
| RESEARCH ARTICLE

Religious Obligation in Indonesia

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| ABSTRACT

This study departs from the fundamental problem of determining religion in Indonesia and the perspective related to the obligations of the Indonesian people to embrace a religion. Considering that the fundamental Law of the Indonesian nation is Pancasila, the first principle of which is the belief in One God. To discuss the problems in this research, a juridical-normative approach is needed. The juridical-normative approach is used to find out policies regarding religious obligations in Indonesia. The results show that although the government does not explicitly oblige the Indonesian people to only adhere to religions recognized by the government. They are namely Islam, Christianity, Buddhism, Hinduism, and several religions that may exist in Indonesia, and their adherents are Sunda Wiwitan, Kaharingan, Parmalim, and other beliefs. Passed down from their ancestors, they get legally discriminatory treatment in practice.

| KEYWORDS

Religion, Pancasila, Believer, Discrimination

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1. Introduction

In the context of human rights, a guarantee of the right to religious freedom and belief is contained in Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Indonesia has ratified the ICCPR through Law No. 12 of 2005 concerning the Ratification of the Convention on Civil and Political Rights. The fundamental right for freedom to follow the religions called by Human Rights attached to every human being is a right that cannot be revoked. Human Rights are rights of Law given by the state to respect the dignity of independent human beings. From a human rights perspective, states have only obligations and no rights ("International Covenant on Civil and Political Rights," 1985).

The state has to protect human rights, which means the state has to guarantee human rights and the existence of Negative Obligations towards the state, which means the state have to respect individual freedoms and rights ("International Covenant on Civil and Political Rights," 1985). In the context of civil and political rights, The Positive Obligation of the state is to create conditions that support everyone's rights to enjoy full rights and freedoms, while The Negative Obligation of the state is to respect the implementation of individual rights and freedoms. The state's positive Obligation should be realized maximally by utilizing the resources of all political forces, starting from the legislative, executive, and judicial ("International Covenant on Civil and Political Rights," 1985).

Religious freedom is the right of individuals or communities, in public or private, to realize religion or belief in teaching, practice, and worship. This condition also includes the freedom to change religion or not follow a religion or freedom from following a religion. Religious freedom is closely related to the separation of religious institutions, the influence of religious institutions, and the separation of religion and state affairs. The First Amendment of the United States Constitution, written in 1791, reads: "Congress shall make no law respecting an establishment of religion, or prohibiting 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." (Katharine Gammon, 2011).

Regions of the country to restrict the rights of religious freedom and belief have also been arranged. However, it was included in the rights that cannot be removed or not be reduced in any situation, but not entirely meant for the whole (Article 28J of the 1945 Constitution of the Republic of Indonesia and Article 18 Section 3 ICCPR). The scope of the provisions on permissible restrictions has to be done by participating states of ICCPR by the need to protect the rights guaranteed by the Covenant, including the right to equality and non-discrimination in any field. In addition to restrictions, there are also prohibitions, namely coercive prohibitions aimed directly at the right to have or follow a religion or belief. That coercion is included physical coercion and indirect coercion (Article 18 Section 2 of ICCPR).

Regarding religious freedom, the 1945 Constitution of the Republic of Indonesia Article 29 Section (2) mentions that the state guarantees the independence of every citizen to follow their religion and worship according to their religions and beliefs. For this reason, all religions that exist in the Republic of Indonesia must be guaranteed and protected, regardless of whether it is a religion followed by the majority of the Indonesian people or followed by the minority of the Indonesian people.

On the other hand, not a few Indonesian citizens (silently) do not believe or not follow a particular religion (atheism). Indeed, there is no legislation that firmly prohibits and determines punishments for someone who does not follow a religion or follow atheism. However, in practice, someone who follows atheism will have a legal impact on that person's rights. People who have followed a belief of ancestor (Baduy community from Banten who follow the belief of Sunda Wiwitan, and the other communities in Indonesia that follow the belief of Kaharingan, Parmalim, the belief (Sapto Darmo), and other beliefs outside the religion which recognized by government), has given an impact of Law on those people's rights, including discrimination of Law, let alone not openly follow a religion that the government recognizes.

2. Literature Reviews

2.1 Religious Freedom Guarantee

The 1945 Constitution of the Republic of Indonesia Article 29 Section (2) states: that the state guarantees the independence of every citizen to follow their religion and worship according to their religions and beliefs. For this reason, all religions that exist in the Republic of Indonesia must be guaranteed and protected. Nevertheless, in applying resident documents such as ID Card or Family Card, there is a provision regarding the inclusion of religion followed, as regulated in Articles 61 and 64 of Law No. 23 of 2006 concerning Population Administration.

The explanation of Article 29 Section 1, the ideology of the State of Indonesia is the Belief in the one and only God; therefore, all activities in the State of Indonesia must be based on the Belief in the one and only God, which is absolute. The principle of divinity embedded in the 1945 Constitution embodies religious recognition. Therefore, everyone is free to follow the religion and worship according to his religion. Unfortunately, not all religions or beliefs that citizens perceive are recognized by the government because the government has determined religions that are recognized (right), and there are no recognized beliefs.

Religion here is a value system that contains norms. Then these norms are used as a guide in attitude and behaviour to align with the religious beliefs they hold so that it does not affect social relations with humans (Ishomuddin, 2002). Religion is a system of belief and worship used by various nations and their struggles to overcome human life's highest problems (Betty R. Scharf, 2004). The function of religion, first, the manifest function, includes three aspects, namely:

1. Embedding patterns of beliefs called doctrines, which determine the nature of the relationship between humans and humans with God.
2. The ritual symbolizes the doctrine and reminds humans of that doctrine, and
3. A set of norms of behaviour that is consistent with that doctrine.

The second function, namely, latent functions, are hidden and closed functions. These functions can create conflict in interpersonal relationships, both with fellow members of religious groups and other groups. These functions serve as a force to create feelings of ethnocentrism and superiority, which creates fanaticism (Alo Liliweri, 2001).

Human Rights are legal rights granted by the state to respect the dignity of independent human beings. From a human rights perspective, states have only obligations and no rights ("International Covenant on Civil and Political Rights," 1985). The states have to guarantee human rights and the existence of The Negative Obligations towards the state, which means the state have to respect individual freedoms and rights ("International Covenant on Civil and Political Rights," 1985). In the context of civil and political rights, The Positive Obligation of the state is to create conditions that support everyone's rights to enjoy full rights and freedoms, while The Negative Obligation of the state is to respect the implementation of individual rights and freedoms.

The state of Indonesia is based on the belief in the one and only God. In the first point of the first principle of Pancasila, it is stated: Belief in the One and Only God, under their respective religions and beliefs according to A just and civilized humanity. This condition means that every Indonesian citizen believes and fears God Almighty and follows a religion or belief ideologically. Pancasila is the philosophical basis of the Indonesian state. So, it can be interpreted that Pancasila is the basis of the state's

philosophy and ideology, which is the way of life of the Indonesian nation, as a unifying basis, a symbol of unity and integrity, and part of the defence of the nation and state.

2.2 Conditions in Indonesia

The other fundamental Law which is mentioned above which guarantees the religious freedom in Indonesia is Article 28E Section (1) of the 1945 Constitution: "Everyone is free to follow religion and worship according to his religion, choose education and teaching, choose work, choose citizenship, choose a residence in the state and leave it, and have the right to return". Article 28E Section (2) of the 1945 Constitution also states that everyone has the right of freedom to believe in a belief. In addition, Article 28I Section (1) of the 1945 Constitution also recognized that the right to follow a religion is a human right. However, these rights are not without limitations. In Article 28J Section (1) of the 1945 Constitution, it is stipulated that everyone must respect the human rights of others. Article 28J Section (2) of the 1945 Constitution further stipulates that implementing these rights must comply with restrictions regulated by Law. So, these human rights, in implementation, still comply with the restrictions set by Law—the inclusion of 10 new articles that regulate human rights in the second amendment of the 1945 Constitution. Including the article above, the provisions on human rights issues from Article 28A to 28I of the 1945 Constitution have been restricted by Article 28J of the 1945 Constitution.

In implementing the articles on human rights in the 1945 Constitution, Presidential Decree Number 1/PnPs/1965 concerning Prevention of Abuse and Blasphemy of Religion, gathers with Law Number 5 of 1969 concerning Statements of Various Presidential Decrees and Presidential Regulations as laws, and Joint Decree by the Ministry of Religious Affairs, the Attorney General and Ministry of Home Affairs No. 03 of 2008, No. KEP-033/A/JA/6/2008 and No. 199 of 2008 concerning Warnings and Orders to Adherents, Members and administrators of "Jamaah Al Islamiah (JAI)-Ahmadiyah", and Community Members ("Joint Decree"). Both regulations have created a polemic for adherents of beliefs (Sunda Wiwitan, Kaharingan, Parmalim, Flow Trust, Sapto Darmo, Etc). Besides religions that are officially recognized by the Indonesian government (Islam, Christianity, Catholicism, Buddhism, Hinduism, Kong Hu Chu / Confucius), on the other hand, some religions are allowed, namely Judaism (Jewish religion), Zarazustrian, Shinto, and Taoism. Besides the six recognized religions, religions also received full guarantees by Article 29, Section 2 of the 1945 Constitution before the amendment. They are permitted if they do not break the provisions contained in these regulations or the other regulations. Besides that, the other problems are that the believers, besides the religions officially recognized by the government, have difficulties with Law and discrimination. The restrictions and rules that interfere with the rights of religious freedom at the top and some provisions such as Law No. 23 the Year 2006 on Population Administration and Law of Marriage No. 1 the Year 1974 which require citizens of Indonesia to follow a religion instead of following a Belief. Then, it needs to be questioned whether Indonesian freedom to follow a belief or it is a must to have religion in terms of it being determined by the government.

3. Research Methodology

This research was conducted at the National University and occurred from March 2019 to July 2019. This study is a research study of literature (normative research) concerning legislation in Indonesia.

4. Results and Discussion

A. Basic Law

Is there a fundamental law that asserts that only six religions are recognized in Indonesia? In the description of Article 1 of Presidential Decree Number 1/PnPs/1965 concerning Prevention of Abuse and Blasphemy of Religion (Penpres No. 1/PnPs/1965 concerning Prevention of Blasphemy of Religion (PPA) [90] which was enacted into Law through Law No. 5/1969), stated that religions which Indonesian people follow is Islam, Christianity, Catholicism, Hinduism, Buddhism and Konghucu (Confucius / Confucianism). However, it does not mean that other religions are prohibited in Indonesia. Adherents of religion, besides the six religions above, are fully guaranteed as regulated by Article 29 Section (2) of the 1945 Constitution ("The state guarantees the independence of each resident to follow their religion and to worship according to his religion and belief"). If they do not break the Indonesian laws and provisions, they are permitted. Indonesian Law explicitly protects religious freedom for six recognized religions: Islam, Catholic, Christian, Buddhist, Hindu, and Kong Hu Cu/ Confucius.

B. Background of Beliefs Not Considered as Religion.

The collapse of communism in Indonesia (whose members are primarily atheists or recorded following one religion but never did worship) caused Islamic-Christian conflicts to increase several times and become open conflicts (Sukamto, 2015). Alwi Shihab estimates that around two million Abangan Muslims (claiming as Muslims but not practicing/ doing worship in an Islamic way) have converted to Christianity and Catholicism to avoid isolation from the communist era (Indonesian Communist Party followers are generally Abangan) (Sukamto, 2015). The rebellion of the Indonesian Communists Party in the year 1948 in Madiun, Central Java, is a political movement that has the effect of attacking and killing Muslim students (of the Islamic Party Masjumi) who then take revenge against Abangan in Surakarta, Central Java. Then the Indonesian Communist Party (PKI) is regarded as a left extremist (rebel) (Wright, Steven; Casey Jonathan, 2015). Since 1952 in Indonesia, the amounts of new religions (Beliefs), according to the data from the Ministry of Religious Affairs (1951-1965), have increased very fast, so it is worried that this will have an impact on the increase of heretical doctrine (Justus M. van der Kroef, 1961). In 1952, the Department of Religion proposed a definition of a

minimum of religion: "have a prophet, holy book, and international recognition". It impacts the beliefs that are not recognized as religion (Abdul Moqsit Ghozali, 2002). The Ministry of Religious Affairs provisions were revoked due to opposition from Hindu Balinese. In 1961, to avoid disintegration due to many new religions/beliefs, the Ministry of Religious Affairs proposed that religion should have a holy book, a prophet, God Almighty, and a legal system for its followers (Amos Sukanto, 2013). Of various traditions and religious beliefs, only six religions successfully met these criteria, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism, confirmed in Presidential Decree No. 1 / Pnps / 1965 (Abdul Moqsit Ghozali, 2002). There are safeguards to the six official religions, but the indigenous religions of the archipelago do not get recognition as religions in Indonesia but only as culture.

C. Official State Religion

The events of right-wing extremists and separatists (in the 1950s), the emergence of new beliefs that were considered contrary to religious teachings, and tensions between the Indonesian Communist Party and the Nahdlatul Ulama (Islamic Organization) in the mid-1960s led Minister of Religious Affairs Saifuddin Zuhri to urge President Soekarno to release Presidential Decree No. 1 / PnPs / 1965 concerning the Prevention of Blasphemy of Religion which was later set as Law through Law no. 5/1969. The Law on the Prevention of Blasphemy of Religion (PPA Law) gives the government the authority to enter into a private zone between its citizens and their beliefs. The PPA Law discriminates against groups that are considered to have deviant beliefs by certain religious groups. It should not be effective since November 10, 2008, with the release of the Law on the Elimination of Racial and Ethnic Discrimination. Minister of Religious Affairs Suryadharma Ali 2010 argued that the PPA Law should be maintained to prevent horizontal conflicts because legal protection from the government is lost. Law will avoid the perpetrators of blasphemy. The MUI Interfaith Harmony Commission chairman, Slamet Effendy Yusuf (2010), stated that the Constitutional Court must be careful because there is no substitute law.

Applying the PPA Law causes discrimination against followers of Indonesian indigenous beliefs, which are not included in the six official religions. The believers often receive discriminatory social and legal treatment, and it is hard to get documents such as identity cards (ID cards and Family Card) and marriage certificates (Tohari, 2015). Apart from PPA Law, some regulations are also considered to violate the religious freedom, for example, Circular Letter from Ministry of Home Affairs No. 477/74054/1978 on instructions to fill the religion column on the National Identity Card, which states, "Religions which the government recognizes are Islam, Catholicism, Christianity / Protestantism, Hinduism, and Buddhism".

Since the release of this Ministerial Decree, the terms of official and unofficial religion have appeared, resulting in the neglect of the rights of other religions, such as indigenous religions and Confucianism. The recognition of "official state religion" is explicitly emphasized in the Law of Amendments from Law Number 23 of 2006 concerning Population Administration, that the state only recognizes six official religions (Musdah Mulia, 2016). The Decree of the People's Consultative Assembly Number II / MPR / 1998 concerning Outlines of State Policy is also considered highly discriminatory and attacks followers of indigenous religions. That Article is Point 6 of Religion and Belief in God Almighty, which reads: "People Beliefs in God Almighty guided and directed to the preservation of harmony in the society. Through the harmony of life, religious and faithful people need to strengthen their understanding that belief is not a religion. Therefore, the guidance must be taken so it does not lead to the formation of a new religion, and its followers are directed to follow one of the religions recognized by the state. The formation of the believers is the responsibility of the government and society" ("Resolution of MPR No. II / MPR / 1998 concerning The Broad Outlines of State Policy" (PDF). The People's Consultative Assembly, 1998).

Those provisions cause a community of local indigenous beliefs (such as Sunda Wiwitan, Parmalim, Tolotang, Sapto Darmo, Marapu, and Kaharingan) to become the target of Islamization or Christianization later. Some believers like Sunda Wiwitan try to maintain their beliefs even though they have to face discrimination in their daily lives and choose to leave the religion column blank on the National Identity Card since Law no. 23 of 2006 concerning Population Administration. Meanwhile, some other beliefs, such as Kaharingan and Tolotang, chose to join Hinduism even though they were not satisfied. On the last occasion before the proclamation of Indonesian independence, precisely on June 1, 1945, Sukarno expressed his opinions based on five basic principles, later called Pancasila (Five Principles). Sukarno declared that the Indonesian people who believe in God and every person in Indonesia must believe in God. However, to all of us, let us believe in God. Indonesian country must be a state where each person can pray to his God freely. All Indonesian people have God in a culture without the selfishness of religion. Furthermore, Indonesia must be one of the countries that have God.

D. After Constitutional Court Recognizing the Believers

On November 7, 2017 (case number 97 / PUU / XIV / 2016), the Constitutional Court of Indonesia provided a good verdict against the constitutional review of the Law on Population Administration articles associated with how the beliefs are recorded on identity documentation. The followers of beliefs (The believers) included Sunda Wiwitan, Kaharingan, Marapu, Sapto Darmo, and Parmalim. Citizens of this country will now be able to register their beliefs as a Believer on their Identity Card (KTP). Previously, they were

forced to identify themselves with one of the six official religions or leave the religion column blank on their identity cards (Article 61 (1) and (2) gather with Article 64 (1) and (5) of Law no. 24 of 2013 concerning Amendments of Law Number 23 of 2006 concerning Population Administration.

Some Muslim leaders reacted negatively to the Constitutional Court's decision. Among them are Ma'ruf Amin, who is general chairman of the Indonesian Ulema Council (MUI) and supreme leader (rais 'amm syuriah) of the most prominent Islamic organization, Nahdlatul Ulama (NU); Yunahar Ilyas, a member of the central board of the second-largest Islamic organization in Indonesia, Muhammadiyah; and Din Syamsudin, former chairman of MUI and Muhammadiyah.

These Muslim leaders say that "The Beliefs" are not a religion. It is also a part of cultural practice. Therefore they should not have the same status as a religion under Indonesian Law. Din Syamsudin said that the category of "religion" implies criteria of a specific concept of God, the Holy Book, and figures such as prophets. According to this view, because indigenous beliefs do not have at least one of these criteria, they are not a religion. The Muslim leaders seem to have a paradigm that tends to be monotheistic about religion. In the Indonesian context, there are three ways to refute this view.

The first is about Indonesian Law, as highlighted in the decision of the Constitutional Court (MK) itself. One of the two fundamental parts of the Decision of the Constitutional Court is that the column of religion in the ID cards of citizens, as mandated by Articles 61 and 64 (1) of the Population Administration, was unconstitutional because the word "religion" - is already understood to administrative Law - excluding the beliefs. The primary fundamental Law of this decision is Article 29 (2) of the 1945 Constitution of the Republic of Indonesia, which states, "The State guarantees everyone free to worship, according to his religion or belief."

The court acknowledged that this article might imply that religion and "Belief" are two different things because there is conjunction "and" between the two words. However, the court based their argument on their reading of how the state's founding fathers formulated Article 29 of the constitution, both Sections 1 and 2, leading up to Indonesia's independence in 1945. The initial draft of Article 29(1) read: "The state will be based on Islam with the obligation to comply with Sharia for Muslims." This Islam clause was removed and replaced with "based on Belief in the one and only God" in the last minutes before the promulgation of the official constitution on August 18, 1945.

Although removed, in the court's view, the "Islam clause" remains relevant because of its connection with Article 29(2). The Constitutional Court said that, considering the context that Article 29 (1) was initially intended only for adherents of Islam (Muslims), Article 29

(1) is intended to guarantee freedom of worship for all non-Muslims. Therefore, the two words "religion (religion)" and "belief (belief)" are not meant to be different from each other; in the court's view, the founders implied that the word "belief" is part of religion, even though it has a connection with "and".

A noteworthy fact is that the word "belief" in Article 29 Section (2) was initially proposed by Wongsonegoro, a member of the constitution drafting committee who later became Minister of Education and Culture, deputy prime minister, and founder of the Indonesian Spiritualism Congress (Indonesian Spiritualism Congress Council). The word "spiritualism" (spiritualism / the practice of something believed in) was used as a synonym for "belief" in the 1965 decree on blasphemy of religion, which later became the Blasphemy Law. It is a fact of clear history but unfortunately ignored that the leaders in the past of the community "Belief / Spirituality" contributed to the formulation of the constitution of Indonesia. Understanding this Constitutional Court leads to the other main element of the decision: that there is discrimination between religious practices and beliefs, such as requiring the followers of original beliefs to let the column of religion card identity empty, contrary to the constitution.

5. Conclusion

Pancasila (five basic principles of Indonesia), as the philosophical foundation of the Indonesian nation, places the principle of Belief in God Almighty in the first place. So that the existence of religion becomes a spirit for the people of Indonesia, it is improbable that various laws and regulations, which are based on the Constitution and Pancasila, oblige Indonesians to be religious, as well as speeches from the First President of the Republic of Indonesia who have stated that Indonesians are religious, then if there are non-religious citizens (not adherents of 5 religion recognized by the state), it will be declared as "non-Pancasilaist", if it is not subject to the first principle of Pancasila as the basic philosophy of the state, namely "Believe in God Almighty". Let alone non-religious (Atheists), having a belief that is not recognized as a religion only, will get into tremendous trouble; what if you do not have a religion, no doubt your existence will be ignored. There is not a single regulation that allows Indonesians not to embrace a religion or belief ("Belief" means "Belief / Belief"), which became officially recognized after the Decision of the Constitutional Court on November 7, 2017 (case Number 97 / PUU / XIV / 2016).

Based on Pancasila, the existence of religion and belief becomes the spirit for the Indonesian people to fulfil independence and uphold justice So that the protection of religion from all forms of harassment and blasphemy must be minimized. In addition, the things mentioned above show that "Indonesian people must be religious or have faith/belief in God Almighty," and there is no place for atheists.

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