LEGAL PROTECTION ISSUE IN THE MINORITY RELIGION OF THE NON-GREATEST SIX

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Abstract
Adherents of minority religions outside the greatest six religions was still had to face the uncertainty from the state in religious rights service and legal protection. It was started from the right to obtain permission to build a synogogue, religious education rights, marriage registration, birth certificate, put the religion identity in official document column, and so on. The fundamental problem was a flurry of religious recognition concept by the state. There were some opportunities for short and long term breakthrough solutions need to be explored.

Keywords: Legal Protection, Religious Minorities, Basic Religious Rights

INTRODUCTION
State protection of new religious rights was relatively adequate in the six largest religions: Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. From the institutional aspect, for the protection of the first five religions (Islam, Christianity, Catholicism, Hinduism and Buddhism), the state formed five echelon 1 officials (Director General) in the Ministry of Religion (Kemenag). Regarding Confucius religious services, the state formed echelon III officials [Head of Division] in 2007 and was promoted to echelon II [Head of Center] in 2017. Beyond the six largest religions, there were a number of minority religions, so far the state did not provide a special bureaucratic structure to support the mechanism of protecting their religious rights. (2)

The minority religions discussed in this article focus on religions outside the six largest religions above, i.e international, like Sikhs, Baha’is, Jews, or Taoism. (3) Some other religions on a domestic scale, such as Kaharingan from Central Kalimantan, Permalim from North Sumatra, or Sunda Wiwitan from West Java. They were not religions that are prohibited or deviated, but some of adherents basic rights did not receive certainty of protection and service. They could not achieve the right for house of worship building permission, religious education, marriage register whose validity depends on religion, got birth certificate for their children, put their religion identity in official documents, and so on. (4)

So far, many had been deceived, as if the six largest religions above were state-recognized religions, because of they were entitled to state protection and service, meanwhile, some other religions were deemed not recognized by the state, so it was considered normal if it was less protected and considered not entitled to be served by the state. (5) Decision of the Constitutional Court (MK) in 2010 in the legal material examining Number 1/PNPS/1965 concerning Prevention of Blasphemy and Abuse of Religion, emphasized that there was no concept of religious recognition by the state in Indonesian law. Religion was what people believed...
as their religion, and the state's obligation to protect and serve all religions. The state had no authority to recognize or not recognize a religion.

The six religions with the largest number of adherents above, were indeed mentioned in the first row in the legal 1/PNPS/1965 explanation. But that was merely a sociological explanation, not a legal acknowledgment that only six religions were recognized as religions in Indonesia. First Act which contains the concept of religious recognition by the state was Law 23/2006 on Population Administration, but no legal references were found, what were the "recognized religions" and how do mechanisms gain state recognition.

Such legal uncertainty left some basic religious rights of citizens neglected. In the theory of human rights, the obligation to respect, fulfill and protect human rights were on the the state responsibility. Several attempts to resolve this issue had been tried. But the benefits of the minority religion got nothing. There was an attempt to test the material to the Constitutional Court, but it had not effectively improved the norms and laws related to the service of minorities. There were also efforts to submit the Religious Protection Bill as it had been prepared by the Ministry of Religion since 2014, but nothing significant progress until the end of President Joko Widodo's tenure.

METHODS

This was a normative legal research. The material examined consists of primary, secondary, and non-legal data. Primary legal materials, among others, consist of Law Number 1/PNPS/1965 concerning Prevention of Blasphemy and Abuse of Religion, Law Number 23 of 2006 concerning Population Administration, Law Number 1 of 1974 concerning Marriage, Law Number 30 of 2014 concerning Government Administration, and The Constitutional Court's decision on case Number 140/PUU-VII/2009, took the form of a judicial review of Law 1/PNPS/1965 concerning Blasphemy, which was announced on Monday, April 19, 2010.

Secondary legal material in the form of a legal dissertation and a number of scientific journal articles with a legal theme related to this topic. While non-legal material was a journalistic report on the fulfillment of the rights of adherents of minority religions, largely was done by the author of this article in publications in mass media, as well as several research books on the analysis of human rights protection.

The study material was explored and reviewed with three approaches: the statute approach, the case approach, and the conceptual approach. The statute approach was used to explore and examine the content, contradictions and harmonization of laws and regulations. The case approach was used to gather
information and study the decisions of the Constitutional Court. A conceptual approach to explore some relevant legal concepts used in this study, namely the concept of religious recognition and the concept of discretion. These concepts were needed to explore this topic, seat the problem, and offer a solution.

RESULT AND DISCUSSION

Minority Religions Protection Issue

Indonesian Baha’i National Spiritual Council in 2012, struggled for the remission of two prisoners of Baha’i religion, on their feast, Nawruz, which takes place every March 21st. The request was not fulfilled. The reason is that Baha’is are not included in the six religions facilitated by the state. This is an example of the different treatment of the state in religion outside the top six. The testimony was raised in the seminar, "Map of State Service Problems Against Religious Life" at the Ministry of Religion Building, Central Jakarta, Saturday, September 20, 2014.

A follower of the Sikh religion, Harbrindejit Singh Dillon-usually called H.S. Dillon, had to marry his two children in Australia, and then registered in Indonesia. If marriages by the Sikh religion take place in Indonesia, the state does not provide registration services. Even though the Marriage Law emphasizes, the validity of marriage is determined by each religion. The problem is that the Sikh religion adopted by the Dillon family is not the six religions that are perceived as "recognized" by the state. A marriage based on Sikh religion in Indonesia is considered illegal and the marriage registrar is not willing to take notes. (8)

Minister of Religion Lukman Hakim Saifuddin "tweeted" through his Twitter account, on July 24, 2014, that Baha’i is a religion, not a religion.
"religion has not been recognized" in Law number 24 of 2013 concerning Population Administration (Adminduk).

The blankness of religious identity on KTP and KK can have far-reaching implications for the recording of marriage and child birth certificates. The empty religious column on the KTP in the field often makes civil registration officials reluctant to take care of their marriage registration. Suryanandar, administrator of the Indonesian Taoism Council, said that there were Taoists who chose to write Buddhism on their KTPs. Sheila Soraya, External Affairs of the Baha’i National Spiritual Council, stated that in some places there were still many Taoists who were forced to choose a particular religion for the KTP column. The problem of uncertainty regarding marriage registration also befell the adherents of the local religion, Djawa Sunda, in Kuningan, West Java.

Marriage Registration

Law Number 1 of 1974 concerning Marriage does not limit religion as a determinant of the validity of marriage. It is only publicly stated that a marriage is legal if done in accordance with their respective religions. But followers of non-six major religions find it difficult to obtain marriage registrations because their religious names are not listed in the population documents, and are considered "their religion not yet recognized as a religion". As a result of marriage is not recorded in the marriage certificate, because the religion column on the KTP is empty, their child may not be considered a legitimate child. The child is given a birth certificate out of wedlock.

Religious education

Law Number 20 Year 2003 concerning the National Education System (Sisdiknas) states that every student has the right to receive religious education. There is no limit to the education of only six religions. In reality, followers of non-six major religions do not receive religious education according to their religion. It was also due to a misunderstanding of education officials in religious education.

Establishment of Houses of Worship

In practice, the Forum for Religious Harmony (FKUB) only provides recommendations for houses of worship for six major religions. Even though PBM 8-9/2006 on Forum for Religious Harmony, as a derivative of PNPS 1/1965 not limit religion to only six. In a discussion with North Sumatra FKUB in Medan, in 2015, it was revealed that there was a request for recommendation to establish a Parmalim religious house of worship. Forum for Religious Harmony can not give because of the view that FKUB is only authorized to provide recommendations on the six largest religions. This also stems from the assumption that religion is recognized and not recognized.
The Confusion of Norms of Religious Recognition

Mid-2012, followers of several minority religions came to the Office of the Ministry of Religion (Kemenag), in the Banteng Field area, Central Jakarta. There are "transnational" religions, such as Taoism, Judaism, and Baha'i. There is also a local religion: Kaharingan. They want to register their religion to be recognized by the state. However, the request could not be processed, because the Ministry of Religion did not serve the registration of religious confessions. (15)

So far, there has been a general understanding that in Indonesia there are six state-recognized religions, namely: Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. That perception can be influenced by a cursory understanding of Law Number 1/PNPS/1965 concerning Prevention of Blasphemy and Abuse of Religion. The PNPS explanation stated, "The religions embraced by the population in Indonesia are Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism (Confucius)."

Such understanding is reinforced by the fact that in the Ministry of Religion there is a Directorate General of Community Balance for only five religions: Islam, Christianity, Catholicism, Hinduism, and Buddhism. For Confucius, since 2007, echelon III positions have been made, the Confucius Community Guidance Division, under the Center for Religious Harmony. The interval of ten years, in 2017, was upgraded to echelon II position: Head of the Confucius Education and Guidance Center.

This perception is reinforced by Law Number 23 Year 2006 concerning Population Administration, which mentions the sentence, "Population whose religion has not been recognized as a religion based on the provisions of the Laws and Regulations" in the article on making KK [article 61] and KTP [article 64]. The problem of the protection and service of the state to followers of many minority religions originates from this Adminduk Law.

The law was signed by President Susilo Bambang Yudhoyono on December 29, 2006. In fact, eleven months earlier, during the 2557th Chinese New Year Celebration at the Jakarta Convention Center, February 4, 2006, President Yudhoyono made a speech emphasizing, "In our Country, we do not adhere to the term, I Repeat again, we do not adhere to the terms of religion that are recognized or not recognized by the state. "The President emphasized," The principle adopted by our Constitution is, the state guarantees the independence of each population to worship according to their religion and belief..." (16)

The issue of religious recognition was made clear by the ruling of the Constitutional Court (MK), in April 2010, which could be positioned as an official interpretation of the position of religion in the constitution. The Constitutional Court's decision to test the material of the Act 1/PNPS/1965 about Blasphemy. (17) The Constitutional Court session led by Prof. Mahfud MD explained that the mention of six religions within Act 1/PNPS/1965, not a form of religious recognition, but merely disclosure of sociological facts. (18)

The Court corrected perceptions about the existence of official and unofficial religions or recognized and unrecognized religions. "According to the Court there is no right or authority for the state to not recognize the existence of a religion, because the state is obliged to guarantee and protect the
religions adhered to by the people of Indonesia," the Court's decision when examining the material of the Act 1/PNPS/1965. (19)

Act 1/PNPS/1965, according to the Court, it does not limit the recognition or protection of only six religions. Decisively explained in the general explanation of the Act 1/PNPS/1965, "This does not mean that other religions, for example: Judaism, Zarasustrian, Shintoism, Taoism are prohibited in Indonesia. They get full guarantee as provided by Article 29 verse 2 and they are left as long as they do not violate the provisions in this regulation or other laws and regulations". (20)

According to the Court, the word "left" in the explanation of the Act 1/PNPS/1965 must be interpreted as unobstructed and even given the right to grow and develop, and not be left in the sense of being ignored. (21) Therefore, according to the Court, all religions are equally allowed to grow, develop, be treated equally, and not be inhibited. (22)

Thus, the Constitutional Court concluded, "There is no discrimination in the mention of religious names in the Law on Prevention of Blasphemy," when the Law on Prevention of Blasphemy was formulated."

Law Adminduk 23/2006 it was revised and ratified on November 26, 2013. Unfortunately, the 2013 revision did not pay attention to aspects of religious recognition. The clause "religion is not yet recognized as a religion" remains listed. The Spirit of the Adminduk Law, since 2006, has actually been more advanced in terms of religious administrative services. Prior to 2006, adherents of religions outside of the six major religions, were not provided with population administration services, except to list one of the six religions.

Since 2006, population documents for all religious adherents have been served. But the service is still considered discriminatory, because only six religions may include the name of religion. Apart from that, residents were still given population documents, but the religious column was left blank. Ideally, the reform of the Adminduk Law will continue so that all citizens can include the name of their religion.

In addition to the four major non-six religions mentioned in Law 1/1965-Judaism, Zarasustrian, Shinto, and Taoism, now also grow in meaningful numbers of two transnational minority religions: Sikhs and Baha'is. There are also local religions that want to be treated as religions: Kaharingan, Parmalim, and Sunda Wiwitan. (23)

The Ministry of Religion adopts a policy of: recognizing all religions, but serving only six religions. (24) Restrictions on services in six religions are based on Law 1/PNPS/1965. "Because these six types of religions are religions that are embraced by almost the entire population of Indonesia," said the explanation of Law 1/1965. So in addition to their constitutional guarantees, "they get help." The word "assistance" is interpreted as service. (25)

Several Ministry of Religion officials made progressive statements about the logic of service to all religions. Head of Research and Development Ministry of Religion in 2013 explained, there have been studies exploring the possibility of serving all religions. This discourse needs to be immediately realized in policy. If the problem is regulation, then the solution to the revision of the regulation.

The Ministry of Religion once proposed the directorate general of "other religions", to serve non-six major religions, but has not yet been approved by the Ministry of State Apparatus.
Religious data on the number of adherents of "other religions"[1,196,317 inhabitants in 2010] are far greater than followers of Confucianism[117,091 inhabitants in 2010], and the number of adherents of "other religions" is close to the number of Buddhists[1,703,256 people the year 2010]. From BPS 2000 to 2010 data, followers of "other religions" have doubled, from 415,410 people[2000] to 1,196,317[2010], while Buddhists actually dropped: from 2,162,409 people[2000] to 1,703,256 people[2010]. That is, the population of followers of non-six major religions is important to consider. So it doesn't become a time bomb.

**Discretion as a Short-Term Solution**

Discretion is defined as decisions and/or actions that are determined and/or carried out by government officials to overcome concrete problems encountered in the administration of government in terms of legislation that provides choices, does not regulate, is incomplete or unclear, and/or there is stagnation government. Provisions regarding discretion are contained in Law Number 30 Year 2014 concerning Government Administration, Article 1 Number 9 of Law 30/2014.

Discretion can only be carried out by authorized government officials [Article 22 paragraph (1) of Law 30/2014]. Discretion is used, according to Article 22 paragraph (2) of Law 30/2014, with the aim of: a) expediting the administration of government; b) fill the legal vacuum; c) provide legal certainty; and d) overcome the stagnation of government in certain circumstances for the benefit and public interest. What is meant by government stagnation is that government activities cannot be carried out as a result of a deadlock or dysfunction in the administration of government. (26)

The scope of discretion includes [Article 23 of Law 30/2014]: a) Decision making and/or action based on statutory provisions that provide a choice of decree and/or action; b) Decision making and/or action due to laws and regulations do not regulate; c) Decision making and/or action due to incomplete or unclear laws and regulations; and d) Decision making and/or action due to government stagnation for broader interests.

Discretionary schemes should be considered as a short-term solution in overcoming the fulfillment of religious protection and services of adherents of minority religions because the situation already meets the purpose of using discretion. Both to smooth the administration of government, fill the legal vacuum, provide legal certainty, and overcome the stagnation of government, for the sake of state protection of the religious rights of citizens.(27) Because these religious protections and services are related to cross-ministries and institutions, in the short term, coordinative and comprehensive handling is needed which can be led directly by the president or coordinating minister.

The state apparatus must not be too attached to a legalistic-positivistic approach, so they are unable to take discretionary measures. With the principle of discretion (discretie, freies Ermessen), officials, authorities, should not refuse to make decisions on the grounds that there are no regulations. Therefore, officials are given the freedom to make decisions according to their own opinions as long as they do not violate the principles of juridicality and the principle of legality. (28)

The law allows government officials to act on their own initiative in
solving important problems that arise suddenly. In this case, the state must act quickly to make a solution. In the principle of state administration, there is freedom to act to carry out functions dynamically in order to solve important urgent problems, even though rules do not yet exist. There is no reason for the state apparatus to refuse to make a decision. However, freedom of action is not the widest freedom without limits, but remains bound to certain limits permitted by law.

Implementation of Legal Protection Discretion

Suppose that ID Card and family card filling problem of the big non-six religion column in addition to being resolved by revising the Act or submitting a request for judicial review of the Law Adminduk 24/2013 to the Constitutional Court, discretion can also be taken as a way out. Because what is called "unrecognized religion" has no legal basis. And when referring to the 2010 Constitutional Court ruling, every religion that must be adopted by citizens is protected by the state and fulfilled its right of service.

Discretion can also be used as a solution to the problem of recording non-six major religious marriages. If the Marriage Registrar is willing to take notes, there are actually no regulations that are violated, because the scope of religion referred to in the Marriage Law is not limited to certain religions. And there are no other regulations that state that only certain religions can be served. The use of this discretion can more quickly fulfill the protection of the rights of citizens rather than waiting for the way of revision of the Act or judicial review of the Act to the Constitutional Court.

Religious education of students of non-six major religions can also be overcome by the discretion of the education office or the principal to make policies to provide religious education in accordance with the religion of students. To be more optimal, it can first involve the relevant religious assemblies to discuss the models and mechanisms for providing religious education in question. The use of this discretion can again more quickly fulfill the rights of citizens rather than waiting for the revision of the Act or judicial review of the Act to the Constitutional Court or the making of regulations together with the Minister of Religion and the Minister of Education on non-six major religious education.

In terms of granting permission for the establishment of places of worship among non-six major religious groups, the Regional Government can be a sector that initiates the use of discretion. FKUB needs to think more deeply and in the future to be able to provide recommendations on requests for the establishment of non-six major religious places of worship while still asking for the fulfillment of standard requirements, as stipulated. That will be a way to break the deadlock, spur the stagnation of government, and fill the legal vacuum.

All of these problems must be resolved across ministries and institutions. Starting from the Ministry of Religion, Ministry of Home Affairs, Local Government, Ministry of Education, and so on. Religious education services, for example, are related to the Ministry of Education and Culture. Records of important religious events, such as marriage, divorce, and inheritance related to the Ministry of Home Affairs and the court. If you want everything done, according to the advice of Abdul Fatah, the former Head of the Religious Harmony Center for the
Ministry of Religion, it is necessary to have a law that strictly orders all religions to be served. But for the short term, discretion can be used as a solution to the problem of protection and service of these basic rights.

**Judgment of Act Material, Law Revision, and Submission of Draft Law as a Medium and Long Term Solution**

For a medium-term solution, steps to test the material of the Adminduk Law which contain clauses on the existence of a religion that is recognized and not recognized by the state. This clause has no philosophical reference in the applicable laws and regulations. In fact, the Constitutional Court's decision in 2010 as explained above has emphasized that the state does not have the authority to recognize or not recognize the religion of citizens. The duty of the state is to serve and protect any religion that is embraced by the citizens.

The Adminduk Law has been submitted for judicial review to the Constitutional Court and was decided in 2017, but it is not related to the clause on religious recognition. MK Decision.

At the same time, long-term solutions can be taken, in the form of changes to the law or the submission of a new bill that can provide more comprehensive and long-term solutions, to complete the various religious protection and services of adherents of minority religions above.

**CONCLUSION**

More crucial than the problem of protecting and serving the six largest religions [Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism], adherents of minority religions outside the six largest religions [Baha'i, Sikh, Tao, Kaharingan, Parmalim, Sunda Wiwitan, and others] experienced discrimination in the protection and service of the state against their religious rights. Like the right to get permission to build a house of worship; the right to register a marriage in the form of a birth certificate to a marriage conducted in the manner of their religion; as well as the participating rights in the form of birth certificates for the couple's child; the right to religious education in accordance with the religion of the students; and the right to include the name of their religion on KTP and KK which has broad implications.

The situation, among other things, results from the confusion of norms of religious recognition. It is widely understood that there are recognized and unrecognized religions in Indonesia. But legally, the Constitutional Court's ruling emphasizes that there is no religious recognition by the state, while the Population Administration Law states the recognition norm, but without a clear legal basis. The non-six major religions are widely understood to be classified as religions that have not been recognized by the state. The implication is that there is a legal vacuum in overcoming the uncertainty of state protection and service to the religious human rights of non-six major religious minorities.

The mechanism of discretion can be explored as a model of short-term breakthrough solutions in overcoming the uncertainty of the protection and service of the state to the rights of adherents of non-six major religious minorities. Terms and conditions related to discretion, such as should aim at: a) streamlining the administration of government; b) fill the legal vacuum; c) provide legal certainty; and d)
overcoming the stagnation of government in certain circumstances for the benefit and public interest, has been fulfilled in the service of this non-six major religious minority.

In the long term, a solution in the form of a revision of the Law as mandated by the Constitutional Court's decision, as well as the establishment of a new law that further guarantees the certainty of state services to the religious rights of adherents of non-six major religious minorities, must be pursued. Along with the long-term process, for the short and medium term, the mechanism of discretion can be a solution opportunity.

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