

Legal Protection of the Constitutional Rights of the Indigenous Faith Believers in Indonesia

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ABSTRACT

The State has a responsibility for preventing the violation of the indigenous faith believers. Violations occur in the form of discrimination and coercion such as the forced embracing of a particular religion, there is no religious column in the identity card, lack of public, law, health and education services. Indigenous faith believers fight against the discrimination by filling a petition to the constitutional court based on the principles of freedom of religion. The Constitutional Court granted this petition through Decision Number 97/PUU-XIV/2016. However, the Constitutional Court Decision has faced obstacles in its implementation. The government responds to the Constitutional Court Decision by enacting the Regulation of the Minister of Home Affairs Number 118 of 2017 concerning Family Card Forms, Registers, and Civil Registration Deeds. This regulation allows indigenous faith believers to get their religious status in the ID card, marriage certificates, health insurances, poverty certificates, and registration as voters for the general election. This research aims to investigate the State Position in the fulfillment of the Constitutional Rights of the indigenous faith believers and how the decision is being implemented and the obstacle in implementing the decision.

Based on constitutional theory analysis, this research argues that the constitutional court decision has a fundamental role to fulfil the legal status of indigenous faith believers as the Indonesian citizen, while the implementation of the decision has been taking slow progress.

Keywords: Constitutional rights, Indigenous faith believers, legal protection

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INTRODUCTION

The protection of the entire Indonesian people and the whole Indonesian citizens is clearly stated in the Indonesian Constitution (Hager, 2000). The Constitution / the 1945 Constitution serves as guidelines for the implementation of the state because of its nature as the basic law in Indonesia (Soemantri, 2006).

The Constitutional Rights which include human rights and citizen rights are expressly stipulated in the 1945 Constitution. The State protects every citizen before the law and government to worship and practice their respective religions and beliefs (Rahardjo, 2000). The state recognition of the rights to religion and worship according to the 1945 Constitution is regulated in Article 29 Paragraph (2) and Article 28E Paragraph (1) of the 1945 Constitution (Abdullah, 1984).

The values contained in Article 28A to Article 28J of the 1945 Constitution, in addition to norms, also include rights and obligations in the relationship between the state and citizens, and the principles of human values (Rohidin, 2011). The basic principle says that every person living within the territory of the Unitary State of the Republic of Indonesia must be protected by the State in terms of their human rights and obligations (Asshiddiqie, 2015).

The implementation of Article 28 E and Article 29 of the 1945 Constitution can not be separated from the current principle of majority democracy (Syafi'ie & Umiyati, 2012). The majority is based on religious beliefs, economics, ethnicity, or regionalism. As long as the integrity of

the State and society administration is well-maintained, there will be no conflict in the community (Arianingtyas et al., 2009).

The implementation of the majority democracy in Indonesia can be seen in the formation of legal products in the form of laws formulated by the House of Representatives together with the President (Susanti et al., 2000). Every proposed draft of the law which only listens to takes input from and attaches importance to the interests of the power group will only produce a legal product influenced by the wishes of a particular group (Anggono, 2014). For example in the formation of Law Number 24 of 2013 on Amendment to Law Number 23 of 2006 concerning Civil Administration.

There is a controversial provision relating to the civil administration in the Identity Card about filling the religious column for the local belief community (Risdiarto, 2017). While people who confess faith in the majority religions such as Islam, Christian (Catholic and Protestant), Hinduism, Buddhism, and Confucianism have no problem, people who still adhere to local religions and beliefs face difficulties.

Based on the fact in the community that there has been discrimination against the community of genuine believers including:

1. Believers of indigenous beliefs are forced to choose one religion so that it can be recognized administratively in government
2. Discrimination in population administration records. This resulted in limited access to various population products. They often find it difficult to get a National

Identity Card, Family Card, Birth Certificate, and Marriage Certificate. Thus, the people who believe that the original believers have made a customary marriage are not recognized by the state.

3. Difficulties are also experienced in terms of employment. This is a result of not including their trust in the identity card. They often cannot get jobs unless they want to convert. Weddings also often appear on job vacancies on the internet. Many application forms do not include the flow of belief in religious choices on the form.
4. Communities of genuine believers have difficulty in the wage process to gain bank access. Banks often need government confirmation in advance to provide access to adherents of trust. As a result, not only are difficulties in the wage process, they are also often difficult to get venture capital assistance.
5. Discrimination also occurs in terms of education. In some cases, children who hold certain beliefs cannot advance to class even though they are classified as smart in school. This is because they do not take religious studies. Many schools argue that only lessons from six government-recognized religions exist in the curriculum. This makes believers believe that they refuse to attend religious studies at school because they do not comply with

their beliefs. As a result, the value of religion in the report card was empty.

The provision in the civil administration law has violated their rights as citizens and human beings. Such government action can be categorized as unconstitutional.

The provision in the Civil Administration Law is deemed incapable of guaranteeing the protection and fulfilment of the same rights to the believers as a citizen (Budijanto, 2016). The judicial review of Law Number 24 of 2006 was conducted by a group of local faith believers to examine the constitutionality of Article 61 Paragraph (1) and (2), and Article 64 Paragraph (1) and (5) governing the inclusion of religion column in ID cards (Rahman, 2017).

The Constitutional Court granted the judicial review petition of Article 61 Paragraph (1) and (2), and Article 64 Paragraph (1) and (5) of Law Number 23 of 2006 regarding Civil Administration juncto Law Number 24 of 2013. The Constitutional Court Decision, case Number 97/PUU-XIV/2016, has principally provided legal certainty for the indigenous belief groups in terms of civil administration. However, the current social and political realities and laws have not provided openness and acceptance to these groups.

Although the Constitutional Court Decision Number 97/PUU-XIV/2016 has provided a room for the administrative needs of the faithful believers, it has still created social and legal conflicts. The Government and the House of Representatives have not formulated the latest regulation from

Article 61 Paragraph (1) and (2), Article 64 Paragraph (1) and (5) of Law Number 23 of 2006 regarding Civil Administration juncto Law Number 24 of 2013 regarding Civil Administration. As such, there is no legal certainty for the belief groups in implementing the Decision of the Constitutional Court.

Central questions in this article include How is the State Position in the Fulfillment of the Constitutional Rights of the indigenous faith believers?. How is the decision being implemented and what is the obstacle in implementing the decision?

Literature Review

Constitution and Constitutional Theory.

The Constitution or Constitution (Latin: *Constitutio*) in the State is a political and legal system of norms, which are on the Government usually codified as a written document. The provisions of the law/ rules were not set things that detail but layout principles that became the basis for other regulations. In the case of a State, the Constitution contains the rules and principles of the political and legal entity, the term refers specifically to establish the national Constitution as the basic principles of politics, the basic principles of law are included in the build the structure, procedures, authority and responsibilities of the Government of the country in general, the Constitution generally refers to the granting of rights to the citizens of the community. The term Constitution can be applied to all the laws which define the functions of the Government.

The Constitution is used to refer to a set of fundamental principles of government, only beginning to be used when the United States declared its constitution in 1787 (Wheare, 1975). Wolhoff (1955) states that the Constitution or Constitution is the highest law in the country, which contains the foundations of the entire legal system within the country (Wolhoff, 1955).

According to A. A. H. Struycken, the Constitution (*Grundwet*) as a written constitution is a formal document containing (Tutik, 2014):

- (1) The result of the nation's political struggle in the past
- (2) The highest levels of national development of the nation
- (3) The views of the nation's figures to be realized now and in the future
- (4) A desire by which the development of national state life will be led

Based on conceptual three main characters of a constitution is (Harahap, 2004):

- (1) A constitution is a supreme law of the land
- (2) A constitution is a framework for government
- (3) A constitution is a legitimate way to grant and limit powers of government officials
- (4) The Constitution serves as a vehicle that accommodates the international order in national law

The Constitution is essential to be regarded as a form of a social contract to underpin the social order of a society. A form of a collective agreement between the

government and the governed, between the ruler and the people, with the understanding that the rule of power must be sourced and joined on the consent of the people (Diponolo, 1975).

According to Djahiri (1971), the essence of the constitution must be oriented to the early days of the process of the state is the beginning of the *formal constitution*, *pactum objectionis* and *pactum subjectionis* which regulates the establishment of the state and the guarantee of the fundamental leges of man and state. Based on that, the nature of the constitution leads to the formal *human zekerheids* in life against others as well as the organizations in which he lives and the security of the right of state authority and framing. In other words, the nature of the constitution is the arrangement of human rights guarantees in its life as homosociality as well as the regulation of the state of affairs (*frame of government*).

The Constitution of a country should contain and regulatory matters relating to the subject of humanity living together in a state container. In the union of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution, who live together and collect or collect themselves in common life are also human beings, ie humans in nature, and humans in a culture called Indonesia. Indonesian man, on the one hand, is none other than a human who lives together in a cultural environment that formes and forms itself in a social environment with humans themselves (Zuchron, 2017).

The concept of a plural modern state constitution always contains noble values that are universal-perennial and basic things that can be mutually agreed upon by all components of the citizenry, with different religious, cultural, and cultural backgrounds (Mas'udi, 2011). That is why there is no one country, let alone a multi-layered or diverse modern state, whose constitution directly, literally and unambiguously refers to the sound of certain religious scriptures despite being embraced by the vast majority of the people of the country concerned. This is by no means a denial of scripture, but rather putting the holy book on the proper, eternal and divine maqam (Mas'udi, 2011).

In democratic countries, constitutional structures concern the competition between the collective goals of the community and ideas of individual equality and freedom. The constitutional law makes it possible for us to act collectively by coordinating the interests of many individuals, for example by voting mechanisms or judicial decisions. It also protects individuals against abuses by those to whom we entrust power it being a sad feature of human nature that those who seek power may be unfit to exercise it. (Alder, 2002).

The political system of which the constitution is a skeleton can, of course, be anything that the dominant groups in the community manage to impose on the people by appeals to morality or self-interest or using violence, charismatic leadership, or reliance upon apathy. A constitution provides safeguards which at the very least facilitate peaceful change (or in some

versions of democracy provides a means of legitimating forcible change according to a majority opinion) (Alder, 2002). Constitutional Theory is used for the basis of think in analyzing the Law Reconstruction of Constitutional Rights of the believer in the rule of law in Indonesia. Constitutional Theory is also used to see the state's position in fulfilling the constitutional rights of minority groups (believer believers) in the State of Law of Indonesia in the legislation.

Indigenous Faith Believers. Indigenous faith believers are the belief of the local Indonesian people who believe in God outside the majority religion of the people of Indonesia. Or the followers of the faith are also called all belief systems that are not or have not been officially recognized religion based on tradition. This method follows the religious ways of ancestors, ancestors, or people from the previous generation. Adherents to traditional religious methods are generally strong in religion, find it difficult to accept religious matters that are new or renewable, and are not interested in exchanging religions. List of local beliefs of native Indonesian people are Hindu Bali (Hindu Dharma), Aluk Todolo (Tana Toraja), Sunda Wiwitan (Kaneke, Banten), Agama Djawa Sunda (Kuningan, West Java), Buhun (West Java), Kejawen/Kebatinan (central java dan East Java), Parmalim (North Sumatera), Pemena, Kaharingan (Kalimantan), Tonaas Walian (Minahasa, North Sulawesi), Tolotang (South Sulawesi), Wetu Telu (Lombok, West Nusa Tenggara), Naurus (Seram Island, Maluku), Aliran

Mulajadi Nabolon (North Sumatra), Marapu (Sumba), Purwoduksino, Budi Luhur, Pahkampetan, Bolim, Basora, Sirnagalih, Koda kirin (Adonara Island, East Nusa Tenggara), Buda Tengger, and Buda Jawi Wisnu.

Local beliefs of indigenous Indonesians are administratively registered in several groups. Based on data in the Directorate General of Culture, Ministry of Education and Culture, Indonesia, there are 187 groups of trust supporters in Indonesia. Most of the group of believers are in Central Java with 53 groups and others are found throughout Indonesia.

MATERIALS AND METHODS

This research was a study on Constitutional Court Decisions relating to the protection of the constitutional rights of the indigenous faith believers in Indonesia. In this research, the authors did see that the state must be held accountable under the constitution to protect Indonesian citizens without discrimination of constitutional rights in the law and its implementation. Researchers analyzed the decision by using the theory of the constitution and analyzed how the government's response to the Constitutional Court's decision and its implementation to the indigenous faith believers. To see how the implementation is done, the researchers interviewed two people of Parmalim belief in Pematangsiantar City. The results of these interviews are then used as primary data to analyze the implementation of constitutional court decisions at the local level.

RESULTS AND DISCUSSIONS

The State Position in the Fulfillment of the Constitutional Rights of the Indigenous Faith Believers

The state is the basic institution of political power (Budiardjo, 2003). Therefore, the state is a law, a territory, a constitution (Wheare, 1975), a society, and a purpose. The state is not a concrete thing, but an abstract concept of political and power attitudes contained in it (Zulkarnaen & Saebani, 2012).

The concept of people in the preamble to the 1945 Constitution of the second paragraph is mentioned as follows: *“And the struggle for the independence movement of Indonesia has safely come to a happy moment which leads the Indonesian people to the front gate of the independence of the State of Indonesia”*. In the fourth paragraph, it is also mentioned that: *“Then the Indonesian independence was formulated in an Indonesian Constitution, which was formed in a composition of the Republic of Indonesia based on sovereignty”*. Sovereignty is mentioned explicitly in Article 1 Paragraph (2) of the 1945 Constitution: *“Sovereignty is in the hands of the people and carried out according to the Constitution”* (Zuchron, 2017).

Following the first principle of *Pancasila*, the State of Indonesia is based on the principle of Belief in One Supreme God. This is affirmed in Article 29 Paragraph (1) of the 1945 Constitution which reads *“The State is based on Belief in One Supreme God”*.

Based on the philosophical foundation of the State of Indonesia, the legal system and ideals of Indonesia are based on the One Supreme God (Budiyono, 2014). This is in line with Indonesia’s recognition of the omnipotence of the One and Only God as reflected in the opening sentence of the third paragraph of the Preamble to the 1945 Constitution.

The 1945 Constitution as a written constitution does not apply perfectly (Rudy, 2013), because one of the chapters is no longer executed (Hoesein, 2009). The prevailing Constitution is not enforced because of the interests of a personal or governing group, in addition to the fact that the provisions of the constitution are run not following the articles contained therein (Indra, 1990).

There are three sovereignty doctrines adopted by the 1945 Constitution simultaneously, namely: *First*, People’s Sovereignty Doctrine in the fourth paragraph of the Preamble of the 1945 Constitution and Article 1 Paragraph (2) of the Constitution (Harahap, 2004). *Second*, Legal Sovereignty Doctrine (nomocracy) in Article 1 Paragraph (3) of the Constitution. *Third*, Divine Sovereignty Doctrine or Omnipotence as reflected in the third and fourth paragraphs of the Preamble of the Constitution and Article 29 Paragraph (1) of the Constitution (Asshiddiqie, 2010a).

The state should accommodate the needs and guarantee protection for its people (Munawar & Rachman, 2011). These needs include spiritual needs and assurance to be able to perform worship according to their religion and belief without fear

(Handayani, 2009). It is generally known that there are six recognized religions in Indonesia namely Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism (Harsono, 2016). There is no regulation which explicitly states that these six religions are the official religions recognized in Indonesia (Sulaiman, 2016).

The recognition status of the six religions is derived from the explanation of Article 1 of the Presidential Decision of the Republic of Indonesia Number 1/PNPS of 1965 on Prevention of Religious Abuse and/or Blasphemy, which reads “The religions professed by the Indonesian people are Islam, Protestantism, Catholicism, Buddhism, Hinduism and Confucianism”.

This can be proven in the history of the development of religions in Indonesia. These six religions are embraced by almost all the people of Indonesia. Therefore, religious communities are guaranteed as stipulated in Article 29 Paragraph 2 of the 1945 Constitution and they must also get help and protection.

Concerning the local beliefs and teachings, based on the Presidential Decree of the Republic of Indonesia Number 1/PNPS of 1965 on Prevention of Religious Abuse and/or Blasphemy. The government seeks to channel it towards a healthy view and the One Godhead. This is per the Stipulation of the People’s Consultative Assembly No. II/MPRS/1960, Appendix A. Section I, Number 6. The word “religious activities” means any kind of religious activities, such as calling a belief as Religion, using terminology in carrying

out or practising beliefs or worship and so on (Nainggolan et al., 2009). The points of religious teachings can be figured out by the Ministry of Religious Affairs which has tools/means to investigate them.

In principle, the existence of the local belief groups as minority groups has its own legal culture. Based on the data obtained from the Ministry of Education and Culture, there are 187 organizations of indigenous faith in 13 provinces. The local beliefs held by the followers do not harass any religion and this indicates that the group has its own legal culture which is the identity of the believers’ group that should be protected by the Indonesian government.

Menski (2016) argued that as long as the legal culture was preserved, a basic legal postulate for the cultural identity of persons in law, which would be called as the postulate for the identity of legal culture, should be assumed to be functioning. It guided people in choosing ways of reformulating their entire legal structure, including combining original law and transplanted law, so that they could still accommodate the changing circumstances (Menski, 2016).

The local belief groups obey the entry of the national legal system in their rights, although the principle is contrary to the conscience. The Indonesian Constitution as the supreme law in the Republic of Indonesia accommodates that the State guarantees the rights of each community to be protected (Kusnardi & Saragih, 2000). The protection of Indonesian citizens is a goal of the State in the social, economic, legal and cultural environment (Zuchron, 2017).

The existence of the believers in daily life becomes undetectable because by being sociologically and religiously forced, the majority of the community imposes religious values on the group but is fundamentally contrary to the beliefs held by these belief groups.

The marginalization of minority communities because the state comes with the power of its commands through the sovereign laws that are presented during society, which then forces the groups of believers to accept with the coercion of the religious values of the majority of Indonesian people. Today's social reality, most people assume that the flow of belief that exists in the community of belief groups is a religious value that is misguided and needs to be returned to the religious context of Indonesian society, the majority of which adhere to Islam, Catholicism, Protestantism, Hinduism, Buddhism and Confucianism.

The position of a faithful believer, such as *ugamo malim* (*Malim* religion) in social reality already existed and developed in the community of the archipelago before Indonesia's independence. The existence of local trust groups is experiencing a decrease in the number of followers of the faith. The entry of religious teachings into the archipelago is a factor in the exclusion of people who have local beliefs.

In Jambi, there are also minority ethnic groups known as the jungle people or camps/tribal children within. People in the camp or tribal children are ethnic minorities who still have a local religion. The existence of a jungle tribe or a tribe of

children is classified as a social group of people who have weak power so that they are unable to influence the social system of the community in their area (Suparlan, 1982). As a minority tribe in Jambi, jungle tribes experience different treatment compared to other tribes. Jungle tribes are victims of collective discrimination by the wider community and government. This is proven by the increasingly marginalized presence of jungle tribes in the Jambi forest with the existence of plantation lands and forest concessions by private and national companies.

The formation of minority groups in the social structure of society is not always based on the total population of the community group, but rather on the marginal status of the group against other dominant community groups. The weak position of a community group will affect the existence of the group in obtaining their rights as citizens. Constitutional rights as Indonesian citizens who should be accommodated through statutory regulations are ignored. The improvement of citizens' rights is due to the marginalized group of citizens having no political power in the government.

The existence of the Indonesian State at this time has not been able to provide a totalitarian realization of the ideals of the nation's founders. The embodiment to protect all Indonesian people and all Indonesian blood has yet to be realized at all as a whole. This is evidenced by the occurrence of discrimination against several national entities that are part of the entire Indonesian nation and an inseparable part of the entire Indonesian blood spill.

The discrimination that occurs directly or indirectly is the responsibility of the state because the state is present and gives birth to a discriminatory state. Discriminatory conditions against certain entities can be tangible in law (legislation), as well as discriminatory from the behaviour/actions of the government of the state apparatus. This is contrary to the purpose of the birth of the Republic of Indonesia to create a welfare state, a state that protects the entire Indonesian nation and the whole of Indonesia's bloodbath based on unity by realizing social justice for all Indonesian people.

Reality shows that groups of citizens who are marginalized based on the distinction of religious beliefs that are not the same as the majority religion are violations of the constitutional rights of these groups as part of Indonesian citizens.

Undang-Undang Dasar 1945 (Fundamental Law 1945) as the Indonesian Constitution contains a lot of basic values, the content of moral and ethical values, and even the provisions regarding human rights that occupy the most material portion after the Reformation. The values contained in articles on human rights, not only contain norms of rights and obligations in the relationship between the state and citizens but also contain principles about human values regardless of the status of people as citizens or not. Anyone who is within the jurisdiction of the unitary state of the Republic of Indonesia must be humanized as a human being who has all of his or her human rights and obligations.

The existence of community groups can be used as an icon for the central government or local government to bring investment through local tourism. The existence of local belief groups as the identity of local communities can be a religious tourism object. The tourists can see directly the local religious practice of the community. It is hoped that with the existence and existence of local believer protected communities, the Government can improve the living standard of the community, through the tourism sector. This can be seen from tourism objects in Mount Bromo, Bali and Toraja. The same can also be developed in North Sumatra.

The Position of the Constitutional Court Decision Number 97/PUU-XIV/2016

The Decision of the Constitutional Court to cancel the emptying of religious columns in Family Cards and Identity Cards for the indigenous faith believers is considered as democratic progress by a group of people.

However, the Decision does not reflect the wishes of the six religion followers generally recognized in Indonesia especially Muslims. The local beliefs referred to in the Decision of the Constitutional Court is the indigenous beliefs that exist in Indonesia such as *Kebatinan*, *Parmalim*, and *Sunda Wiwitan*. While other religions and beliefs such as Judaism, Zarasustrian, Shinto, Taoism are excluded.

The Decision of the Constitutional Court of Indonesia cannot be separated from the implementation of the legal system in Indonesia (Asshiddiqie, 2010b). According to the legal system, the court's first task is

to ensure the provision of certain laws. This task usually requires the deciphering of the meaning of the key terms. The civil law and common law judges will usually have the task of strictly enforcing certain legislative laws if the meaning of the law is clearly defined (de Cruz, 2010).

The concept of judicial review in Indonesia is a result of the modern development of a democratic Indonesian governmental system. Judicial review is based on the ideas of the rule of law (Hoesein, 2009) the principle of separation of power, as well as the protection and promotion of human rights (the protection of fundamental rights). Judicial review is conducted in a country that embraces the supremacy of law and not the supremacy of parliament. In a country which adopts the system of parliamentary supremacy, the legal product cannot be contested because parliament is a form of representation of the sovereignty of the people (Darmadi, 2015).

The Implementation of legal interpretation by the Constitutional Court is conducted through the interpretive approach applicable to civil law (Gilissen & Gorle, 2007). The Constitutional Court's interpretation of the civil administration law confronted with the Indonesian Constitution resulted in the fact that the existence of the civil administration law, especially Article 61 Paragraph (1) and Article 64 Paragraph (5), is contradictory to the 1945 Constitution.

Radbruch argued that legal sense could be categorized into three aspects (Huijbers, 1982). *The first* is justice in its narrow

sense. This justice means equal rights for everyone before the court. Thus, the local faith believers have fought for constitutional rights through the Constitutional Court.

The second is the goal of justice or finality. This aspect determines the content of the law because the content of the law is following the objectives to be achieved. In this case, the existing laws and regulations, such as the civil administration laws, educational laws, health laws, and election laws in Indonesia have not reflected the substance that accommodates the interests of all Indonesians.

The third is legal certainty or legality. This aspect ensures that the law can serve as a rule to be obeyed (Huijbers, 1982; Tanya, 2013). The legal certainty contains a good value which is called by Radbruch as an ethical value. And so it is because this value gets its shape in the attitude of a man who acts according to his duty for the good of life (Huijbers, 1982; Aquinas, 2002). Legal certainty relates to the effectiveness of the law (Huijbers, 1982). Legal certainty is only guaranteed if the government has sufficient means to ensure the existing regulations.

The Constitutional Court Decision Number 97/PUU-XIV/2016 is only able to provide legal certainty for the local faith believers at the constitutional level. In terms of implementation, the government has not established technical and applicative rules. The Decision of the Constitutional Court Number 97/PUU-XIV/2016, viewed from the perspective of justice and benefits, has not been able to provide justice and benefits in the social reality of the community.

The Decision of the Constitutional Court Number 97/PUU-XIV/2016 comes under the category of a conditional unconstitutional rule. An unconstitutional decision is a verdict made through negative interpretation, meaning that law is instantaneously unconstitutional when interpreted as the formulation/interpretation of the Constitutional Court (Wibowo, 2015).

The Constitutional Court Decision does not directly alter the way a group of people view the indigenous belief followers. The majority of Indonesian people still degrade and treat the local faith groups discriminatively (Kurnia, 2015). The discrimination is also done by both government and private agencies, among others, in the installation of electricity, the opening of a bank account, making of passports and inheritance certificates from the court.

The Government of Indonesia's response to the Constitutional Court Decision Number 97/PUU-XIV/2016 is limited to issuing the Minister of Home Affairs Regulation No. 118 of 2017 on Family Card Forms, Registers and Civil Registration Deeds. The regulation aims to improve the services of the Civil Administration professionally, to meet the standards of information technology, and to be dynamic and orderly in achieving excellent service toward the Family Card Forms, Registers and Civil Registration Deeds.

The Regulation of the Minister of Home Affairs Number 118 of 2017 does not work effectively in the local faith community. Lack of information and access to change

data on civil administration is the main obstacle for the believers who generally reside in a remote village. This happened, for example, to the community of Malim believers in Toba Samosir Regency, North Sumatera Province, where some families did not have Family Cards and marriage certificates.

The obstacles faced by the Indonesian government to implement the Constitutional Court Decision are, *firstly*, the government is not ready to revise the civil administration law. *Secondly*, the government has not established a technical regulation to accommodate the rights to religion inclusion in the ID column. Although the Decision of the Constitutional Court Number 97/PUU-XIV/2016 has become a legal breakthrough, its implementation does not serve as a guide for the government in making a public policy related to the constitutional rights of the local belief communities living in various regions in Indonesia.

The Indonesian government should prepare itself and consciously think to participate in incorporating social issues into legal materials because of the interaction, interrelation, and interdependence between law and social changes (Tutik, 2014). The Indonesian government's policy in responding to community issues with legal norms is expected to change people's behaviour.

Protection of the constitutional rights of Indonesian citizens is not only regulated in the Law but must apply it in real situations or even imaginable situations to occur in developing law following the development

of the existing community. Therefore, every law written in the law must be clearly defined in society. The same was said by Jack M Balkin that defining here the intention was to find possible changes and conceptual boundaries created by the law itself (Balkin, 2004). More complete than Balkin's statement is as follows: "law is full of conceptual oppositions created by distinctions, which separates things in certain categories from things that fall outside it". According to Balkin (2004), that these changes that must be captured by legal experts include the forming of state law, and therefore the law, in this case, will always be "contested" and limitations in the law itself will always be tested by changes in society. The ability of the state/government to protect and provide the needs of citizens will greatly affect social and political stability.

According to Unger (1975) that in the formation of law by itself also reflects certain socio-political values. Unger said that law is inseparable from politics and various other non-legal norms. Laws are formed by various non-legal factors such as economic, racial, gender, or political interests. The formation of law always presupposes interaction and negotiation between various community groups. As a result, a doctrinal legal analysis will only isolate the law from its socio-political context, and make the law unable to overcome various socio-political problems: racial, gender, religious, or class discrimination.

According to Balkin (2004), to criticize discriminatory state law, values must be established that are more important than the

positive norms of humanitarian, cultural and convention laws. By using deconstruction to criticize unjust justice and create more justice. This deconstruction can be used to criticize the laws and regulations made by the Government of Indonesia that are discriminatory to the followers of the original faith.

So the state, in this case, is responsible for forming laws in the form of laws that are progressive, non-discriminatory, and can interact with marginal communities in society. The concrete step is by evaluating discriminatory regulations at the central and regional levels and forming legislation that further guarantees and protects the constitutional rights of citizens, especially the rights to religion and belief.

The evaluation and formation of these laws and regulations must be based on the values of freedom, justice, and equality in the rule of law that upholds the rule of law. Thus, the law is not just a tool to bring order but to bring prosperity and justice for all people. In Indonesia, based on Pancasila as the basis of the Indonesian state, the relationship between religion and state in Indonesia is substantial, meaning that in religion there are substantial teachings and values. This means that in religion there are substantive values that contain ethical and moral principles in the community and state. Religious values become a reference and guide in carrying out and carrying out community life and state politics. Thus, the state of Indonesia is a Godhead of the Almighty, with the type of the Almighty God based on a just and civilized basis.

CONCLUSIONS

The Decision of the Constitutional Court Number 97/PUU-XIV/2016 has only reflected certainty, justice and benefits in Indonesian societies in terms of constitutionalism. The implementation of the Constitutional Court Decision by the Indonesian government as a government regulator and operator has not worked optimally. The Indonesian government's unpreparedness to provide technical rules, socialization, information and access for the indigenous faith communities indicates that the government has been unconstitutional. Protection of the constitutional rights of Indonesian citizens who adhere to the original beliefs of Indonesia is constructed through positive Indonesian law, as well as political and cultural protection so that the protection of constitutional rights can be truly realized. The Government of Indonesia should immediately formulate a technical regulation in the form of the Minister of Home Affairs Regulation, the Minister of Education Regulation, the Minister of Health Regulation, and the Minister of Law and Human Rights Regulation which are interrelated (correlated), consistent and continuous. The regulations act as a form of implementation toward the fulfillment of the constitutional rights in the field of civil administration, health, education, law and government affairs. The local government should provide guarantees to the community groups to fulfill their constitutional rights by conducting socialization, advocacy and open access for the indigenous faith believers in the area.

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