

THE CONSTITUTIONAL COURT INTERPRETATION OF "INDIGENOUS BELIEF": AN ISLAMIC AND 1945 CONSTITUTION PERSPECTIVES

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Abstract

This study aims to review the Republic of Indonesia's Constitutional Court Decision No. 97/PUU-XIV/2016. The Decision states that the provisions of Law No. 23 of 2006, Article 61(1) and (2) and Article 64(1) and (5) relating to the clearing of the column of religion in the family card and electronic identity card, are contrary to the Constitution. This study was designed to be qualitative for this purpose and uses normative methods of legal research. This study found that the decision of the Constitutional Court was not in line with Islamic Sharia and the Constitution of 1945 because it had an impact on the recognition of indigenous beliefs and their followers in order to have the same position in Indonesia as religions and their followers. This condition is damaging to society. According to the Islamic principle of *sadd adz-dzarai*, if it leads to something that is prohibited, something that is permitted must be closed or stopped. As respect to the Constitution of 1945, the provisions of Article 28E paragraph (1) and paragraph (2) of the Constitution of 1945, where religions and indigenous beliefs are classified as two separate and distinct entities, are more relevant constitutional norms to be referred to.

Keywords: Religion, Indigenous belief, Constitutional Court Decision, Islamic Sharia, 1945 Constitution.

A. INTRODUCTION

Decision of the Constitutional Court of the Republic of Indonesia No. 97/PUU-XIV/2016 states that the provisions of Law No. 23 of 2006 Article 61 paragraph (1) and paragraph (2) and Article 64 paragraph (1) and paragraph (5) that are related to clearing off the religion column in the family card and electronic identity card is against the Constitution.

The consequence of this Constitutional Court Decision is that followers of *aliran kepercayaan* (indigenous beliefs) can list their beliefs in the religion column both in the family card and electronic identity card. The Constitutional Court's ruling is based on the right to embrace religion or belief in the One God, which is the constitutional rights of citizens. In the idea of a democratic state that based on a law or a democratic legal state, the country is present to protect these rights. The state's responsibility to protect all indigenous beliefs in Indonesia is the provision of Article 28I paragraph (4), which states that: "Protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the Government."

The existence of religion in Indonesia has been determined by the government, which refers to Law No. 1/PNPS/1965, which related to Law No. 5/1969 concerning the Prevention of Abuse and or Blasphemy of Religion and TAP MPRS No. XXVII/MPRS/1966 states that in Indonesia, there are six recognized religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism.³ Religion is generally believed to contain teachings originating from God Almighty. Spiritual teachings are believed to be absolute truth.

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³ Feby Yudianita, "Tinjauan Yuridis Terhadap Aliran Kepercayaan Dihubungkan Dengan Pasal 29 Ayat (2) UUD 1945," *Jurnal Online Mahasiswa* 2, no. 2 (2015).

Religious instruction is a dogma whose authenticity cannot be disputed again by human reason.⁴ While the indigenous belief, according to the National Belief Conference held in Yogyakarta in 1970, is all psychological, mysticism, and spiritual activities.⁵

According to David Barret and Todd Johnson,⁶ the indigenous belief is a local religion, native religion, or indigenous religion. In Indonesia, the followers of the local religion are only about 1% of the total population. Most of them live in Papua, Sumba, rural of Sumatra, rural of Kalimantan and rural of Sulawesi, and some areas of Java.⁷ Thus, the indigenous belief is a local belief system, which is a religious belief system that is part of the social policy of a community.⁸ The local religion is a term embedded in the original belief system of the archipelago, namely traditional religion that existed before the arrival of major religions such as Hinduism, Buddhism, Islam, and Christianity in Indonesia.⁹

In principle, in Indonesia, there is no ban on a person who does not have a religion or becomes an atheist. The Constitution thus regulates the State is not entitled to force one to embrace a religion. Religion is a private right to embrace it. People who do not understand religion justify it if they do not embrace any religion. Even perhaps, those who understand religion are not forbidden to adopt a religion that is well understood.

On the other hand, based on *Pancasila* (five principles of Indonesia), the so-called religion is the guidance of personal life based on the truth of the "holy book" doctrine, to live with mutual respect, mutual protection, and mutual benefit without discrimination in family, community, and state. The followers of indigenous beliefs are those who claim to have not practiced the religious teachings and rituals practiced by the followers of the religions in the country. They are regarded as practicing the great teachings inherited by the ancestors to live the truth within the family, community, and state without discrimination, and they uphold the rules that apply in the country.

The study of the limits or the definition of "religion" and "indigenous belief," "religious believers" and "followers of indigenous belief," as well as "the teaching of the scriptures" and "*ajaran keluhuran budi*" (the teachings of nobility) should be done as an academic foundation in determining the scope of understanding religious rights and following indigenous faiths in Indonesia. In the future, hopefully, that there will be a firm and definite regulation on this issue. Writing the name of "indigenous belief" in the religion column both in the family card and electronic identity card will have undesirable social impacts in the family, community, and state. For example, a follower of indigenous faith died, his burial procession should follow which teaching, and what if the city refused to bury him. This case, of course, will lead to horizontal conflicts, if there is no firm regulation of the indigenous faith.

The consequences of the Constitutional Court's decision on writing the name of indigenous belief in the religious column in the family card and electronic identity card allow anyone to write down whatever their life guidance. He may write "atheist" or "have God according to the *Pancasila*." This case needs to be regulated further so that there is legal certainty and negative impacts in the community can disappear.

⁴ Nurdjana, *Hukum Dan Aliran Kepercayaan Menyimpang Di Indonesia* (Yogyakarta: Pustaka Pelajar, 2009).

⁵ Ibid.

⁶ David Barret and Johnson Todd, "Annual Statistical Table on Global Mission: 2003," *International Bulletin of Missionary Research* (Denville. New Jersey, 2003).

⁷ Kiki Muhamad Hakiki, "Aliran Kebatinan Di Indonesia," *Al-Adyan* VI, no. 2 (2011).

⁸ Ahmad Syafii (Ed) Mufid, *Dinamika Perkembangan Sistem Kepercayaan Lokal Di Indonesia* (Jakarta: Kementerian Agama RI Badan Litbang dan Diklat Puslitbang Kehidupan Keagamaan, 2012).

⁹ Ahmad Muttaqien, "Spiritualitas Agama Lokal (Studi Ajaran Sunda Wiwitan Aliran Madrais Di Cigugur Kuningan Jawabarat)," *Al-Adyan* VIII, no. 1 (2013).

From the perspective of the problem as above, this analysis will discuss two things: (1) How does the Constitutional Court Decision No. 97/PUU-XIV/2016 view the "indigenous belief?" (2) Is the interpretation of "indigenous belief" in Decisions the Constitutional Court No. 97/PUU-XIV/2016 following Islamic Sharia and the 1945 Constitution?

B. METHODS

This research was qualitative in nature, namely multimethod in focus involving an interpretive, naturalistic approach to its subject matter.¹⁰ The focus of this research was the limitation of "indigenous belief" in Indonesia. This type of legal research is normative legal research, namely legal research that refers to the concept of law as the norm. The research method that would be used is a normative legal research method. Normative legal research is conducted to explore and review the fundamentals of the Constitutional Court's argument in establishing the objectivity of the interpretation of the "indigenous belief" mentioned in Law Number 23 of 2006. Furthermore, the research results are used to be compared with the notions of "indigenous belief" in Islamic Sharia and the 1945 Constitution.

C. RESULTS AND ANALYSIS

1. The Constitutional Court Equates "Indigenous Belief" with "Religion."

On November 7, 2017, the Constitutional Court issued a Decision No. 97/PUU-XIV/2016. The decision states the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) of Law Number 23 of 2006 as amended by Law Number 24 of 2013 (State Gazette of the Republic of Indonesia Number 232 of 2013 and Supplement to the State Gazette of the Republic of Indonesia Number 5475) in contravention of the Republic of Indonesia Constitution in 1945, and does not have the power of legal binding conditionally as long as it does not include "kepercayaan (belief)."

Although the Constitutional Court's decision is final and binding, it does not close the door of the study to test it in several aspects such as the extent to which its suitability with Islamic law as believed by the majority of the Indonesian population and with the 45 Constitution itself. Studies can also be carried out from other aspects such as the extent of benefits or harms caused by the Decision. Based on the norms contained in Article 29 of the 1945 Constitution, the Constitutional Court interpreted the meaning of "belief" as "belief in religion."

By granting petitioners' petition, the Constitutional Court has imposed "belief" into the word "religion" contained in Article 61 paragraph (1) and Article 64 paragraph (1) of Act No. 23 of 2006. This is because "belief" from now on referred to as "belief in the Supreme Lord" as the one who pleads for it is the followers of the indigenous beliefs who are disadvantaged by the law above so that what is meant by the belief is that there is no belief or faith in a religion.

Actually, "religion" and "belief in God Almighty" are two different things. "Religion" has four criteria of scripture, its followers spread it, its teachings give spiritual and social satisfaction to its adherents and have open nature in the sense of acceptance of criticism and its lessons can be interpreted by its devotees throughout the ages. Besides, religion also has three fundamental concepts that are not owned by "belief in God Almighty," which are the theological concepts (transcendent, immanent, realism [dualism]), escapist (two separate realms, two united states, eternity and vigor), and salvation.¹¹ While "belief in God Almighty" as defined in the meeting of followers of belief in God Almighty in 1981 in Jakarta is: "Declaration and execution of personal

¹⁰ Norman K. Denzin and Yvona S. Lincoln, *The Sage Handbook of Qualitative Research* (Yogyakarta: Pustaka Pelajar, 2011).

¹¹ Mohammad Damami, *Kepercayaan Terhadap Tuhan Yang Maha Esa Pada Periode 1973-1983: Sebuah Sumbangan Pemahaman Tentang Proses Legalisasi Konstitusional Dalam Konteks Pluralitas Keberagamaan Di Indonesia*, First (Jakarta: Ministry of Religion of the Republic of Indonesia., 2011).

relationships with the Supreme Lord, based on the beliefs embodied in the piety behavior of the Supreme Lord or worship and practice of nobility."¹² The Director-General of Culture defines "belief in God Almighty" as "Spiritual Culture that consists of noble guidance in the form of behavior, law and sacred science, which is adhered to by its followers in the consciousness and belief of the Supreme Lord, by building firmness and mental alertness and refinement of moral character, to purify the soul and spiritual maturity, to achieve the welfare and perfection of life in this world and eternal realms."¹³

Thus, religion and belief in God Almighty are two different things, then the Decision of the Constitutional Court, which treats equally on two different things, is improper. In another arrangement, namely the Decision of the Constitutional Court Number 27/PUU-V/2007, dated February 28, 2008, the Court stated that discrimination is treating differently on the same thing. The opposite is not discrimination, treating differently on different things.

Among the corroborating evidence that belief in God Almighty is not a religion is its coaching and protection not in the Ministry of Religious Affairs, but in the Ministry of Education and Culture, because indigenous faith is included into the culture, namely spiritual culture as defined by the Director-General of Culture in 1980. Furthermore, the followers of it are unwilling to be involved in any religion, including official religions under the provisions of the legislation.

Although belief in God Almighty is not a religion, the State still protects and recognizes its followers by recording them in the population database. The issue of emptying the column "religion" in the electronic identity card and family card for followers of the indigenous faith is appropriate because it is a consequence of the differences between religion and the indigenous belief, and that the indigenous faith is not a religion.

Although indigenous faith is not a religion, the followers do not lose their constitutional rights to get the same service in population registration and civil registration. The absence of indigenous faith in the resident identity card and family card column does not cause the loss of the constitutional rights of followers because the 1945 Constitution has guaranteed everyone's legal rights. If there are still followers who have difficulty in obtaining their legal rights, it is caused by the authorities, not because of the law.

If the Constitutional Court wants to include "belief in God Almighty" in the identity card and family card, it can take another method, namely by stating that the word "religion" that should be included in the identity card and family card as instructed in Article 61 paragraph (1) and Article 64 paragraph (1) of Law Number 23 of 2006 is not comprehensive or does not cover the indigenous belief. Hence, it needs to be added to a slash of indigenous beliefs. However, by adding "a slash of indigenous belief" after the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1), it means that the Constitutional Court opens the faucets of indigenous faith to develop freely in Indonesia, even though Indonesia is the State which has the Almighty Godhead. As a religious country, Indonesia must give freedom, promote and facilitate people who are atheists or non-religious to embrace one religion, especially religion, that is recognized as a religion under the provisions of the laws and regulations.

2. Interpretation of "Indigenous Belief" in the Constitutional Court Decision Number 97/PUU-XIV/2016, according to the Perspective of Islamic Law.

Although Indonesia is a State that believes in Almighty God, however, religionists who have not yet been recognized as a religion under the provisions of the legislation and followers of indigenous beliefs are still served and recorded in the population database. Accordingly, Article 61 paragraph (2) and Article 64 section (5) of Law No. 23 of 2006 are correct and proper.

The view of Islamic law on the indigenous belief is that the indigenous faith that has been standardized becomes: "Belief in the Almighty God" is not from Islam, and Islam is entirely independent of it. "Belief in the

¹² K. Permadi, *Persepsi Tentang Tuhan Dan Kehidupan* (Jakarta: Direktorat Pembinaan Penghayat Kepercayaan terhadap Tuhan Yang Maha Esa. Direktorat Jenderal Kebudayaan. Departemen Pendidikan dan Kebudayaan RI., 1993).

¹³ Director-General of Culture, "Keputusan Direktur Jenderal Kebudayaan Nomor: 021/A.1/1980 Tentang Pedoman Pembinaan Penghayat Kepercayaan Terhadap Tuhan Yang Maha Esa" (1980).

Almighty God" is a human-made religion. Even its followers do not want to categorize their beliefs as religions, as well as the Director-General of Culture, Ministry of Education and Culture. So that the indigenous beliefs can be classified as teachings taken from various religions, and the believers are atheists or people who have no faith but have a spiritual culture drawn from multiple religions. They cannot be categorized as followers of the secular religion and not atheists.

The indigenous belief, as defined by the followers, is: "Statement and implementation of personal relationships with God Almighty, based on beliefs manifested by the attitude of devotion to God Almighty or worship and the practice of virtue." The essence of the indigenous belief is a personal relationship with God. However, it is not clear what the relationship is based on because the followers of the sect do not have scripture, and their religious beliefs do not want to be considered as a religion. The Director-General of Culture gives an official name for indigenous faith: "Believe in God Almighty," namely: "Spiritual culture: noble guidance in the form of behavior, law and sacred knowledge, which is shared by its adherents with a conscience in awareness and belief in God the One. The way is by fostering determination and mindfulness and refining character in the social order towards mental cleanliness and spiritual maturity, to achieve prosperity and perfection in life in this world and the eternal realm." ¹⁴ So, the essence of the indigenous belief is culture.

Furthermore, this definition explains that indigenous belief is a culture in the spiritual field carried out by its followers. Because it is a culture, it is human-made, which is certainly different from one place to another. Thus, from the two definitions above, it can be concluded that the indigenous belief or "Belief in the Almighty God" is a human-made religion.

According to the *sadd adz-dzara'* (closing all ways leading to badness) principle, something permitted should be banned when it comes to prohibited things. Writing columns: "religion/indigenous belief" within the citizens' identity card and a family card is something that can be done and maybe abandoned because there is no order or ban on it according to religious views. However, if the writing encourages people to develop indigenous belief since it has been recognized as a religion, it must be prevented, prohibited, and terminated. Thus, the Constitutional Court Decision, which includes "belief" into "religion," has violated the principle since the consequence of the Decision is that the followers of indigenous beliefs can write down their beliefs in the religion columns.

In terms of *maslahat* (advantages) and *madharat* (disadvantages), the Constitutional Court Decision above is highly anticipated and expected by the applicants who are followers of indigenous beliefs, but it is very worrying that the Decision hurts society. The adverse effects of the verdict include: (1) the growing of indigenous faith in Indonesia which beliefs in Almighty God; (2) there is no difference between a religion and indigenous knowledge; (3) the state legalizes marriage between religious people (especially Muslims) and non-religious people. Thus Law No. 1 of 1974 concerning Marriage must be changed because it is not following the Constitutional Court Decision; (4) the electronic identity card and family card column will change so that it covers the indigenous belief which the Government and the community have always tried to avoid; (5) the guidance of indigenous belief followers will be under the Ministry of Religion, which has so far been avoided by the Ministry of Religion because indigenous belief is not religion.

In the view of Islamic Law, the Constitutional Court Decision has an impact on the continuity of religious life in Indonesia due to the absence of a difference between a religion and an indigenous belief. Moreover, in the future, the country will be able to legalize marriage between religious people (especially Muslims) with people who are not religious or followers of the indigenous belief.

3. Constitutional Court Interpretation of "Indigenous Belief" in the Decision of the Constitutional Court Number 97/PUU-XIV/2016 According to the 1945 Constitution Perspective.

The Constitutional Court Decision Number 97/PUU-XIV/2016 concerning the Testing of Article 61 paragraph (1) and Article 64 paragraph (1) of Law Number 23 of 2006 concerning Population Administration is a conditionally

¹⁴ Ibid.

unconstitutional decision. The article petitioned is tested when the verdict is read is illegal and will be constitutional if the conditions stipulated by the Constitutional Court are fulfilled by the addendum of the Decision of the Constitutional Court.¹⁵ The Decision of the Constitutional Court states that the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) of Law No. 23 of 2006 in conjunction with Law No. 24 of 2013 is declared contrary to the 1945 Constitution unconstitutional and does not have the legal force as long as it does not include "belief". The Constitutional Court gives conditions to Article 61 paragraph (1) and Article 64 paragraph (1) of Law No. 23 of 2006 in conjunction with Law No. 24 of 2013 not to contradict the 1945 Constitution, namely the word "religion," which means "belief." This requirement is given by the Constitutional Court to avoid the occurrence of the legal void, remembering the written sentence is only "religion," not including "belief." To add "belief" in the provisions of Article 61 paragraph (1) and Article 64 section (1) of Law No. 23 of 2006 in conjunction with Law No. 24 of 2013 can only be done by the House of Representatives of Republic of Indonesia by changing Article 61 paragraph (1) and Article (64 paragraph (1) of Law No. 23 of 2006 in conjunction with Law No. 24 of 2013 in the amendment law or new law.

The reason given in the Decision of the Constitutional Court is that "religion" is always related to "belief," as stipulated in Article 28E paragraph (1) and paragraph (2) and Article 29 paragraph (2) of the 1945 Constitution, where "religion" is "belief" itself. However, the Constitutional Court also states that by reading and understanding the existence of Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution, "religion" and "belief" are very likely to be understood as two different things, but both are recognized. Such understanding arises because textually Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution regulates "religion" and "belief" separately. Article 28E paragraph (1) of the 1945 Constitution regulates "religious rights and worship according to religion," while Article 28E paragraph (2) of the 1945 Constitution regulates "the right to freedom of belief in *kepercayaan* (belief/faith)."

The word "and" in the phrase "... and to worship according to his religion and "belief" in Article 29 of the 1945 Constitution places his "belief" in proportion to his "religion." Although the phrase is intended for the matter of worship, if the "belief" is considered a part of "religion," then the phrase "his religion and belief" will certainly not be used in the formulation of Article 29 of the 1945 Constitution. By merely using the phrase "to worship according to that religion", the purpose of guaranteeing the implementation of worship according to the religion believed to be of every occupation is enough. However, it is not the word "religion," and the word "belief" is thus used simultaneously by using the "and." When viewed from the aspect formulation of the norm, the use of the word "and" indicates the cumulative nature. In the case of the word "religion" and the word "belief" as something formulated cumulatively, then both are two things that are grouped differently. Thus, the term "religion" and "belief" are understood as two different things that are equated.

With an understanding built using lexical interpretations, the Constitutional Court uses it as the fundamental basis for understanding the position and relationship of "religion" and "belief," as stated in Article 28E paragraph (1) and paragraph (2) and Article 29 of the 1945 Constitution. To emphasize the interpretation above, the Constitutional Court reviews the history of the formulation of these articles. The Constitutional Court concluded that based on the process of forming Article 29 and Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution, "religion" and "belief" were placed as two separate things, in which "religion" and "belief" were formulated in two different verses. It is just that, by putting in place "religious" and "belief" arrangements in two various forms. It can be said that the 1945 Constitution places "belief" differently from "religion." Thus, on the one hand, "religion" and "belief" are placed as something separate, namely in Article 28E paragraph (1) and Article 28E paragraph (2). Still, on the other hand, "belief" is also understood as part of religion as mentioned in Article 29 of the 1945 Constitution. Furthermore, the term "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) should be interpreted as "belief" by the norms in Article 1 paragraph (3) of the 1945 Constitution. According to law, so that the two articles do not conflict with the principles of legal certainty and the principle of non-discrimination (equal treatment before the law) as guaranteed in Article 28D paragraph (1) of the 1945

¹⁵ Mohammad Mahrus Ali, Meyrinda Rahmawaty Hilipito, and Syukri Asy'ari, "Tindak Lanjut Putusan Mahkamah Konstitusi Yang Bersifat Konstitusional Bersyarat Serta Memuat Norma Baru," *Jurnal Konstitusi* 12, no. 3, (2015).

Constitution and violate the guarantee of equality of citizens before the law as specified in Article 27 paragraph (1) of the 1945 Constitution.

The Constitutional Court in its decision sought to resolve the discrimination experienced by followers of indigenous faith, then the decision was related to the context of protection and fulfillment of human rights (Article 28E paragraph (1) and paragraph (2)), not a guarantee of the state's freedom of religion (Article 29). The Constitutional Court has determined the definition of discrimination in the Decision of the Constitutional Court Number 024/PUU-III/2005. The decision states that: "discrimination can occur if there are any restrictions, harassment or exclusion that are directly or indirectly based on the differentiation of people based on religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, political beliefs, which results in the reduction, deviation or elimination of the recognition, implementation or use of human rights and basic freedoms in both individual and collective life in the political sphere, economy, law, social culture, and other aspects of life."

So in the matter concerning the limitation of human rights relating to religion and belief, more appropriate constitutional norms to refer to are the provisions of Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution, in which religion and belief are regulated as two things separate. Article 29 paragraph 2 of the 1945 Constitution, namely the state, guarantees every citizen to choose and worship according to his religion and belief. The logical consequence of the warranty above is that the state has no right to limit and let alone prohibit any citizen from embracing a religion he believes to the extent that he is not in public space and imposes specific religious rules on followers of other faiths.

In the future, the State must be present to issue policies related to the participation of all followers of the belief in God Almighty to be more meaningful and contribute to development. State policies can be realized to regulate: (1) formal existence that governs the indigenous beliefs (2) the life of followers of indigenous faith in carrying out their worship, and (3) the forms and methods used for prayer. At the very least, the role of followers in the development of national culture can include (1) appreciation and practice of the *Pancasila*, especially the precepts of the One Godhead, whose manifestations also involve other doctrines. The method of this service is a logical consequence of human nature that can shape Indonesian human beings, namely human beings whose birth and personal needs are balanced; (2) implementing character education, both within the family, community, and school. Good culture will provide a religious, mental, and moral-ethical foundation/morality that is strong in shaping Indonesian people. Ethical scholarship (especially in school) in recent years has tended to be less attention and even neglected; and (3) strengthening nationalism's sense and insight, such as a sense of unity, harmony, solidarity, and cooperation between components of the nation. It is necessary to develop an understanding of sensitivity and sympathy with humanitarian issues, such as inter-ethnic violence (ethnicity), abuse by security forces, and seizure of property rights.¹⁶

4. Follow-up of the Decision of the Constitutional Court Number 97/PUU-XIV/2016.

In the judicial review of laws against the 1945 Constitution, both conditionally constitutional and conditionally unconstitutional or formulation of new norms, the verdict is related to the implementation of the provisions of the law complying with and implementing the legal requirements mandated by the Constitutional Court.¹⁷ Decision Number 97/PUU-XIV/2016 functionally cannot be released from the authority of other state institutions, even though the relevant state institution is not the executor of the Constitutional Court's decision, considering that this Decision must be followed up by pouring the norms of decisions into laws, government regulations, presidential regulations, presidential decrees, ministerial regulations, regional regulations, regent regulations, and even circulars or other implementing regulations from relevant agencies.

¹⁶ Nurcahyo Tri Arianto, "Potensi Dan Peran Serta Penghayat Kepercayaan Terhadap Tuhan YME Dalam Pembangunan Budaya Bangsa: Fakta Dan Harapan," Dialog Aktualisasi Budaya Spiritual Jawa Timur (Malang, 2009).

¹⁷ Ali, Hilipito, and Asy'ari, "Tindak Lanjut Putusan Mahkamah Konstitusi Yang Bersifat Konstitusional Bersyarat Serta Memuat Norma Baru."

The legal consequences of this Decision Number 97/PUU-XIV/2016 require follow-up efforts from other related institutions, namely law-making institutions (legislation domains) and legislative institutions in addition to laws (the area of regulation). The realm of legislation is the parliament's authority to form laws (primary legislation) or is a process and product of lawmaking (the creation of general legal norms by specific organs).¹⁸ The domain of regulation is carried out by the authority of the executive body to implement laws as secondary legislation through the regulatory process.¹⁹

The mechanism of follow-up of the Constitutional Court's Decision in the domain of legislation refers to Law Number 12 of 2011 on the Establishment of Legislation. Article 10 paragraph (1) of Law No. 12 of 2011 states that the content of the regulation to be governed by law; one of them contains the follow-up of the Constitutional Court's Decision. Monitoring of the Constitutional Court Decision, as referred to in Article 10 paragraph (1) of Law No. 12 of 2011, is carried out by the House of Representatives or the President. Legislation in this regard is not only placed on the House of Representatives only as the holder of the power to form the law but also involves the President, as regulated in Article 20 paragraph (1) and Article 20 paragraph (2) of the 1945 Constitution.

The follow up on the verdict of the Constitutional Court on the testing of the Law on the 1945 Constitution of the Republic of Indonesia requires the House of Representatives and the Government's response. It is because the Decision of the Constitutional Court to be referenced in the process of making the law. Even it supposed to be the law's political paradigm in the future, in the sense that the bill will be set up according to the soul contained in the Constitutional Court's verdict, so the material is not contrary to the 1945 Constitution.²⁰

The Constitutional Court, with its authority in testing the law, is required to position the law as a harmonious system. This thing also applies to the House of Representatives as a legislator and the government as the co-legislator. The power of government regulation as a co-legislator in terms of implementing the authority to stipulate general rules is delegated power (delegation of legislative power, the delegation of rulemaking power, *delegatie van wetgevendmacht*). The government does not involve the legislature, but its formation must be based on the provisions of the law.²¹

In the case of follow-up, the Constitutional Court Decision, two things should be noted by the Constitutional Court, namely: first, so far, there are no provisions regarding the time that must be fulfilled to carry out the follow-up of the Decision immediately. Secondly, there is no clarity and certainty about which institution should play a role, in the beginning, to follow up on the Constitutional Court's Decision. The fact is that so far, some of the Constitutional Court's Decisions following up on the verdict are not under the interpretation of the Constitutional Court. In terms of overcoming this problem, legal instruments, such as judicial order, are required, namely the authority of the Constitutional Court to order addressee to implement the Constitutional Court's Decision forcefully.²²

The follow-up of the Constitutional Court's Decision is essentially an effort that must be made by the Government so that the public better understands the norm changes that have occurred after the Constitutional Court's Decision, especially to follow up on Constitutional Court Decisions that are constitutionally and

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

unconstitutionally conditional.²³ The follow-up actions of the Constitutional Court Decision Number 97/PUU-XIV/2016, which can be done by the Government, include: (1) from the technical point of view of the application of norms, the government must make adjustments to the data collection for the followers of the indigenous belief. Complete data collection needs to be done to avoid the vagueness of an indigenous faith that might cause turmoil in the community because it is considered incompatible with *Pancasila* and the 1945 Constitution. (2) The government, after collecting data on the indigenous belief, then enters the data into the SIAK database. The socialization of the database of the aboriginal faith must be carried out by the government to the community and especially to the officials concerned in the management of the family card and electronic identity card so that the officials are technically related to the data collection of family card and electronic identity card for residents of the indigenous belief. (3) The House of Representatives and the Government make amendments to the population administration law specifically concerning the religion/aboriginal belief column in the family card and electronic identity card. (4) The Government adjusts the rules relating to current population administration.

D. CONCLUSION AND RECOMMENDATIONS

The Constitutional Court in the Constitutional Court Decision Number 97/PUU-XIV/2016 equates between indigenous belief and religion. "Belief," as stated by the Constitutional Court, is "a belief in a religion" and under Article 29 of the 1945 Constitution. However, the actual "religion" and "belief in the Supreme Lord" are two different things. Accordingly, the Decision is not in line with Islamic Law and the 1945 Constitution.

Based on the results of this study, the researcher proposed several suggestions as follows: (1) the government should adjust the data collection for the followers of indigenous belief. Complete data collection needs to be done to avoid the vagueness of an indigenous faith that might cause turmoil in the community because it is considered incompatible with *Pancasila* and the 1945 Constitution and enter the data into the SIAK database. (2) The government should disseminate information on the database of the indigenous belief followers to the public and especially to those concerned with the management of family cards and electronic identity cards for followers of indigenous belief. (3) The Government adjusts the rules relating to current population administration. (4) The House of Representatives and the Government amend the population administration law specifically concerning the religion/indigenous belief column in the family card and electronic identity card.

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