

ABSTRAK

Kebebasan beragama merupakan bagian dari hak asasi manusia, yang telah diakui dalam hukum internasional dan dalam pelaksanaannya hak ini tidak dapat dikurangi (*non derogable right*). Dalam pengertian atas hak kebebasan beragama, dikenal dua ranah kebebasan beragama dan berkeyakinan, yakni *forum internum* (*freedom to believe*) dan *forum eksternum* (*freedom to act*). Bentuk tanggung jawab negara dalam pemenuhan hak asasi manusia berdasarkan pasal 28I ayat (5) dijamin, diatur dan dituangkan dalam peraturan perundang-undangan. Apabila dilihat pada beberapa peraturan perundang-undangan yang ada di Indonesia, tidak sedikit yang pembentukannya didasarkan pada nilai-nilai agama, dalam hal ini adalah hukum agama Islam contohnya pada Undang-Undang Negara Republik Indonesia Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal, selanjutnya disebut UU JPH. Diundangkannya aturan tersebut, menimbulkan berbagai perdebatan di kalangan masyarakat. Hal ini berkaitan dengan sejauh mana negara dapat mengatur kehidupan beragama seseorang khususnya dalam ranah *forum eksternum*. Penelitian ini berusaha menjawab batasan pengaturan *forum eksternum* dalam pembentukan peraturan perundang-undangan dan menganalisis pengaturan *forum eksternum* dalam UU JPH. Penelitian ini merupakan penelitian hukum doktrinal yang menggunakan pendekatan konseptual dan pendekatan peraturan perundang-undangan.

Hasil penelitian menunjukkan bahwa pembatasan yang dilakukan oleh negara hanya dapat dilakukan pada ranah *forum eksternum* dan didasarkan pada lima elemen; *Restriction For The Protection of Public Safety*, *Restriction For The Protection of Public Order*, *Restriction For The Protection of Public Health*, *Restriction For The Protection of Morals*, dan *Restriction For The Protection of The Fundamental Rights and Freedom of Others*. Selain itu, juga harus dirumuskan secara *directory*. Dalam hal ini UU JPH merupakan pembatasan yang dilakukan untuk melindungi ketertiban masyarakat (*Public Order*). Namun, berdasarkan substansi yang diatur dapat digolongkan bersifat *mandatory*. Sehingga, belum memenuhi prinsip yang harus ditaati oleh negara ketika memformalisasikan aturan agama.

Kata kunci: *forum internum*, *forum eksternum*, kebebasan beragama, jaminan produk halal, kewajiban sertifikasi halal, formalisasi aturan agama.

ABSTRACT

Freedom of religion is part of human rights which has been recognized in international law. This rights includes freedom to changes religions or beliefs, and freedom to manifest the religion and beliefs either alone or in community, publicly or privately, which cannot be reduced (non-derogable rights). Forms of state responsibility in the fulfilment of human rights based on article 28I paragraph (5) are guaranteed, regulated and stated in legislation. When seen in several laws and regulations in Indonesia, not a few of which are formed based on religious values, in this case Islamic religious law, for example in the Law of the Republic of Indonesia Number 33 of 2014 concerning Guaranteed Halal Products, hereinafter referred to JPH Law. The promulgation of these rules has caused various debates among the people. This relates to the extent to which the state can regulate one's religious life, especially in the realm of the external forum. Depart from the fact, this research attempts to explore the limitations of the external forum arrangements in the laws and regulations making process and analyse the external forum settings in the JPH Law. This paper is a doctrinal legal research that employs conceptual approach and statute approach.

The research shows that restrictions imposed by the state can only be carried to the extent of external forum based on five elements; Restriction for the Protection of Public Safety, Restriction for the Protection of Public Order, Restriction for the Protection of Public Health, Restriction for the Protection of Morals, and Restriction for the Protection of the Fundamental Rights and Freedom of others. In addition, the law regarding freedom of religion must also be formulated in a directory form. In this case it is obvious that the JPH Law is considered aiming to protect public order (Public Order). However, its substance can be classified as mandatory. Thus, it has not yet fulfilled the principle that must be obeyed by the state when formalizing religion based legislation.

Keywords: *forum internum, forum externum, freedom of religion, halal product guarantee, halal certification obligation, religion based legislation.*