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Right of expression in Pergub D.I Yogyakarta Number 1 Year 2021 Perspective *Siyasah Dusturiyyah* *

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Abstract

The Government of the Special Region of Yogyakarta issues and stipulates the Governor's Regulation (Pergub) DIY Number 1 of 2021 concerning implementing Public Expression of Opinions in Open Space. Article 5 of the Pergub reads that "Public Opinion is carried out in an open space for the public in the Region by the provisions of the legislation, except in the State Palace Area, the Great Building, the Kraton of the Ngayogyakarta Hadiningrat Sultanate, the Kraton of the Duchy of Pakualaman, Kotagede; and Malioboro a polemic amid society because it is considered to violate the fundamental rights of citizens, especially in the human rights scheme in Islam which is regulated in the *Siyasah Dusturiyyah*. The purpose of this research is to explain the perspective of *Siyasah Dusturiyyah* and explain the concrete solution to the problem. This type of research is library *research* with a juridical-normative approach. This study found that the Regulation of the Governor of the Special Region of Yogyakarta Number 1 of 2021 juridically does not contradict the above laws and regulations. Still, philosophically the norms in the human rights scheme in Islam adhere to several principles, namely the principle of equality, the principle of Freedom, and the principle of respect for fellow human beings who experience anomalies and are injured, where policymakers should be able to guarantee, maintain and protect the fundamental rights of citizens, in this case, the right to express opinions by not castrating the rights of some people and then for the sake of some other people's rights. At this point, the responsibility holders must jointly be able to accommodate all requests so they can be carried out together correctly.

Keyword: Rights; Govenor Regulation; *Siyasah Dusturiyyah*

Abstrak

Pemerintah Daerah Istimewa Yogyakarta mengeluarkan dan menetapkan Peraturan Gubernur (Pergub) DIY Nomor 1 Tahun 2021 Tentang Pelaksanaan Penyampaian Pendapat di Muka Umum Pada Ruang Terbuka. Pasal 5 dalam Pergub tersebut berbunyi bahwa "Penyampaian Pendapat Di Muka Umum dilaksanakan di ruang terbuka untuk umum di Daerah sesuai ketentuan peraturan perundang-undangan, kecuali di Kawasan Istana negara gedung agung, kraton Kasultanan Ngayogyakarta Hadiningrat, kraton Kadipaten Pakualaman, kotagede; dan malioboro menimbulkan polemik ditengah-tengah masyarakat karena dianggap melanggar hak-hak dasar warga negara, terlebih dalam skema HAM dalam Islam yang diatur dalam paradigma *Siyasah Dusturiyyah*. Tujuan dalam penelitian ini adalah

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menjelaskan perspektif *Siyasah Dusturiyyah* dan menjelaskan solusi konkrit atas persoalan tersebut. Jenis penelitian ini adalah kepustakaan (*library research*) dengan menggunakan metode pendekatan yuridis-normatif. Penelitian ini menemukan bahwa Peraturan Gubernur Daerah Istimewa Yogyakarta Nomor 1 Tahun 2021 secara yuridis tidak bertentangan dengan peraturan perundang-undangan yang berada di atasnya, namun secara norma filosofis dalam skema HAM dalam Islam yang menganut beberapa prinsip yakni prinsip persamaan, prinsip kebebasan serta prinsip penghormatan terhadap sesama manusia mengalami anomali dan terciderai, di mana seyogyanya pemangku kebijakan dapat menjamin, menjaga dan melindungi hak-hak dasar warga negara dalam hal ini hak menyampaikan pendapat dengan tidak mengebiri hak sebagian masyarakat lalu demi sebagian hak masyarakat yang lain. Pada titik ini pemangku kewajiban harus sama-sama bisa mengakomodir semua hak agar dapat terlaksana bersama-sama dengan baik.

Kata Kunci: Hak; Peraturan Gubernur; *Siyasah Dusturiyyah*

A. INTRODUCTION

In the era of modern democracy, as it is today, demonstrations or expressing opinions in public are expected. This is because it has become one of the ways that are considered powerful enough to express views to get the attention of the authorities. Even today, demonstrations or expressing opinions in public is expected if the community feels something is considered not to express views in public (Law Number 9 of 1998). This Law guarantees one of the human rights related to Freedom of expression in public. Law Number 9 of 1998, as the implementation of the provisions of Article 28 of the 1945 Constitution in the consideration section, expressly states that the Freedom to express opinions in public is a human right guaranteed by the 1945 Constitution and the Universal Declaration of Human Rights (UDHR). So the Freedom to express views in public is a manifestation of one of the pillars of democracy, namely independence or Freedom for every citizen, including the Freedom to express opinions expressed by Sir Lyman Tower Sargent.²

Whereas what is meant by human rights are rights that are owned by humans solely because they are human. Humans have it not because it was given to them by society or based on positive Law but based exclusively on their dignity. Therefore, human rights are fundamental rights inherent in humans which are natural and universal as gifts from God Almighty and function to ensure the survival, independence, and development of humans and society, which should not be ignored, confiscated, or disturbed by anyone. (TAP MPR Number XVII/MPR/1998).³

Indonesia is a country that adheres to a democratic system. In a country that attaches to a democratic system, the recognition of Human Rights (HAM) is one of the characteristics of a democratic country. This was reflected in the *International Commission of Jurists* at its conference in Bangkok in 1965. The results of the meeting stated the basic requirements for the implementation of a democratic government under the rule of Law including constitutional protection, an independent and impartial judiciary, free

² Thaib Dahlan, *Kedaulatan Rakyat, Negara Hukum dan Konstitusi*, (Yogyakarta: Penerbit Liberty, 1999).

³ Nasution, Muhammad Syukri Albani dkk, *Hukum Dalam Pendekatan Filsafat*, (Jakarta: PT. Kharisma Putra Utama, 2015).

elections, Freedom of expression, Freedom of association/organization and opposition, and civic education.⁴

As a country that adheres to a democratic system, Indonesia has guaranteed human rights in its Constitution. The regulation regarding human rights in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) is regulated in Articles 28A-28J. Freedom of expression is one of the essential aspects of human rights because it is a fundamental right. Freedom to express opinions and associate is an absolute requirement that a democratic country must own. Therefore, these freedoms must be guaranteed by laws and regulations.⁵

The 1945 Constitution of the Republic of Indonesia has regulated Freedom of expression in Article 28 E paragraph (3) which reads, "Everyone has the right to freedom of association, assembly, and expression". In addition, the laws and regulations under the 1945 Constitution of the Republic of Indonesia also regulate Freedom of expression, namely the Republic of Indonesia Law Number 9 of 1998 concerning the Freedom of Expressing Opinions in Public (The Freedom of Expression of Opinions Law in Public). Article 2, Paragraph (1) of the regulation states that every citizen is free to express opinions as the embodiment of democratic rights and responsibilities in society, national, and state life.

Freedom of expression is also regulated in Law No. 39/1999 on Human Rights (UU HAM). Article 23 Paragraph (2) of the Human Rights Law states that "Everyone is free to have, issue and disseminate opinions according to his conscience, orally and or in writing through print and electronic media with due observance of religious values, morality, order, public interest and the integrity of the nation". Furthermore, the Law of the Republic of Indonesia Number 12 of 2005 concerning the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights) also regulates Freedom of expression. The Law states that everyone has the right and is free to express (Article 19 paragraphs (1) and (2)).

The right to an opinion and expression is a request inherent in every human individual, not a right granted by a party outside of them. Therefore, the Freedom to express an opinion does not require permission to do so, and it is only a notification for reasons of Security and order. In the people's sovereignty system, the highest power in a country is considered to be in the hands of the country's people. That power essentially comes from the people and is for the benefit of all the people themselves.

Law Number 9 of 1998 concerning Freedom of Expressing Opinions in Public has stipulated that Freedom of expression is the right of every citizen to express thoughts orally, in writing, and so on freely and responsibly by the provisions of the prevailing laws and regulations. Therefore, based on the above, all forms of rules governing Freedom of expression should not reduce the constitutional rights of citizens.

⁴ Budiarjo M, *Dasar-Dasar Ilmu Politik* (Edisi Revisi). (Jakarta: PT Gramedia, 2017).

⁵ Warong, K.M, Waha, C.J.J, Tangkere, C. Kajian Hukum Hak Asasi Manusia Terhadap Kebebasan Berpendapat Oleh Organisasi Kemasyarakatan Di Media Sosial. *Jurnal Lex Administratum*, 3 (5), 44- 53 2020.

To note, several provisions in the Pergub DIY Number 1 of 2021 have caused a polemic, namely the provisions in Article 5 of the Governor Regulation, which states that the expression of opinions in public is carried out in open spaces for the public in the regions by the provisions of laws and regulations, except in the following areas: State of the Great House; Ngayogyakarta Hadiningrat Sultanate Palace; Pakualaman Duchy Palace; Kotagede; and Malioboro; with a radius of 500 meters from the fence or outermost point.

In February 2021, the Government of the Special Region of Yogyakarta issued and stipulated the Governor's Regulation (Pergub) DIY Number 1 of 2021 concerning implementing Public Expression of Opinions in Open Space. Article 5 of the Pergub reads that "Public Opinion Submission is carried out in an open space for the public in the Region by the provisions of the legislation, except in the Area: a). Istana Negara Gedung Agung; b). Kraton Kasultanan Ngayogyakarta Hadiningrat; c). Kratin Kadipaten Pakualaman; d). Kotagede; and e). Malioboro.

Although this provision refers to the Law on Freedom of Expressing Opinions in Public, which states that the expression of opinions in public is carried out in places open to the public, except in the presidential palace, places of worship, military installations, hospitals, airports or seaports, railway stations, land transportation terminals, and vital national objects, however, the areas that are prohibited in the Governor's regulation are the main areas in carrying out the wheels of the DIY government which should be the supervision of the community. For example, the Regional House of Representatives (DPRD) of DIY Province and the DIY Governor's Office are located in the Malioboro area.

The issuance of the Regulation of the Governor of the Special Region of Yogyakarta Number 1 of 2021 concerning Control of the Implementation of Public Opinion in Open Space (Governor Regulation Number 1 of 2021) caused quite a strong reaction from the public, especially supporters of democracy. This Governor's Regulation, especially the provisions of Article 5, is considered to interfere with the political and democratic rights of the community. Article 5 of the Gubernatorial Regulation reads that public expression of opinion is carried out in areas open to the public in the regions by the provisions of the legislation, except in the Area of the state palace, the grand building, the Ngayogyakarta Hadiningrat Sultanate Palace, the Pakualaman, Kotagede, and Malioboro Kadipaten Palaces with a radius of 500 (five hundred) meters from the fence or the outermost point.

The stipulation of Regulation of the Governor of the Special Region of Yogyakarta (DIY) Number 1 of 2021 concerning Controlling the Implementation of Public Opinions in Open Spaces received a lot of strong protests from various levels of society, for example, from the People's Alliance for Yogyakarta Democracy (ARDY) which consists of 38 civil society groups, also from the Yogyakarta Legal Aid Institute

(LBH) considers that the Governor of DIY has used tourism as a cover to cover himself from public control.⁶

ARDY expressed his refusal by making an open subpoena to the Governor of the Special Region of Yogyakarta (DIY), Reporting to the Ombudsman of the Republic of Indonesia Representative of the Special Region of Yogyakarta (ORI DIY) for alleged maladministration, and reporting to the National Human Rights Commission (Komnas HAM) for alleged human rights violations. . Meanwhile, ARB, KKY, and SMI expressed their refusal by expressing their opinions in public in open spaces or demonstrations.

The report by ARDY has received a response or follow-up from Komnas HAM and ORI DIY. First, Komnas HAM, in its letter Number 422/K-PMT/VI/2021, considers that the Governor of DIY Number 1 of 2021 contradicts the right to Freedom of expression. Then, ORI DIY in the Examination Results Report (LHP) concluded that there had been maladministration in the preparation and determination of the Governor of DIY No. 1 of 2021. The form of maladministration in question was improper conduct because the process of drafting and stipulating the Pergub did not involve the community.

According to the lecturer of Constitutional Law at the State Islamic University (UIN) Sunan Kalijaga, Gugun El Guyanie, enacting the Governor's regulation can reduce constitutional rights, the right of every citizen to express opinions in public. According to him, this gubernatorial regulation will also distort Yogyakarta as a democratic student city with many campuses, artists, cultural observers, academics, and a society that upholds Freedom of expression.⁷ Academically, this issue becomes even more complicated when viewed from the constitutional concepts in the *siyāsah dusturiyyah* that a statutory regulation must protect the fundamental rights of citizens as the embodiment of the rule of Law.⁸

In Article 5 (five) above, it can be seen that there are restrictions on the location of the expression of opinions for citizens, which in the future, it is feared could result in the reduction of the constitutional rights of citizens. Therefore, the authors are interested in examining this with the research title "Regulation of the Governor of the Special Region of Yogyakarta Number 1 of 2021 concerning Control of the Implementation of Public Opinion in Open Spaces from the Perspective of *Siyāsah Dusturiyyah*".

Therefore, the academic question that will arise in answering this question is Why are there pros and cons to Article 5 (five) of the Regulation of the Governor of the Special Region of Yogyakarta Number 1 of 2021 concerning Control of the Implementation of Expressing Opinions in Public in Open Space? What is the view of the *Siyāsah dusturiyyah* regarding Article 5 (five) of the Regulation of the Governor of the

⁶ Irwan Syambudi, Banjir Kritik atas Pergub DIY soal Larangan Demo di Malioboro, <https://tirto.id/banjir-kritik-atas-pergub-diy-soal-larangan-demo-di-malioboro-f9xk>, akses 04 April 2021.

⁷ *Ibid*, hlm. 1. <https://www.cnnindonesia.com/nasional/20210425060246-506-634360/kolong-kota-tuan-tuan-penyamar>

⁸ Muhammad Iqbal, *Fiqh Siyāsah: Kontekstualisasi Doktrin Politik Islam Cet Ke-1*, (Jakarta: Prenamedia Group, 2014), hlm. 177.

Special Region of Yogyakarta Number 1 of 2021 concerning Control of the Implementation of Public Opinion in Open Space

B. METHODS

The approach method used is a normative juridical approach. The normative juridical process is a legal research method used to examine library materials or secondary materials related to issues relating to synchronization about the problems studied, namely the regulation of defamation through electronic media.⁹ In the case of this research, the researcher conducted further research on the perspective of the *siyāsah dusturiyyah* on the Regulation of the Governor of the Special Region of Yogyakarta Number 1 of 2021 concerning Control of the Implementation of Public Opinion in Open Space and regarding the purpose of its implementation.

The type of this research is library research; in this case, the researcher deals with text or data that are directly used that can be found in the library. Qualitative form with the object of study, namely library data containing ideas or thoughts or thoughts that are supported by library data sourced from books, journals, previous scientific works, reports, and papers, as well as the results of literacy or documentation of scientific discussions and documents and officially issued by the government or other institutions.¹⁰

The data analysis technique of this research is qualitative analysis. The data obtained in this study include material for the Governor of DIY No. 1 of 2021, the pros and cons of expressing opinions at the point of vital national objects, Freedom of expression both in Islam and in Indonesian laws and regulations, and so on. These data will be analyzed qualitatively to answer the formulation of the problem, which is the conclusion of this study.

C. RESULTS AND DISCUSSION

Siyāsah fiqh has a branch of study, namely *Siyāsah dustūriyyah* or some scholars call it the same thing. The term *fiqh siyāsah* is formed from two root words: *fiqh* and *siyāsah*. *Fiqh* means knowing, understanding, and understanding. Linguistically, *fiqh* means a deep knowledge and or understanding of the meaning of human words and actions. Meanwhile, *fiqh* means knowledge of the syara' laws for actions that are known from detailed arguments obtained from the Al-Quran and As-Sunnah).¹¹

Etymologically *siyāsah* means "regulating, controlling, managing or making decisions", as in the sentence "*sasa al-qaum*", regulating the people to rule and lead.

⁹ Soerjono Soekanto, Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta: Rajawali Pres, 2001), hlm.13-14. Lihat juga Sutrisno Hadi, *Pengantar Metode Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2004), hlm. 30.

¹⁰ Mestika Zed, *Metode Penelitian Kepustakaan*, (Jakarta: Yayasan Obor Indonesia, 2004).

¹¹ Jubair Situmorang, *Politik Ketatanegaraan dalam Islam (Siyasah Dusturiyyah)*, (Bandung: Pustaka Setia, 2012), hlm. 13.

According to terminology, *siyāsah* means "politics". The origin of the meaning of the word *sāsa yasūsu siyāsah* means driving, controlling, and controlling.¹²

According to Abdul Wahhab Khallaf, *siyāsah* means regulations that are placed on maintaining order and benefit as well as regulating the situation.¹³ According to Ibn Qoyyim quoted from Ibn 'Aqil, giving the notion of *siyāsah* is an act that brings people closer to benefit so that they stay away from damage even though no evidence is found from the hadith and the Qur'an. Meanwhile, Suyuthi Pulungan argues that *siyāsah* means setting the interests (mashalih) of mankind by syara' Law to realize a benefit.¹⁴

Muhammad Iqbal stated that *Siyāsah dustūriyyah* is rooted in the word industry, which means Constitution, the word comes from Persian, which means someone who has power in political and religious aspects. In its development, the language was absorbed into Arabic, namely, *dusturi*, which means principle, basis, or coaching. In *dusturi* terminology, it means the rules governing essential matters and the pattern of reciprocity and cooperation between the community and the state, both by convention (which is not written) and constitutionally in writing. So the *Siyāsah dustūriyyah* which is part of the *fiqh siyāsah* examines the issue of state regulations which it examines the concepts of the Constitution, legislation, democratic institutions, and shura, in a broader sense, the *siyāsah dustūriyyah* discusses the concept of the rule of Law and the *symbiotic* relationship between countries that represented by the government with citizens and the protection of the basic rights of the community.

Dustūr is a collection of basic rules of government of any country, as well as its laws, regulations, and customs. The word *dustūr* has the same meaning as the *Constitution* in English or the basic Law in Indonesian. Therefore, *the siyāsah dustūriyyah* discusses the issue of state legislation so that it is in line with Islamic Law. This means that regulations that refer to the Constitution must be by the principles of Islamic Law and are sourced from the Qur'an and Sunnah, such as *aqidah*, worship, morality, *muamalah*, and everything related to state administration.¹⁵

Siyāsah dustūriyyah can also mean the political science of government and state administration in Islam which has a scope of study relating to general arguments in the Qur'an and Al-Hadith as well as the purposes of Islamic Law. The Medina Charter or the Medina constitution is one example of the study of *siyāsah dustūriyyah*, which plays a role in extracting the substance from the principles of the Medina Charter in the form of forming a harmonious society, regulating a people, establishing a government based on equality of rights.¹⁶

Islamic politics and state administration as a scientific discipline are contained in the term *siyāsah dustūriyyah*, which is also part of the *fiqh siyāsah* which discusses state legislation. Not only that, but other concepts are also the scope of his study, namely

¹² *Ibid*

¹³ *Ibid*

¹⁴ Sayuthi Pulungan, *Fiqh Siyāsah Ajaran, Sejarah, dan Pemikiran*, (Jakarta: Raja Grafindo Persada, 1995), hlm. 23.

¹⁵ Jubair Situmorang, *Politik Ketatanegaraan dalm Islam (Siyāsah Dusturiyyah)*, hlm., 19.

¹⁶ *Ibid*.

constitutional concepts (the Constitution and the history of the birth of laws and regulations in a country), legislation (how to formulate laws), democratic institutions, and shura, which are essential pillars. In the Act. The concept of the rule of Law, the reciprocal relationship between the government and citizens, and the rights of citizens that must be protected are also part of the study of *siyāsah dustūriyyah*.¹⁷

According to Abdul Wahhab Khallaf, the principles laid down by Islam in the formulation of this Constitution guarantee human rights. Therefore, every community member has the same position in the eyes of the Law, without discriminating against social stratification, wealth, education, and religion.¹⁸

All citizens are guaranteed certain fundamental rights. According to Subhi Mahmassani in his book *Arkan Huquh al-Insān*, some of the rights of citizens that must be protected are: guarantees for personal security, self-respect and property prices, the right to get proper education, media and health services, and Security to carry out activities economy.¹⁹

Therefore, there are three tasks and functions of the state in the *siyāsah dustūriyyah*, namely:²⁰

1. *Al-Sulṭah al-Tasyri'iyah* is tasked with creating legislation on Islamic teachings. The state has the authority to make interpretations, analogies, and inferences on the texts of the Qur'an and hadith.
2. *Al-Sulṭah al-Tanfiziyyah*, namely the task of implementing the Act by the executive power. The state can describe and actualize the formulated laws and regulations. The highest executor of this power is the government (head of state), assisted by his cabinet (Minister).
3. *Al-Sulṭah al-qaḍa'iyah*, namely the task of maintaining the laws and regulations that the legislature has formulated. This task is carried out by the judiciary (*Al-Sulṭah al-qaḍa'iyah*). This institution has several rooms under it, including *wilāyah al-hisbah* (Judicial institution to resolve cases of minor violations such as fraud and fraud in business), *wilāyah al-qaḍa'* (Judicial institution that decides cases between fellow citizens, both civil and criminal), and *wilāyah al-mazālīm* (Judicial institutions that resolve instances of misappropriation of state officials in carrying out their duties, such as making political decisions that are detrimental and violate the interests or rights of the people as well as the actions of state officials that violate human

Rights human rights in Islam have existed in the Qur'an and society at the time of the Prophet Muhammad.²¹ Human rights in Islam are clearly stated for the benefit of

¹⁷ Muhammad Iqbal, *Fiqh Siyāsah: Kontekstualisasi Doktrin Politik Islam Cet Ke-1*, (Jakarta: Prenamedia Group, 2014), hlm. 177.

¹⁸ *Ibid*, hlm. 177-178

¹⁹ Mutiara Fahmi, "Prinsip Dasar Hukum Politik Dalam Islam", *Jurnal Fakultas Syari'ah dan Hukum, Uin Ar-Raniry*, Vol.2 No.1 2017

²⁰ Muhammad Iqbal, *Fiqh Siyāsah: Kontekstualisasi Doktrin Politik Islam....*, hlm.157-158.

²¹ Sidney Hook, *dkk, Hak Asasi Manusia dalam Islam*, (Jakarta: Pustaka Firdaus, 1987), hlm 141

humans, namely through Islamic shari'ah, which was revealed through revelation. This is because a country can guarantee it in the Constitution because it is an inherent right that marks the essence of human existence and must be respected, upheld, and protected by the state, Law, government, and everyone.

The Islamic human rights system contains the basic principles of equality, Freedom, and respect for fellow human beings. Equality means that Islam views all humans as equal and has the same position, the level of his piety only determines the only advantage enjoyed by a human being over another human being.

The presence of Islam guarantees human Freedom to avoid futility and pressure, both in religion, politics, and ideology. Human rights in Islam are centred on five main things, which are summarized in *al-huquq al-insāniyyah fi al-Islam* (human rights in Islam) and *uṣūl fiqh* known as *Maqāṣid ash-Syari'ah*. The concept contains five main things that each individual must maintain:²² a). *Ḥifẓ al-dīn* (Right to Freedom of religion); b). *Ḥifẓ al-nafs wa al-ird* (Right to life); c). *Ḥifẓ al-'aql* (Right of equality); d). *Ḥifẓ al-māl* (right to protect property/property); e). *Ḥifẓ al-nasb* (necessity to maintain offspring/right to obtain justice).

Legally and formally, the provisions of Article 5 of Governor Regulation Number 1 of 2021, which prohibits demonstrations or the expression of opinions in public in 5 locations, are contained in the Decree of the Minister of Tourism Number KM.70/UM.001/MP/2016 concerning the Determination of National Vital Objects in Tourism Sector.

The above is not wrong because the legal basis for making Governor Regulation Number 1 of 2021 is already based on the provisions of higher laws and regulations and its contents also do not conflict with the regulations that are the basis for making the provisions of Article 5 of Governor Regulation Number 1 of 2021. In principle, the provisions of article 5 This is in no way contradict the requirements of the 1945 Constitution, the Universal Declaration of Human Rights, Law No. 9 of 1998, because this governor regulation does not prohibit demonstrations or the expression of opinions in public to members of the public or anyone who wishes to do so. Convey their aspirations in public as long as they are not carried out in 5 (five) locations excluded from this Governor's regulation. This means that expressing opinions in public is generally not prohibited, only limited to the location/place of implementation.

Article 28E paragraph (3) of the 1945 Constitution states, "Everyone has the right to freedom of association, assembly, and expression". This article does provide guarantees for the protection of human rights to express opinions in public freely. However, the implementation of this article is closely related to the provisions of Article 28J Paragraph (1) and Paragraph (2). Paragraph (1) states, "Everyone is obliged to respect the human rights of others in the orderly life of society, nation, and state". Paragraph (2) states, "In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by Law for the sole purpose of guaranteeing recognition and

²² Amir Syarifuddin, *Pengertian dan Sumber Hukum Islam dalam Ismail Muhammad Syah dkk, Cet ke-2, (Jakarta: Bumi Aksara, 2000), hlm.25-26.*

respect for the rights and freedoms of others and to fulfil fair demands by moral considerations. , religious values, Security, and public order in a democratic society". So the contents of the provisions of Article 28J paragraphs (1) and (2) require that the use of human rights must be subject to existing restrictions to respect the rights of others with a sense of justice based on moral considerations. Religion, Security, and public order.

Law Number 9 of 1998 Article 2 states, "Every citizen individually or in groups has the right to express opinions as the embodiment of democratic rights and responsibilities in the life of society, nation, and state. The provisions of this Law carry out a public expression of opinion. Suppose it is related to the content of the provisions of Article 5 of Governor Regulation Number 1 of 2021. In that case, the contents of article 5 do not conflict with the provisions of Article 2 of Law Number 9 of 1998 because this gubernatorial regulation in no way prohibits the expression of opinions in public but only limits a location that can be used to convey the aspirations of the community. Because Law Number 9 of 1998 concerning Freedom of Expressing Opinions in Public states that the expression of opinions in public is carried out in open places except for the presidential palace, places of worship, military installations, hospitals, airports or seaports, and train stations. , land transportation terminals, and national vital objects. This means that the source of the rules that are the basis for allowing demonstrations in public places also regulates several locations that are excluded from being used as demonstration locations. However, because the provisions of Law Number 9 of 2008 do not clearly state what is meant by a vital national object, then on the initiative of the president, Presidential Decree Number 63 of 2004 was issued, which explains what is meant by an essential national thing.

What is meant by vital national objects in this Presidential Decree are areas or locations, buildings or agencies, and businesses that involve the people's livelihood, the interests of the state, or strategic sources of income? Then this presidential regulation was clarified again by the Decree of the Minister of Culture and Tourism Number PM.19/UM.101/MKP/2009 concerning the Security of vital national objects in the Field of Culture and Tourism. Then the Decree of the Minister of Culture and Tourism Number PM.19/UM.101/MKP/2009 was replaced with the Decree of the Minister of Culture and Tourism Number KM.70/UM.001/MP/2016 concerning the Security of National Vital Objects in the Field of Culture and Tourism.

Decree of the Minister of Tourism Number KM.70/UM.001/MP/2016 rigidly mentions tourist locations that are considered vital and must be guaranteed safety. The Manager of National Vital Objects in the Tourism Sector is responsible for implementing the internal Security of their respective National Vital Objects. The Manager of National Vital Objects in the Tourism Sector in internal Security is carried out by referring to the Decree of the Chief of Police of the Republic of Indonesia concerning Guidelines for the National Vital Objects Security System.

Article 25 of Law Number 39 of 1999 states, "Everyone has the right to express opinions in public, including the right to strike by the provisions of the legislation". The contents of this article give everyone the right to express opinions in public, and the implementation of these rights must be by the provisions of the applicable laws and

regulations. The meaning of the applicable laws and regulations can be related to the laws and regulations limiting the location/place where public opinion can be conveyed. This means that the expression of the views in public can be done, but with certain exceptions, such as restrictions on the location of demonstrations can be done. This shows that the content of the provisions of article 5 of the Governor's Regulation Number 1 of 2021 does not conflict with the contents of the provisions of article 25 of Law Number 39 of 1999.

Hierarchically the laws and regulations of the Regulation of the Governor of the Special Region of Yogyakarta Number 1 of 2021 stipulate several areas as objects national vital have met the legal requirements. However, in viewing a social phenomenon, one cannot stop at juridical factors, because before the existence of regulations, philosophical and sociological norms must be the basis for determining juridical norms.

Therefore philosophically, if the Governor's Regulation Number 1 of 2021 is reviewed from the fundamental rights of citizens in the human rights scheme in Islam, then the values of *Maqāṣid ash-Syarī'ah*, which emphasize equality, Freedom, and respect for fellow human beings, have several important notes that:

First, the equality in question is Islam's view that all humans are equal and have the same position, including equal rights in expressing opinions in public without disturbing the rights of other human beings. The fundamental right of equality is a right that is inherent since humans are born as humans. Therefore, this kind of right should be a right that is protected, respected, and protected by the holder of the obligation to the holder of the right. As long as this right does not interfere with the circulation of other human rights, then this right must be able to be realized at all times.

Second, Freedom, in this case, is that humans essentially have the right to Freedom of expression, association, and assembly, as has been widely agreed by human rights associations that are generally agreed upon and by world human rights experts. This kind of right is also the same where rights are inherent since humans exist because these rights are human beings who are fully human. Therefore, the limitation of the place for expressing opinions in the Governor Regulation should be observed so that there is no *abuse of power* by the duty holders

Third, respect for fellow human beings; this means that the fundamental rights that exist in a human being must be protected, respected, and protected. Including the right to express opinions in public. Suppose it is feared that the expression of opinions in public will interfere with the rights of citizens who also use the same facilities. In that case, it is the duty of the holder of the obligation to make arrangements so that the basic rights that citizens own can be realized without negating the rights they have. Others for the sake of rights held by other parts of the community.

At this point what is referred to in the human rights scheme in Islam, namely *Maqāṣid ash-Syarī'ah*, the last *hiḥz al-nasb* (the obligation to maintain offspring / or can also be interpreted as the right to obtain justice), where if the holder of the obligation has *political will* impartial basic rights of citizens, including expressing opinions in public, can be accommodated without prejudice to the rights and obligations of some other people.

D. CONCLUSION

The regulation of the right to express opinions in the Regulation of the Governor of the Special Region of Yogyakarta Number 1 of 2021 concerning Control of the Implementation of Public Expression of Opinions in Open Space is juridical, places proposed to become vital national objects do not conflict with the hierarchy of laws and regulations. However, philosophically as reflected in the human rights scheme in Islam, it is necessary to review the Pergub because several principles, such as the principles of equality, Freedom, and respect for fellow human beings, have been injured by the Governor of the Special Region of Yogyakarta Regulation Number 1 of 2021 concerning Controlling the Implementation of the Expression of Opinions in Public Front in Open Space so that all fundamental rights owned by citizens can be realized as they should.

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