

HIFDZUDDIN AND THE GUARANTEE OF FREEDOM OF INDIGENOUS BELIEF ON INDONESIAN IDENTITY CARD/KTP

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ABSTRACT

Indigenous faith followers/believers receive discriminatory acts. This is as regulated in Article 61 paragraph (1), paragraph (2) and Article 64 paragraph (1), paragraph (5) of the Population Administration Law. In this regulation, for followers of belief, the religion column is not filled because it is not recognized by the state. The discriminatory treatment in the Population Administration Law is then submitted for a judicial review to the Constitutional Court. This writing questions the decision of the Constitutional Court Number 97 / PUU-XIV / 2016 from two aspects, Hifdzuddin and Guarantee of Freedom of Belief. This writing is writing normative law with a conceptual approach (conceptual approach) and a statutory approach. The result of this writing, the decision of the Constitutional Court Number 97 / PUU-XIV / 2016 is in accordance with the concept of hifdzuddin with respect for followers of other religions and beliefs. Besides that, this decision is also in accordance with the concept of guaranteeing freedom of belief in accordance with the 1945 Constitution.

Keywords: Hifdzuddin, Belief, Guarantee, Religion, Islamic Law.

A. INTRODUCTION

The problems of believers have almost no end. Several issues related to existence and security in various aspects are often not resolved. In fact, the issue of guarantee and protection is the responsibility of the state. This is as stated in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia (UUD 1945). In the alines, it is stated that the state protects the entire Indonesian nation and all Indonesian bloodshed. Therefore, that in state administration, equality is created according to the conception of equality before the law.¹

Guarantees for matters of belief, belief, and worship have been regulated in the 1945 Constitution. This guarantee is explicitly stated in Article 28E paragraph (1), paragraph (2), and Article 29 paragraph (1), paragraph (2) of

¹ Novita Akria Putri, 'Penghapusan Kolom Agama Dalam Kartu Tanda Penduduk', *Mizan; Jurnal Ilmu Syariah*, 3.2 (2015), p. 277.



the 1945 Constitution. -As a quo, the state affirms its guarantees in religion and belief. The state guarantees each individual in matters of religion and belief as a constitutional mandate.

These things, in fact, are still far from what was mandated. The issue of civil registration does not provide equality for adherents of religions and faiths. This imbalance appears in the religious columns of Family Cards (KK) and Identity Cards (KTP). Article 61 paragraph (1) and paragraph (2) of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration (Population Administrative Law) states:

- (1) KK contains information regarding the KK number column, the full name of the head of the family and family members, NIK, gender, address, place of birth, date of birth, religion, education, occupation, marital status, the status of family relations, citizenship, immigration documents. , parents' names.
- (2) Information regarding the religion column as referred to in paragraph (1) for Residents whose religion has not been recognized as a religion in accordance with the provisions of the Legislation or for believers of faith is not filled in, but is still served and recorded in the Population database.

Whereas in matters of KTP, Article 64 paragraph (1) and paragraph (5) of the Population Administration Law states:

- (1) The e-KTP contains a picture of the Garuda Pancasila emblem and a map of the territory of the Unitary State of the Republic of Indonesia, containing population data elements, namely NIK, name, place of birth date, male or female, religion, marital status, blood type, address, occupation. , nationality, passport photo, validity period, place and date of issue of the e-KTP, and the signature of the e-KTP owner.
- (2) The population data element regarding religion, as referred to in paragraph (1) for residents whose religion has not been recognized

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as a religion based on the provisions of Legislation or for believers of the faith, is not filled in, but is still served and recorded in the population database..

Of the two provisions of Article a quo, there is discrimination that is enforced even though it is regulated in law. Some treatments are regulated to differentiate between religions and indigenous-belief followers. This treatment is confirmed in the Minister of Home Affairs Circular No. 477/74054/1978 which only acknowledged filling in the religion column on the KTP. Thus, for indigenous-belief followers, there is no record of what beliefs are held. This has resulted in the emergence of discriminatory treatment against the belief that is still held and believed by the community..²

The absence of registration resulted in the emptying of the religion column for indigenous-belief followers. This is as if to generalize between believers of faith and atheists, where atheists do not have legitimacy in Indonesia. Meanwhile, in both KK and KTP, the religion column must be filled in. This raises questions regarding the seriousness of the government in terms of guarantees for adherents of faith, even though services are still provided by the government..³

In contrast to atheists, adherents of the faith have belief in the Almighty Being. This trust should be the responsibility of the government to be guaranteed. One of the guarantees is the recognition in the belief column on the KTP.

The roots of differences in religion and belief began with the adoption of the 1977, 1978, and subsequent GBHN Guidelines. According to Achmad Zubaidi, who was quoted by Muwaffiq Jufri, the meaning of belief is the belief

²Sukirno, 'Diskriminasi Pemenuhan Hak Sipil Bagi Penganut Agama Lokal', *Administrative Law & Governance Journal*, 1.3 (2018), p. 233.

³ Anna Kostantia Panjaitan, 'Implikasi Pengosongan Kolom Agama Dalam Kartu Tanda Penduduk Terhadap Pemenuhan Hak Konstitusional Umat Baha'i', *Indonesian State Law Review*, 1.1 (2018), p. 2.



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in God Almighty, which is part of the culture and heritage of our ancestors, which is then called *kebatinan*, psychiatry and preservation of the nation's culture. As a result, coaching is no longer under the Ministry of Religion but under the Ministry of Education and Culture by establishing the Directorate for Development of Beliefs (PPK) towards God Almighty under the leadership of the Directorate General of Culture.⁴

For this discriminatory act, a judicial review was filed against Article 61 paragraph (1), paragraph (2), and Article 64 paragraph (1), paragraph (2) of the Population Administration Law. In its decision, the Constitutional Court granted the judicial review. The Constitutional Court ruled:

1. State the inclusion of religion in Article 61 paragraph (1) and 64 paragraph (1) of the Population Administration Law does not have binding legal force as long as it does not belong to a belief.
2. Article 61 paragraph (2) and 64 paragraph (5) of the Population Administration Law is contrary to the 1945 Constitution and has no binding legal force.

This writing deals with two problem formulations. First, hifdzuddin in the Constitutional Court Decision Number 97 / PUU-XIV / 2016 and second, the Constitutional Court Decision from the perspective of freedom of belief.

B. METHOD

This research is a normative study using a conceptual approach and a statutory approach. The materials used are laws and regulations as well as journals, books, and proceedings.

C. DISCUSSION

1. HIFDZUDDIN IN VERDICT 97/PUU-XIV/2016

⁴ Muwaffiq Jufri and Mukhlis Mukhlis, 'Akibat Hukum Pemisahan Hak Beragama Dengan Hak Berkepercayaan Dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945', *Jurnal Konstitusi*, 16.2 (2019), p. 278.

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Islamic Shariah or the aim of obliging Islamic law has five dimensions; The five dimensions are:⁵:

- a. *Hifdz Ad-Din* (protecting religion)
- b. *Hifdz An-Nafs* (protecting the soul)
- c. *Hifdz Al'Aql* (protecting the mind)
- d. *Hifdz An-Nasb* (protecting offspring)
- e. *Hifdz Al-Maal* (protecting the property)

Syari'at yang ditujukan untuk ummat islam tidak semata merta hadir dan dipaksakan terhadap para pemeluknya. Keberadaan dari pada syari'at ini memiliki tujuan-tujuan sebagaimana disebutkan di atas. Syari'at memiliki rasionalisasi dan alasan kenapa kemudian ditegakkan dan dipedomani sebagai sebuah ajaran. Sehingga, tidak muncul keraguan di dalam para ummat islam.

Hifdzuddin is one of the objectives of implementing sharia (maqoshid sharia). Hifdzuddin means that the implementation of sharia has the aim of preserving religion. Hifdzuddin consists of two words *hifdzun* (حفظ), which means to guard and *din* (دين), which means religion.

In terms of implementing sharia, *hifdzud-din* has the highest degree. This is inseparable from religious teachings in order to maintain the spread, confirmation, guarding and prevention of misuse of Islamic aqidah⁶ so that the continuity of a religious teaching can be maintained and sustainable.

Regarding the decision of the Constitutional Court Number 97 / PUU-XIV / 2016, it will be related to the *hifdzud-din* issue. This is inseparable from the effort to have freedom of religion and uphold respect for other religions. This is known as the concept of *tasamuh* or respect for other religions. Tasasmuh in Islam teaches respect, recognition, and even

⁵ Novi Rizka Amalia, 'Untuk Realisasi Identitas Politik Islam Di Indonesia', *Dauliyah Journal of Islamic and International Affairs*, 2.1 (2017), p. 41.

⁶ Eka Sakti Habibullah, 'Urgensi Hifzhu Ad-Din Dan Institusionalisasi Ibadah', *Al Mashlahah Jurnal Hukum Islam Dan Pranata Sosial Islam*, 4.8 (2016), p. 512.

safeguards against other teachings. Islam, as noble teaching, recognizes the existence of other religions. So that Islam also provides freedom in terms of worship for other religious teachings.⁷

This teaching is as said by Allah SWT in the letter Al-Kafiruun, the last verse which:

لَكُمْ دِينُكُمْ وَلِيَ دِينِ

Meaning: for you is your religion, and for me is my religion

In the decision of the Constitutional Court Number 97 / PUU-XIV / 2016, the Constitutional Court gave several reasons related to the issue of the religion column, which was more specific to the problem of the column of belief in KTP. First, the state, in its capacity as the executor of the people's sovereignty, guarantees freedom of religion and belief. This guarantee is stated in Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution, which states that the state guarantees the right to freedom of religion and belief for anyone.

Article 29 paragraph (1) and (2) of the 1945 Constitution is an affirmation of the role of the state to ensure that every individual is free to embrace his religion and belief. The Constitutional Court, in its legal considerations, explained that although the formulation of Article 29 of the 1945 Constitution preceded Article 28 of the 1945 Constitution, this was not a problem. This arrangement reinforces the existence of religious freedom.⁸

Second, there are differences in the formulation of religion and belief in the 1945 Constitution. In terms of tracing, it is not separated between religion and belief. However, this will become a problem in the

⁷ Adeng Muchtar Ghazali, 'Toleransi Beragama Dan Kerukunan Dalam Perspektif Islam', *Religious: Jurnal Agama Dan Lintas Budaya*, 1.1 (2016), p. 29.

⁸ Mahkamah Konstitusi, Putusan 97/PUU-XIV/2016, 2016.

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future. Trust is not considered to be guaranteed and recognized by the state.

On this basis, the Constitutional Court has its own views. The Constitutional Court explained that the issue of religion and belief is regulated in two different ways as Article 28 E of the 1945 Constitution. Also, religion and belief are also regulated in Article 58 paragraph (2) of the Population Administration Law, which places religion and belief as different things.⁹

Third, that what was tested/judicial review at the Constitutional Court was the issue of article 61 paragraph (1), paragraph (2), and Article 64 paragraph (1), paragraph (5) of the Population Administration Law. The Constitutional Court is of the opinion that the dichotomy of religion and belief in terms of recording in the religion column is inconsistent with the 1945 Constitution.

From the arguments described above, the concept of hifdzuddin actually guarantees adherents of other religions, as long as it does not conflict with Islamic teachings. Islam in the Medina charter teaches the concept of tolerance and respect for other religions, including other beliefs to worship. Islam teaches how to coexist with other religions. As quoted by Imam Amrusi Jailani, Siti Maryam explained *tasamuh* between Muslims and Jews. They receive protection and freedom in carrying out their respective religions.¹⁰

Hifdzuddin confirmed the decision of the Constitutional Court Number 97 / PUU-XIV / 2016. Hifdzuddin is in line with the a quo decision, which guarantees the religion and belief of each individual. This guarantee can be interpreted from two things, first internally, *hifdzud-din* is applied to

⁹ Mahkamah Konstitusi.

¹⁰ Imam Amrusi Jailani, 'Piagam Madinah: Landasan Filosofis Konstitusi Negara Demokratis', *Al-Daulah: Jurnal Hukum Dan Perundangan Islam*, Volume 6,2 (2016), p. 286.



maintain the continuity of Islam itself. The application of Islamic sharia is nothing but aimed at protecting the religion of Islam itself. Second, externally, the *hifdzuddin* concept is aimed at respecting other religions. This is as contextualized with the Surah Al-Kafirun and the concept of *tasamuh* in Islam as exemplified in the Medina Charter.

2. VERDICT 97/PUU-XIV/2016 FREEDOM OF BELIEF PERSPECTIVE

There are two problems faced by the state in matters of religion and belief, regulation, and law enforcement.¹¹ This is also reflected in the religion/belief column on the KTP. In Articles 61 and 64 of the Population Administration Law, there are problems in freedom of belief. As a result of this, certain groups of beliefs are not guaranteed.

Two losses were recorded with regulating the religion column in the Population Administration Law. *First*, he did not write down the belief system. This problem is, as stated in Article 61 paragraph (2) and Article 64 paragraph (5), which leaves the religion column blank. *Second*, the emergence of negative public sentiment towards followers of belief.

By testing Article 61 paragraph (1), paragraph (2), and Article 64 paragraph (1), paragraph (5) of the Population Administration Law, the Constitutional Court provides meaning to the religion column in the Population Administration Law. According to the Constitutional Court, Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Law do not have binding legal force as long as religion is not interpreted as including belief.

Apart from that, the Constitutional Court also stated that Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Law contradict the 1945 Constitution. The statement that Article *a quo* is contrary to the 1945 Constitution because, in its regulation, it has created discrimination. This form of discrimination arises because of differences in services. For those whose religion is mentioned in the Minister of Home Affairs Circular No. 477/74054/1978, it will be written in the religion

¹¹ Yusdani, 'Kebebasan Beragama Perspektif Hak Asasi Manusia', *Al-Mawarid*, XI.2 (2011).

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column. However, those whose religion is not recognized by statutory regulations will be left blank. This is, of course, a form of discrimination.

The decision of the Constitutional Court is in line with the concept of guaranteeing freedom of belief guaranteed in Article 28E paragraph (1), (2), and Article 29 of the 1945 Constitution. This is marked by the signing of the return of guarantees for adherents of belief. For followers of the faith sect, it is possible to register their beliefs on the KTP.

In principle, the issue of freedom of belief has been described. Solutions to differences in religion and belief were resolved when the Indonesian state was founded. The founders of the nation chose the conception of Godhead in One God. This selection is based on the understanding that in Indonesia, there are many religions and beliefs. Each man in Indonesia is obliged to respect the religion and belief. Therefore, every individual has the freedom to believe.¹²

D. CONCLUSION AND SUGGESTIONS

Article 61 paragraph (1), paragraph (2), and Article 64 paragraph (1), paragraph (5) of the Population Administration Law have provided discrimination to adherents of belief. This is as regulated that for adherents of a belief / whose religion is not recognized in statutory regulations, the religion column is not recorded. The decision of the Constitutional Court has guaranteed that Article 61 paragraph (1) and Article 64 paragraph (1) referred to as religion includes belief. The decision of the Constitutional Court is also in line with the concept of *hifdzuddin* and the guarantee of freedom of belief.

¹² Fatmawati, 'Perlindungan Hak Atas Kebebasan Beragama Dan Beribadah Dalam Negara Hukum Indonesia', *Jurnal Konstitusi*, 8.4 (2011), p. 499.

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