

Striking Balance: Freedom of Expression in Post-Soeharto Indonesia

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Debates about freedom of expression raise questions about what constitutes its limits. At the level of practice, some individuals or groups of people may impose limits through violence, either direct violence or "proxy violence," especially when it comes to matters regarding the exercise of faith, such as a blasphemy case, which is irrational in nature and not governed by secular laws. The case of *Charlie Hebdo*, and in the context of Indonesia, the case of Alexander Aan—a self-proclaimed atheist who served a jail sentence after being charged with tarnishing the image of Prophet Muhammad—how such limits were imposed.

I argue that such acts are not acceptable, and are not legitimate. Freedom of expression may be in need of limits, but in order to be acceptable and legitimate, these limitations need to be obtained through public deliberation, wherein all parties concerned are free and equal in participation. This enhances the level of acceptance of public deliberation outcomes. The acceptance becomes the basis for the limits to be sanctioned and incorporated into law.

Keywords: *Freedom of Expression, Islam, Reform, Violence, Prophet Muhammad*

Introduction

Debates around the world on the subject of freedom of expression used to focus on the lack of its implementation in developing countries. However, since the 9/11 terror attack in New York in 2001, the debates shifted onto global stage, which often pit one civilization against the other. The publication of series of political cartoons in September 2005 in a right-wing Danish newspaper (*Jyllands-Posten*), which depicted the image of Prophet Muhammad to satirize Islam, fueled intellectual (and non-intellectual) confrontations among people of different faiths about, in particular, what constitutes freedom of expression and its limits. The debates again resurfaced in early 2015 when two gunmen shot dead 11 staffers of the satirical weekly newspaper *Charlie Hebdo* in its office in Paris, France, and injured 11 others. It was apparently an act of retaliation after the *Charlie Hebdo* published cartoons that the two gunmen considered to have tarnished the image of Prophet Muhammad. Earlier in Indonesia, a civil servant who declared himself an atheist was jailed in 2012 after he posted on Facebook what locals

considered as offensive statement against Prophet Muhammad. Locals even overwhelmed the civil servant, Alexander Aan, before they handed him to police for prosecution.

These events show that, at the level of practice, some individuals or groups of people imposed limits on freedom of expression through violence, either direct violence or “proxy structural violence.”¹ Such acts are not legitimate, and are not acceptable. Freedom of expression has limitations, especially when it comes to things related to the exercise of faith, such as blasphemy. But, in order to be acceptable and legitimate, the limits need to be obtained through public deliberation, wherein all parties concerned are free and equal in participation. This enhances the level of acceptance of public deliberation outcomes. The acceptance becomes the basis for the limits to be sanctioned and incorporated into laws.

The following sections are framed to support my argument. The first two sections are to explain how the term of freedom of expression is used in this article, and then I will elaborate about the genesis of the idea of freedom of expression in Indonesia and how it is understood. The third section maps out a variety of competing views about freedom of expression here, followed by the fourth section, which shows the middle way that the Indonesians may employ to provide a favorable ideological framework for freedom of expression to flourish. The fifth section discusses how the balance is supposed to be implemented in practice, taking lesson from *Charlie Hebdo* and Alexander Aan cases. The final section is the conclusion.

The Meaning of Freedom of Expression

It is important to distinguish “freedom of expression” from other similar terms commonly used by libertarian scholars such as freedom of speech, freedom of religion or belief, or freedom of the press. In this journal article, I use the term “freedom of expression” as it is all-encompassing. Freedom of expression is the freedom that someone possesses to speak out about his or her own feelings about issues that matter to him or her. Oxford Dictionary defines freedom as “the power or right to act, speak or think as one wants”, while expression means “the action of making known one’s thoughts or feelings” (“expression,” n.d.). Hence, freedom of expression has broader meaning in comparison to other terms I mentioned earlier. When somebody speaks out about his right to proclaim his atheism, he exercises freedom of expression in the area of religion or belief. When a journalist defends his or her newspaper being prosecuted for alleged defamation, he or she exercises freedom of expression in the area of freedom of the press.

Despite the broadness of the term freedom of expression, it often refers to the freedom exercised through the media, such as books, pictures and

signs (Kamali, 1994; Douglas, 1993; Sturges, 2006). In a similar vein, the United Nations' Universal Declaration of Human Rights Article 19 defines freedom of expression as "the right to seek, to receive and to impart information and ideas through any media and regardless of frontiers."² Hence, freedom of expression can be defined as the right of an individual or a group of people to obtain information and ideas, to express their feelings or thoughts by using various means or media, without any restraints. Freedom of expression covers freedoms of speech, religion, press, assembly, association and petition.

Genesis of the Idea of Freedom of Expression in Indonesia and Its Transformation

This section briefly describes how freedom of expression is understood, and discusses the transformations undergone by this concept in Indonesia, from independence to the reform era.

The discussion and negotiation about what constitutes freedom of expression began with the events surrounding the deliberation of the 1945 constitution. In the run up to Indonesian independence, the committee deliberating over the constitution (BPUPKI) was divided into two camps over the argument of whether human rights are supposed to be construed as individual rights or social rights (Mahfud, 1999). The first camp, which was spearheaded by Soekarno and Soepomo, rejected individual rights such as freedom of expression envisaged by Western liberal views from being included in the constitution. They argued that the individual rights were alien to Eastern cultures such as Indonesia, and therefore, the content of article on human rights should reflect Indonesian culture, which is based on values such as familialism values, *gotong-royong* (mutual help among members of a community) and social justice. The inclusion of the individual rights would also deny the initial construction of the constitution, which aims at establishing a familial state.

While in the liberal state, the sovereignty lies in the hands of individual, but in a familial state, the sovereignty is in the hands of people (Setiardja, 1993). Therefore, the principle should also be reflected in the attitude of the citizens in that "the attitude of the nation (citizens or *Warga Negara*) is not always asking 'what is my rights', but asking 'what is my duty as a member of the big family, that is, the Indonesian state'" (Koichi, 2003, pp. 24-25).

Meanwhile, the other camp led by Muhammad Hatta and Muhammad Yamin stressed that the inclusion of individual rights such as freedom of expression is extremely important to keep the power of the state in check, or in Hatta's words: "to prevent the country for being the state based on power" (Mahfud, 1999, p. 112), instead of being the state based on law.

The two opposing camps struck a deal: they agreed that stipulations about human rights would be included in the constitution in several articles, including articles on freedom of association, assembly, thought and expression (Article 28), as well as freedom of religion (Article 29). However, these articles would need to be regulated further through legislation.

However, Mahfud (former Chief of the Indonesian Constitution Court) argues that first, the human rights stipulations incorporated in Articles 28 and 29 of the 1945 Constitution were not individual rights reflected in the United Nations Declaration of Human Rights (which was influenced heavily by Western sense), but merely a right of the citizens.

Second, the scope of the articles' interpretations is limited by subsequent laws, which were prone to abuse, because these laws were written depending on the interests of the law makers at any given time (Mahfud, 1999). However, not only in the field of law making, but in the political sphere, the articles on human rights led to different interpretations. In the early years of the Republic, for example, which adopted liberal democracy, Article 28 on freedom of association, assembly, thought, and expression was often understood as the freedom of people to establish political parties under any ideologies (Saydam, 1999, p. 351).

Therefore, the human rights being understood as the right of citizens (emphasis on the right of citizens instead of the right of individuals) bore implications that the individual right of members of society must to be put aside when it collides with the interest of community or the state. In addition to that, the flexible nature of the constitution (in which many articles are subject for further interpretation by subsequent laws) easily makes it subject to abuse by regimes in power, for example, by issuing laws that serve their own interests, under the pretext that the law is issued for the interest of the community or the state. The 1945 Constitution (before being amended between 1999 and 2002) was executive heavy and was not detailed, so that it was prone to many loopholes that could be manipulated by the executive, especially the president (Koichi, 2003; Mahfud, 1999). In the Soeharto era, for example, human right abuses often took place under the justification of breach of political and economic stability, such as rampant press censorship, repression of hardliner Muslims, or normalization of student political activities in campuses.

The reform era—which began after Soeharto, an authoritarian leader, fell from power—opened a political opportunity for the amendment of the 1945 constitution, and the process was finalized in 2002. The amended constitution corrected the earlier version, the 1945 Constitution, which was executive heavy, turning it into a parliamentary one. The constitution's newer version also includes more detailed stipulations about human rights

in the individual sense, and not just in the sense of the right of the citizens. The new stipulations include the right of everybody to seek, save, process and convey information by using any means available, freedom of religion, the right to obtain an education, the right to fight for collective and the right of everybody to be equal before the law.

Mapping of Freedom of Expression in Reform Era

In the previous section, I discussed the historical development of the idea of freedom of expression in the period leading to the reform era. In this section, I map out a variety of understandings about what constitutes freedom of expression in Indonesia. Arguably, they can be categorized into three camps: Pancasila, Islamist-Salafi and Liberal Views.

Pancasila View on Freedom of Expression

Pancasila³ as state ideology (national philosophy) lost its relevance in the reform era as it was considered as remnants of the New Order regime under Soeharto. People were skeptical regarding Pancasila because it was considered to have contributed to the establishment of corrupt and authoritarian New Order regime. The regime often used Pancasila as a tool to oppress people and to sustain its power. However, the rising religious fundamentalism in the post-New Order era, which culminated in a string of bombings such as the Bali bombing in 2002, has brought back into prominence the discourse on Pancasila.

Intellectuals from various quarters saw Pancasila as potent cure to address religious fundamentalism on the ground that the ideology, which is situated at the center of various Indonesian political spectrums, offers an ideological platform that embraces diversity in heterogeneous Indonesia. Although the argument was rejected by the Islamists, who argue that Al Quran and Sunnah are the divine principles to which people have to adhere, scholar Nurcholish Madjid states that Pancasila is in line with Islamic principles. Nurcholish equalizes Pancasila with the Madinah Charter, powered by Islamic values, whereby in the charter, the Prophet Muhammad struck deals with other believers to co-exist. Besides, it conforms to Islamic values, Moh. Mahfud also underlines another reason that Pancasila is fit to be implemented in Indonesia, namely that it was coming from Indonesian traditional values itself (Hidayatullah, 2012).

Proponents of Pancasila fought to restore its relevance through seminars and formal events organized for civil servants and state officials. The secretariat of the People's Consultative Assembly (MPR), the state institution of highest stature, routinely conducted dissemination about the contents of Pancasila and how they are implemented in a variety of schools nationwide.

The efforts were easily done during the New Order era, because access to communication was limited and hence, the authoritarian government had leeway to disseminate and to instill Pancasila and its interpretation, in line with their views, in Indonesian citizens. But the reform era and the advance of internet technology gave unlimited access for public to read, not only about Pancasila and its interpretation, but also other ideologies such as those of Salafist-Islamists and liberal ideology.

Although Pancasila's clout waned during the reform era, its presence remained significant as even now, people often cite contents of Pancasila as a source of inspiration in shaping public opinion about, for example, the making of public policy. It is still important in the edifice of Indonesian law system because it provides the soul for the 1945 Constitution, which is further reflected in subsequent laws and regulations. Pancasila, especially the Number 1 and Number 2 principles, provide a basis for the inclusion of human right articles stipulated in the 1945 Constitution, such as Article 28 on freedom of association, assembly, thought, and expression; and Article 29 on freedom of religion.

Pancasila acknowledges individual rights proposed by Western ideals, which are included in the UN's 1948 Declaration of Human Rights, however, it maintains that individual obligations to the state and community must not be neglected. There has to be balance between individual and societal rights (Darmodiharjo, 1995).

Pancasila's proponents endorse democracy, which is understood as a mechanism wherein people are free to express their aspirations through formal channels such as their representatives in regency, provincial or state level legislative institutions, or through informal channels such as the media. In a democracy, differences of opinion are considered natural, but "it has to be resolved by adhering to the rules of democracy, by adhering to institutional and wisdom of deliberation system and by always putting into priority the interests of people as a whole" (Darmodihardjo, 1995, p. 78). The expression of thoughts and aspirations needs to be conducted in responsible way, in line with the people's position as human beings created by God, and the expression also needs to take into account the prevailing sentiment among members of the community so that it would not lead into the ruin of society's harmony (Setiardja, 1993).

Pancasila's acknowledgment of the diversity of religions and beliefs is ambiguous (Setiardja, 1993). It states that people are free to profess and practice religions and beliefs, but in such practice, people have to promote tolerance and to maintain the balance of macrocosm, or in other words, people need to maintain harmony within society. This ambiguous view often prioritizes the interests of the majority and leads to friction between

followers of different religions and beliefs recognized by the state (Islam, Catholic, Protestant, Hindu, Buddha, and Confucianism), and the minority of Aliran Kepercayaan, whose number is estimated between 100 to 517 groups⁴ (Arifin, 2010).

Regarding Pancasila's response to the liberal view, the proponents of Pancasila are not comfortable with the liberal idea that centers on the acknowledgment of individual rights, which are in contrast with domestic values respecting communalism. Only after international criticism was leveled at Soeharto regime, over persistent violations of human rights in the 1980s and 1990s, did the proponents water down their views on the sanctity of Pancasila and started to accept the inclusion of some individual rights espoused in UN Declaration of Human Rights into the 1945 Constitution (Setiardja, 1993). The inclusion complemented stipulations about human rights already included in the original 1945 Constitution, as already written in Article 28 and Article 29.

The Pancasila proponents' call, which was made in the 1990s, was then approved by the People's Consultative Assembly (MPR) at the end of 1990s and early 2000s, by expanding stipulations on human rights into more detailed ones. While the original constitution stipulates articles on human rights to be regulated further in subsequent laws, in the amended constitution, the articles on human rights stand independently. With regard to the articles on human rights, liberal views that promote individual rights are much more reflected in the amended constitution, as compared to the original, which was heavily influenced by familial values.

Salafists and Islamists View on Freedom of Expression

The birth of the Salafi movement (which is literally translated as "the return to the ancestors") was attributed to the works of Jamal al-Din al-Afghani (1838-1898), Muhamad Abduh (1849-1905) and Rashid Rida (1865-1935). The movement was a response to an accumulation of events, particularly the backwardness of Islam in contrast with the rising power and wealth of the West (Roy, 1994). The salafists strove to advance their own interpretation of Al Quran and the Sunnah (ijtihad), disregarding the interpretation of earlier mainstream *ulemas* [Muslim clerics]. The salafists interpreted Al Quran and the Sunnah from its original source, thus, it was a blatant attempt to end the monopoly of interpretation by earlier ulemas in the field of Al Quran and the Sunnah. The endeavor was being done under the pretext of purification of Islamic tenets.

Although salafists insist that sharia (set of Islamic laws and regulations) have to be applied within the state, they are not hostile to Muslim governments. It occurs because they argue that political authority is

accorded little value. Salafists are more concerned with the creation of a Muslim community (*umma*) and the restoration of the caliphate (Roy, 1994).

Meanwhile, Islamism was pioneered by Egyptian and Pakistani scholars Hasan al-Banna and Abul-Ala Maududi in the 1920s and 1940s. Like the salafists, the Islamists believe that Islam is an all-encompassing religion, meaning that it shapes people's way of life, culture, education, legal and state systems and others (Bubalo & Fealy, 2005). They also adopt the salafists' principles such as the return to Al Quran and Sunnah and the implementation of sharia. However, according to Olivier Roy (Roy, 1994, pp. 36-37), the Islamists are different from salafists in three aspects:

1. Islamists believe that the Islamization of society can be achieved through social and political actions (political activism), where the ultimate objective is the establishment of Islamic state;
2. Islamists are in favor of education for women and the active participation of women in social and political activities; and
3. Islamists believe that application of sharia is important but the more important is the Islamic nature of the state, which is characterized by the establishment of an Islamic state.

In contrast to that last view, salafists believe sharia can exist without being under the supremacy of the Islamic state. Salafists believe more in personal salvation through faith and the correct practice of Islam, which is characterized by the avoidance of certain practices such as unwarranted *bid'a* [innovation], *khurafat* [superstition], *shirk* [idolatrous] (shirk) or *taqlid* [imitation] (Bubalo & Fealy, 2005).

How are their views transmitted into Indonesia? Bubalo and Fealy (2005) explain that human movement was the main vector of the view transmissions. Many Indonesian students go to Middle Eastern institutions to study classical subjects of Islamic scholarship, such as Islamic jurisprudence, but while they live there, they are exposed to Islamists' and salafists' views as well. Upon completion of their studies, they exert more influence with the Indonesian public, as their standing before local community is much greater for being graduates of overseas educational institutions. Meanwhile, the active involvement of Middle Eastern individuals and institutions in pouring funds for Islamist and salafist organizations or educational institutions to disseminate their views is another factor that contributes into the spread of salafist and Islamist ideologies in Indonesia.

The influence of Islamists and salafists is reflected in the thoughts and actions of several mass organizations in Indonesia. The most prominent

include: Majelis Mujahidin Indonesia (Indonesian Council of Muslim Holy Warriors Indonesia or MMI), Hizbut Tahrir Indonesia (Indonesian Islamic Party of Liberation or HTI), Laskar Jihad and Islamic Defender's Front (FPI).

Islamist organizations such as MMI and HTI reject democracy (which includes its paramount principle, freedom of expression) on the grounds that Western political ideology is not in line with Islam. Islam asserts the sovereignty of God, while democracy fights for the sovereignty of people. Democracy endorses secularism, the separation between human affairs and affairs related to God, while Islam emphasizes human's total submission to God in all aspects of life.

They acknowledge that public deliberation (*shura*) is part of Islamic values, but it is incorrect to assume that Islam is equal with democracy. There is no compromise to democracy, because "democracy represents the revolt against Allah SWT in term of law making process and the presence of democracy will only reduce the level of Muslim's faith to Allah SWT" (Hilmy, 2007, p. 67).

Compared to HTI, MMI is more receptive to Western concepts of freedom of expression. In their concept, elaborated in "The Amendment to the 1945 Constitution in line with Islam Sharia," MMI recognizes freedom of religion and endorses it for inclusion in the amended constitution, but they add two clauses which stand against the universal principles of human rights: first, Muslims are prohibited to convert into other religion or belief; and second, the state is allowed and even obliged to regulate the way people practice their religions (Arifin, 2010). In this light, MMI shares the belief that Muslims should not force people of other religions to convert into Islam and respect others in practicing their religious beliefs, but when a Muslim chooses Islam as his or her religion, he or she must salvage his or her Muslim brothers and sisters from their sins and from being converted into other religions. The implementation of Islam sharia is "the most authentic way of doing this salvation" (Nursalim, 2007, p. 155). Islam is not only a personal religion, but it is also a social one, so that the intervention of the state in the affairs of Islam sharia can't be avoided.

Just like the Islamists, the salafist movement such as FPI and Laskar Jihad also prefer the establishment and implementation of Islam sharia in Indonesia. They also oppose democracy, because democracy asserts the sovereignty of the people, whereas sovereignty is supposed to be in the hands of Allah SWT. However, unlike the Islamists, they will not strive for the establishment of the Islamic state. In its Indonesia backgrounder, the International Crisis Group quoted some salafi figures as saying: "it is not permissible to revolt against a Muslim government, no matter oppressive or

unjust. The penalty for rebellion is death” (“ICG Indonesia Backgrounder,” 2004, p. 4). The statement is a bit too embellished, but it more or less represents the sentiment of the salafi movement: They respect the Muslim government, and that they will never resort to revolution or violence to topple the government. The latter view is in contrast to the common practice of the Islamists.

Indonesian Liberal View on Freedom of Expression

The Indonesian liberal view on freedom of expression was propagated by various quarters, including scholars, intellectuals, journalists but the most influential came from heavyweight Muslim neo-modernist thinkers Nurcholish Madjid and Abdurrahman Wahid. Unlike the Islamists and salafists, who were usually trained in Middle Eastern institutions, the two thinkers were exposed to Western values from youth, on top of the Islamic traditionalist and modernist values that they embraced as they grew up.⁵ Therefore, it explains why they are more receptive to Western values.

The neo-modernist and modernist thinkers reject Islamist views on the issue of the establishment of the Islamic state. They argue that the formalistic term “Islamic state” is never mentioned by the Al Quran and Sunnah (Fealy & Hooker, 2006). While Islamists, for example, may have interpreted Surah Al Baqarah (2:30) as the basis for establishing an Islamic state under Caliphate structure⁶, the neo-modernists and other Muslim thinkers argue that the verse should be linked with other verses in Al Quran in order to capture a comprehensive understanding of the term Caliphate. Muslim scholar Quraish Shihab argues that the term “Caliphate” is used in various verses in Al Quran both in singular and plural form. Shihab does not elaborate on the ideal formalistic form of the State according to Islam, but he endorses that the leader/leaders be elected by people (Shihab, 1996).

Nurcholish tends to interpret the caliphate in plural form, in which he believes that Allah appoints human being as His representatives (Caliphates) in earth to implement His missions to develop the world. In implementing these missions, human beings should be guided by the Al Quran and Sunnah. Al Quran is a perfect divine revelation, which rules the human foundation of the system of living, but “further developments built on that foundation, namely edifices of civilization and culture, had to be arranged by human beings themselves, using their reason” (Fealy & Hooker, 2006, p. 229). For Nurcholish, the formalistic form of state can vary, so long as the state implements, is run based on, fundamental values of Islam.

Both Nurcholish and Abdurrahman Wahid reject implementations of sharia Islam in the literal sense, on the ground that sharia Islam needs to be made compatible with the current situation. Abdurrahman Wahid explains

that sharia Islam needs reform (Mujiburrahman, 1999) because first, sharia Islam as compiled in variety of books and publications can't provide legal certainty for Muslims due to different interpretation by different jurist-consults (*mufti*) on the same case (it seems Abdurrahman Wahid envisages law based on social contract is much more legitimate because it is more universal and gets consent from whole of people); second, sharia Islam was developed in a particular time, so that some samples cited in sharia Islam might not be relevant if they become the reference for today's events; and third, Islamic legal theory (*usul al-fiqh*) is strongly based on a literary method of interpretation by the authoritative sources, so that the practice prevents reform of sharia Islam from happening. Just like Nurcholish who emphasizes the use of reason, Abdurrahman Wahid proposes that the sharia Islam needs to be developed or reformed by using humanistic judgments.

The neo-modernists also suggest sharia Islam needs to be "objectified, rationalized and universalized" (Weck, Hassan & Abubakar, 2011) before being adopted as formal law because society consists of people with different religions and beliefs. Nurcholish asserts that the presence of objectification, rationalization and universalization processes will assure greater acceptance from followers of other religions and beliefs, especially the minority, toward public policy shaped by sharia Islam. However, Nurcholish acknowledges that not all parts of sharia Islam can be objectified; rationalized and universalized. He points to Pancasila as a sample of objectified religious teachings (Weck, Hassan & Abubakar, 2011).

Nurcholish states that Pancasila can be made middle path ideology in heterogeneous Indonesia, while asserting that the adoption of Pancasila does not mean annihilation of Islamic sharia. Rules about worship and ritual need to be kept intact to ensure the existence of Islamic sharia, while contents unrelated to worship and ritual can be objectified by using Pancasila as reference. Similarly, Abdurrahman Wahid agrees that there is convergence between sharia Islam and Pancasila, and Pancasila can serve as compromise among different elements of Indonesian society (Mujiburrahman, 1999). According to Abdurrahman Wahid, the implementation of sharia Islam should not harm public or national interests. When the contents of sharia Islam are against public or national interests, then its interpretation should be left to the universal values of Islam, such as the moral purposes of the contents of the parts of sharia Islam which are in question.

In contrast to Islamists and salafists, the neo-modernist thinkers embrace Western values of democracy, arguing that democracy is compatible with Islam. Influenced by Egyptian Islamic thinker Ali Abd al-Raziq, Abdurrahman Wahid states that at least three values of Islam are in line with democracy, namely: *al-hurriyya* [freedom], *al-'adala* [justice] and

shura [consultation]. When they are inter-connected, they form democracy. Shura principle, in particular, is reflected in modern democracy, such as in the presence of transparent political process, the limitation of political authority and the accountability of rulers to their people (Mujiburrahman, 1999).

In addition to Abdurrahman Wahid's view, Nurcholish Madjid states that democracy should not only be reflected in state structure (institutional habit); every Muslim needs to practice democracy (individual habit) (Hilmy, 2007). Opposition by people is legal, to keep democracy in check. Nurcholish reiterates that a check and balance mechanism in the system of governance is important, in order to help avoid abuse of power and to protect the minority. Nurcholish often cites the Madina Covenant as an ideal system of governance, whereby people of different religions and beliefs successfully co-existed, the rights of the minority were protected, everybody was equal before the law, and freedom of expression and religion were respected. This political practice is viewed as "the highest manifestation of commitment in mass involvement and participation for all of the members of society and the inclusiveness of its leaders based on their achievements evaluated in universal standards" (Hilmy, 2007, p. 58).

However, Indonesian far-right liberals argue that freedom of expression in the modern sense is absent in Islamic doctrines. Scholar Luthfi Assyaukanie, for example, argues that freedom of expression is entirely from Western political thought. Muslim philosophers and theologians merely deliberated freedom of expression in the context of the God-human relationship, and never discussed it in the context of human-human relationships. Many Islamic doctrines are incompatible with freedom of expression, including blasphemy, wherein violation of the doctrine will lead to punishment. Blasphemy is in the form of, among others: visualizing the Prophet Muhammad, insulting the Al Quran, and derogating Islamic teachings (Assyaukanie, 2008). There is no quick solution to address the problem of intolerance in Islam, which impedes freedom of expression, except through radical reinterpretation of some of the classical Islamic doctrines regarding the Al Quran and Sunnah (Assyaukanie, 2008).

In Search of a Middle Way

In the previous section, I mapped out some views that provide competing ideological frameworks about how freedom of expression should be practiced. This section shows a middle way that the Indonesians may employ to provide a favorable ideological framework for freedom of expression to flourish.

The reform era saw conservatism on the rise, as a result of Wahabism dissemination (Wahabism is a Sunni religious movement within Islam that promotes conservatism, whose movement is spearheaded by the Saudi Arabian government). For example, due to funding from Middle Eastern countries, especially Saudi Arabia, the presence of education institutions promoting Wahabism in their curriculum was rampant during the reform era.⁷ The rising conservatism resulted in the establishment of an anti-pornography law that pits secular and conservative camps of Muslims against each other, and the establishment of vigilante groups to police society so that the people conform to values of the conservative camps (Salafist-Islamist camps). The trend sparked tension because the Salafist-Islamist views, which are based on their own interpretation of Al Quran and Sunnah, deny the presence of others when sharia Islam is implemented in the community or polity. If it is implemented, then it will lose its legitimacy and may infringe on the freedom of others.

Pancasila is supposed to be middle ground ideology that is more acceptable. It is based on Indonesian values, and embraces liberal concepts such as democracy. It has also largely been accepted, including by neo-modernist and modernist Muslims. For example, Budhy Munawar-Rachman, the disciple of Nurcholish Madjid, acknowledged that Pancasila has been a common platform for different religions and beliefs in Indonesia, because it was formulated by taking into consideration plurality in Indonesian society, including plurality of religion and belief. Having accepted Pancasila as the foundation of the state, it does not mean that the role of religion is sidelined. Pancasila also embraces religious views, embodied in the first principle, which is in line with the religious culture of Indonesians (Munawar-Rachman, 2010). The state does not reject the presence of religion, but it refrains from formalizing the values of one religion into state laws, because if it is formalized and implemented, it will lose legitimacy and will draw constant resistance from followers of other religions and beliefs who may fear being sidelined.

Pancasila has been largely ignored after the *reformasi* [the 1998 reform], however those who opposed Pancasila had a weak basis for their arguments: they rejected Pancasila only because it was promoted by the disgraced New Order government, while at the same time, the opponents never really expressed objections against its contents. They only objected to the first principle of Pancasila (Belief in the One and Only God). The Islamists and Salafists have expressed a demand since independence era for the inclusion of a particular clause: (Belief in the One and Only God) and the obligation for Muslims to practice Islam sharia. However, the demand has been losing steam after it failed to be incorporated into the amendment

of the constitution finalized by the People's Consultative Assembly (MPR) in 2002. The fact that the demand was democratically deliberated in the MPR, the highest manifestation of people's representatives, suggests that the amendment outcome is highly legitimate. It means that if the Islamists and salafists are fair-minded, they should accept the whole principle of Pancasila.

If Pancasila is to be implemented, its interpretation has to be rejuvenated in order to suit current challenges being confronted by the nation, especially in the realm of freedom of expression. The rejuvenation effort is highly recommended in order to avoid the abuse of Pancasila, just like in the past, when it was manipulated by the New Order regime, among others, to curb freedom of expression in order to advance their narrow interests. Pancasila has emphasized the duty of individuals to the society, which makes it an easy target for manipulation by the elite. In this light, there is need not only for rejuvenation of its interpretation and guidelines for its implementation, but it should be followed with the resocialization in order to become an effective way of life for Indonesians.

Pancasila is supposed to be re-socialized as an ideology that incorporates all various ideological strains, including Western ideas of liberalism (which is supported by moderate Muslims as well as Christian intellectuals), Islam and indigenous values. The Islamic value of *tauhid* [doctrine of Oneness of God], for example, is mainly incorporated in the first principle, while the value of freedom of expression is incorporated in the fourth principle.

The problem in the past was that Pancasila was considered as a familial system, and it was then reflected in the subsequent laws and regulations, notably the 1945 Constitution. After *reformasi*, the People's Consultative Assembly (MPR) amended the constitution by incorporating Western style individual rights; however the state's highest institution did not follow it up with a reformed interpretation of Pancasila. Before amending the constitution, it should have earlier promoted a new interpretation of Pancasila, in which Pancasila is supposed to recognize individual rights, in addition to its conventional interpretation, which obliged individuals to perform their duties as part of society.

However, it takes some time to materialize a middle ground principle that can be comfortably accepted by the nation's different spectrums. Borrowing Michel Foucault's argument, the debates about righting the balance of freedom of expression, both in principle and in its implementation, should go through discursive formation. Challenging and questioning principles or ideas in society will bring change to other principles or ideas that will shape the minds and attitude of the community, with the media assuming

a crucial role in helping it gain recognition as the truth (Danaher, Schirato & Webb, 2000).

After I mapped out different views about freedom of expression and explained how balance is struck among the competing views, the following section will discuss how the balance is implemented in practice. To shed more light about the issue, I use the case study of an Indonesian, a self-proclaimed atheist, who is being sentenced for tarnishing the image of Prophet Muhammad. I will also briefly discuss the *Charlie Hebdo* case, for the sake of comparison.

Striking Balance: An Atheist Case Study

Indonesia ushered in a new era of freedom after the downfall of Soeharto's authoritarian regime. The advance of the Internet spurred freedom of expression. The birth of social media—such as Facebook and Twitter—even gave unprecedented access for the public to express their opinions and wishes, being unfiltered by media editors. It can also be an outlet for citizens to post a variety of comments, including about things related to his or her faith. The case in point here is Alexander Aan's case.

Alexander is a civil servant in the West Sumatra province. He grew up as Muslim, but then he proclaimed himself as an atheist. He helped set up a Facebook account called Minang Atheists, and posted some comments that allegedly defamed Islam. One of the comments that drew violent protests from locals was that, in his statement on Minang Atheist's Facebook page, he alleged that the Prophet Muhammad had sex with one of his maids (Neal, 2012). Local residents collected the evidence and reported him to the police in 2012. After court proceedings, he was found guilty of blasphemy and served a jail sentence of over two years. Alexander Aan filed an appeal with the high court, but the Supreme Court rejected the appeal in 2013.

Despite international pressure,⁸ a majority of the domestic public were in favor of Alexander Aan being prosecuted, given his uncommon stance (atheism) in the religious community of Indonesia, as well as his comments on the Facebook page that the public considered to be offensive, tarnishing the image of Prophet Muhammad. A news wire story published by *The Jakarta Globe* describes such public sentiments: "Aan's proclamation has been removed from the page, but the Facebook group has doubled to 2,000 since the controversy made local news reports. Most of the postings, however, are diatribes against Aan and his supporters" (Mandari, 2012). The negative public sentiment against Alexander Aan allowed leeway for the legal apparatuses to ensure that the defendant received legal punishment. Subsequently, in 2012, the atheist was charged with perpetrating blasphemy, which carries a maximum sentence of five years in jail. The defendant was

charged with violation of the 2008 Information and Electronic Transaction Law by disseminating information which aims to fuel hatred between different groups of people along racial, religious and ethnic lines. The case proceeding shows the social and legal edifices are still in favor of communalism versus liberal ideas about the exercise of individual rights.

The Alexander Aan case is reminiscent of the case of *Charlie Hebdo*, in a sense that the exercise of freedom of expression collides with Muslim's adoration of Prophet Muhammad. The adoration is concerned with faith, and hence, it is no longer rational. John Rawls (1997) argue that secular matters can be resolved with secular laws, made by humans. But when it comes into resolving things that are concerned with faith, there is no easy way to deal with it, and hence these things should simply be avoided. The irrational view means that "such a doctrine (adoration of Muhammad) is politically unreasonable. Within political liberalism, nothing more need be said" (p. 223).

However, reality shows that the collision of values has already occurred, and has also resulted in violence. I agree that it is not easy to resolve things that involve faith. In France, Germany and the United States, people's religious expression in the public sphere has prompted prolonged debates as to where the State needs to regulate it. France has taken a sterner stance, by preventing students from wearing conspicuous religious symbols in primary and secondary schools. The law passed in 2004 targeted those female Muslim students who wore a *hijab* [Muslim veil] ("Why the French are so strict," 2014). Meanwhile, German courts issued a verdict that male circumcision is illegal, sparking protest from the Muslim and Jewish community, and dividing Germans on the issue (Connolly, 2012). In the same year, 2012, the German parliament eventually corrected the verdict and issued a bill to re-legalize the practice of circumcision. And New York City announced in early March 2015 that New York schools would observe the principal Muslim holidays, which was seen as progress in the United States towards promoting multiculturalism (Grynbaum & Otterman, 2015). However, two weeks later, a student in New York reciting the American Pledge of Allegiance in Arabic sparked controversy, raising questions as to whether or not the Islamophobia in the United States was on the decline (Izadi, 2015).

I argue that addressing the problem of collision of values cannot be done in the short term. Public deliberation about what constitutes limits to freedom of expression should be enhanced, to raise awareness from both sides. Public deliberation can take any direction, and it is not necessary to take a universal path because the public consensus can reach different paths from one country to another. Public deliberation in France

may result in defending freedom of expression at all cost, whereas special laws in Indonesia may ensure jail term for citizens that publish pictures depicting the image of Prophet Muhammad. In either case, the decision will be considered legitimate because it has gone through thorough public deliberation where anybody is involved, or given the opportunity to be involved in the process.

At least, the public deliberation will open the hearts and minds of the members of the public in respective countries, on issues such as how important are individual rights, or how sensitive should the law be to the publication of pictures or comments that tarnish the reputation of Prophet Muhammad. Thorough public deliberation will ensure that members of public produce decisions based on informed choice. The result can be different from one country to another, given differences in culture. But, at least, after public deliberation, everybody has spoken, and it avoids anyone being left out and alienated. The sense of inclusion will reduce radicalism and radical response, and hence, reduce violence.

Conclusion

In previous sections, I have showed that limits to freedom of expression—especially in the matter of irrational cases such as blasphemy—may be imposed, but they need to go through public deliberation, in order to be legitimate and acceptable. The failure to do so will result in prolonged controversy and violence, as we have already seen over the past few decades. Public deliberation needs to result in setting up parameters of limits that are acceptable for all concerned parties. It takes time, but once the parameters are accepted and every party concerned is comfortable with the parameters, they will be legitimate solutions for the prolonged violence prompted by blasphemy cases. However, due to insufficient space, this article does not elaborate about these parameters, and hence, proposing such parameters should be subject of future works.

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Endnotes

¹ What I meant with “proxy structural violence” is that justice system tends to rule in favor of popular public opinion or the majority’s sentiments. In Alexander Aan case, locals demanded that he be prosecuted, and the course of court prosecution showed that justice system tried to ensure that he did not escape being sentenced to a jail term.

² Can be accessed at <http://www.un.org/en/documents/udhr/index.shtml>

³ Pancasila consists of five principles, namely: (1) Belief in the One and Only God, (2) Just and Civilized Humanity, (3) The Unity of Indonesia, (4) Democracy Led by The Wisdom of Deliberations among Representatives, and (5) Social Justice for The Whole of The People of Indonesia. Pancasila was proclaimed by Soekarno, the founding father of Indonesia, on June 1, 1945 and has been adopted since then as state ideology and philosophy.

⁴ *Aliran kepercayaan* refers to meditation-based spiritual practices or/and animists, who often combine with the mainstream religions or beliefs (Islam, Protestant, Buddha, Hindu, Catholic and Confucianism) recognized by the government. According to a book titled *Menekuk Agama, Membangun Tahta: Kebijakan Agama Orde Baru* (2004), the number of *aliran kepercayaan* is estimated between 100

and 300 groups, while non-governmental organization (Kontras or the Commission for Missing Persons and Victims of Violence) believes that around 517 groups of *aliran kepercayaan* prevail in Indonesia (Arifin, 2010)

⁵ Born in Jombang, East Java, both Nurcholish Madjid and Abdurrahman Wahid came from Islam traditionalist background. Nurcholish earned undergraduate degree from Syarif Hidayatullah State Islamic Institute, had opportunity to pursue a short education program in the United States at the end of 1960s, and completed doctorate in mid-1980s at The University of Chicago. Abdurrahman Wahid never attended Western formal education, but while he was studying undergraduate in Egypt and Iraq in the 1960s, he read widely Western liberal literature and was even engaged in Western culture (Barton, 1997).

⁶ Surah Al-Baqarah, chapter 2, verse 30 says: And (mention, O Muhammad), when your Lord said to the angels, "Indeed, I will make upon the earth a successive authority (Caliphate)." They said: "Will You place upon it one who causes corruption and sheds blood, while we declare Your praise and sanctify You?" Allah said: "Indeed, I know that which you do not know" (in <http://quran.com/2>).

⁷ The successful Iranian revolution sparked worry among Sunni countries, such as Saudi Arabia. They were afraid that Iran under Ayatollah Khomeini would export Shia teachings across the world that would undermine Sunni. Hence, the petro-dollar country Saudi Arabia embarked on massive campaign to tackle Iranian influence by, among others, pouring money for Wahabism education worldwide, including in Indonesia.

⁸ Domestic human right groups, liberal media and fellow atheists indeed condemned prosecution of Alexander Aan on the ground that the prosecution was infringement of individual rights. However, the stronger support came from overseas human right groups and media.

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