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Religious Recognition Arrangements for *Penghayat Kepercayaan Sapto Darmo*: A Legal Analysis

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ABSTRACT

Indonesia has a diversity of religions and beliefs that must be maintained. Freedom of religion and belief is a human right whose fulfilment cannot be diminished under any circumstances. The Indonesian Constitution expressly guarantees this right. However, in practice for believers, civil and political rights are often hampered in fulfilment, especially from an administrative aspect. Adherents of the faith often experience obstacles in terms of marriage administration, management of Identity Cards, birth certificates, Family Cards, education rights, and others. This happens because the regulation of religious recognition in Indonesia is still experiencing legal problems. This study was conducted to find out how the legal consequences of regulating religious recognition for *penghayat kepercayaan Sapto Darmo*. This research uses normative legal research with a descriptive qualitative approach. Primary and secondary legal materials will be analysed to answer the formulation of the study. As a result, religious recognition arrangements in Indonesia still focus on mainstream religious groups only and recognition of believers is still experiencing a legal vacuum (*vacuum of norm*) in Indonesia.

Keywords: Religion recognition, *Penghayat kepercayaan, Sapto Darmo*

1. INTRODUCTION

Indonesia with its diversity of tribes, languages, customs, and religions is also believed to be a wealth that should be maintained and celebrated. The founding fathers agreed to express this diversity in one state basis, ideology, and national philosophy, namely Pancasila. Yudi Latif argues that Pancasila is a legal ideal (*rechtsidee/future legal framework*), where every law that is later born cannot clash / contradict Pancasila. Yudi also believes that apart from being a fulcrum and meeting point, Pancasila is a forward point. The point of progress as a guide or view of life of the nation to achieve its vision.[1] The existence of adherents of belief in this case *Penghayat Kepercayaan Sapto Darmo* is not a threat but rather a part of Indonesia's proud.

According to Solly Lubis, Pancasila is the paradigm of legal policy in Indonesia. Government policies, both legal and political, must be based on Pancasila.[2] The regulation of every aspect of community life must be based on Pancasila and every signpost that is expressly regulated in the Constitution of the Republic of

Indonesia, including regarding freedom of religion and belief.

The joints of social life that need to be regulated based on Pancasila and the Constitution are guarantees of freedom of religion and belief. The practice of fulfilling freedom of religion and belief is currently incomplete in Indonesia, due to the many restrictions and various obstacles in the process of its use by the state. Strictly regulated in the constitution, but in its derivation, namely the Laws and Regulations under the constitution, there is a disharmony of norms that have a direct impact on the guarantee of freedom of religion and belief in Indonesia. [3] One of them is the emergence of the term recognized and unrecognized religion in several regulations that have implications for discriminatory practices against followers of religions that are categorized as unrecognized.[4] In fact, the context of belief has no recognized or unrecognized belief nomenclature. In fact, in the context of the constitution and international covenants, "religion" and "belief" are consistently regulated equally marked using the word "and" in every article regulating religion and belief.

The existence of the constitution should guarantee the fulfillment of a sense of justice and peace for all members of society who have various religions and beliefs so that the rights to religion and belief are not hindered by the state.[5] Freedom of religion and belief is a right that cannot be reduced under any circumstances (non-derogable right) and this right is strictly regulated in the Indonesian constitution. The guarantee of religious freedom in Indonesia is strictly regulated in Article 28 E paragraphs (1) and (2) of the Constitution of the Republic of Indonesia which states that everyone is free to profess or embrace a religion to express their beliefs in that religion through their worship, for believers are also free to express their rights based on their conscience.[6] These two articles are a strong legal basis that any religion and any belief in Indonesia is given the freedom to be embraced and professed and free to express that belief. Article 29 paragraph (2) of the 1945 Constitution expressly guarantees the same. There is nothing to argue about the guarantee of religious freedom compliance in the constitution.

The formation of religious identity is also influenced by the community where it is assumed that most of the community already adheres to a religion.[7] in social life in Indonesia, adherents of belief are not considered as religion. Therefore, the regulation regarding the recognition of religion does not apply to adherents of a belief because it is considered that adherents of that belief are not part of a religion. That is why in practice adherents of the faith experience special challenges in enjoying their civil and political rights.

Since 2006 the government issued Law Number 23 of 2006 concerning Population Administration which was amended into Law Number 24 of 2013 there is an article that provides little room for administrative recognition of believers in article 64 paragraph 1 and paragraph 5 the government began to provide a policy of emptying the religion column for citizens of believers and the name of the belief stream that is lived remains in the data in the population database, However, it still cannot include the name of the believer who is trusted in the Identity Card column and Family Card and other personal identities.[8] In obtaining an Identity Card (KTP) or Electronic Identity Card (KTP Electronic), the religion column of the KTP belonging to believers is left blank and only filled with a flat line mark (strip). The emptying of the religion column for believers on the KTP is not without legal basis. The provisions of Article 61 paragraph (1) and paragraph (2), Article 64 paragraph (1) and paragraph (5) of Law Number 24 of 2013 on amendments to Law number 23 of 2006 concerning Population Administration (Population Administration Law). After the Constitutional Court Decision, Decision Number 97 / PU-XIV / 2016, believers have the same position as followers of six religions that have been recognized by the government.

the fact is that the court's decision has not been fully executed in Indonesia, especially for adherents of *Penghayat Kepercayaan Sapto Darmo*.

Sapto Darmo comes from the ancient Javanese language, namely Sapto means seven and Darmo means obligation. Sapto Darmo is the name of one of the organizations of believers in God Almighty whose main teaching is to carry out seven sacred obligations. Sapto Darmo is a stream of belief in God Almighty. which has seven teachings that must be lived and practiced by its citizens without exception.[9] The spirituality of Sapto Darmo referred to here is a pure spiritual teaching received by the great guide Sri Gutomo, whose real name is Harjosapuro derived from Pare Kediri. This teaching was received from December 27, 1952, until the time of his death on December 16, 1964, at his residence Pare Kediri, East Java.

Naen Suryono, who serves as Chairman of the Presidium of the Central Indonesian Trust Council (MLKI), explained that in Surabaya there are 45 Sapto Darmo temples. In total, there are 769 temples throughout Indonesia, they are spread across 17 provinces. The number of *Penghayat Kepercayaan Sapto Darmo* residents in Surabaya is between 7,500 and 15,000 people, in fact, based on data in Department of Population and Civil Registration of Surabaya City, the number Sapto Darmo adherents is 213 persons.[10] Naen assumed that many *Penghayat Kepercayaan Sapto Darmo* adherents choose a religion that is recognized administratively so that they are not hindered from enjoying their civil and political rights.

The civil and political rights of every citizen of that country begin from the moment they are born until they die. These rights start with obtaining a birth certificate, the right to enjoy education, having an identity card, having a marriage certificate, having a family card, and getting a death certificate. Based on the background of this research, it is necessary to conduct a legal analysis related to the regulation of religious recognition for adherents of *Penghayat Kepercayaan Sapto Darmo*.

2. RESEARCH METHODS

The research method used in this study is normative legal research (normative juridical). Normative legal research or what is often referred to as doctrinal research is carried out to conduct in-depth studies related to the vacuum of norms, obscure of norms, and the conflict of norms.[11] In the context of this study, this method is used to answer the obscure of norms related to the legal consequences of regulating religious recognition for followers of the *Penghayat Kepercayaan Sapto Darmo*.

Normative legal research focuses only on literature study or document study. The literature and documents in question are sources of legal materials in the form of

laws and regulations, court decisions, legal theories, and opinions of scholars. Normative legal research is often also referred to as doctrinal legal research because it is aimed at legal materials, namely written regulations.[12] It is also called literature research because this research is mostly carried out on secondary data that has been rolled out. This type of research is descriptive research because it will describe and describe the regulation of religious confession that is fair and legally certain, by examining the values, principles, norms, and legal facts in Indonesia. The legal products to be analyzed focus on the blasphemy law, the population administration law, and the civil and political rights law related to the legal consequences of religion recognition for *Penghayat Kepercayaan* Sapto Darmo.

3. RESULTS AND DISCUSSION

3.1 *Penghayat Kepercayaan Sapto Darmo and Law Nu.1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy of Religion.*

State policies on "religion" and "belief" may give rise to discriminatory practices. This is based on Law No.1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy.[13] The state discriminates in the form of favoritism by granting recognition and protection to six religions: Islam, Catholicism, Christianity, Buddhism, Hinduism, and Confucianism. Meanwhile, believers in True God do not get recognition and protection, because they are considered "irreligious".[14] Referenced Explanation of Article 1 of Law no. 1/PNPS/1965 which basically does not prohibit religion or sect other beliefs such as Judaism, Zoroastrians, Shinto, Taoism, as long as they don't conflict with this rule. The legal consequences Indonesia does not only recognize several religions course, such as Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism (Explanation of Article 1 UU No. 1/PNPS/1965) but other religions as well acknowledged. Based on this Law, *Penghayat Kepercayaan* Sapto Darmo is not part of a religion.

Article 2 paragraph 2 of that Law stipulates that if the violation and blasphemy to religion referred to Sapto Darmo, President of the Republic of Indonesia can dissolve the Organization and declare the Organization or sect as a prohibited organization/ sect. Sapto Darmo is even seen as a threat to those religions that are considered recognized. It is contrary to Constitutional Court Decision, Decision Number 97 / PU-XIV / 2016 which states that religion and belief have an equal position.

Various policies on the existence of believers make the law on blasphemy and blasphemy as the legal basis. The belief built on the formulation of the law that believers have a great potential to become a blasphemer of a religion that is considered recognized.[15] The law

provides absolutely no guarantees and protections for followers of beliefs such as the religions considered recognized. Whereas before these religions entered, believers or streams of belief already existed because they were considered local religions that were part of tribes in Indonesia. The religion adopted becomes the "test standard" beliefs and mysticism which exists, and one of them is *Penghayat Kepercayaan* Sapto Darmo.

The norms regulated in the Religion Blasphemy Law, it can be concluded that the existence of religious beliefs and mysticism is restricted by the government. In practice, this is called part of the politics of religious regulation.[16] On one hand, this effort is not only from the subjective interests of the rulers, but because the founders of this nation have an important belief and agreement that Indonesia is a country that believes in the one and only God so that it only provides protection for beliefs and *penghayat kepercayaan* that acknowledge the existence of God.

The issue of religion being recognized and not recognized in Indonesia is inseparable from the practical political practices of the elites who then try to conceptualize religion in legal products and decisions that are demanded by freedom of religion in Indonesia. Unfortunately, very often because they want to accommodate interests, they will deliberately think more of the majority. The interests of the majority will be prioritized.[17] In plain view this view is in accordance with the concept of justice owned by Jeremy Bentham who states that justice exists to achieve the greatest happiness by dividing the amount used as well.

Indonesia as a rule of law must provide a way out of polemics and controversies about the existence of recognized and unrecognized religions in Indonesia. However, this will greatly impact religions outside the 6 religions that are considered recognized and official in this country. They are hampered in population administration services, education services, and of course politics. Being forced to choose one of the 6 existing religions will suppress their minds and free their freedom to believe and adhere to the religion that is currently inherent in their lives. Recognized and non-recognized religious terms must be reviewed in a normative manner both in the constitution and in every other legal product which is a derivative of the constitution.

The Religion Blasphemy Law has been subject to material review in the Constitutional Court. However, the lawsuit was rejected for judicial review on the condition that the law must be perfected in the legislature. Legislative institutions in the future are expected to refine this Law by considering other Constitutional Court decisions which state that religion and adherents, in this case *Penghayat Kepercayaan* Sapto Darmo, are equivalent to religions that are claimed to be recognized religions.

3.2 *Penghayat Kepercayaan Sapto Darmo and Law Population Administration Law*

The polemic on religion being recognized and not recognized in Indonesia started with the issuance of Law Number 1/PNPS/1965 which not only discriminated against minority religions and adherents of beliefs but seemed to provide legitimacy for violence in the name of religion which muzzled religious freedom in Indonesia. Even though this law does not explicitly state that only six religions are recognized, in practice this law is used as a basis that outside of these six religions, it is not an official religion. In 1978, the Minister of Religion issued a Ministerial Instruction which essentially forced groups of adherents of a belief to choose one of six recognized religions to be listed.[18] In case of marriage the *Penghayat Kepercayaan* have no other choice but to submit themselves so that they are not considered illegal partners. Not only that, the children they gave birth also could not be registered because they were considered born from an illegitimate marriage.

In 1979, the Minister of Home Affairs also issued a Circular Letter which essentially provided instructions for filling in the religion column on Citizen Identity Card/ KTPs, that only six religions were recognized in Indonesia and could be listed on Citizen Identity Card.[19] Again, religions and *Penghayat Kepercayaan* other than the six religions are forced to choose and give up their rights because they have been usurped by the state. Referring to article 18 paragraph 2 of the ICCPR which has been ratified by Indonesia, it states that no one citizen can be forced to reduce his freedom to adhere to and practice the religion or belief of his choice.[20] In the explanatory part of this article, in paragraph 5 of General Comment Number 22, what is meant by the prohibition of coercion includes giving threats of physical violence or legal sanctions to force believers or non-believers to adhere to their beliefs, renounce their religion or beliefs, or to replace religion and belief. If this practice is continued until now, then in fact Indonesia has violated a legal product, International Covenant which it has ratified.

There are articles that allow minimal space for administrative acknowledgment of *Penghayat Kepercayaan* since 2006, when the government released Law Number 23 of 2006 about Population Administration, which was revised to Law Number 24 of 2013. The government has begun to publish a policy of vacating the religion column for citizens who subscribe to the *Penghayat Kepercayaan* in articles 64, paragraphs 1 and 5, and the name of the *Penghayat Kepercayaan* that is lived is still recorded in the population database. However, in the column for identity cards, family cards, and other personal identifiers, the name of the *Penghayat Kepercayaan* cannot be published.

Article 61 paragraph (1) and paragraph (2), and Article 64 paragraph (1) and paragraph (5) of Law Number 24 of 2013 on amendments to Law Number 23 of 2006 concerning Population Administration status quo provision is felt to be unfair, discriminatory, and difficult to obtain public services by adherents of that belief. It was this situation and the practical experience of adherents of the faith in the field that motivated them to carry out a judicial review before the Constitutional Court. When *Penghayat Kepercayaan* examine the article relating to the blanking of the religion column on their Citizen Identity Card to Indonesian Constitution, they were assumed that Article 61 paragraph (1) and paragraph (2) and Article 64 paragraph (1) and paragraph (5) of the Population Administration Law are contradictory to Article 28E UUD 1945 or other rules relating to guarantees of equal treatment and discrimination in obtaining good public services.

The request of the applicants regarding the article that was judicially reviewed by the Constitutional Court was granted in its entirety. *Penghayat Kepercayaan* can include their status in the religion column. The Constitutional Court in its decision granted in its entirety based on the arguments of the applicants against the a quo article which is believed to be against the principles of a rule of law state (Article 1 paragraph 3 of the Indonesian Constitution), contrary to Article 27 paragraph (1) concerning equality before the law, contrary to Article 28D paragraph (1) regarding the right to recognition, guarantees, protection, and fair legal certainty and equality before the law, and is contrary to Article 28I paragraph (2) concerning freedom from discriminatory treatment.

The Constitutional Court's decision regarding religion being recognized in the Population Administration Law does not at all use the matter of what religion is recognized according to the constitutional paradigm. Of course, the Constitutional Court did not enter this realm because it was not part of the petition of the Petitioners. The Petitioners focused on compiling every argument and request relating to their status as *Penghayat Kepercayaan* to enjoy public services and about their population administration.

The Constitutional Court in its decision consistently reiterated the word religion in Article 61 paragraphs (1) and (2) and Article 64 paragraph (5) that the term "religion" is religion in the sense that it is recognized as a religion in accordance with the provisions of the Laws and Regulations. This context does not include *Penghayat Kepercayaan*. Referring to the decisions and views of the Constitutional Court Judges in the context of the judicial review of the People Administration Law, religion which is recognized as a religion according to the Invitation Law is something that has not been completed normatively. Which laws and regulations are referred to? There is not a single regulation that

normatively regulates the mechanism for recognizing religion or contains any religion that is recognized as a religion and for *Penghayat Kepercayaan* Sapto Darmo, this norm still obscure.

3.3 Penghayat Kepercayaan Sapto Darmo and Civil and Political Rights Law

In essence the right to adhere to a religion or belief in God Almighty is a constitutional right of citizens and is not a gift from the state. In the principles of a democratic rule of law, the role of the state is to protect which also means respecting and guaranteeing the fulfilment of these rights. The right to adhere to a religion/belief is part of the human rights of civil and political rights groups. This human right originates from the conception of natural rights. As part of natural rights, these rights are inherent in everyone because of their nature as human beings, and once again they are not given by the state.[21] As a natural right inherent in every human being as a creature of God Almighty, freedom of religion should be a human right that cannot be reduced under any circumstances. However, in Indonesia it is understood that restrictions on human rights are possible if they are carried out only by law.

Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, in relation to religion and belief, article 4 states that the right to religion is a human right. The guarantee of freedom of religion and belief is reaffirmed in article 22. This policy was strengthened by the issuance of the Law of the Republic of Indonesia Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights. Article 18 stipulates the right of everyone to freedom of thought, conscience, and religion, as well as the protection of these rights.[22] Government policies that provide legal protection to adherents of the *Penghayat Kepercayaan* by issuing regulations related to the civil rights of adherents of the Faith have a significant impact on development.

Article 27 Civil and Political Rights Law state that "In countries where there are minorities based on ethnicity, religion or language, those belonging to such minority groups cannot denied the right, in community with other members of their group, to enjoy their own culture, to live and practice their religion themselves, or to use their own language". *Penghayat Kepercayaan* Sapto Darmo as minority groups must be guaranteed to manifest his beliefs. In 2016, the Minister of Education and Culture issued a Ministerial Regulation Education Number 27 of 2016 Concerning Trust Education Services God Almighty in the Education Unit (Kemendikbud Regulation Number 27 Year 2016). With the existence of this Permendikbud, students who appreciate it can have a curriculum and follow the education of adherents for religious subjects. If previously *Penghayat* students were asked to choose one of 6 (six) religions, now they can learn with a special

appreciation curriculum for educational subjects' religion/belief.[23] The existence of this regulation also shows recognition and the state's fulfillment of the right of students to study according to what they believe. The government's legal policy by passing various laws and regulations that fully guarantee adherents of the faith have direct implications for the civil and political rights of *Penghayat Kepercayaan* Sapto Darmo.

4. CONCLUSION

Penghayat Kepercayaan Sapto Darmo believe in God Almighty and this belief cannot be considered a threat to the religions that claim to be recognized. In the future, the Religion Blasphemy Law that is recommended to be perfected must be clearer in guaranteeing the certainty of protection for *Penghayat Kepercayaan* which, based on the Constitutional Court's decision, are equal with mainstream religions. Starting from administering births, procuring family cards, registering marriages, exercising political rights, educational rights, and other rights fully guaranteed by the state. going forward, after the Constitutional Court's decision, the Population Administration Law must be renewed by explicitly emphasizing the equality of adherents of religions with *Penghayat Kepercayaan* and one of them is Sapto Darmo. It is needed for the sake of legal certainty, the benefit of the law and the fulfillment of justice for *Penghayat Kepercayaan*. Apart from that, there needs to be a holistic inter-agency policy in fulfilling the civil and political rights of *Penghayat Kepercayaan* Sapto Darmo and the small thing is to allow them to write down the identity of their status as *Penghayat Kepercayaan* Sapto Darmo on the Citizen Identity Card/KTP.

AUTHORS' CONTRIBUTIONS

The author was made up of four persons who also contributed to the article. An article is written in several stages over the course of 2 (two) months, including research and writing. The author of the article grounds his opinions on verifiable legal product.

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