addressing problems of environmental destruction and other negative consequences of economic development, and efforts to institutionalize popular participation. When considering the role of NGOs as case study given, AMAN, NGOs, in social context of developing countries, one evidence is the existence of people who have been left out of the market-based developmental process, and are unable to secure the necessary resources to lead fulfilling lives. NGOs are constituents of what is called the 'third sector' or 'non-profit sector'. In the advanced countries, the researches and discussions on the third sector, especially the West take for granted that both the market sector and government sector once performed relatively important roles in the distribution of resources in society, and assess the advantages and disadvantages of the third sector relative to these two sectors (Bauer, 1990; cited in Shigetomi, 2002). In developing countries, the resource distributing functions of both market and government sectors have been found grossly inadequate even prior to the emergence of the third sector. When peoples are not be able to secure their livelihood because of the loss of resources NGOs like AMAN came into space and tries to help those people. For decades, indigenous peoples have been fighting to defend their rights in the face of government's development projects. They have been struggling to defend their lands and resources against the large-scale commercial development promoted by the government. With the founding of the AMAN, indigenous peoples have an opportunity to work at a nation-wide level, to push for change in government policies and laws. Currently, AMAN is working on many aspects related to indigenous peoples in Indonesia such as, community mapping, people's rights advocacy, law enforcement, capacity building, and so on as have been elaborated in earlier part.

However, it does not mean that NGO or the third sector will take a role over the state. In order to consider the role of the third sector, it is necessary to explains what we mean by the state, and what functions of the state we consider important. When a group of individuals interact with one another socially, rules become necessary, and are formulated through such interacts. A set of commonly accepted rules forms emerge when group of people interact with one another. Such rules, we might called them 'social rules' that the society has for governing

and regulating its constituent members. The society is also equipped with a system for distributing resources to its members on the basis of its rules. The state is an entity who establishes a set of rules that applied to all its constituent societies across the territories, and often enforce in the name of 'public interest'. On the one hand, these rules which refer to laws, police, and so on, are for regulating private interactions among its citizens, and on the other hand, those which regulate the formation and management of goods and services which are produced by private interactions among its citizens. The functions of the state can be examine in two dimensions. The former rules represent the despotic dimension of the state that use laws and regulation to regulate its citizens. Another dimension that the state also has is infrastructural dimension. The infrastructural dimension is the state's performance in administrative part. However, the question is what areas it is managing to supply how many resources, and that determines the areas of activities available to NGOs.

With the understanding of the state functions, and the gap occurred in developmental process, we can determine the space available for NGOs. We can discuss the space of NGOs in two perspectives, economic space and political space. The Economic space for NGOs is the way NGOs manifest themselves as state demand for their activities, or the arena in which they needed. Individual citizens require various goods and services or what we call resources. Citizens can consume some of these resources from the market or from the original source. The market is an arena where individual citizens purchase resources in a competitive way, using prices as the standard for decisions on whether or not to purchase a certain good. However, not all necessary resources are supplied by the market and even when sufficient resources are available on the market, there are a large number of citizens. State needs to make use of its administrative systems and mechanisms, to provide people inadequately goods and services.

Figure 3: Possible Arenas for NGOs' Activities
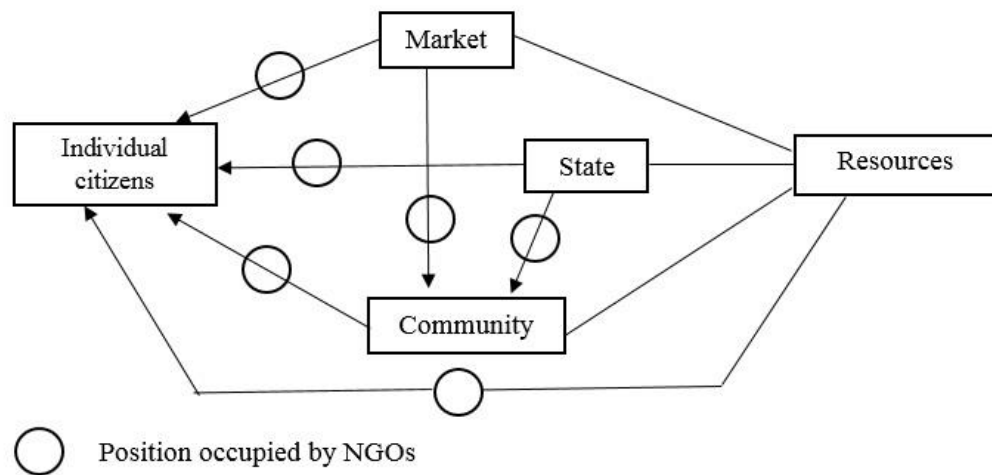
Source: Shigetomi, 2002

The resource distributing function is usually seen as being perform by the state and the market alone. In reality, however, there are other systems for the distribution of resources, which are built into societies, NGOs (see Figure 4.1). NGOs emerge to maintaining and distributes resources that cannot be supplied by either the market or the state. For example in the case of AMAN. AMAN does not enter into the only one arena, but many. AMAN's works cover the gap between state and individuals of indigenous communities, between state and resources, between the market and indigenous peoples and communities. As mentioned, AMAN is working to mobilize indigenous peoples in all aspects.

According to the interview with AMAN, when the organization first established in 1999, their works are not mainly about lobbying the government, advocacy, or promoting indigenous movement. AMAN aims to do so including be able to negotiate with the ministers or higher position officers, but in the first couple years the organization was more the center for indigenous members to gather together to learn and understand the issues, importantly what the organization is here for. As there are many different indigenous communities joint AMAN, they experienced different issues and most of the time have different needs. It is necessary for them to exchange information and learn about each communities' issues in order to ensure that as indigenous peoples, they will work towards a same goal. Hence, in the first

couple years was mostly about internal affair, ensuring everyone sharing the same value and the same goal.

Through time and experiences, few years after the establishment, AMAN was be able stabilized their work core. From the beginning of helping case by case, AMAN realized that there are needs of other work aspects to help indigenous peoples, for instance, a knowledge on legal framework which the government always uses it to restrict indigenous peoples rights. Currently, AMAN have structured their works into four fields, internal affairs, political affairs, and socio-cultural affairs. AMAN implements strategies and programs based on the need of members, which are indigenous communities, to ensure the functioning of the indigenous people movement and organizations in Indonesia.

(1) Political Affairs: Advocacy, Human Rights, and Politics

Political Affairs is mainly working on law and advocacy. In present, this affair working to encourage changes in laws, policies, regulations and agreements at the national and regional levels, to recognize and protect the rights of indigenous peoples. Also, providing legal services and handling cases for indigenous communities of AMAN members who experience conflict regarding their collective rights. Furthermore, they encourage the expansion of political participation of indigenous peoples and lobbying and intervening in various international forums to encourage changes in agreements to recognize and protect the rights on indigenous peoples.

(2) Internal Affairs: Strengthening Organizations and Institutions

Strengthening the management and operational capacity of the organization and the capacity of AMAN members and cadres; develop and expand AMAN organization at all levels; build and strengthen communication and information systems, including building community media; and mobilizing public resources.

(3) Economic Affairs: Community Services and Support

Conduct mapping of indigenous territories; strengthening the community economy; developing renewable energy in communities members; disaster emergency response; establishing indigenous peoples production cooperatives; build indigenous community owned enterprises; develop culture and education; develop customary forestry.

(4) Socio-Cultural Affairs: Social and Culture

Identifying and documenting data on knowledge, traditional arts and intellectual property of indigenous peoples; encourage and develop local content in the formal education curriculum; develop customary education systems rooted in culture; organizing events and cultural development of indigenous peoples at various levels; preservation of indigenous peoples cultural sites.

AMAN has a national headquarters in Jakarta and localize their works through four different levels, which consists national, regional, and provincial administrations, importantly all indigenous communities. According to the interview, all of AMAN's staffs in all levels are from different indigenous communities. Each staff is truly understand the issue of indigenous peoples' rights, and they often sharing information and experiences to one another. That made AMAN has strong connection because they are not the organization who work for indigenous peoples, but they are all indigenous peoples who gather together in AMAN and work for their people's rights.

CHALLENGES

NGOs in the world today are facing various challenges that threaten their future works and sustainability. Generally, these challenges are the availability of funding, management of human resources, public interest, and the ability to maintain a new generation of NGO leaders. NGOs also need to operate freely without government interference (Lassa and Li, 2015). Although, working collaborated as NGOs network helps strengthen their works and have strong influences on government implementation. However, those challenges are only a second prioritized challenges for Indonesian NGOs. Although, The number of NGOs in Indonesia have grown significantly since 1998 as part of a broader development, but few of them have positively engaging with government, the corporate sector or other stakeholders. After the reformation period, the environment of works and strategies of NGOs have changed, considerably more complex and difficult to navigate, even though the new environment for civil society and NGOs is more open in terms of access to information and distribute their information, but there is no guarantee that NGO contributions to public and political discourse will be welcomed by society. The major challenge for Indonesian NGOs is a reformation of their positions vis-s-vis the state and various other sectors in the society. As democratizing country, power is no longer centralized but it distributed among new power agencies such as parliament, political parties, and judicial institutions.

Nowadays, NGOs are in the process of learning how they can be part of a process of creating checks and balances. The role of public benefit protector is no longer monopolized by NGOs, but is shared with other actors, and other civil society organizations. The situation seems to be changed today, NGOs cannot express their position as government opposition, and it is unfavorable for the immediate future of the NGOs without a breakthrough on relations and interactions with government and other sectors in the society (Antlov, Ibrahim and Tuijl, 2005). The NGOs need a genuine two way dialogue with the government and private sector to develop trust. It will led to a change from protest politics to developing strategies of engagement through the process of lobbying and negotiations. However, those challenges usually represent external challenges facing by most of the NGOs, not only Indonesia but around the world. According to the interview with AMAN, they state that the most challenges for them are internal factors which they divide them into three main parts accorded to their resent work evaluation report, which are strategies, institutions, and program management.

CONCLUSION

We all known that non-governmental organizations (NGOs) address very important roles in our society, not only in developing countries but also in advanced countries. Generally, NGOs engaged in extensive formation of activities and mostly philanthropic work for people left out of the developmental process. However, when considering the roles of NGOs, different contexts in particular country may be different. This research aims to study the roles of NGOs in Indonesia in particular, it found that their roles have changed through the transition of democracy in the country. This research found that nowadays, NGOs are in the process of learning how they can be part of a process of creating checks and balances in the development process and decision. The role of public benefit protector is no longer monopolized by NGOs, but is shared with other actors, and other civil society organizations and sectors. The situation seems to be changed today in Indonesia, NGOs cannot express their position as government opposition as in the past, as Antlov, Ibrahim and Tuijl state that it is unfavorable for the immediate future of the NGOs without a breakthrough on relations and interactions with government and other sectors in the society. The NGOs need a genuine two ways dialogue with the government and private sector to develop trust. It led to a change from

protest politics to developing strategies of engagement through the process of lobbying and negotiations.

As in the case of AMAN's role, in the beginning years after the establishment, AMAN mainly worked to help the indigenous communities protest the government's development projects. They were placed as the government opposition. The government always saw them as an enemy. It was very difficult to do lobbying and negotiation because the governmental officials did not welcome them for the negotiation. Few years later, when the organization was more stabilized in working on this issue, plus they have more experiences, seeing what were really needed for the best solution. They started to change their position and roles. Now, AMAN placed themselves into a space where they can involve in developing strategies through the process of lobbying and negotiation. AMAN put themselves in a gap space created by the developmental process, trying to link up the individuals' needs (here means indigenous communities) with the government's distribution of resources. However, in order to reach that goal is not simple, the (collective) rights of indigenous peoples need to be official recognized by the state. AMAN divide their works into four fields, political, internal, economic, and socio-cultural affairs ensuring that their works cover all aspects for the best benefit of indigenous peoples.

AMAN is not only working among the indigenous communities but it also work widely with private sector and other civil society organizations. With a strong network, AMAN have achieved many works and have stronger influences to put a pressure on the government, as well as the policy makers. In these present years, AMAN adopted the global trend of a concern on the environmental issues, climate change, and global warning into their discourse. AMAN sees the environmental exploitation in Indonesia is an urgent problem because the increase of land grabbing for the industries, mining, and palm oil plantation which always lead to deforestation. Those projects are not only affect the indigenous peoples but also very harmful to the environment. AMAN addresses environmentalism as a new approach to claim indigenous peoples' rights. AMAN believes that in order to protect the environment, we need to protect indigenous peoples, who clearly known as the best forest defenders. With the environmental discourse, the government cannot ignored it. As one of the richest countries in natural resources, Indonesia is being observed internationally. Thus, Indonesian government needs to be more careful on their developmental projects.

However, although democratization in the country opened up more space for the third sector like NGOs for their activities but it does not mean that NGOs can work freely and easier. NGOs in Indonesia face many challenges that threatening their works and achievement. Generally, these challenges are the availability of funding, public interest, and ability to maintain a new generation of NGOs. The research found that the challenges that concern NGOs the most is internal challenges. AMAN found that the most challenges for them are the strategies, institutions, and program management. First challenge is designing strategies. As a national wide organization, the strategies they use need to be well-communicated between the members, so they will be able to spread this message to wider society and government agencies. Importantly, the strategies and advocacies need to think as globally, but act locally ensuring that people will be the most benefited. Second challenge is institution or internal affairs. The most important for AMAN is strengthen and empower the communities. When the community is strengthened, they will be able to empower their youth and women as well. Lastly, the challenge on program management. AMAN has staffs in national and regional offices that have very high capacity and commitment. However, there are some skills that are lacking, so the organization needs to strengthen their staffs' capacity. Furthermore, AMAN is concerning on the sustainability of their staff. They have a program training indigenous youth who have potential to be leaders in the future. Those challenges are important to consider when we discuss about NGOs' roles, because they can significantly affect their works and limited them from doing some fruitful activities for communities.

On the other hand, the democratization seems to be contradictory. While it created more space for NGOs' works, but it also lead to a wider gap in society, particularly marginalized groups. In Indonesia, democratizing the nation based on developmentalism approach led to an ignorance of minorities groups. In the past decades, the Indonesian government tries to decentralize the central power, with the passage of new legislation that shifted political fiscal authority to provincial level governments. The policy makers saw decentralization as a way to make government more accountable to local populations. Nonetheless, such a shift of power, it empowered and authorized the local government to control more over the natural resources in the region. They can lease lands to any private companies, they can allow private sector to do illegally deforestation. The wealth generated by the natural resources had enriched politicians and their cronies rather than benefiting local communities. The decentralization promises that the benefit of ethnic minorities and other

marginal groups within the state will be better protected but it seems contradictory, after centralized power to the local level, it made the local especially indigenous groups are even more marginalized. The rise of NGOs is not only because of the decentralization itself opened up the space for a third sector, but decentralization led to a marginalization of ethnic minorities. Consequently, NGO sector in Indonesia started to rise up in order to support and mobilize those marginalized groups. Therefore, the idea of developmentalism and democratization is conflicting with reality in Indonesia.

The gap happened because the state apply the developmentalism approach by focusing only on the relation between state and market. In a case study of Indonesia, the state only focus the national development based on the economic growth. Indonesian government develop their economy by dependence on the natural resources without considering its impacts on people which mostly are indigenous groups, and negative consequences on the environment. The government pays rarely attention on socio-economic, sociopolitical, and human development, which are strongly linked to sustainable development of the country. Today, indigenous peoples and other minorities groups in the country are still left out from the development plan. Moreover, indigenous peoples' rights are not legally recognized, when the development projects either government's projects or private sectors' industries or investor, come to claim the land they lived in for centuries, they cannot claim it back as they do not hold legal ownership over hose land. This is strongly shown that NGOs or the third sector is necessary for Indonesia's development and democratization. Their roles are to bring up the issue from the gap created by the exclusive development, to the duty bearer that is the government who responsible for the solution. On the other hand, NGOs also influent and engage in policy checking ensuring that those policies will be inclusive. Nonetheless, it does not mean that NGOs will take over the roles of the state, in reducing the gap and serve all populations' needs. Instead, NGOs' role is to present the issues and needs of people who are left behind. In other words, NGOs' works is to bridge the gap between the state policy, market interest, and people. Obviously that they play very important roles in developmental process in various aspects, especially for developing countries included Indonesia.

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