

## OBLIGATION TO HOLD A RELIGION IN INDONESIA

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### INTRODUCTION

In the context of human rights, the guarantee of the right to freedom of religion and belief is contained in Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Indonesia has ratified the ICCPR through ratification of Law Number 12 of 2005 concerning the Ratification of the Convention on Civil and Political Rights.

The fundamental right to freedom to embrace a religion called Human Rights is inherent in every human being who is an inalienable right. Human Rights are legal rights granted by the state for respect for independent human dignity. In the perspective of human rights, the state only has obligations and has no rights<sup>1</sup>. The state must protect human rights, which means the state must guarantee human rights, and the existence of *Negative Obligations* on the state which means that the state must respect the freedom and rights of individuals<sup>2</sup>. In the context of civil and political rights, the *Positive Obligation* of the state is to create conditions that support the right of everyone to enjoy full rights and freedoms, while the Negative obligation of the state is to respect the implementation of individual rights and freedoms. The Positive obligation of the State must be realized maximally by utilizing all the resources of political power, starting from the legislature, executive and judiciary<sup>3</sup>.

By law, the differentiation of human rights rationality is important to provide guidance on the "territory" of the state about what is allowed and to limit. None of the practices of religion or belief can be used as propaganda to fight or advocate for national hatred, racial hatred; or religious hatred, which can encourage discrimination, hostility or violence. This distinction also produces components of the right to religious freedom itself, namely: first, is the right to move to another religion (right to change and maintain religion), *private intervium* (internal religious freedom), and secondly, the right to manifest religion in terms of teaching, practicing and carrying out worship.

Freedom of religion is the right of an individual or community, in public or private, to manifest religion or belief in teaching, practice, worship, and observance. It is also include the freedom to change religion or *to not follow any religion* or freedom from religion. Freedom of religion is closely associated with separation of religion institution, influence of religious institutions religious affairs and state. The First Amendment to the U.S. Constitution, written in 1791, reads: "Congress shall make no law respecting an establishment of religion, or prohibiting

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<sup>1</sup> "International Covenant on Civil and Political Rights," *Human Rights Quarterly* 7, no. 1 (February 1985): p. 132.

<sup>2</sup> *Ibid.* Article 2 paragraph 1 ICCPR

<sup>3</sup> *Ibid.* Article 2 paragraph 3 ICCPR

the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances<sup>4</sup>.”

The territory of the country to limit the right to freedom of religion and belief has also been regulated in such a way, even though it is included in *non-derogable* rights, or cannot be reduced under any circumstances, but it is not entirely meant for the whole<sup>5</sup>. The scope of the provisions concerning permitted restrictions must be carried out by the ICCPR States Parties with the need to protect the rights guaranteed by the Covenant, including the right to equality and non-discrimination in any field.

In addition to the limitations, there are also restrictions, namely the prohibition of coercion which is aimed directly at the right to have or adhere to a religion or belief<sup>6</sup>. Such coercion includes physical coercion, and indirect coercion.

Many countries, even the United States, make restrictions on matters relating to religion or organizing religious services. The Supreme Court of the United States has consistently held, however, that the right to free exercise of religion is not absolute. For example, in the 19th century, some of the members of a religion, traditionally practiced polygamy, yet in a case heard in 1879, the Supreme Court upheld the criminal conviction of one of these members under a federal law banning polygamy. The Court reasoned that to do otherwise would set a precedent for a full range of religious beliefs including those as extreme as human sacrifice, stating that "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may interfere with practices." So, if one were part of a religion that believed in vampirism, the First Amendment would protect one's belief in vampirism, but not the practice. This principle has similarly been applied to those attempting to claim religious exemptions for using drugs<sup>7</sup>.

## LITERATURE REVIEW

### A. Conditions In Indonesia

The legal basis that guarantees religious freedom in Indonesia is in Article 28E paragraph (1) of the 1945 Constitution: "Everyone is free to embrace religion and worship according to his religion, choose education and teaching, choose a job, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return."

Article 28E paragraph (2) of the 1945 Constitution also states that everyone has the right to freedom to believe in a belief. Besides, in Article 28I paragraph (1) of the 1945 Constitution, it is also recognized that the right to adhere to a religion is a human right. Furthermore, Article 29 paragraph (2) of the 1945 Constitution also states that the State guarantees independence for each of its people to embrace religion.

However, these rights are not without restrictions. In Article 28J paragraph (1) of the 1945 Constitution, it is stipulated that everyone must respect the human rights of others. Article 28J Paragraph (2) of the 1945 Constitution further stipulates that the implementation of these rights must be subject to restrictions regulated by law. So, these human rights, in their implementation, remain compliant with the restrictions regulated by law. The inclusion of 10 new articles

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<sup>4</sup> Katharine Gammon, Freedom of Religion, LiveScience, <https://www.livescience.com/21328-freedom-of-religion.html>

<sup>5</sup> Article 28J of 1945 Indonesian Constitution and Article 18 paragraph 3 of ICCPR

<sup>6</sup> Article 18 paragraph 2 of ICCPR

<sup>7</sup> *Op. Cit.*, Katharine Gammon, Freedom of Religion.

governing human rights in the second amendment to the 1945 Constitution, including the articles above, the provisions of human rights issues from Articles 28A to 28I of the 1945 Constitution have been limited or "locked" by Article 28J of the 1945 Constitution.

In the implementation of the articles concerning human rights in the 1945 Constitution, the Law Number 1/PnPs/1965 concerning Prevention of Abuse (or Blasphemy of Religion) in conjunction with Law Number 5 the Year 1969 concerning Statements of Various Presidential Decrees and Presidential Regulations as Laws, and Joint Decree by the Minister of Religion, Attorney General and Minister of Home Affairs No. 03 of 2008, No. KEP-033/ A/JA/6/2008 and No. 199 of 2008 concerning Warnings and Commands to Adherents, Members and/or Managers of "Jamaah Al Islamiah (JAI)-Ahmadiyah ", and Community Residents ("Three Ministerial SKB (Surat Keputusan Bersama)"). The two regulations have created polemics for adherents of the Believers/*Kepercayaan* (Sunda Wiwitan, Kaharingan, Parmalim, Aliran Kepercayaan, etcetera), outside of the five religions which are officially recognized by the Indonesian government (Islam, Christianity, Buddhism, Hinduism, Judaism). In addition, other problems that arise are adherents of Belief, outside of the official religion recognized by the government, having difficulties in obtaining population documents (such as Identity Cards or "*Kartu Tanda Penduduk*" , Family Cards or "*Kartu Keluarga*").

## ANALYSIS

According to Article 28I paragraph (1) of the 1945 Constitution, the right to life, the right not to be tortured, freedom of mind and conscience, mercy, the right not to be enslaved, these rights cannot be reduced for any reason. But then, in Article 28I paragraph (5) of the 1945 Constitution, to uphold and protect human rights by the principles of a democratic legal state, the implementation of these human rights is guaranteed, regulated and further stipulated in legislation.

So, there are opinions that the human rights provisions in the 1945 Constitution are still unfair and inconsistent. There are some adherents of a religious teaching declared heretical. Many adherents of a belief outside the religion officially recognized by the government have difficulty obtaining population documents, and other things that are very important, Indonesian citizens may not be atheists (do not embrace any religion).

According to Article 2 paragraph (1) the Blasphemy of Religion Law is stated, in the event that someone violates the prohibition of abuse and/or blasphemy of religion, is given strict orders and warnings to stop their actions in a decision with the Minister of Religion, Attorney General and Minister of Home Affairs. An example is the three ministerial decree "Commands to followers and administrators of Indonesian Ahmadiyah followers" issued on June 9, 2008 (SKB Minister of Religion, Attorney General and Minister of Home Affairs No. 03 of 2008, No. KEP-033/A/JA/6/2008 and No. 199 of 2008 concerning Warnings and Commands to Members, Members and/or Administrators of JAI/Ahmadiyah and Community Residents).

Who concluded that certain beliefs were heretical? According to article 2 paragraph (2) of the Blasphemy Law, the authority to declare an organization / sect of faith that violates the prohibition of abuse and/or desecration of religion as a prohibited organization / stream is with the President, after being considered by the Minister of Religion, Attorney General and Minister

of Home Affairs. In practice, there is a Coordinating Board for Monitoring Beliefs Community or commonly abbreviated as *Bakor PAKEM*. Actually what *Bakor PAKEM* meant was the Beliefs Monitoring Coordination Team which was formed based on the Indonesian Attorney General's Decree No. : KEP004 / J.A / 01/1994 dated January 15, 1994, concerning the Establishment of a Monitoring Coordination Team on the Flow of a Belief Community (PAKEM). The "Pakem" team discusses and analyzes believers who grow and live in society. The PAKEM team will then make a letter of recommendation to the Minister of Religion, Attorney General and Minister of Home Affairs, regarding actions to be taken. In the case of the Indonesian Ahmadiyya Community ("JAI"), for example, the PAKEM Team approved so that JAI was given a strong warning, to stop the activity.

### **B. Legal Basis**

Is there a legal basis that confirms that religion in Indonesia has only five? In the elucidation of article 1 of the Blasphemy Law, it is stated that the religions embraced by the Indonesian population are Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism (Confucius/Confucianism, finally Confucianism is considered not a religion). But, this does not mean that other religions are prohibited in Indonesia. Adherents of religions outside the five religions above are fully guaranteed as provided by Article 29 paragraph (2) of the 1945 Constitution and they are left to their existence, as long as they do not violate Indonesian laws and regulations. Indonesian law protects religious freedom specifically for five recognized religions, namely Islam, Catholicism, Christianity, Buddhism, Hinduism (including Judaism to be six).

The version of the 1945 Constitution after the changes, especially the second amendment relating to the following articles:

#### CHAPTER XA. HUMAN RIGHTS

##### Article 28E

- (1) Everyone has the right to embrace religion and worship according to his religion, choose education and teaching, choose a job, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return.
- (2) Everyone has the right to freedom to believe in a belief, express their thoughts and attitudes, according to their conscience.

##### Article 28I

- (1) The right to life, the right not to be tortured, the right to freedom of mind and conscience, religious rights, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on retroactive law are human rights, which cannot be reduced under any circumstances.

#### CHAPTER XI. RELIGION

##### Article 29

- (1) The state is based on the Belief in the One Supreme God (the only God);
- (2) The state guarantees the independence of each resident to embrace his own religion and to worship according to his religion and belief.

The aforementioned articles are limited by the rights of other people as stipulated in article 28J as follows:

- (1) Every person is obliged to respect the human rights of others in the context of orderly life in the community, nation and state.



- (2) In exercising their rights and freedoms, each person must submit to the restrictions set by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security, and public order in a democratic society.

Stipulation of the People's Consultative Assembly of Republic of Indonesia on Pancasila (The Five Basic Principles as State Ideology):

The points of practice of the Pancasila are outlined in the Decree of the People's Consultative Assembly No. II/MPR/1978 concerning "Ekaprasertia Pancakarsa" into 36 items, specifically for the First Principle, broken down into 4 items. The Education Development Agency for Implementation of the Engagement Guidelines, and Practice of Pancasila (BP7) recounts the 36 points in 1995 to 45 points, 7 of which are the points of the First Principle<sup>8</sup>, as follows:

1. The nation of Indonesia expresses its belief and devotion to God Almighty;
2. Indonesian people believe and obey the Almighty God, by their respective religions and beliefs according to the basis of just and civilized humanity.
3. Develop respectful attitudes, respect and cooperation between religious adherents with different believers towards God Almighty.
4. Fostering harmony of life among fellow religious people, and the Beliefs in God Almighty.
5. Religion and adherents the Belief in God Almighty is a matter that concerns the personal relationship of mankind to the God Almighty.
6. Develop mutual respect in the freedom to worship according to their respective religions and beliefs.
7. Do not impose a religion and belief in God Almighty to others.

In 1998, (Decree of the People's Consultative Assembly) TAP MPR No. II / MPR / 1978, along with the Pancasila Decree as the sole principle revoked through MPR TAP No. XVIII / MPR / 1998<sup>9</sup>, for political reasons, namely the abolition of the products of the New Order regime. This abolition is considered as a mistake because it causes SARA conflicts (ethnicity, religion, race, intergroup) to become unstoppable<sup>10</sup>.

Law Number 39 of 1999 concerning Human Rights:

Article 4:

"The right to life, the right not to be tortured, the right to personal freedom, mind and conscience, religious rights, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted on retroactive law is a human right that cannot be reduced under any circumstances and by anyone."

Article 22 (1): "Everyone is free to embrace their respective religion and to worship according to their religion and belief."

<sup>8</sup> Nasruddin Anshory (2008). *Dekonstruksi kekuasaan: konsolidasi semangat kebangsaan*. Yogyakarta: PT LKiS Pelangi Aksara. hlm. 181. ISBN 9791283664.

<sup>9</sup> www.tatanusa.co.id/tapmpr/98TAPMPR-XVIII.pdf "Ketetapan MPR No. XVIII/MPR/1998 tentang Pencabutan Ketetapan MPR No. II/MPR/1978"

<sup>10</sup> Sarlito (14-10-2014). "[Pembubaran BP 7 sebuah Kesalahan Sejarah](#)". Pusaka Indonesia. Diakses tanggal 16-1-2019.

Article 22 (2): "The state guarantees the freedom of each person to embrace their respective religion and to worship according to their religion and belief."

Law Number 13 of 2003 concerning Labor:

Article 80: "Employers are required to provide sufficient opportunities for workers / laborers to carry out worship that is required by their religion."

Article 185 (1): "Whoever violates the provisions referred to in Article 80 ... is subject to imprisonment sanctions ... and / or fines ....

Indonesian Criminal Code (KUHP)

Article 175: "Anyone with violence or threat of violence hinders religious meetings that are general and permissible, or permissible religious ceremonies, or funeral services, are threatened with imprisonment for at most one year and four months."

**C. The background of the Beliefs is considered not Religion.**

The fall of the communists in Indonesia (whose members were generally atheists or recorded as embracing one religion but never carrying out worship) caused the Islamic-Christian conflict to escalate, which erupted several times into open conflict<sup>11</sup>. Alwi Shihab estimates that around two million Abangan Muslims (claiming to be Muslim but not practicing religion) converted to Christianity and Catholicism to avoid mass confinement of communists (followers of the Indonesian Communist Party are generally Abangans)<sup>12</sup>. The rebellion of the Indonesian Communist Party in 1948 in Madiun, Central Java, was a political movement but had the effect of attacking and killing Islamic students/*Santri* (from the Masyumi Islamic Party) who subsequently took revenge against Abangans in Surakarta, Central Java. then the Indonesian Communist Party (PKI) was seen as a leftist (rebel) extremist<sup>13</sup>. Since 1952 in Indonesia, the increase in the number of new faiths (the Beliefs) according to the Ministry of Religion data (1951-1965) has experienced a very rapid increase, so it is feared that it will have an impact on the increase of heresies<sup>14</sup>. In 1952, the Ministry of Religion proposed a minimum definition of religion, namely: "there is a prophet, has a holy book, and there is international recognition". This has an impact on sects of belief not recognized as religion<sup>15</sup>. The Ministry of Religion's proposal was revoked because it gained opposition from Balinese Hinduism. In 1961, to avoid disintegration as a result of the many new religions/Beliefs, the Ministry of Religion proposed that religion must have a holy book, a prophet, the absolute power of God Almighty, and a legal

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<sup>11</sup> Sukamto, *Perjumpaan Antar Pemeluk Agama Di Nusantara: Masa Hindu-Buddha Sampai Sebelum Masuknya Portugis*. Deepublish. p. 1-4. ISBN 6022806917 (Jakarta: Deepublish, 2015).

<sup>12</sup> *Ibid.*

<sup>13</sup> Wright, Steven; Casey Jonathan, *Mental Maps in the Era of Détente and the End of the Cold War 1968–91*. (Springer, 2015).

<sup>14</sup> Justus M. van der Kroef, "New Religious Sects in Java," *Far Eastern Survey* 30, no. 2 (February 1961): p. 18–25.

<sup>15</sup> Abdul Moqsit Ghozali, *Tubuh, Seksualitas, Dan Kedaulatan Perempuan: Bunga Rampai Pemikiran Ulama Muda*, p. 145-148, ISBN 9799492580 (PT LKiS Pelangi Aksara, 2002).

system for its followers<sup>16</sup>. Of the various religious traditions and beliefs that exist, only six religions have succeeded in fulfilling these criteria, namely Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism, and reaffirmed in Presidential Decree No. 1/Pnps/1965<sup>17</sup>. There are safeguards against six official religions, but the indigenous religions of the Archipelago did not gain recognition as a religion in Indonesia, but only as a culture<sup>18 19</sup>.

#### D. State Official Religion

The events of rightist extremist separatism (in the 1950s), the emergence of a variety of new beliefs that were considered contrary to religious teachings, and tensions between the Indonesian Communist Party and *Nahdlatul Ulama* (Islamic Organization) in the mid 1960s caused Minister of Religion Saifuddin Zuhri to urge President Soekarno to issue Presidential Decree No. 1/PnPs/1965 concerning Prevention of Blasphemy of Religion which is later stipulated as Law through Law No. 5/1969. The Law on Prevention of Blasphemy of Religion (PPA Law) gives authority to the government to enter into private territory between its citizens and their beliefs. The PPA Law discriminates against groups that are deemed to have deviant beliefs by a particular religious group, and should not have been valid since 10 November 2008 with the issuance of the Elimination of Racial and Ethnic Discrimination Law. Minister of Religion Suryadharma Ali in 2010 argued that the PPA Law must be maintained to prevent horizontal conflicts in the community because legal protection from the government is lost, and the perpetrators of blasphemy will escape legal snares. The Chairperson of the MUI Interfaith Harmony Commission, Slamet Effendy Yusuf (in 2010), stated that the Constitutional Court must be careful because there is no substitute law.

The application of the PPA Law led to discrimination against followers of indigenous Indonesian religions, which were not included in the six official religions. Adherents of indigenous religions often receive discriminatory social and legal treatment<sup>20</sup>, and it is difficult to arrange deeds such as identity cards and marriage certificates<sup>21</sup>.

In addition to the PPA Law, several regulations are also considered to violate religious freedom, for example Circular of the Minister of Home Affairs No. 477/74054/1978 concerning instructions for filling in the religious column on the National Identity Card, which states "Religion recognized by the government, namely Islam, Catholicism, Christianity / Protestantism, Hinduism and Buddhism". Since the issuance of this Minister decree, the term official and unofficial religion has emerged, resulting in the neglect of the rights of other religions such as indigenous religions and Confucian teachings. Recognition of the "official state religion" is explicitly affirmed in the Amendment Law on Law Number 23 of 2006 concerning

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<sup>16</sup> Amos Sukanto, "Ketegangan Antar Kelompok Agama Pada Masa Orde Lama Sampai Awal Orde Baru: Dari Konflik Perumusan Ideologi Negara Sampai Konflik Fisik," *Jurnal Teologi Indonesia*, 2013.

<sup>17</sup> Moqsit Ghozali, *Tubuh, Seksualitas, Dan Kedaulatan Perempuan: Bunga Rampai Pemikiran Ulama Muda*.

<sup>18</sup> Melissa Courch, *Law and Religion in Indonesia: Conflict and the Courts in West Java* (Routledge, 2013).

<sup>19</sup> PHDI Provinsi NTT, "Untuk Kita Renungkan: Mengapa Sebagian Umat Kaharingan Ingin Keluar Dari Hindu? accessed on 8- 2013.," August 2013.

<sup>20</sup> Pebriansyah Ariefana (14-5-2016). "[warga baduy minta sunda wiwitan bisa masuk kolom agama ktp](#)". *Suara.com*. Accessed on 16 January 2019.

<sup>21</sup> Tohari (20-10-2015). "[Analisa Pengosongan Kolom Agama di dalam Kartu Tanda Penduduk](#)". *Hukum Online.com*, accessed 16 January 2019.

Population Administration, that the state only recognizes six official religions<sup>22</sup>. The Decree of the People's Consultative Assembly Number II / MPR / 1998 concerning the Outline of State Policy is also considered to be very discriminatory and attacks the followers of the original religion. The article in question is Point 6 concerning Religion and Belief in God Almighty which reads: "*The Believers in God Almighty* are fostered and directed to support the maintenance of an atmosphere of harmony in community life. Through harmony of life, religious people and the believers need to continue to strengthen their understanding, **that the Beliefs are not religion** and by therefore, guidance must be taken so as not to lead to the formation of a new religion, and its followers are directed to embrace one of the religions recognized by the state. The formation of believers is the responsibility of the government and society.<sup>23</sup> "

Those provision caused indigenous religious communities such as *Sunda Wiwitan*, *Parmalim*, *Tolotang*, and *Kaharingan* to become targets of Islamization or Christianization of immigrant religions<sup>24</sup>. Some adherents of indigenous religions such as *Sunda Wiwitan* try to defend their beliefs even though they have to face discrimination in daily life, and choose to vacate the religious column on the National Identity Card since the issuance of Law No. 23 of 2006 concerning Population Administration<sup>25</sup>. Meanwhile, several other native religions such as *Kaharingan* and *Tolotang* chose to join the Hindu religion despite dissatisfaction<sup>26</sup>.

On the last occasion before the proclamation of Indonesian independence, precisely on June 1, 1945, Sukarno expressed his opinion on the basis of the state which was later given the name *Pancasila* (The Five Principles). Soekarno stated that it was not just the Indonesian people who were God, but each Indonesian should be God. But let us all be God. The State of Indonesia should be a country each person can worship his God in a free manner. All the people Indonesia has God in a culture that is with no religious selfishness. And Indonesia should be one country that has God.

*Pancasila* as the philosophical foundation of the Indonesian nation places the principle of the Supreme God in the first place. So the existence of religion became a spirit for the Indonesian people to fill independence and uphold justice. So that protection of religion from all forms of abuse and/or blasphemy must be minimized. but not only that, the things mentioned above indicate that "**Indonesian people must be religious**", there is no place for atheists.

## E. After The Indonesian Constitutional Court Decision

The law governing population administration in Indonesia, namely Law number 24 of 2013 concerning population administration, explains that every Indonesian citizen must have a population document that contains a population registration number, name, address, religion,

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<sup>22</sup> Musdah Mulia (2016). "Potret Kebebasan Beragama di Indonesia, Catatan Awal Tahun 2016". *Indonesian Conference on Religion and Peace*. [https://id.wikipedia.org/wiki/Kebebasan\\_beragama\\_di\\_Indonesia](https://id.wikipedia.org/wiki/Kebebasan_beragama_di_Indonesia). accessed 16 January 2019.

<sup>23</sup> "Ketetapan MPR Nomor II/MPR/1998 tentang Garis-garis Besar Haluan Negara" (PDF). *Majelis Permusyawaratan Rakyat*. 1998: 921.

<sup>24</sup> Musdah Mulia (2008). "Potret Kebebasan Beragama dan Berkeyakinan Di Era Reformasi". *Komnas HAM*. [https://id.wikipedia.org/wiki/Kebebasan\\_beragama\\_di\\_Indonesia](https://id.wikipedia.org/wiki/Kebebasan_beragama_di_Indonesia). accessed 16 January 2019.

<sup>25</sup> Pebriansyah Ariefana (14-5-2016). "warga baduy minta sunda wiwitan bisa masuk kolom agama ktp". *Suara.com*. accessed 16 January 2019

<sup>26</sup> "Untuk Kita Renungkan: Mengapa Sebagian Umat Kaharingan Ingin Keluar dari Hindu?". *PHDI Provinsi NTT*. 8-2013. [phdintt.blogspot.com/2013/08/mengapa-sebagian-umat-kaharingan-ingin.html](http://phdintt.blogspot.com/2013/08/mengapa-sebagian-umat-kaharingan-ingin.html)



family, father, mother and various other important data. The religious column in this population document then causes problems, because in interpretation and practice, filling in the religious column in population documents only requires religion, which is specifically mentioned in Law Number 1/PNPS/1965.

This has led to several people, namely Nggay Mehang Tana, Pagar Demanra Sirait, Arnol Purba, and Carlim, who are members of the Citizens' Defense Team, who are suing law number 24 of 2013 regarding population administration to the Constitutional Court<sup>27</sup>.

These petitioners argue, that Article 61 paragraphs 1 and 2, Article 64 paragraphs 1 and 5 of the Population Administration Act are contrary to the principle of the rule of law and the principle of equality before the law because in the article is written, that the family card and identity card contains elements of religious information in it, but specifically for adherents of faith (Penganut Kepercayaan), the column of religion is left blank so that it conflicts with Article 1 paragraph 3, Article 27 paragraph 1, and Article 28D paragraph 1 of the 1945 Constitution<sup>28</sup>.

The background to the claim of the Population Administration Law to the Constitutional Court is because there are various civil rights of the petitioners which are not fulfilled, starting from the right to education, the right to get a place of worship, and various other rights.

With the submission of the petition, on Tuesday 7 November 2017, the Constitutional Court read the decision on the case. This ruling eventually became the basis that "Adherents of faith (Penganut Kepercayaan) could be written to fill in the religion column on the identity card or various other civil registration, which required the inclusion of religion in it.

The contents of the decision are "to grant the petition of the petitioners for the whole. Stating Article 61 paragraph (2) and Article 64 paragraph (5) of Law Number 23 of 2006 concerning Population Administration, as amended by Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration, is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force".

With the writing or submitting of Adherent of belief (Penganut Kepercayaan) in the column of religion, of course, it will have a long impact on the recording of marriage, death and so on, even with this, the government can be required to provide teaching staff in schools for each of the Stream of Belief (Aliran Kepercayaan) existing in Indonesia.

In terms of policies or rules that have been issued by the state against adherents of beliefs in Indonesia, it can be divided into four (4) phases: The first phase, during the Old Order administration (President Soekarno's reign), in which several regulations have been issued that intersect with adherents of beliefs, among these laws are, the Prosecutor's Law No. 15/1961 which contains the rules regarding the authority of the prosecutor's office to supervise adherents of beliefs. then, the issuance of Presidential Decree No. 1 of 1965, which later became law, one of the articles contained official religions in Indonesia, and in which only contained five official religions without recognizing the existence of the adherents of beliefs.

The Second Phase, during the New Order era (President Soeharto's reign), precisely in 1978 was issued TAP MPR Number II/1973 on the Guidelines of State Policy (GBHN) asserted that

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<sup>27</sup> <http://nasional.kompas.com/read/2016/10/06/15401061/pengosongan.kolom.agama.digugat.diakses> Jumat 26 Januari 2018, jam 21:30 WIB

<sup>28</sup> <https://news.detik.com/berita/3358424/kolom-agama-di-ktp-dikosongkan-penganut-kepercayaan-gugat-ke-mk?9922022=>. diakses Jumat 26 Januari 2018, jam 21:40 WIB

the stream of Belief in God Almighty (aliran Kepercayaan terhadap Tuhan Yang Maha Esa) is not a religion.

Eight years later, in 1978, another MPR Decree No. 4/1978 was issued, stating that the streams of "Belief in God Almighty (Kepercayaan kepada Tuhan Yang Maha Esa)" or Stream of Belief was not a religion, but only cultures. This decree also required the presence of a religious column in the population document. In the same year, the Presidential Decree No. 40/1978 which came out containing "adherents of beliefs" would be under the supervision of the Directorate General of Culture. In 1984, the Attorney General's Office Letter No. Kep.108/J.A/5/1984 on the Establishment of a Coordination Team for the Supervision of Religious and Stream of Beliefs Community (PAKEM). The third phase, in the reform era since 1999, began with the inclusion of Human Rights clauses in the country's legal instruments, the adherents of faith again received recognition. Continuing in 2006, a revision of the Population Administration Act was carried out, but unfortunately, the revision of the law still discriminated against adherents of Beliefs. With the existence of article 61 of the Law "Population Administration, the streams of Adherents of Belief has no right to include their beliefs in the column of religion, in every recording of population document. In 2013 revisions were made to the population administration law, but the changes made were not related to the filling of the religious column. The law was later petitioned to the Constitutional Court. In the fourth phase, on Tuesday 7 November 2017, the Constitutional Court read the decision that the religious column on the population document may be included or filled with streams of adherents of the Beliefs (Aliran Kepercayaan). This decision also caused the fulfillment of other rights for adherents of beliefs, including houses of worship, marriage registration, teaching staff for adherents of Beliefs, and various other rights.

### CONCLUSION

*Pancasila* as the philosophical foundation of the Indonesian nation places the principle of *the Belief in God Almighty* in the first place. So the existence of religion became a spirit for the Indonesian people. It is truly impossible if various laws and regulations, which are based on the Constitution and Pancasila, oblige the Indonesian people to be religious, as well as speeches from the First President of the Republic of Indonesia who have stated that the Indonesian people are religious people, then there are non-religious citizens, it will be declared as not "Pancasilaism", if not subject to the first principle of Pancasila as a basic philosophy of the state, namely "Belief in God Almighty". let alone not religious (Atheist), having a belief that is not recognized as a religion, will get tremendous difficulties, what if you do not have a religion, surely your existence is ignored. There is no single regulation that allows the Indonesian people not to embrace religion.

After the decision of the Constitutional Court regarding the Population Administration Law, which legalizes adherents of belief written in the column of religion of the ID card, is following the principles of freedom of religion and belief.

The task of the government to define the streams of "Belief in God Almighty (aliran Kepercayaan)" are religions or not.

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