

# Policy discrimination against the minority group of flows of believers citizens in Indonesia: an administrative justice perspective



Fx Hastowo Broto Laksito \*

<sup>a</sup> Faculty of Law, Universitas Slamet Riyadi, Surakarta, Indonesia

\* corresponding author: [hastowobroto@gmail.com](mailto:hastowobroto@gmail.com)

## Article Info

Received: 29 January 2023

Revised: 27 February 2023

Accepted: 20 March 2023

## Keywords:

Discrimination;

Legal Policy;

Aliran Kepercayaan

## Abstract

*This study examines discrimination against aliran kepercayaan adherents in Indonesia, despite the Constitutional Court Decision Number 97/PUU-XIV/2016 recognizing their existence. This study found that human rights are inherent in humans and essential to life. Constitutional Court considerations include religious rights, particularly the right to believe in God Almighty, and affirmation that the rights are constitutional rights of citizens, not state gifts. The Constitutional Court also considered the definition of 'religion' and 'belief'. In conclusion, the Constitutional Court carefully and gradually applied Indonesian cultural values to the issue. The Constitutional Court believes the state should respect, preserve, and fulfill religious rights including the right to believe. The Constitutional Court Decision No. 97/PUU-XIV/2016 states that adherents of the faith have constitutional rights to embrace their beliefs and allows their status to be included in population administration documents, such as the electronic identity card. However, administrative service practices in Indonesia seem to still not be well implemented, which harms a sense of justice, especially administrative justice, which requires openness, confidentiality, transparency, justice, efficiency, accountability, consistency, participation, rationality, equality, and equal treatment.*

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## 1. Introduction

Indonesia exhibits a remarkable degree of cultural diversity, positioning it as one of the most culturally heterogeneous nations globally.<sup>1</sup> The varied, diversified, and enormous sociocultural and geographical settings of Indonesia are indicative of this phenomenon. Indonesia, being a diverse and pluralistic nation, possesses the inherent capacity to cultivate a prosperous multicultural nation-state, characterized by its

<sup>1</sup> Muwaffiq Jufri, 'Potensi Penyetaraan Agama Dengan Aliran Kepercayaan Di Indonesia (Kajian Putusan Mahkamah Konstitusi Nomor 97/PUU-XIV/2016)', *Jurnal Yudisial*, 13.1 (2020), 21–36 <<https://doi.org/10.29123/jy.v13i1.360>>.

<https://doi.org/10.62264/jlej.v1i1.5>

[journaloflawandjustice@gmail.com](mailto:journaloflawandjustice@gmail.com)

multitude of ethnicities, cultures, and religions.<sup>2</sup> However, the presence of a multicultural society, with its diverse range of cultures and ethnicities, can be seen as a valuable asset for a nation.

Conversely, it is important to acknowledge that this diversity also carries the potential to give rise to disputes and challenges. The architects of Indonesia's establishment recognized the existence of a diverse populace within the nation, and acknowledged the imperative of preserving this diversity while fostering national cohesion.<sup>3</sup> The presence of diversity is an inherent phenomenon, provided that its existence is acknowledged and seen as a matter that necessitates the cultivation of tolerance. Nevertheless, the concept of diversity, which is perceived as a divine endowment, is inherently intertwined with the various difficulties that frequently manifest in human existence.<sup>4</sup> Hence, the acknowledgment and acceptance extend not only to diverse religious beliefs, but also to many systems of faith. It is crucial to acknowledge the historical experience of the Indonesian country, as it will have a lasting impact on the national psyche in the future.

According to the data provided by the Directorate General of Population and Civil Registration (Dukcapil) under the Ministry of Home Affairs, the number of individuals in Indonesia who identified themselves as adherents of aliran kepercayaan reached 102,508 as of June 2020. The aforementioned numerical value represents 0.04% of the whole population of Indonesia, which is estimated to be 272.23 million individuals.<sup>5</sup> According to demographic data in Indonesia, it can be observed that the province of East Nusa Tenggara has the highest number of adherents to the aliran kepercayaan, with 35,877 individuals. In contrast, the province of North Maluku has the lowest number of adherents to the aliran kepercayaan, with only 10 individuals.<sup>6</sup> The presence of diversity within a nation holds promise for societal advancement, although it also carries the risk of generating social tensions if not well addressed. An instance of concern is the differential treatment experienced by specific demographic groups and corresponding behaviors. Discrimination against minority groups engenders feelings of unfairness and harbors the potential to manifest as long-term time bombs, so precipitating social crises.<sup>7</sup>

<sup>2</sup> Tara Nadya Andiani, FX Hastowo Broto Laksito, and Jose Gama Santos, 'Evidence from Indonesia on the Legal Policy Confronting Discrimination of Minority Groups Based on Race and Ethnicity', *Wacana Hukum*, 29.2 (2023), 146–62 <<https://doi.org/10.33061/wh.v29i2.9808>>.

<sup>3</sup> Ibrahim Abubakar and others, 'Confronting the Consequences of Racism, Xenophobia, and Discrimination on Health and Health-Care Systems', *The Lancet*, 400.10368 (2022), 2137–46 <[https://doi.org/https://doi.org/10.1016/S0140-6736\(22\)01989-4](https://doi.org/https://doi.org/10.1016/S0140-6736(22)01989-4)>.

<sup>4</sup> Defira Martina Adrian, Fence M. Wantu, and Abdul Hamid Tome, 'Racial and Ethnic Discrimination in the Perspective of International Law', *Jurnal Legalitas*, 14.1 (2019), 1–17.

<sup>5</sup> Yogi Zul Fadhli, 'Kedudukan Kelompok Minoritas Dalam Perspektif HaM Dan Perlindungan Hukumnya Di Indonesia', *Jurnal Konstitusi*, 11.2 (2016), 352 <<https://doi.org/10.31078/jk1128>>.

<sup>6</sup> M. Zamroni, 'General Principles of Good Governance in Indonesia: What Are The Legal Bases?', *Varia Justicia*, 15.1 (2019), 1–8 <<https://doi.org/10.31603/variajusticia.v15i1.2464>>.

<sup>7</sup> Bambang Sugeng Rukumono and others, 'Arrangement Registration Of Geographical Indications Of Traditional Alcoholic Beverages In Indonesia Based Multiculturalism', *Revista de Gestão Social e Ambiental*, 17.6 (2023), 1–14 <<https://doi.org/10.24857/rgsa.v17n6-001>>.

The present state of affairs reveals a paradoxical policy, as the emergence of the presumption of desecration of religious teachings by adherents of aliran kepercayaan is actually a consequence of state policies mandating affiliation with officially recognized religions.<sup>8</sup> Consequently, when adherents of aliran kepercayaan engage in worship practices that diverge from the teachings of the state-sanctioned religion, their beliefs are deemed deviant and in conflict with the official religious doctrine acknowledged by the state. The presence of diversity is an inherent phenomenon, provided that it is acknowledged and seen as a matter necessitating the cultivation of tolerance.<sup>9</sup>

Nevertheless, the concept of diversity, which is viewed as a divine endowment, is inherently intertwined with the various difficulties that frequently manifest in the human experience. The constitutional right to protection against discrimination is ensured in Indonesia, as stated in Article 28 I paragraph (2) of the 1945 Constitution of the Republic of Indonesia.<sup>10</sup> This provision explicitly affirms that every individual possesses the entitlement to be exempt from discriminatory treatment on any grounds and is entitled to receive safeguards against such treatment. Nevertheless, discrimination continues to persist in real-world scenarios, particularly targeting vulnerable populations, minorities, and marginalized communities. The contemporary situation in Indonesia suggests that discriminatory treatment has been more deeply ingrained within the establishment of institutionalized and diverse social structures aimed at problem-solving.<sup>11</sup>

To far, there has been a notable prevalence of discriminatory practices, particularly targeting minority religious communities, mostly attributed to the lack of uniform legislative safeguards. One example of a challenge faced by individuals pertains to the creation of specific legal instruments or records for their offspring, as their marital unions are based on customary beliefs that lack official recognition from the governing authorities. The present issue pertains to the fulfillment of fundamental rights and public policy, specifically the numerous discrepancies seen between the religious affiliation recorded on the Family Card (KK) and the Electronic Identity Card (KTP).<sup>12</sup>

In the context of employment, there are instances where individuals who have religious convictions may be restricted from taking a leave of absence on their designated day of worship. Additionally, this inquiry pertains to the experiences of Ugamo Bangso

<sup>8</sup> Eko Mukminto and Awaludin Marwan, 'Pluralisme Hukum Progresif: Memberi Ruang Keadilan Bagi Yang Liyan', *Masalah-Masalah Hukum*, 48.1 (2019), 13 <<https://doi.org/10.14710/mmh.48.1.2019.13-24>>.

<sup>9</sup> Natalie R Beylin, Toshali Katyal, and Arturo Durazo, 'Race and Ethnicity', in *Encyclopedia of Child and Adolescent Health (First Edition)*, ed. by Bonnie Halpern-Felsher, First Edit (Oxford: Academic Press, 2023), pp. 309–18 <<https://doi.org/https://doi.org/10.1016/B978-0-12-818872-9.00183-7>>.

<sup>10</sup> Hesti Armiwulan, 'Diskriminasi Rasial Dan Etnis Sebagai Persoalan Hukum Dan Hak Asasi Manusia', *Masalah-Masalah Hukum*, 44.4 (2015), 493 <<https://doi.org/10.14710/mmh.44.4.2015.493-502>>.

<sup>11</sup> Nicholas Tarling and Edmund Terence Gomez, *The State, Development and Identity in Multi-Ethnic Societies: Ethnicity, Equity and the Nation, The State, Development and Identity in Multi-Ethnic Societies: Ethnicity, Equity and the Nation*, 2008 <<https://doi.org/10.4324/9780203932162>>.

<sup>12</sup> Saldi Isra and Hilaire Tegnau, 'Legal Syncretism or the Theory of Unity in Diversity as an Alternative to Legal Pluralism in Indonesia', *International Journal of Law and Management*, 63.6 (2021), 553–68 <<https://doi.org/10.1108/IJLMA-04-2018-0082>>.

Batak adherents residing in Medan, a city located in the province of North Sumatra.<sup>13</sup> Ugamo Bangso adherents experience several constitutional setbacks, particularly in relation to employment opportunities and access to company capital provided by financial organizations, such as banks or cooperatives. One of the individuals involved in the petition, Arnold Purba, had a situation wherein his daughter, Dessy Purba, faced job rejection on the grounds of being perceived as an atheist or pagan. This perception was based on the presence of a dash (-) in the religion field on her Electronic ID card.<sup>14</sup>

One of the constitutional rights enshrined in the Indonesian legal framework is the right stipulated in Article 29 paragraph (2), which affirms that "The State ensures the freedom of every citizen to adopt and practise their chosen religion, as well as to engage in worship in accordance with their religious beliefs." It is indisputable that the Indonesian nation is characterised by its diverse nature, encompassing a multitude of traditions, beliefs, religions, arts, and cultures that have thrived continuously and evolved inside the fabric of Indonesian society. The articulation of the initial tenet of Pancasila, namely "Belief in One God," exemplifies the significant role that religion and faith hold within a societal context. This demonstrates that individuals in Indonesia predominantly adhere to theistic ideas, embracing the existence of a higher power and subscribing to distinct theological interpretations and perspectives in accordance with their respective religious doctrines and personal convictions.

According to the 1945 Constitution, it is stated that all individuals who have Indonesian citizenship are entitled to equal rights in the eyes of the law and the state, without any form of discrimination based on factors such as ethnicity, religion, race, or intergroup differences (SARA). Indonesia ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1999, as stipulated by Law Number 29 of 1999. This international instrument, commonly known as the International Convention on the Elimination of All Forms of Racial Discrimination 1965, was ratified by Indonesia for similar justifications. In addition, Indonesia possesses a range of state regulatory measures aimed at safeguarding the fundamental rights of its citizens within the framework of human rights.<sup>15</sup>

These include TAP MPR-RI No. XVII/MPR/1998, which pertains to human rights, as well as Law No. 39/1999 and Law No. 40/2008, which respectively address human rights and the eradication of racial and ethnic discrimination.<sup>16</sup> The available evidence suggests that the framework ensuring freedom of religion or belief in Indonesia is widely

<sup>13</sup> Anthony C. Diala, 'The Concept of Living Customary Law: A Critique', *Journal of Legal Pluralism and Unofficial Law*, 49.2 (2017), 143–65 <<https://doi.org/10.1080/07329113.2017.1331301>>.

<sup>14</sup> Brian Z. Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences*, *Legal Pluralism Explained: History, Theory, Consequences* (Madison Avenue, New York: Oxford University Press, 2021) <<https://doi.org/10.1093/oso/9780190861551.001.0001>>.

<sup>15</sup> Ken Miichi, 'The Role of Religion and Ethnicity in Jakarta's 2012 Gubernatorial Election', *Journal of Current Southeast Asian Affairs*, 33.1 (2014), 55–83 <<https://doi.org/10.1177/186810341403300104>>.

<sup>16</sup> Suwoko Suwoko, 'Multiculturalism & Democracy Education in Political and Cultural Based Conflict Resolution Process in East Kalimantan', *Iseedu: Journal of Islamic Educational Thoughts and Practices*, 6.1 (2022), 28–38 <<https://doi.org/10.23917/iseedu.v6i1.20535>>.

acknowledged as robust. However, it appears that certain instruments within this framework serve merely as symbolic gestures, representing Indonesia's commitment as a legal state that upholds human rights, rather than being effectively implemented in society.<sup>17</sup> There is a prevalent concern that the normative framework ensuring equal rights and opportunities has yet to materialise as a universally accessible reality for all members of society.

In order to safeguard the constitutional rights of individuals practising religion or holding beliefs, which are inherent to every segment of Indonesia's diverse society, a state institution known as the Constitutional Court was established with the purpose of effectively upholding these rights.<sup>18</sup> The Constitutional Court has played a significant role in safeguarding the constitutional rights of Indonesian individuals within their diverse society. This has been exemplified via its decisions that specifically address the subject of the variety of beliefs among Indonesian society, including aliran kepercayaan. The verdict rendered by the Constitutional Court pertains to a judicial review case involving Law Number 23 of 2005 in conjunction with Law Number 24 of 2013 on Population Administration (Adminduk Law), which was initiated by various representatives of indigenous religions in Indonesia.<sup>19</sup>

The Constitutional Court's decision in Case Number 97/PUU-XIV/2016 demonstrates that it fully granted the petitem of the lawsuit brought forth by the adherents of aliran kepercayaan. This includes the recognition that certain provisions within Article 61 paragraphs (1), (2), and Article 64 paragraphs (1), (2) of the Population Administration Law are in conflict with the provisions of the 1945 Constitution. Based on the aforementioned ruling, it is imperative to accord equal treatment to both aliran kepercayaan (faith movements) and established faiths.<sup>20</sup> This principle extends to the rights of aliran kepercayaan adherents, who should be granted the same privileges as adherents of officially recognised state religions in matters pertaining to population administration. According to the editorial, religion and aliran kepercayaan hold equal significance inside the legal framework of Indonesia. The pronouncement has effectively addressed the social unrest and instances of prejudice experienced by adherents of aliran kepercayaan. The phenomenon of belief systems existing in Indonesia predates the formal recognition of state-sanctioned faiths. The historical evidence further demonstrates that the Indonesian populace has long acknowledged the practise of cohabitation and the acceptance of individuals with diverse religious affiliations and

<sup>17</sup> W Jefferson West, 'Regional Cleavages in Turkish Politics: An Electoral Geography of the 1999 and 2002 National Elections', *Political Geography*, 24.4 (2005), 499–523 <<https://doi.org/https://doi.org/10.1016/j.polgeo.2005.01.003>>.

<sup>18</sup> M. Alvi Syahrin, 'The Immigration Crime and Policy: Implementation of PPNS Authorities on Investigation', *Journal of Indonesian Legal Studies*, 3.2 (2018), 175–94 <<https://doi.org/10.15294/jils.v3i02.27512>>.

<sup>19</sup> Adrian, Wantu, and Tome.

<sup>20</sup> Jufri, 'Potensi Penyetaraan Agama Dengan Aliran Kepercayaan Di Indonesia (Kajian Putusan Mahkamah Konstitusi Nomor 97/PUU-XIV/2016)'.



beliefs.

## 2. Research Method

The present study employs a normative methodology that adopts a statutory framework.<sup>21</sup> This approach pertains to the examination of legal matters using primary legal sources, specifically the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 concerning Human Rights, Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights, TAP MPR RI No. XVII/MPR/1998 on Human Rights, and Constitutional Court Decision No. 97/PUU-XIV/2016 regarding the assessment of the Population Administration Law. Additionally, this study incorporates secondary legal resources such as scholarly books, papers, academic journals, and scientific publications in the field of law.<sup>22</sup> Secondary legal materials refer to works pertaining to law that do not possess official status. The present study adopts a descriptive qualitative research approach, which entails the collection and analysis of qualitative data to provide a comprehensive description of legal occurrences.<sup>23</sup> This research draws deductive findings by systematically observing and analysing the collected legal sources.

## 3. Results and Discussion

### **The Constitutional Court's consideration of justice and religious freedom in the context of equality of religions and beliefs**

The Indonesian Constitution, specifically the 1945 Constitution of the Republic of Indonesia, elucidates the role of the state as being established or constituted with the explicit purpose of safeguarding and ensuring the realisation of individuals' rights, as explicitly articulated in Preamble IV of the 1945 Constitution of the Republic of Indonesia.<sup>24</sup> The role of the state in this matter is subsequently governed by the provisions outlined in Article 28 I, paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states that "The state, particularly the government, bears the responsibility for safeguarding, advancing, enforcing, and fulfilling human rights." The freedom to adopt a certain religious faith and belief system centred around acknowledging the presence of a higher power is among the

<sup>21</sup> Taufiq Yuli, Ramalina Ranaivo, and Mikea Manitra, 'The Proposal for the Implementation of Elections in Indonesia: A Framework Based on the Presidential System', *Wacana Hukum*, 29.2 (2023), 181–205 <<https://doi.org/10.33061/wh.v29i2.9815>>.

<sup>22</sup> Muhamad Khalif Ardi and others, 'The Imperative Is to Restrict Customary Criminal Offenses after Implementing Indonesia ' s New Criminal Code', *Wacana Hukum*, 29.2 (2023), 130–45 <<https://doi.org/10.33061/wh.v29i2.9829>>.

<sup>23</sup> M Zaid and others, 'Eradicating Public Official Corruption Indonesia: A Revolutionary Paradigm Focusing on State Financial Losses', *Wacana Hukum*, 29.2 (2023), 87–111 <<https://doi.org/10.33061/wh.v29i2.9564>>.

<sup>24</sup> Mardian Wibowo, I Nyoman Nurjaya, and Muchammad Ali Safaat, 'The Criticism on the Meaning of "Open Legal Policy" in Verdicts of Judicial Review at the Constitutional Court', *Constitutional Review*, 3.2 (2018), 262 <<https://doi.org/10.31078/consrev326>>.

rights encompassed within the category of Human Rights (HAM). This particular right finds its roots in the concept of natural rights. Human rights are the conclusion of individuals' self-awareness.<sup>25</sup>

The concept of human rights, initially designed to safeguard the inherent worth and dignity of individuals, has undergone a transformation that has led to the perception of these rights as being characterised by anthropocentrism, humanism, egoism, and pseudo-individualism.<sup>26</sup> Hence, it is imperative to advocate for governmental initiatives aimed at fostering an atmosphere conducive to the formulation of rules that duly consider the components of human rights enforcement endeavours and the ability to proficiently implement human rights policies, as stipulated by constitutional mandates.<sup>27</sup> When analysed through the lens of Thomas Aquinas' views on natural law, it can be observed that these inherent rights align with the Principia Prima premise. The Principia Prima is a principle that pertains to the concept of fundamental human rights, characterised by its universality, generality, and applicability across all spatial and temporal boundaries. The aforementioned principle possesses an absolute nature, as it is intrinsically present within the entirety of the human population.<sup>28</sup>

In the Indonesian legal framework, the aforementioned right has transitioned from a mere philosophical concept to a legally recognised norm. The principles stated in the 1945 Constitution of the Republic of Indonesia, specifically in Article 28 E paragraph 1 (pertaining to the right to practise religion) and paragraph 2 (pertaining to the right to adopt beliefs), as well as Article 29 paragraph 2 (pertaining to the state's assurance of the right to practise religion and adopt beliefs for all residents), are of utmost importance and are applicable to all branches of state authority and citizens.<sup>29</sup> According to Article 28, Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is affirmed that this entitlement encompasses non-derogable rights, which are rights that are not subject to reduction under any circumstances.<sup>30</sup> Therefore, non-derogable rights are elevated to the status of constitutional rights, thereby imposing a duty or obligation on the state, particularly the government, to uphold, safeguard, and ensure the realisation of such rights.

The judiciary in Indonesia constitutes an integral component of the constitutional

<sup>25</sup> Ni'matul Huda, Dodik Setiawan Nur Heriyanto, and Allan Fatchan Gani Wardhana, 'The Urgency of the Constitutional Preview of Law on the Ratification of International Treaty by the Constitutional Court in Indonesia', *Heliyon*, 7.9 (2021), e07886 <<https://doi.org/10.1016/j.heliyon.2021.e07886>>.

<sup>26</sup> Elisa Ortega Velázquez, 'Minority Rights for Immigrants: From Multiculturalism to Civic Participation', *Mexican Law Review*, 10.1 (2017), 103–26 <<https://doi.org/https://doi.org/10.22201/ij.24485306e.2017.19.11385>>.

<sup>27</sup> Eva Nave and Lottie Lane, 'Countering Online Hate Speech: How Does Human Rights Due Diligence Impact Terms of Service?', *Computer Law & Security Review*, 51 (2023), 105884 <<https://doi.org/https://doi.org/10.1016/j.clsr.2023.105884>>.

<sup>28</sup> Dale Dewhurst, 'Justice Foundations for the Comprehensive Law Movement', *International Journal of Law and Psychiatry*, 33.5–6 (2010), 463–74 <<https://doi.org/10.1016/j.ijlp.2010.09.016>>.

<sup>29</sup> Sekar Anggun Gading Pinilih, 'Aktualisasi Nilai-Nilai Pancasila Terhadap Hak Atas Kebebasan Beragama Dan Beribadah Di Indonesia', *Masalah-Masalah Hukum*, 47.1 (2018), 40 <<https://doi.org/10.14710/mmh.47.1.2018.40-46>>.

<sup>30</sup> Sarip Arip Arip, 'Kemajemukan Visi Negara Hukum Pancasila Dalam Misi Hukum Negara Indonesia', *Refleksi Hukum: Jurnal Ilmu Hukum*, 2.2 (2018), 109–24 <<https://doi.org/10.24246/jrh.2018.v2.i2.p109-124>>.

framework, fulfilling the authorised role of the judicial function. The presence of courts serves as a platform for the implementation of legal measures within this nation.<sup>31</sup> The judiciary is an institutional body responsible for overseeing and enforcing the legal provisions that are applicable within the jurisdiction of a nation-state. In Indonesia, the judiciary plays a crucial role in establishing a non-authoritarian judicial system for the administration of state affairs. Pertaining to matters of Human Rights (HAM), discussions and debates surrounding this topic are frequently held not only in seminars and discussions, but also among legal professionals. Indonesia possesses a judicial institution that serves the purpose of safeguarding the constitution (UUD NRI 1945) by preventing the existence of laws that are in conflict with it.<sup>32</sup> To achieve this objective, one of the measures implemented is granting the authority or prerogative of judicial review to the Constitutional Court, which is a component of the judicial power institution. In the event that citizens, including individuals, communities, or legal entities, see a violation of their constitutional rights due to the implementation of legislation, they possess the ability to lodge a legal challenge pertaining to the specific laws in question to the appropriate governing body.

In the legal analysis portion of Constitutional Court Decision Number 97/PUU-XIV/2016, it is argued by the Judges that the fundamental freedom to practise religion or have beliefs in a higher power is a constitutional entitlement granted to citizens, rather than a bestowed privilege from the state.<sup>33</sup> In the context of a democratic state governed by the rule of law, it is incumbent upon the state to fulfil its duty of safeguarding and upholding fundamental rights, thereby demonstrating respect for and ensuring the realisation of these rights. The freedom to adopt a religious faith or have a set of beliefs is an integral component of the human rights framework, specifically falling within the purview of civil and political rights. The genesis of this particular human right can be traced back to the concept of inherent rights.<sup>34</sup> The right in question is an inherent attribute of every individual by virtue of their human nature, rather than being bestowed upon them by the state. This right is encompassed within the framework of natural rights.

According to the analysis conducted by the justices in Constitutional Court Decision Number 97 of 2016, it is explicitly mentioned that the term "religion" as used in Article 61 paragraph 1 and Article 64 paragraph 1 of the Population Administration Law does not encompass beliefs. The legal standards inherently ensure that individuals who do not adhere to a recognised religion are in compliance with statutory laws, thereby establishing certainty. This circumstance also renders it unattainable for individuals to have equitable treatment

<sup>31</sup> Samuel Issacharoff, 'Constitutional Courts and Democratic Hedging', *Georgetown Law Journal*, 99.4 (2011), 961–1012.

<sup>32</sup> Muhammad Amin Putra, 'Eksistensi Lembaga Negara Dalam Penegakan Hak Asasi Manusia Di Indonesia', *FIAT JUSTISIA:jurnal Ilmu Hukum*, 9.3 (2016), 256–92 <<https://doi.org/10.25041/fiatjustisia.v9no3.600>>.

<sup>33</sup> Reko Dwi Salfutra, Dwi Haryadi, and Darwance Darwance, 'Implementasi Putusan Mahkamah Konstitusi Nomor 97/PUU-XIV/2016 Bagi Orang Lom Di Kepulauan Bangka Belitung', *Jurnal Konstitusi*, 16.2 (2019), 255 <<https://doi.org/10.31078/jk1623>>.

<sup>34</sup> Muwaffiq Jufri, 'The Urgency of The Fifth Amendment of The 1945 Constitution of The Republic Of Indonesia Related To Religious Freedom and Rights', *Jurnal HAM*, 12.1 (2021), 123–40.



within the legal system.<sup>35</sup> The exclusion of certain religious entities from the definition of religion is a conceptual aspect of the Population Administration Law. The regulation has exhibited differential treatment towards individuals who adhere to aliran kepercayaan (faith movements) and those who adhere to officially recognised religions by the state.<sup>36</sup> This statement is in opposition to the provisions outlined in Article 28 J of the 1945 Constitution. Hence, the Constitutional Court holds the view that the imposition of restrictions based on belief, which results in differential treatment among individuals, constitutes an act of discrimination.

### **Problems in realisation of the Rights of Believers: the examination from a perspective of administrative justice.**

The scholarly discussion around administrative justice remains restricted and insufficient within the realm of Indonesian public law. Nevertheless, a retrospective examination of the evolution of administrative justice reveals that its origins can be traced back to the early 20th century. Specifically, in December 1998, Martin Partington, a prominent figure in the advancement of contemporary administrative justice studies, delivered a lecture titled "Restructuring Administrative Justice" at University College London. During a specific segment of the lecture, Partington put forward the argument that administrative justice ought to be comprehended as a unified idea that encompasses two unique characteristics in terms of their conceptual nature.<sup>37</sup> The author designates these two elements as "institutional frameworks" and "principles and values". The term "first" in this context encompasses decision-making at all levels, including courts, tribunals, inquiries, ombudsmen, and other entities responsible for the provision of governmental services. When discussing the concept of administrative justice, the author highlights the significance of principles and values. These principles and values are seen as a crucial subset that must be taken into account within the overall conceptual framework.<sup>38</sup>

Partington (year) identifies a range of values and concepts that are pertinent to the topic under discussion. These include openness, confidentiality, transparency, fairness, efficiency, responsibility, consistency, participation, reason, equality, and equitable treatment. In addition to timeliness, civility, and user-friendliness, there are various more generic instances that can be considered.<sup>39</sup> The author asserts that comprehending these values introduces

<sup>35</sup> Tatu Aditya, 'Reforming Criminal Impacts in the Law of State Finance : Legal Certainty for State-Owned Enterprise', *Indonesian Law Journal*, 15.2 (2022), 125–40 <<https://doi.org/10.33331/ilj.v15i2.97>>.

<sup>36</sup> Jufri, 'Potensi Penyetaraan Agama Dengan Aliran Kepercayaan Di Indonesia (Kajian Putusan Mahkamah Konstitusi Nomor 97/PUU-XIV/2016)'.

<sup>37</sup> Frans Van Dijk, 'Improved Performance of the Netherlands Judiciary: Assessment of the Gains for Society', *International Journal for Court Administration*, 6.May (2014), 1–22 <<http://www.rechtspraak.nl/English/Publications/Documents/Improved-performance-of-the-Netherlands-judiciary.pdf>>.

<sup>38</sup> Luthfi Dwi Yoga, 'How to Handle the Administrative Violations in the Election? A Discourse of Characteristic of Bawaslu Verdict', *Journal of Law and Legal Reform*, 3.3 (2022), 349–78 <<https://doi.org/10.15294/jllr.v3i3.55058>>.

<sup>39</sup> James M Ogilvie and Steve Kisely, 'Examining the Health and Criminal Justice Characteristics for Young People on Compulsory Community Treatment Orders: An Australian Birth Cohort and Data Linkage

intricacy to the notion of administrative justice. This complexity arises mostly due to the lack of consistency among these principles and values, which often vary depending on their inherent characteristics and implementation.<sup>40</sup> In the Indonesian context, Stewart Fenwick observes that there have been notable disparities in the administrative justice system over the course of nearly two decades. Fenwick highlights the contrasting circumstances that led to the establishment of Indonesia's administrative justice system in the 1980s, and the subsequent introduction of a new judicial review process two decades later.

Nevertheless, it cannot be discounted that the alterations in the administrative justice system may have comprehensive benefits for the nation. To illustrate this point, the author cites the Constitutional Court Decision No. 97/PUU-XIV/2016, which explicitly addresses the identification of religious affiliations and the mention of specific religious beliefs adhered to by individuals within the administrative justice system, including those who follow the official state religions.<sup>41</sup> The followers of aliran kepercayaan have raised concerns regarding the content of Article 61 paragraph (2), Article 64 paragraph (1), and Article 64 paragraph (2) of Law No. 23 of 2006 concerning Population Administration (Adminduk Law), which were subsequently amended by Law No. 24 of 2013 concerning Amendments to the Population Administration Law. These concerns stem from their dissatisfaction with the declining number of followers of aliran kepercayaan, which they attribute to the challenges they face in accessing accurate population data. In certain instances, individuals may adopt a religious affiliation that diverges from their personal convictions or, in some cases, may choose to withhold their religious identification altogether.<sup>42</sup> The ruling made by the Constitutional Court offers the potential for establishing an organised data gathering system for individuals adhering to a particular faith. However, it presents a set of regulations that do not endorse the inclusion of religious affiliation in official demographic records.

There is a hypothesis that the state policy, which omits specifying the name of indigenous faiths while documenting their identity, may be attributed to the significant protests and pressure exerted by adherents of official state religions who perceive themselves as being disadvantaged by the enactment of Constitutional Court Decision No. 97/PUU-XIV/2016. This issue arises due to the potential consequences of recognising the aliran kepercayaan and granting it equal status with the official state faiths. It is feared that such recognition could lead to an increase in acts of blasphemy and a shift in the position of the official state religion. If this situation holds true, then the state administration's condition deviates from the principle of the rule of law as outlined in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Instead, it becomes influenced by the requests of various community organisations that express discomfort regarding the recognition of aliran

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Study', *International Journal of Law and Psychiatry*, 83 (2022), 101813 <<https://doi.org/https://doi.org/10.1016/j.ijlp.2022.101813>>.

<sup>40</sup> Nurul Ula Ulya and Fazal Akmal Musyarri, 'Evaluasi Yuridis Sistem Penyelesaian Sengketa Pemilihan Umum Dan Ius Constituendum Peradilan Khusus Pemilihan Umum', *Justitia et Pax*, 35.2 (2020), 153–75 <<https://doi.org/10.24002/jep.v35i2.2508>>.

<sup>41</sup> Danang Risdianto, 'Perlindungan Terhadap Kelompok Minoritas Di Indonesia Dalam Mewujudkan Keadilan Dan Persamaan Di Hadapan Hukum', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 6.1 (2017), 125 <<https://doi.org/10.33331/rechtsvinding.v6i1.120>>.

<sup>42</sup> Cita Yustisia Serfiyani, Iswi Hariyani, and Citi Rahmati Serfiyani, 'Perlindungan Hukum Terhadap Minuman Alkohol Tradisional Khas Indonesia', *Negara Hukum*, 11.2 (2020), 267–87.

kepercayaan as a legitimate religious belief, eligible to be included as a religious identity in official population documents. The presence of aliran kepercayaan has been subject to significant influence and opposition from various community organisations, resulting in notable modifications to official policies at both the national and local levels.

The utilisation of the phrase "Believers in Belief in God Almighty" at the national level, without distinguishing the particular nature of belief, serves as compelling proof of the significant impact exerted by community organisations on governmental policy. In the regional context, the act of sealing the graves of Sunda Wiwitan adherents serves as evidence that governmental regulations at this level are ineffective in curbing the determination of certain community organisations to restrict the freedom of expression for believers. This issue is evidently in conflict with the fundamental tenets of a constitutional state, which should ensure safeguards for adherents of aliran kepercayaan as a manifestation of its dedication to ensuring, safeguarding, and upholding human rights standards. The purpose of the constitutional state is to maintain the integrity of state affairs by prioritising the preservation of human rights. In the specific setting of the Indonesian state, the constitution, serving as the supreme legal framework, has established a robust assurance for the preservation of aliran kepercayaan and the freedom of its believers to engage in their own religious rituals according to their beliefs. Hence, it can be argued that the issue pertaining to the fulfilment of rights for adherents of aliran kepercayaan in Indonesia has significantly deviated from the fundamental principles of administrative justice, which encompass elements such as openness, confidentiality, transparency, fairness, efficiency, accountability, consistency, participation, rationality, equality, and equal treatment.

#### 4. Conclusion

Human rights are intrinsic entitlements possessed by individuals, and their existence is regarded as an integral component of the human experience. The Constitutional Court takes into account various factors, one of which is the recognition of religious liberties, including the right to adopt a belief in a higher power. The Court has affirmed that these rights are inherent constitutional rights held by people, rather than privileges bestowed by the state. The Constitutional Court's conclusion is founded upon the perspective regarding the distinction in semantics between the terms 'religion' and 'belief'. In summary, the Constitutional Court of Indonesia has demonstrated a meticulous and gradual process of incorporating cultural values into their decision-making pertaining to specific cases. This is supported by the Constitutional Court's assertion that the state has a duty not only to acknowledge, safeguard, and ensure the exercise of the right to religious freedom, but also to recognise and uphold the right to adopt and adhere to personal views. The legal ramifications of the Constitutional Court Decision No. 97/PUU-XIV/2016 encompass a declaration by the Constitutional Court affirming the constitutional rights of individuals to freely practise their religious beliefs. Furthermore, the decision generally permits the inclusion of individuals' religious affiliations in population administration documents, such as the electronic identity card (KTP-electronic). However, the implementation of administrative service practises in Indonesia appears to be lacking, resulting in a compromised sense of justice, particularly in terms of administrative justice. This concept necessitates the presence of openness, confidentiality, transparency,

justice, efficiency, accountability, consistency, participation, rationality, equality, and equal treatment.

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