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## BOOK REVIEW

### Contesting Human Rights: How Religious Freedom Confront Gay Rights and Vice Versa

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<i>How to cite:</i> Alfian, A. (2023). Contesting Human Rights: How Religious Freedom Confront Gay Rights and Vice Versa <i>Journal of Humanity and Social Justice</i> , x(x), xxx-xxx.	Book title : Religious Freedom and Gay Rights: Emerging Conflicts in the United States and Europe. Editors : Timothy Samuel Shah, Thomas F. Farr, and Jack Friedman Publisher : Oxford University Press Year of publication : 2016 Place of publication : New York, USA Number of pages : 360 pp ISBN : 978-0-19-060060-0

One of the issues that caught my attention in the discussion on religion and human rights, which is also an issue that has recently started to be hotly discussed in Indonesia, is the issue of LGBTQ+ people's rights. This issue becomes more interesting when this issue deals with other rights such as religious freedom rights or freedom of religion or belief (FoRB). As we saw in the discussion of human rights at the international level, tensions between LGBTQ+ rights and FoRB in several countries have their characteristics. For example, in Indonesia, recently, the movement for defenders of the FoRB has begun to bloom, and, I observe, there is a tendency to include minority groups such as indigenous people, including LGBTQ+ people, in their circle of struggle. The question is, how do religious

freedom deal with LGBTQ+ rights, especially gay rights? Or conversely, how do gay rights deal with religious freedom? In that context, this book becomes relevant to discuss. This book provides each author's many different moral arguments and philosophical commitments. However, they have one thing in common: the effort to problematize the relationship between religious freedom and gay rights. As noted by the editors in the introduction section that "The contributors to this volume offer an array of different perspectives, reflecting their different expertise and prior moral and philosophical commitments. Nevertheless, they tend to converge around a forecast in which society – for better or worse depending on which author you ask – increasingly moves away from Christian sexual morality and toward a diminished tolerance of religious freedom" (p. 11).

This book comes from an international conference at Georgetown University at the Berkley Center for Religion, Peace, and World Affairs. The international conference was entitled *Religious Freedom and Equality: Emerging Conflicts in North America and Europe*. The result of that international conference is this fascinating book. This book is significant and relevant for discussing religion and human rights because it provides much information about how religious freedom and gay rights are often at odds. The tension between the two occurs in different forms. In America, for example, in 2015, the US Supreme Court passed a state law that legalized same-sex marriage, which means that the state protects gay rights or LGBTQ+ people. This legal decision was rejected by many parties, especially those who disagreed with same-sex marriage. For example, an Apostolic Christian and a public notary named Kim Davis were imprisoned for refusing to sign a same-sex marriage certificate. Kim Davis argues that the law protecting gay rights violates religious freedom, which the state should also protect. In other words, in America, gay rights are recognized by the state, and religious freedom or FoRB is used as an argument against gay rights.

Meanwhile, in Indonesia, gay rights are not recognized by the state. However, interestingly, based on my observations, there is a tendency to use the argument of religious freedom or FoRB to defend minority rights such as indigenous religions and LGBTQ+ people. This tendency is proven, for example,

by advocating for transgender rights to build their own *pesantren*, a transgender Islamic boarding school in Yogyakarta, using the argument of freedom of religion or belief (FoRB). In other words, religious freedom becomes an umbrella for advocating the rights of LGBTQ+ people. I also mentioned that it has potential because the state constitution of Indonesia (UUD 1945) does protect human rights for minority groups such as LGBTQ+ and indigenous people, for example, in Article 28A, Article 28C (ayat 2), Article 28E (ayat 2), and Article 28I (ayat 2.3). In general, this law guarantees the rights of citizens. Indeed the law does not mention the rights of minority groups specifically those rights for LGBTQ+ people but this law can protect (or be used for legitimate) the rights of minority groups such as LGBTQ+ people in Indonesia amidst the many violations of the rights of these minority groups. Once again, this book is relevant because it contributes to how the discussion on human rights, especially gay rights or LGBTQ+ people, deals with rights of religious freedom or FoRB. Although the debate on gay rights and religious freedom in this book focuses on the United States and Europe, the discussion of this book is still relevant to be discussed by Indonesian readers to see how debates about human rights are always complex. In addition, this book illustrates the complexity of how a country can use one human rights law to counter other human rights.

However, this book has succeeded in providing a big picture of how gay rights and religious freedom are related in human rights discussions, particularly about how religious communities in liberal democracies are heavily influenced by gay rights, which, not to say hinder, or reduce religious freedom. For example, chapter one written by John Finnis demonstrates that the UK court's efforts to reduce discrimination against gay people even discriminate against religious people. Another chapter, chapter three written by Philip Tartaglia, argues that the idea of religious freedom or freedom of religion or belief has been reduced to simply "freedom of worship." In chapter seven written by Steven D. Smith, there are also criticisms of how the "asymmetry" of legalizing same-sex marriage as a form of gay rights in many liberal democracies has alienated religious communities. The analysis of these chapters contradicts the argument of gay rights

activists that gay rights do not come to discriminate against other rights. However, the demand for religious freedom or FoRB is the most effective argument against gay rights. The people resisted by proposing accommodation, such as freeing the church from being forced to perform same-sex marriage ceremonies, as a form of recognition of religious freedom.

In addition, this book has also succeeded in uncovering important discussions on the topic of gay rights and religious freedom from several perspectives, ranging from those who think religious freedom must be used as a legal basis to those who suspect religious freedom or religious conscience. As emphasized by Stephen Law in chapter two, for example, accommodating religious freedom with the “religious conscience” argument also needs to be watched out for. Because the argument for freedom of religion based on “religious conscience” is often not measurable. For example, what about secular people who do not want to serve marriage or gay rights on any other basis? Is that also religious freedom or “religious conscience”? In short, Stephen Law sees that there is no reason for courts to exclude “religious conscience” in cases of gay rights violations because it is so difficult to measure. How do we know that a secular person refuses to serve gay people because of their “religious freedom” or “religious conscience”? In addition, this book is also helpful for readers who want to know the history of the different European and American cultures that also influence how they respond to and overcome these problems (for example, the Italian culture of same-sex couple rights, as explained by Andrea Pin in chapter nine, provided a new understanding of history and culture for me).

One of the shortcomings of this book is that the authors of this book do not explicitly provide a solution to the feud between religious freedom and gay rights. Most of the author advises leaving the matter to the courts or the laws. In addition, another shortcoming, the voices represented by the authors tend only to represent the legal paradigm, which sees gay rights as constantly contradicting religious freedom. If we want to look at it in many aspects, gay rights are not always in conflict with religious freedom. In the Vatican, for example, a few years ago, there has been a response (such as acceptance) to homosexuals. Similar acceptance can

be found in some countries, such as Indonesia. The argument for religious freedom is used to defend gay rights. In other words, human rights can be integrated. Although, it is not always easy.

After reading this entire book, I got the impression that the editors were trying to present a balanced point of view or ideas between writers who prioritize religious freedom over gay rights and writers who prioritize gay rights over religious freedom. However, this book has other shortcomings such as it is very Christian-centric, perhaps because of the western context. There is no serious conversation about the views of Islam, Buddhism, Hinduism, and even indigenous religions, only a few times mentioning "Jewish-Christianity," and even then, Judaism is not elaborated on in-depth. Only Christianity is elaborated explicitly on. Even though the countries discussed are countries where the majority are Christian, that does not mean other religions are not included in the discussion. Despite its shortcomings, this book is worth reading for readers and human rights activists interested in discussing the relationship between religious freedom and gay rights in the West (Europe and America). Finally, I appreciate this book because it has provided a comprehensive overview of gay rights versus religious freedom in both Western and Christian contexts. Although there is often a strong position over others, such dialogue is needed, as suggested by Robin Fretwell Wilson in chapter six that dialogue is needed to get a meeting point between religious freedom or freedom of religion or belief and gay rights. By presenting important arguments like that, I can finally say, this book contributes a lot.