

# The Clear Pathway of the Constitutional Court's Decision on Adherents of Belief in Indonesia

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**ABSTRACT:** The article aims to analyze the implications of the Indonesian Constitutional Court's decision on adherents of belief in Indonesia, not only regarding population administration but also the re-conception of the distinction between belief and religion. This notion corresponds to Article 5 paragraph (1) of the Law of Judicial Power and the theory of progressive law, which views laws as established for human life. This article used normative legal research. The results indicate first, that in reviewing Constitutional Court's decision Number 57/PUU XIV/Year 2016 on Law Number 24 Year 2013 on Civil Administration, the judges' considerations are based on and aim to uphold the 1945 Constitution. As constitutional interpreters, the judges interpret religions and beliefs as an integral entity. Granting the request to review Law Number 24 Year 2013 is considered a concrete manifestation of the fulfillment and protection of human rights, in this case the rights of adherents of beliefs. The request granted provides a clear pathway for acknowledging the identity of adherents of beliefs in Law Number 24 Year 2013, so that adherents of beliefs can freely practice their faith. Second, the Constitutional Court's decision Number 57 /PUU XIV/Year 2016 has massive implications for public and leads to the establishment of laws as a tool of social engineering. Recognizing native-faith followers in civil administration establishes a new norm, ensuring religious rights are implemented and fulfilled.

**KEYWORDS:** Constitutional Court Decision, Religious Rights, Civil Administration, Adherent of Belief



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## I. INTRODUCTION

The protection and respect for human rights as the basis of individual interests is enshrined in the constitutional rights of the 1945 Constitution.<sup>1</sup> That the creation of a state and the exercise of state power must not reduce the meaning or significance of human rights is an important element of the rule of law, especially in conditions of diversity of people and beliefs.

One of the constitutional rights guaranteed in Indonesia is the right of freedom of religion contained in Article 29 paragraph (2), which states that the state guarantees the independence of every citizen to embrace their own religion and to worship according to their religion and beliefs. Even though the state has guaranteed the right to believe, in the reality various human rights violations often occur to communities and indigenous peoples, especially to adherents of belief. Based on data from the Setara Institute<sup>2</sup>, many Indonesian people who adhere to local beliefs such as Kejawen and Sunda Wiwitan often face discrimination and even violence or persecution, as seen in the case of followers of the Lalang Rondor Malesung (Laroma) belief system.<sup>3</sup>

To advocate for constitutional rights, both the right to embrace a religion or belief as possessed by every element in Indonesia's plural society and other rights, appeals must be made to the Constitutional Court (MK) as a state institution that can realize these rights. One of the results of the struggle and efforts to achieve the constitutional rights of Indonesian citizens through the Constitutional Court is its

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<sup>1</sup> Shandy Harsyahwardhana, "Akibat Hukum Putusan MK No. 97/PUU-XIV/2016 Tentang Judicial Review UU Administrasi Kependudukan Terhadap Penghayat Aliran Kepercayaan" (2020) 13:2 Arena Hukum 369–387.

<sup>2</sup> Kidung Asmara Sigit & Ismail Hasani, *Intoleransi Semasa Pandemi: Laporan Kebebasan Beragama dan Berkeyakinan 2020*, Halili Hasan, ed (Jakarta: Pustaka Masyarakat Setara, 2021).

<sup>3</sup> Tunggal Ganggas Danisworo, "GOVERNING RELIGION: Critics of Indonesia's Government Social Cohesion and Religious Harmony Policy" (2023) 2:2 Aliansi : Jurnal Politik, Keamanan Dan Hubungan Internasional 76–85.

decision which focuses on the beliefs of the Indonesian people. The Constitutional Court's decision relates to the case of a judicial review of Law Number 23 of 2005.<sup>4</sup> In decision Number 97/PUU-XIV/2016, it can be seen that the Constitutional Court granted the entire claim submitted by adherents of the belief system, which included the consideration of several parts of Article 61 paragraph (1) and paragraph (2), and Article 64 paragraph (1) and paragraph (2) of the Administrative Law, which contradicts the 1945 Constitution of the Republic of Indonesia.<sup>5</sup> Relevant to this study, there are some literature reviews regarding religious freedom of adherents of beliefs in Indonesia. Studies reviewed include *Dinamika Pengakuan Penghayat Kepercayaan di Indonesia* (2020) by K Viri and Z Febriany<sup>6</sup> and *Implementasi Putusan Mahkamah Konstitusi Nomor 97/PUU-XIV/2016 bagi Orang Lom di Kepulauan Bangka Belitung* (2019) by Reko Dwi Salfutra et al.<sup>7</sup> These studies find that the state recognizes the community of adherents of beliefs, especially regarding all matters related to their rights for civil administration (where now, there is a “belief” column for them, in the Family Card and electronic ID), and their rights to embrace and worship.

In this case, the Constitutional Court has a significant role in examining constitutionality as regulated in Article 24 C paragraph (1) of the Constitution, which explains that the Constitutional Court has the authority to adjudicate at the first and final levels, the decision of which is final. In light of these issues, the Constitutional Court plays a crucial role in upholding constitutional rights. Constitutional judges must be capable of applying structural alignment and enforcing laws effectively. In addition, the Court also considers potential social and legal consequences. Based on this proposition, it is important to

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<sup>4</sup> Akhmad Muawal Hasan, “Pembakuan Definisi ‘Agama’ yang Penuh Pro dan Kontra”, (11 November 2017), online: *tirto.id* <<https://tirto.id/pembakuan-definisi-agama-yang-penuh-pro-dan-kontra-czVV>>.

<sup>5</sup> *Putusan Nomor 97/PUU-XIV/2016*, 2016 Constitutional Court of Indonesia.

<sup>6</sup> Kristina Viri & Zarida Febriany, “Dinamika Pengakuan Penghayat Kepercayaan di Indonesia” (2020) 2:2 Indonesian Journal of Religion and Society 97–112.

<sup>7</sup> Reko Dwi Salfutra, Dwi Haryadi & Darwance Darwance, “Implementasi Putusan Mahkamah Konstitusi Nomor 97/PUU-XIV/2016 bagi Orang Lom di Kepulauan Bangka Belitung” (2019) 16:2 Jurnal Konstitusi 255–273.

conduct further study in relation to this research regarding recognizing the rights of adherents of belief through Constitutional Court Decision Number 97/PUU-XIV/2016

Given the central role of religion in the lives of believers, who often see it as a supernatural force guiding their choices, religious values and norms play a significant part in shaping individual behavior and societal interactions.<sup>8</sup> So, the purpose of this research is to analyze how the Constitutional Court carries out its function as a guardian of the constitution, interpreter of the constitution, protector of human rights, and protector of democracy. The problems investigated in this research are: (1) How is the existence of the Constitutional Court and its decision related to its role as protector of human rights in Indonesia, especially freedom of religion? (2) What are the implications of the Constitutional Court Decision Number 97/PUU-XIV/2016 regarding population administration related to freedom of religion for adherents of belief?

## **II. METHOD**

In this study the authors use qualitative legal research methods. The type of research used is normative juridical, and this paper takes a statutory approach<sup>9</sup> and conceptual approach. This normative legal research is grounded in primary and secondary legal sources. Primary sources, such as legislation, provide the core legal framework, while secondary sources, including books, articles, and online resources, offer interpretations and analyses. The conceptual approach focuses on the Constitutional Court's decisions and their implications for the freedom of religion, particularly for adherents of minority beliefs.

## **III. The Existence of the Constitutional Court in Indonesia as Protector of Human Rights**

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<sup>8</sup> Harsyahwardhana, *supra* note 1, p. 373.

<sup>9</sup> Amiruddin & Zainal Asikin, *Pengantar Metode Penelitian Hukum* (PT. Rajagrafindo Persada, 2012), p. 118.

## A. Legal Entanglements: The Rule of Law, Constitutional Rights and Freedom of Religion as Human Rights

The rule of law is not a new discourse when viewed historically. It has progressed towards the expected changes, starting from Plato's thinking which was motivated by the reality of his country, namely the existence of an arbitrary ruler who overrides the preferences of the people.

Plato proposed the creation of an ideal state as a solution to the political problems of his time.<sup>10</sup> In *The Republic*, Plato argues that a just state can only be achieved under the leadership of a philosopher-king, a ruler with profound knowledge of goodness. He further suggests that the rule of law is essential for establishing such an ideal state, as outlined in his work *The Statesmen and the Law*.<sup>11</sup>

The concept of the rule of law is not confined to a single thinker. Immanuel Kant was another influential figure who advocated for this idea.<sup>12</sup> Essentially, this concept aligns with Plato's philosophy.<sup>13</sup> A straight line can be drawn from Plato and Kant to other thoughts on human rights including those of John Locke<sup>14</sup>, Montesqueieu's *Trias Politica*<sup>15</sup>, and Rousseau on popular sovereignty.<sup>16</sup> The idea is to eliminate the arbitrariness of the ruler. Kant has indicators in the rule of law, namely the protection of human rights and the division of power.<sup>17</sup> It departs from the ruler who holds absolute power. Kant's indicators are used as a reference that can achieve people's welfare.

<sup>10</sup> Abdul Aziz Hakim, *Negara Hukum dan Demokrasi di Indonesia* (Pustaka Pelajar, 2011).

<sup>11</sup> Jimly Asshiddiqie, *Menuju negara hukum yang demokratis* (Jakarta: Bhuana Ilmu populer, 2009).

<sup>12</sup> Sayid Anshar, "Konsep Negara Hukum dalam Perspektif Hukum Islam" (2019) 2:2 *soumlaw* 235–245, p. 238.

<sup>13</sup> Soeharno, "Ketertautan Rule of Law dengan HAM" (2015) 6:1 *HUMANITAS: Jurnal Kajian dan Pendidikan HAM* 136–156.

<sup>14</sup> Reko Dwi Salfutra, "Hak Asasi Manusia Dalam Perspektif Filsafat Hukum" (2018) 12:2 *PROGRESIF: Jurnal Hukum* 2146–2158.

<sup>15</sup> Ruhenda Ruhenda et al, "Tinjauan Trias Politika Terhadap Terbentuknya Sistem Politik dan Pemerintahan di Indonesia" (2020) 1:2 *Journal of Governance and Social Policy* 58–69.

<sup>16</sup> Ofis Rikardo, "Penerapan Kedaulatan Rakyat Di Dalam Pemilihan Umum Di Indonesia Berdasarkan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (2020) 6:1 *Jurnal Hukum Sasana* 51–71.

<sup>17</sup> Muhammad Riora, Ulya Kencana & Kun Budianto, "Netralitas Politik Aparatur Sipil Negara dalam Perspektif Perlindungan Hak Asasi Manusia" (2020) 4:2 *Wajah Hukum* 355–368, p. 360.

Julius Stahl further refined Kant's concept of the rule of law. He argued that the rule of law's primary purpose is to protect human rights, limit state power, and promote its equitable distribution. Stahl proposed that these goals could be achieved through statutory regulations and the establishment of administrative courts to oversee the government's adherence to human rights.<sup>18</sup> Stahl's preference for the rule of law is formal law. The next period rotates by paying attention to material laws that lead to the conception of the welfare state, or the goal of the state to create people's prosperity.<sup>19</sup>

Discussions of the rule of law often involve equivalent terms like *rechtstaat* and *rule of law*. The theoretical and pragmatic *rechtstaat* concept originated in Continental Europe (within the civil law tradition) and was pioneered by Julius Stahl.<sup>20</sup> As for the mainland of the Anglo-Saxon country (common law), the rule of law was implemented, pioneered by AV Dicey.<sup>21</sup> Although they have differences in terms of their legal characteristics and traditions, as stated by Philipus Hadjon,<sup>22</sup> if examined it is found that the similarities between the two are the characteristics of the rule of law, namely the protection of human rights.

The cornerstone of the rule of law is the principle that the state should be governed by law, not by arbitrary power. Indonesian law explicitly states that the nation is a *rechtstaat*, a state governed by law, rather than a *machtstaat*, a state governed by brute force.<sup>23</sup> The Indonesian interpretation of the rule of law has been a subject of debate, leading to the recognition of a unique legal state concept that aligns with the nation's spirit. Rooted in Pancasila philosophy, this Indonesian legal state is defined by the values, principles, ideals, and goals outlined in

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<sup>18</sup> Hakim;, *supra* note 10.

<sup>19</sup> Atika Thahira, "Penegakan Hukum Administrasi Lingkungan Hidup Ditinjau Dari Konsep Negara Hukum" (2020) 5:2 JCH (Jurnal Cendekia Hukum) 260–274.

<sup>20</sup> Aristoteles, *Politik. Yogyakarta: Bentang Budaya, Diterjemahkan dari buku Politics. (1995)* (New York: Oxford University Press, 2004).

<sup>21</sup> Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 1889).

<sup>22</sup> Philipus M Hadjon, *Perlindungan hukum bagi rakyat di Indonesia* (Surabaya: Bina Ilmu, 1987).

<sup>23</sup> Haposan Siallagan, "Penerapan Prinsip Negara Hukum di Indonesia" (2016) 18:2 *Sosiohumaniora* 122–128.

the preamble and articles of the 1945 Constitution, forming the foundation for its legal and political framework.<sup>24</sup>

The description above explains that Pancasila became a source of the nation's view of life, attached to the concept of the Indonesian legal state.<sup>25</sup> This is very different from other conceptions of the rule of law because it is prismatic.<sup>26</sup> Prismatic in this case means assimilation of law into a unified whole of the many social and cultural values that exist and become the new law. The Pancasila legal state holds the principle of kinship and achieves the goal of legal certainty and justice. The law reflects the nation's culture which functions to change society, and has a belief in God as the first precept of Pancasila.<sup>27</sup>

Jimly Asshiddiqie gave his thoughts on 13 principles in the rule of law which are as follows: (i) the rule of law; (ii) equality before the law; (iii) the application of the principle of legality; (iv) limited powers; (v) mixed organs of independent nature; (vi) the existence of an independent judiciary; (vii) state administrative courts; (viii) the existence of a constitutional court; (ix) protection of human rights; (x) democracy; (xi) welfare *rechtstaat*; (xii) transparency and social control; and (xiii) basis of the One Godhead.<sup>28</sup>

The concept of the rule of law places the law as the highest power in its implementation.<sup>29</sup> The estuary is a term called constitution. This term in Dutch is called *Grondwet* which means the law as the basis of all law.<sup>30</sup> Hans Kelsen agrees that the constitution is the basis of the national legal order.<sup>31</sup> In Indonesia, the constitution has a

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<sup>24</sup> Moh Mahfud M D, *Membangun politik hukum, menegakkan konstitusi* (LP3ES, 2006).

<sup>25</sup> Kurnisar Kurnisar, "PANCASILA SUMBER DARI SEGALA SUMBER HUKUM DI INDONESIA" (2011) 10:2 Media Komunikasi FPIPS, online: <<https://ejournal.undiksha.ac.id/index.php/MKFIS/article/view/467>> at 249.

<sup>26</sup> *Ibid.*

<sup>27</sup> Arief Hidayat, *Negara Hukum Berwatak Pancasila* (Yogyakarta: Seminar Nasional Pekan Fakultas Hukum Universitas Atmajaya Yogyakarta, 2017) at 4–5.

<sup>28</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006).

<sup>29</sup> Mr Sayuti, "Konsep Rechtsstaat dalam Negara Hukum Indonesia (Kajian terhadap Pendapat Azhari)" (2011) 4:2 Nalar Fiqh 220458.

<sup>30</sup> Ahmad Sukardja, *Piagam Madinah & Undang-Undang Dasar NRI 1945* (Jakarta: Sinar Grafika, 2012), p. 34.

<sup>31</sup> Hans Kelsen, *Teori Umum tentang Hukum dan Negara* (Bandung: Nusamedia, 2009), p. 365.

fundamental function and position, namely as the highest source of law<sup>32</sup> which regulates the aims and objectives of the state.<sup>33</sup>

Carl J. Friederich argues that in the Constitution, it is mandatory to have content that regulates the division of state power and human rights.<sup>34</sup> Montesquieu divides three types of power, namely legislative, executive, and judicial.<sup>35</sup> Interestingly, the judicial power, according to Montesquieu, is the power that has the duty to adjudicate for violations of the law.<sup>36</sup> The content of this division of power is contained in the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia. It is explained in Article 24 paragraph (1) that judicial power is an independent power to administer justice in law enforcement. Furthermore, in Article 24 paragraph (2), judicial power is exercised by the Supreme Court and the Constitutional Court.<sup>37</sup>

The 1945 Constitution of the Republic of Indonesia not only outlines constitutional rights but also includes a special chapter on human rights, namely in the chapter XA. There is no strict separation between the two. Constitutional rights in Indonesia are essentially elaborations of universal human rights principles in the context of the Indonesian state.<sup>38</sup> Article 28A to Article 28J explain the scope and types of human rights which derive from the contents of several international human rights instruments such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights, and others. Human rights are comprehensively and impressively regulated in the 1945 Constitution of the Republic of

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<sup>32</sup> Oly Viana Agustine, "Implementasi Noken Sebagai Hukum Tidak Tertulis Dalam Sistem Hukum Nasional" (2019) 8:1 Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional 69–84.

<sup>33</sup> MPR, *Buku I, Naskah Akademik Kajian Komprehensif Komisi Konstitusi tentang Perubahan Undang-Undang Dasar Negara RI Tahun 1945* (Jakarta, 2004), p. 12–13.

<sup>34</sup> Benny K Harman, *Mempertimbangkan Mahkamah Konstitusi Sejarah pemikiran Pengujian UU Terhadap UUD* (Perpustakaan Populer Gramedia, 2013), p. 106.

<sup>35</sup> Montesquieu, *L'Esprit des Lois in Book XXVI, Chapter 15* (1748).

<sup>36</sup> Suparto Suparto, "Teori Pemisahan Kekuasaan dan Konstitusi Menurut Negara Barat dan Islam" (2019) 19:1 Hukum Islam 134–149.

<sup>37</sup> *UUD NRI 1945*.

<sup>38</sup> Laica Marzuki, "Konstitusionalisme dan Hak Asasi Manusia" (2011) 8:4 Jurnal Konstitusi 479–488.



Indonesia, including civil and political rights, economic rights, and socio-cultural rights.<sup>39</sup> The distinction between constitutional rights and human rights lies in the formulation of the articles that govern them within the constitution. The constitutional rights often begin with the phrase "*every citizen*," human rights typically start with the phrase "*every person*." The consequence of this distinction is that constitutional rights apply only to Indonesian citizens, while human rights apply to all people, regardless of nationality.<sup>40</sup>

Philosophically the constitution is based on Pancasila, which contains a depth of meaning regarding Divinity, Humanity, Unity, Democracy, and Social Justice.<sup>41</sup> With regard to this aspect, the 1945 Constitution of the Republic of Indonesia contains the guarantee, protection, and fulfillment of human rights. In the enforcement of law and human rights, there are actors of judicial power as regulated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The presence of actors of judicial power ensures justice can be enforced.<sup>42</sup> Second, the Indonesian Constitution clearly regulates human rights, reflecting the value of legal certainty. Article 28D, paragraph (1) explicitly states that everyone has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment under the law. These two fundamental values serve as parameters for achieving the broader goal of societal benefit and are essential for realizing the legal objectives that guide state administration, known as the rule of law.

## **B. The Constitutional Court: Judicial Review as Human Rights Protections and fulfillment**

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<sup>39</sup> Mukhamad Luthfan Setiaji & Aminullah Ibrahim, "Kajian Hak Asasi Manusia Dalam Negara the Rule of Law : Antara Hukum Progresif Dan Hukum Positif" (2018) 2:2 LeSRev 123–138.

<sup>40</sup> Utami Argawati, "Indonesian Constitution Protects Human Rights of Everyone Including Foreign Nationals", (2023), online: <[https://en.mkri.id/news/details/2023-01-16/Indonesian\\_Constitution\\_Protects\\_Human\\_Rights\\_of\\_Everyone\\_Including\\_Foreign\\_Nationals](https://en.mkri.id/news/details/2023-01-16/Indonesian_Constitution_Protects_Human_Rights_of_Everyone_Including_Foreign_Nationals)>.

<sup>41</sup> Sutrisno Sutrisno, "Peran Ideologi Pancasila Dalam Perkembangan Konstitusi dan Sistem Hukum di Indonesia" (2016) 1:1 JPK (Jurnal Pancasila dan Kewarganegaraan) 41–49.

<sup>42</sup> Eveline Fifiana, "Eksistensi Kekuasaan Kehakiman (Judicative Power) Dalam Mewujudkan Independensi Peradilan dan Peradilan yang Bersih" (2018) 16 Solusi 266–273.

The Constitutional Court is a pivotal component of the judiciary. To understand its origins, we must delve into its historical context, both internationally and domestically within Indonesia. The establishment of the Constitutional Court is rooted in the evolving legal landscape, particularly the practice of judicial review, which involves assessing laws and regulations against the constitution to ensure their compatibility.<sup>43</sup>

In various literatures that explain the history of the Constitutional Court, all explain that the main momentum for the emergence of judicial review stems from the decision of the United States Supreme Court in the case of *Marbury and Madison* in 1803. The Court canceled the provisions in the Judiciary Act 1789 because it was considered contrary to the American Constitution in this case. The Supreme Court justices of the United States, with the chairman John Marshal at that time, gave an opinion regarding the authority of this institution to conduct judicial review because it was their constitutional obligation as Supreme Court justices with their oath to uphold and protect the constitution as well as human rights.<sup>44</sup> In accordance with the principle of the supremacy of the constitution, laws that are contrary to the constitution must be declared to have no binding legal force. Of relevance is the opinion of Hans Kelsen, who argues that the existence of the Constitutional Court is a consequence of the principle of the supremacy of the constitution, and to safeguard it a special court is needed to ensure the suitability of lower laws.

Regarding the aforementioned legal dynamics in the United States, the existence of the Constitutional Court can be understood as part of realizing the mechanism of checks and balances between one state power and another.<sup>45</sup> Black Law Dictionary defines checks and balances are *arrangement of governmental power whereby powers*

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<sup>43</sup> Jimly Asshiddiqie, *Model-model Pengujian Konstitusional di Berbagai Negara* (Konstitusi Press, 2005), p. 6–9.

<sup>44</sup> Hamid Chalid, “Dualism of Judicial Review in Indonesia: Problems and Solutions” (2017) 7:3 *Indonesia Law Review*, online: <<https://scholarhub.ui.ac.id/ilrev/vol7/iss3/5>>.

<sup>45</sup> Jose H Chooper, *Judicial Review and the National Political Process: A Functional Reconsideration of the Role of the Supreme Court* (Chicago and London: The University of Chicago Press, 1980), p. 4–7.

*of one governmental branch check or balance those of other branches. See also separation of power.*<sup>46</sup> This is in line with the rule of law which aims to maximize the function of each state institution and limit the arbitrariness of state institutions.<sup>47</sup>

The U.S. Supreme Court's decision sparked a debate about judicial review in Europe. At that time, the prevailing view favored parliamentary supremacy, reflecting the people's desire for their representatives to hold ultimate legal authority. Courts were generally unable to refuse to apply laws, even if they violated the constitution. In the late 19th century, George Jellinek contributed to the development of judicial review in the Austrian Supreme Court. This development expanded the court's authority to include constitutional review, allowing it to adjudicate on citizens' complaints against government actions (constitutional complaints). Then there is Hans Kelsen's idea of establishing a separate court (outside the Supreme Court) to handle judicial review. This brilliant idea was accepted and became part of the 1920 Austrian Constitution with the establishment of the Constitutional Court.<sup>48</sup>

As a modern state of law, Indonesia has crystallized elements of the rule of law through the establishment of one of the actors of judicial power, namely the Constitutional Court. The establishment of this judicial institution was based on the Third Amendment to the 1945 Constitution of the Republic of Indonesia. When Indonesia established the Constitutional Court in 2003, there were records of 78 countries that had formed the institution. The Constitutional Court of the Republic of Indonesia was formed along with the ratification of the Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court on August 13, 2003. This was followed by the

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<sup>46</sup> Henry Campbell Black & Joseph R Nolan, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (West Publishing Company, 1990), p. 238.

<sup>47</sup> Indra Rahmatullah & Rizza Zia Agusty, "Memperkuat Hubungan Antar Lembaga Negara Dalam Bingkai Negara Hukum" (2016) 3:2 SALAM: Jurnal Sosial dan Budaya Syar-i 231–244.

<sup>48</sup> Asshiddiqie, *supra* note 11, p. 24–29.

election of Constitutional Justices through Presidential Decree of the Republic of Indonesia Number 147/M of 2003.<sup>49</sup>

It is interesting to note that the idea of a judicial review has actually existed since the discussion of the 1945 Constitution of the Republic of Indonesia by the Investigative Agency for Preparatory Work for Indonesian Independence (Badan Penyelidik Persiapan Usaha-Usaha Kemerdekaan Indonesia) in 1945. Muhammad Yamin argued that there needs to be an authority to compare the law, but this idea was rejected by Soepomo who held the view that the 1945 Constitution of the Republic of Indonesia, which was drafted at that time, did not adhere to the trias politica and not many Indonesian law scholars have experience of judicial review.<sup>50</sup> The discussion on the Draft Law on Judicial Power in 1970 apparently gave rise to the idea of judicial review again. The Indonesian Judges Association proposed that the Supreme Court also has the authority to examine laws against the constitution. On the basis of not stipulating these provisions in the contents of the 1945 Constitution of the Republic of Indonesia, the idea was again rejected.

Prior to the establishment of the Constitutional Court, the authority to review laws was held by the People's Consultative Assembly or Majelis Permusyawaratan Rakyat (MPR), as regulated in MPR Decree Number III/MPR/2000 concerning Legal Sources and Ordering Procedures for Legislation. Judicial review is considered a form of checks and balances which relies on the principle of the supremacy of the constitution to ensure that there is no implementation which is a violation of the constitution, so it is necessary to guarantee that the legal provisions under the constitution do not conflict with the constitution itself.

The authority of the Constitutional Court is outlined in Article 24C, paragraph 1 of the 1945 Indonesian Constitution:

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<sup>49</sup> Meirina Fajarwati, "Upaya Hukum untuk Melindungi Hak Konstitusional Warga Negara Melalui Mahkamah Konstitusi" (2016) 13:3 Jurnal Legislasi Indonesia 322, p. 322.

<sup>50</sup> Muhammad Yamin, *Naskah Persiapan Undang-Undang Dasar 1945 Jilid I* (Jajasan Prapranja, 1959).

*“The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to examine laws against the constitution, decide on disputes over the authority of state institutions whose authority is granted by the constitution, decide on the dissolution of political parties, and decide disputes regarding election results. general.”*

As mentioned earlier, the Constitutional Court has the authority to review laws and determine if they are consistent with the constitution. The term ‘reviewing laws and regulations’ refers to the process of evaluating these laws to ensure they comply with the constitution. The Constitutional Court is one of the bodies responsible for conducting this evaluation which is performed by: (i) judges (*toetsingsrecht van de rechter* or judicial review); (ii) legislative institutions (legislative review); (iii) and executive agencies (executive review).<sup>51</sup> The judicial review will be discussed in greater depth in this discussion as the judicial review is conducted by the Constitutional Court.

Jimly Asshiddiqie, based on Hans Kelsen's understanding, divides judicial review into two types, namely: (i) concrete norm review; and (ii) abstract norm review. Then, according to the object being reviewed, reviewing of legal products in general (*toetsingrecht*) includes: (i) *formeel toetsingrecht*; and (ii) *materieel toetsingrecht*. Thus, there are also types of formal judicial review and material judicial review.<sup>52</sup> Sri Soemantri provides a definition of the right to formal examination, which is the authority to assess whether a legislative product such as a law, for example, is formed through the methods (procedures) as determined or regulated in the applicable laws and regulations. Meanwhile, according to Soemantri, the right to examine material is the authority to investigate and then assess whether a statutory regulation contains or contradicts higher level regulation and whether a certain power has the right to issue a certain regulation.<sup>53</sup>

As explained in the previous sub-discussion, the Constitutional Court also carries out the function of the guardian of the constitution

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<sup>51</sup> HAS Natabaya, *Sistem Peraturan Perundang-undangan Indonesia* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2006), p. 187.

<sup>52</sup> Feri Amsari, *Perubahan UUD 1945: perubahan konstitusi Negara Kesatuan Republik Indonesia melalui putusan mahkamah konstitusi* (Rajawali Pers, 2011), p. 76–79.

<sup>53</sup> *Ibid.*

and the protector and guarantor of human rights. Several decisions of the Constitutional Court (MK) can serve as evidence to assess that the judicial reviews conducted by the MK aim to protect and promote human rights.<sup>54</sup> Therefore, the Constitutional Court also has a function as the guardian of the democracy, the protector of the citizen's constitutional rights, and the protector of human rights.<sup>55</sup> Freedom of religion is a right, not an obligation. Therefore, every citizen is free to exercise this right or not. In relation to the recognition of only six official religions, this can be considered unconstitutional. The basis for this religion recognition is Article 1 of Presidential Decree No. 1 of 1965 concerning the Prevention of Abuse and/or Defamation of Religion, which states that "The religions adhered to by the people of Indonesia are Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism." So when the state only officially recognizes six religions, religious freedom is limited to these few. This is inconsistent with the constitution, which guarantees religious liberty for everyone.

It can be explained that, firstly, the Constitutional Court functions as the guardian of the constitution<sup>56</sup> and holds a mandate to scrutinize the legal framework.<sup>57</sup> In addition, this function was born from a collective awareness of the need for an institution capable of resolving constitutional issues based on the principle of constitutional supremacy. Through the Constitutional Court, it is hoped that the restructuring and improvement of state administration based on the 1945 Constitution of the Republic of Indonesia can occur. Second, the function of the constitutional interpretation relates to the existence of legal interpretation, which is a method of establishing legal precedent in the event that regulations exist but cannot be clearly applied to the event. In addition, in the event of a legal vacuum, the interpreter must

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<sup>54</sup> Saldi Isra, "Peran Mahkamah Konstitusi Dalam Penguatan Hak Asasi Manusia Di Indonesia" (2014) 11:3 Jurnal Konstitusi 409–427.

<sup>55</sup> Janedjri M Gaffar, "Peran Putusan Mahkamah Konstitusi dalam Perlindungan Hak Asasi Manusia terkait Penyelenggaraan Pemilu" (2013) 10:1 Jurnal Konstitusi 1–32.

<sup>56</sup> Oktavani Yenny, "Perluasan Wewenang Mahkamah Konstitusi Sebagai Pengawal Konstitusi" (2020) 4:1 Tanjungpura Law Journal 39–58.

<sup>57</sup> Fatkhurohman, Dian Aminudin, & Sirajuddin, *Memahami Keberadaan Mahkamah Konstitusi di Indonesia* (Citra Aditya Bakti, 2004), p. 3.

also be able to complete the law.<sup>58</sup> In relation to the interpretation of constitutional law, interpreting the constitution has a great significance with regard to defining terms in the formulation of articles and/or paragraphs, carried out by outlining the intent of a matter that is considered unclear.<sup>59</sup> In terms of interpreting the constitution, certain methods and techniques that can be justified rationally and scientifically are necessary so that efforts to uphold the constitution are relevant to the times.

Third, the Constitutional Court functions as a guardian of democracy, meaning that there is a value in constitutional law based on people's sovereignty. This is referred to in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which basically states that people's sovereignty must be exercised by law as the highest power.<sup>60</sup> This function is inherent in the guardianship of democratic values, one of which is the right to vote and stand for election. This power leads to the crystallization of every democratic value in accordance with the constitutional mandate and maintains the people's sovereignty. Following this, the fourth and fifth functions are to protect the constitutional rights of citizens and protect human rights. These two functions are interrelated, considering that constitutional rights are a part of human rights, which are theoretically and normatively citizens' rights as guaranteed in the 1945 Constitution of the Republic of Indonesia.<sup>61</sup> Furthermore, constitutional rights are contained in Chapter XA on Human Rights from Article 28A to Article 28J of the 1945 Constitution of the Republic of Indonesia.<sup>62</sup>

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<sup>58</sup> Syawaluddin Hanadi, "Kewenangan Mahkamah Konstitusi dalam Menafsir Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (2019) 16:1 Ekspose: Jurnal Penelitian Hukum dan Pendidikan 349–360.

<sup>59</sup> Rosjidi Ranggawidjaja, *Wewenang Menafsirkan dan Mengubah Undang-Undang Dasar* (Bandung: Citra Bakti Akademika, 1996), p. 34.

<sup>60</sup> Gita Pradina & Jadmiko Anom Husodo, "Peran Mahkamah Konstitusi Terkait Perlindungan Hak Pilih Warga Negara Indonesia Dalam Pemilu 2019 Melalui Putusan MK Nomor 20/Puu-XVII/2019" (2020) 4:2 Res Publica: Jurnal Hukum Kebijakan Publik 190–204.

<sup>61</sup> Daniel Nicolas Gimón, "Pengaturan Hak Konstitusional Warga Negara dan Bentuk Perlindungan Hak Konstitusi" (2018) 6:4 Lex Administratum, online: <<https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/24537>>.

<sup>62</sup> *Op.Cit.*

#### **IV. Implications of the Constitutional Court Decision Number 97/PUU-XIV/2016 to Adherents of Belief's Population Administration**

The word "belief," according to the Indonesian Comprehensive Dictionary (KBBI), means an understanding that recognizes the existence of God Almighty, but is not included or not based on the teachings of one of the five official religions.<sup>63</sup> Semantically the word belief has several meanings, namely: "First, faith in religion. Second, the assumption or belief that recognition really does exist. Third, recognition is considered true and honest. Fourth, agreement with wisdom."<sup>64</sup> This religious belief is passed down from generation to generation but the number of adherents of belief in Indonesia is low. There are four elements of believers in Indonesia:<sup>65</sup>

1. Groups of believers belonging to local beliefs/religions (tribes) such as the Bedouin, the Dayak (Kaharingan, Manyaan), Sunda Wiwitan, the Batak (Parmalim, the Raja Batak, Namulajadinabolon), and the Anak Dalam Tribe (Central Sulawesi).
2. Groups of people who believe in God Almighty, including those who adhere to Kejawen in Java, namely the Community of Ngesti Tunggal (Pangestu), Sapta Dharma, Tri Tunggal and Manunggal and so on.
3. Groups of believers with religious indications including religious sects, for example Ahmadiyah, Buda Jawi Vishnu, Children of God, Jehovah, Salamullah and so on.
4. Groups of followers of mystical or occult beliefs such as shamanism, psychics, fortune-telling, medicine, witchcraft, sorcery, magic and metaphysics.

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<sup>63</sup> "Arti kata kebelian - Kamus Besar Bahasa Indonesia (KBBI) Online", online: <<https://kbbi.web.id/kebelian>>.

<sup>64</sup> Kamil Kartapradja, *Aliran kebatinan dan kepercayaan di Indonesia* (Yayasan Masagung, 1985), p. 1.

<sup>65</sup> I G M Nurdjana, *Hukum dan aliran kepercayaan menyimpang di Indonesia* (Pustaka Pelajar, 2009), p. 53.



Before organized religions arrived in Indonesia, the people followed Animism. This belief system holds that everything in the world, like specific places, caves, trees, or large rocks, has a spirit that needs to be respected. This is done to avoid disturbing these spirits and to receive their protection from harm and assistance in daily life.<sup>66</sup>

True believers live safely and comfortably, but are viewed with suspicion because of their association with the G30S Coup incident. This causes them to be constantly monitored by New Order government.<sup>67</sup> As a result of the stigmatization and its connection with the 1965 tragedy, there was a large-scale movement of adherents of belief or mysticism to other organized religions, especially Catholicism, Protestantism, or Buddhism. The implementation of state policies on "religion" and "belief" has actually created discriminatory practices. This is based on Law Number 1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy of Religion. The state discriminates in the form of "*favouritism*" by giving recognition and protection to six religions; Islam, Catholicism, Christianity, Buddhism, Hinduism and Confucianism. Meanwhile, believers in God Almighty do not get recognition and protection, because they are considered "non-religious". So that believers in faith do not get guarantees for freedom of belief and worship according to their beliefs.

In Indonesia, adherents of beliefs outside the mainstream religions often face discrimination. Followers of minority religions are frequently accused of being adherents of a splinter religion, pressured to return to their parent religion, or considered a threat to public order. They may also be accused of desecrating officially recognized religions or belonging to uncivilized religious groups. Religious beliefs are often viewed as cultural expressions rather than formal religions. An indigenous community is a group of people with ancestral roots in

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<sup>66</sup> Koentjaraningrat, *Kebudayaan Jawa* (Balai Pustaka, 1994), p. 15–16.

<sup>67</sup> Muhammad Zulkifli, "Resistensi Majelis Luhur Kepercayaan TERhadap Tuhan Yang Maha Esa Indonesia (MLKI) Dalam Mempertahankan Keyakinan Yang Dianut" (2019) 3:1 Edukasi IPS 1–8.

a specific geographic area. They have a unique value system and socio-cultural practices, are sovereign over their land and natural resources, and regulate their sustainability through customary laws and institutions.<sup>68</sup>

The lack of official recognition for millions of believers results in their population data not being included on their Identity Cards. The mandatory "religion" column on documents such as family cards, identity cards, and other important civil records necessitates a declaration of religious affiliation, even for those who do not belong to officially recognized religions.

Based on the Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration, these local religions are called beliefs. Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia reads that "*The State guarantees the independence of each resident to embrace their respective religions and to worship according to their religion and beliefs*". While the state guarantees religious freedom and the right to worship according to individual beliefs, the freedom of adherents to ancestral religions to believe in God Almighty remains unfulfilled. This discrepancy stems from differing interpretations of 'religion' and 'belief,' leading to citizens of certain faiths being excluded from the benefits of religious freedom. The existence of groups in Indonesia who believe in God Almighty is undeniable. These adherents hold diverse belief systems regarding the One Supreme God, often falling outside the six major religions recognized by the government.<sup>69</sup>

### **A. Examination of the Law of the Republic of Indonesia Number 23 of 2006 concerning Administration of Population by Minority Groups**

Law Number 1/PNPS/1965 clearly states that the practice of mysticism or belief is a "defamation of religion". Thus, believers in faith do not receive guarantees for freedom of belief and worship

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<sup>68</sup> Tore Lindholm et al, *KEBEBASAN BERAGAMA ATAU BERKEYAKINAN: Seberapa Jauh? Sebuah Referensi tentang Prinsip-Prinsip dan Praktek* (Yogyakarta: Kanisius, 2010), p. 69.

<sup>69</sup> B Hestu Cipto Handoyo, *Hukum Tata Negara Kewarganegaraan & Hak Asasi Manusia* (Yogyakarta: Andi Offset, 2003), p. 101.

according to their beliefs. Due to the favoritism policy in Law Number 1/PNPS/1965, this has fatal consequences for local belief groups that are embraced by various ethnic or sub-ethnic groups in Indonesia as the column "religion" is obligatory to fill in the family card, identity card, and other important civil deeds. This requirement was included in the Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration which was passed on December 8, 2006, which was actually an era of reform but still required the religion column to be filled.

The Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration introduced the term 'religion that has not been recognized by the state' for the first time in an official state document to refer to belief groups outside the six recognized religions. This law then established limits on the recognition of these beliefs, distinguishing them from the recognized religions. This can be seen in Article 64 paragraph (2) which reads that *"Information about religion as referred to in paragraph (1) for residents whose religion has not been recognized as based on the provisions of laws and regulations or for adherents of beliefs is not filled in, but is still served and recorded in the population data."* So here, the state has provided space for adherents of beliefs to believe in and embrace their beliefs and to be recorded in population data as a form of fulfilling their civil rights.

Based on this discrepancy, attorneys representing the petitioners Nggay Meheng Tana, Pagar Demanra Sirait, Arnol Purba, and Carlim submitted a judicial review to the Constitutional Court Number 97/PUU-XIV/2016 on Article 61 Paragraphs (1) and (2), and Article 64 Paragraphs (1) and (5) of the Law of the Republic of Indonesia Number 24 of 2013 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration. In their petition, the petitioners argue that the word "religion" in Article 61 Paragraph (1) and Article 64 Paragraph (1) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have legally binding conditionality as long as it does not include adherents of religious beliefs. The contents of the documents

that the petitioners have examined, namely the religion column in the family card and electronic identity cards for adherents of beliefs or for adherents of religions that have not been recognized by Indonesian legislation, should be left blank but still recorded in the population database. The petitioners stated that adherents of a belief system have the same legal position as adherents of a religion recognized by the government to obtain rights related to population administration.

The petitioners said that the absence of belief in the electronic identity card resulted in the petitioner as a citizen being unable to access and obtain other basic rights such as the right to work, the right to education, the right to social security, along with all associated services. The complexity of the problems that occur to believers can only be overcome by the existence of a law which contains specific content in accordance with the need for protection of freedom of belief for believers in God Almighty. The regulation of protection for believers is very necessary because it relates to the principle of fulfilling the protection of human rights, including the protection of the rights of citizens.<sup>70</sup> In its decision, the Panel of Judges in case number 97/PUU-XIV/2016 was of the opinion that the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) is contrary to the 1945 Constitution of the Republic of Indonesia and has no conditionally binding legal force as long as it does not include adherents of belief systems. In addition, the Panel of Judges also stated that Article 61 paragraph (2) and Article 64 paragraph (5) contradicted the 1945 Constitution of the Republic of Indonesia and did not have binding legal force. This decision by the Constitutional Court can be a legal basis for believers of faith to attain recognition, respect, and protection in the form of embedding their beliefs on the e-identity card.

## **B. The Description of the Functions of the Constitutional Court in the Judicial Review of the *A Quo* Law**

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<sup>70</sup> A Hamid S Attamimi, *Peranan keputusan presiden Republik Indonesia dalam penyelenggaraan pemerintahan negara: suatu studi analisis mengenai keputusan presiden yang berfungsi pengaturan dalam kurun waktu Pelita I-Pelita IV* (Dissertation, Fakultas Pascasarjana, Universitas Indonesia, 1990) [unpublished], p. 217.

Sri Soemantri said *"The demand for changes to the 1945 Constitution of the Republic of Indonesia which was rolled out was based on the view that the 1945 Constitution of the Republic of Indonesia did not sufficiently contain a system of checks and balances between branches of government (state institutions) to avoid abuses. power or an act that exceeds authority"*.<sup>71</sup> The 1945 Constitution of the Republic of Indonesia as the legal basis in the administration of the state has not been able to cover all matters for the life of the nation and state, and is often interpreted in such a way that causes the values which should be contained to be distorted.

Achmad Roestandi stated that the establishment of the Constitutional Court was driven by *"Increasing state institutions and increasing provisions as a result of the amendment to the 1945 Constitution of the Republic of Indonesia, causing the potential for disputes between state institutions to increase. Meanwhile, there has been a paradigm shift from the supremacy of the People's Consultative Assembly to the supremacy of the constitution, so that there is no longer the highest state institution (previously occupied by the MPR) which holds the supremacy of power with the authority to settle disputes between state institutions. Therefore, a neutral institution is needed to resolve the dispute."*<sup>72</sup> The existence of the Constitutional Court is considered to be the most appropriate choice to maintain the constitutional mandate. The powers of the Constitutional Court are; (i) examine the law against the 1945 Constitution of the Republic of Indonesia; (ii) decide on disputes over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia; (iii) decide on the dissolution of a political party; and (iv) decide disputes regarding the results of the general election.

The Constitutional Court, in its role of examining, adjudicating, and deciding cases, interprets both specific laws and the

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<sup>71</sup> Martin Hutarabat, Harahap Zairin & Thaib Dahlan, *Hukum dan politik Indonesia: tinjauan analitis Dekrit Presiden dan otonomi daerah* (Jakarta: Pustaka Sinar Harapan, 1996), p. 64.

<sup>72</sup> Achmad Roestandi, *Mahkamah Konstitusi dalam Tanya Jawab* (Sekretariat Jendral dan Kepaniteraan Mahkamah Kontitusi RI, 2006), p. 6.

1945 Constitution of the Republic of Indonesia. Given the final and binding nature of its decisions, the Constitutional Court's interpretations are considered definitive, solidifying its position as the ultimate authority on constitutional interpretation.<sup>73</sup> The Constitutional Court serves as a crucial avenue for citizens to seek justice, often leading to bold and innovative decisions. Beyond relying solely on existing legal facts, the Court has demonstrated a willingness to introduce groundbreaking changes through its rulings. By interpreting laws not merely textually but also in light of justice and societal benefits, the Constitutional Court transcends its traditional role as a mere legal mouthpiece and becomes a dynamic force for constitutional development.<sup>74</sup>

Petitioners who believe in the Constitutional Court Decision Number 97/PUU-XIV/2016 state that their constitutional rights have been impaired by Article 61 paragraph (1) and paragraph (2) of Law Number 23 of 2006 and Article 64 paragraph (1) and paragraph (5) Law Number 24 of 2013. Article 61 paragraph (1) of Law Number 23 of 2006 concerning Population Administration was amended by Law of the Republic of Indonesia Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration. Therefore, they submitted an application for judicial review to the Constitutional Court in order to fight for their constitutional rights.

In Decision Number 97/PUU-XIV/2016, the Constitutional Court reviewed Indonesia's Population Administration Law and ruled that individuals of all faiths have the right to have their religious beliefs included in population data elements such as family cards and electronic identity cards. This decision has sparked significant debate among legal experts and the public, with both potential benefits and drawbacks. However, it also underscores the state's crucial

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<sup>73</sup> Muchamad Ali Safaat, Aan Eko Widiarto & Fajar Laksono Suroso, "Pola Penafsiran Konstitusi dalam Putusan Mahkamah Konstitusi Periode 2003 - 2008 dan 2009 - 2013" (2017) 14:2 Jurnal Konstitusi 234–261.

<sup>74</sup> Salfutra, Haryadi & Darwance, *supra* note 7.

responsibility to protect and uphold the guarantee of freedom of religion or belief without discrimination for all citizens.

The *a quo* decision demonstrates that the Constitutional Court not only functions as the final interpreter of the constitution but also fulfills crucial roles as its guardian, protector of democracy, safeguard of citizens' constitutional rights, and champion of human rights. By upholding the constitutional guarantee of freedom of religion and belief as enshrined in Article 29 paragraph (2) of the 1945 Constitution, the Court has ensured that citizens can practice their faiths without hindrance. The function of constitutional guardian crystallizes the function of protector of the citizen's constitutional rights and protector of human rights. In this regard, the Constitutional Court's Decision Number 97/PUU-XIV/2016 becomes a clear path to an acknowledgment of the rights of believers in Indonesia. As for the function of guardian of the democracy, the *a quo* decision also provides space for believers to be able to exercise their rights in the political sphere such as voting and standing for election.

### **C. The Implications of the Constitutional Court Decision Number 97/PUU-XIV/2016 on Abolition of The Distinction Between Religion and Belief in Indonesia**

Article 29 paragraph (1) of the Law on Judicial Power stipulates that the Constitutional Court's decisions are final and binding. Consequently, all parties, including the government, are obligated to implement these decisions without exception. While the Constitutional Court's Decision Number 97/PUU-XIV/2016 has mandated changes to laws and regulations related to believers, it has also generated significant controversy, particularly among those who adhere to modern religions. These individuals express concerns about the potential implications of the decision on social order.

This decision is at least a starting point for explicit legal recognition in the legal system in Indonesia to the legal status of people who believe in religious beliefs. Prior to this decision, believers were subject to a variety of discriminatory state policies and could not fully enjoy some of their civil rights. This decision primarily focuses

on ensuring the constitutional rights of minority believers, particularly in terms of their ability to declare their religious beliefs.<sup>75</sup> In the Decision of the Constitutional Court Number 97/PUU-XIV/2016, the Constitutional Court made a policy leap, because the decision gave legitimacy to the existence of believers in the legal system in Indonesia. It can be said that this decision is a prestigious step for the Constitutional Court to ensure the existence of adherents of belief.

In the judge's consideration of the Decision of the Constitutional Court Number 97/PUU-XIV/2016, the term "religion" is not adhered to in Article 61 paragraph 1 and belief is included in Article 64 paragraph (1) of the Population Administration Law. So, by itself the norms of the law provide certainty that believers are not followers of a recognized religion in accordance with statutory regulations. This also makes it impossible for them to enjoy equal treatment before the law in a fair manner because conceptually in the construction of the Population Administration Law they are not included in the meaning of religion. The regulation has applied different treatment towards the same thing, namely towards citizens who live in beliefs and citizens who live in religion. This is contrary to Article 28J of the 1945 Constitution of the Republic of Indonesia.

This decision removes the difference in treatment between followers of religion and adherents of belief so that belief is also included in the religion column on the identity card. Therefore, believers can make an identity card and register their marriage. In the Constitutional Court Decision Number 97/PUU-XIV/2016, belief in God Almighty is the same as religion. With the issuance of the Constitutional Court Decision Number 97/PUU-XIV/2016 concerning the application for judicial review of the Population Administration Law, which has implications for the equality of the position of followers of belief with recognized religious adherents, it

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<sup>75</sup> Muwaffiq Jufri, "Potensi Penyetaraan Agama dengan Aliran Kepercayaan di Indonesia" (2020) 13:1 Jurnal Yudisial 21–36, p. 30.



is time for this progress to be continued by creating legal certainty for the rights of citizens who adhere to beliefs.

The main objective of the Constitutional Court's decision is actually the recognition of the community of believers. However, at the implementation stage, the community of believers will still be faced with problems and legal substance, institutions, and state officials who resist implementation of the decision. With this decision, of course, there will be rejection and problems that arise, especially among people who have embraced the majority or modern religion. They argue this decision will have a considerable influence on life in society, with no limit to inclusion of names of beliefs in the religious column both on identity cards and family cards which will certainly cause confusion and unrest for the community. This decision is the beginning of the legal protection of believers, but making new regulations certainly takes a long time, in addition to the time required to reconstruct and re-actualize the population and civil registration system.

The juridical consequences of the Constitutional Court's decision not only provide remedies for unjust conditions that must be abolished immediately, but also critically evaluate the inadequate protection of the life sphere of devotees. The *a quo* decision has the potential to significantly blur the categorical distinction between what are commonly referred to as religion and belief in Indonesia. The Constitutional Court's Decision number 97 of 2016 offers a glimmer of hope for followers of beliefs to be able to state their beliefs in the religion column in their ID Card, but fundamentally there is differentiation which can still lead to discrimination. This paradox occurs due to the contradiction caused by the marginalization of followers of beliefs as a result of the recognition and distinction between religions (which are recognized) and followers of beliefs, both constitutionally and through unconstitutional laws and government policies

The distinction between belief systems and religions is based on definitions provided by the Ministry of Religious Affairs, which are

inherently subjective and potentially discriminatory. Therefore, there is no need to differentiate religion and adherent of beliefs, especially on ID cards and all civil administration documents. This conception serves as a regulatory mandate in the field of constitutional material, encompassing the relationship between the state and citizens and among citizens or residents as a whole in a reciprocal manner.

## VI. CONCLUSION

Indonesia, as a state of law, upholds the law in the administration of the state. The constitution as the highest law contains provisions relating to law enforcement and guarantees for the fulfillment and protection of citizens' rights. The judicial review is one of the powers of the Constitutional Court which is divided into formal and material examinations. In exercising its authority, the Constitutional Court also functions as the final interpreter of the constitution, the guardian of the constitution, the guardian of democracy, the protector of citizens' constitutional rights, and the protector of human rights.

The Constitutional Court examined the population administration law as proposed by the petitioners Nggay Meheng Tana, Pagar Demanra Sirait, Arnol Purba, and Carlim. Represented by their attorneys, these adherents of beliefs feel that their constitutional rights have been harmed by Article 61 paragraph (1) and paragraph (2) of Law Number 2006 and Article 64 paragraph (1) and paragraph (5) of Law Number 24 of 2013. In its decision, the Panel of Judges in case number 97/PUU-XIV2016 is of the opinion that the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it does not include adherents of religious beliefs. In addition, the Panel of Judges also stated that Article 61 paragraph (2) and Article 64 paragraph (5) contradicted the 1945 Constitution of the Republic of Indonesia and had no binding legal force. The *a quo* decision has reflected the functions of the Constitutional Court as mentioned

above. In addition, the *a quo* decision also has implications for believers, namely that their constitutional rights can be fulfilled and that they can attain recognition, respect, and protection in the form of embedding their beliefs on the electronic identity card or in population data. This juridical acknowledgment also has a positive impact on their lives in social, economic, and political aspects, so that the *a quo* decision becomes a light for believers in Indonesia.

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