

The State Based on the Almighty Godhead After the Amendment of the 1945 Indonesian Constitution

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Abstract

Indonesia is a country that believes in God. Why is that, because the statement has been written in the 1945 Constitution which states this. In the foundation of the Indonesian State, the First Principle is also written, namely "Belief in One Almighty God". Thus, all aspects of life in the country must be based on the belief in the Almighty God. This is what strengthens the Indonesian state that all its citizens have natural freedom to embrace their religion in accordance with their respective beliefs. Therefore, this Godly basis is a mandatory requirement in recruiting civil servants or ASN. Where the requirements are that Indonesian citizens must be devoted to God Almighty. This is something important, because living humans need God to surrender and hope for His guidance. Apart from that, embracing a religion for citizens is a human right. Religion is also important in social and political life. The purpose of this writing is to discuss, especially, the post-MKRI Decision No. 97/PUU-XIV/2016. The method used is a qualitative method. The result of the discussion is that there are differences between religion and belief. So religion is not the same as belief.

Keywords: Godly State; HAM; social life, politics; religion; belief

1. Introduction

Philosophically, Indonesia is a country based on the belief in One Almighty God. The basis of this divinity is the first principle of Pancasila, the formulation of which is as stated in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia (UUD 1945). The phrase reads as follows: ..., then the Indonesian National Independence was formulated in the Constitution of the State of Indonesia, which was formed in the structure of the Republic of Indonesia which is the sovereignty of the people based on the belief in One Almighty God, ...In general, the meaning understood from the phrase Belief in the Almighty God is faith and devotion to the Almighty God based on one's own religion and beliefs. It is so important to be devoted to God Almighty for the Indonesian people, employee recruitment is one of the requirements for registration. Quoting the kemendagri.go.id page, for example, for CPNS acceptance in 2023, among the general requirements are Indonesian citizens who are devoted to God Almighty.

In the basic norms (articles of the 1945 Constitution), the basis of this philosophy is further explained in Article 29 paragraph (1) whose formula is "The State is based on Belief in One Almighty God". This article is in Chapter XI with the title RELIGION. The chapter that discusses RELIGION consists of 2 paragraphs, the 2nd paragraph of which reads: "The state guarantees the freedom of every citizen to embrace their own religion and to worship according to their religion and beliefs."

According to the Indonesian constitution, religion (following a religion) as an embodiment of God is one of human rights. Positioning religious rights as part of human rights is formulated in Chapter XA Human Rights of the 1945 Constitution (second amendment). Article 28E paragraph (1) formulates: "Everyone has the right to embrace a religion and worship according to his religion, ...". It is also formulated in Article 28I paragraph (1) that "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, ...".

The general view regarding the formulation of this Constitution is that because the Indonesian State is based on God, the population is naturally a religious people. A religious person is a religious person. Thus, having faith in God means the same as being religious. So, all Indonesian citizens must be people who follow a religion (religious). This view is common in Indonesia. The following quote: "Divine Precepts are placed at the first principle, indicating that our people's attention to religious matters is very great. "Religion is important in the social, political and economic life of the people of the archipelago, even the way of thinking is always linked to religious matters," shows this. The same view appears in the writings of 2010-2015 Constitutional Judge Ahmad

Fadlil Sumadi: "The Indonesian people as a religious nation believe that the Indonesian State was formed thanks to the grace of Allah, Almighty God (fadhal Allah) and the noble drive to live a free national life (endeavor)".

The legal configuration based on this view ultimately places religion as an obligation. This is indicated by, for example, Article 9 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, that the top leadership of the state in the executive sector must also be held by a religious person. "Before assuming office, the President and Vice President swear an oath according to religion, ...". The President and Vice President swear an oath according to religion. This shows that the positions of president and vice president according to the 1945 Constitution of the Republic of Indonesia must be held by religious people. Therefore, it is impossible for someone who has no religion to become president or vice president of Indonesia.

The view that belief in God is the same as religion certainly contradicts basic human rights norms. In the life of the nation and state, religion is not just a right but a Human Right (HAM) and not a Human Obligation (vide Article 28E paragraph (1) and Article 28I paragraph (1)). At the Indonesia Lawyer Club (ILC) event, representatives of the Assembly The Indonesian Ulema (MUI) who said that believing in the Almighty God means that every citizen adheres to their own religion, therefore communism is prohibited, was debated by Rocky Gerung by asking and answering that religion according to the Indonesian Constitution is not an obligation but a right. Is it in the Constitution? In Indonesia, it is formulated that religion is an obligation? MUI representatives were silent.

These rights and obligations have different consequences. If belief in God is interpreted as the same as religion and it is an obligation then the consequence is that the state can use coercion. Because obligation contains the meaning of necessity/coercion. It is different if religion is a right, then the right to religion may or may not be taken away because in rights there is freedom {vide Article 29 paragraph (2) in conjunction with Articles 28E paragraph (1) and 28I paragraph (1)} but still within the framework of the Almighty God. One.

Even though the state is based on the belief in the Almighty God, the Indonesian state does not adhere to any religion (not a religious state) nor is it a secular state (not a secular state). One appropriate term for Indonesia as a country based on Pancasila is a national state that believes in God. And a religious national state does not have to be a religious state.

According to KBBI, religious means: religious in nature; religious in nature; which are related to religion. Meanwhile, the meaning of religion, according to the KBBI, is not just: 1) religion, but also means; 2) belief in God; 3) belief in the existence of supernatural powers above humans; 4) belief (animism, dynamism). So, religion can mean religion and can also mean belief in supernatural powers above humans. Based on this meaning of religion, it can be stated that a religious nation is a nation that is religious and also a nation that does not embrace a religion but embraces and has belief in God and supernatural powers (in the sense that it is not a faith that relies on religion).

When the meaning of "religious" is based on the KBBI, then the meaning of a nation with a belief in God as a religious nation is not just a religious nation (following religion) but also a nation that "embraces belief in the existence of supernatural powers above humans". In the Indonesian context, embracing belief in supernatural powers ("right to believe") is usually addressed to the right of the population to embrace "beliefs". Before 2016, legally the state only recognized the existence of religion as one of the resident identities listed on the KTP (Resident Identification Card). Meanwhile, a person's formal legal identity is not shown on their KTP (Resident Identification Card).

Even though changes to the 1945 Constitution have recognized this "right to belief". Article 28E and Article 28I, apart from formulating the right to religion as a human right, also formulates recognition and respect for the right to "belief" in addition to the right to religion as a human right. This is formulated in Article 28E paragraph (2): "Everyone has the right to freedom of belief, expression of thoughts and attitudes, in accordance with his conscience". Of course, "the right to believe in beliefs" is not related to "belief/faith in a religion".

In 2016, the Constitutional Court of the Republic of Indonesia (MKRI) as the Guardian of the Constitution made a quite significant decision regarding the existence of the right to believe in Indonesia. Through Decision Number 97/PUU-XIV/2016, the MKRI granted in its entirety the lawsuit submitted by believers by stating that the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) of Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration 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 "trust".

If up to now a country with a Godhead has been interpreted as merely having a religious population, then through the MKRI Decision Number 97/PUU-XIV/2016, having a Godhead, apart from being religious, also means believing in the One and Only God. This means that having faith in God can definitely mean being religious or it can also mean having faith (in the sense of not having faith based on religion). Juridically, the MKRI Decision Number 97/PUU-XIV/2016 will undoubtedly change the configuration of state law in regulating religion as an interpretation of belief in God in Indonesia.

2. Methods

To obtain answers to the issues and problems raised in this paper, the study method used is the normative juridical method, namely the study is carried out by examining legal materials or secondary data alone. In line with the study method, which is normative juridical, the approach taken is based on the main legal material by examining theories, concepts, legal principles and statutory regulations related to the issue of a God-based state after the amendment of the 1945 Indonesian Constitution. Meanwhile, the analysis method is to use a qualitative analysis method, which is done by tracing statutory regulations and library materials which are then written descriptively.

3. Results and Discussion

Belief in God in Indonesia After The Amendment of the 1945 Indonesian Constitution

The existence of God as *prima causa* for the Indonesian people is something that is very sacred and is held in very high esteem. The independence achieved by the Indonesian people was not solely due to their own efforts, but "By the grace of Almighty Allah and driven by a noble desire to live a free national life, the Indonesian people hereby declare their independence (3rd paragraph of the NRI Constitution of 1945). This belief in God which will color and become the basis for the life of the Indonesian nation and state can be seen in the phrase: ..., then Indonesian National Independence was formulated in a Constitution of the State of Indonesia, which was formed in the structure of the Republic of Indonesia which is the sovereignty of the people based on the belief in the Almighty God, ... (4th paragraph of the 1945 Constitution of the Republic of Indonesia).

Divinity is not God. God is something that humans believe in, revere and worship because of His Supreme Being. Meanwhile, divinity is the nature of God's condition. So, the Indonesian state which is based on belief in the Almighty God means that everything related to the administration of the state, nation and society must be built on the basis of God's attributes. In a country with a Godhead, the essence of religion is the basis and guide of state life.

As has been briefly explained above, the understanding of the meaning of a country with a Godhead is that its population is religious is common in Indonesia. Religion as an embodiment of God is a requirement to hold state office. One example is that to become President you must be a religious person. This is clearly stated in Article 9 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states "Before assuming office, the President and Vice President swear an oath according to religion, ...".

Religion is an absolute identity for Indonesian people who believe in God. Article 61 paragraph (1) and Article 64 paragraph (1) of Law no. 23 of 2006 concerning Population Administration and its amendments clearly states that in essence, one of the information contained on the KTP is the religion column. Residents who have no religion, namely adherents of religious beliefs, leave the religion column blank. Even though it is left blank, your identity as a believer is still recorded in the population data base.

However, through the decision of the Indonesian Constitutional Court (MKRI) No. 97/PUU-XIV/2016, the understanding of God for Indonesian citizens, as evidenced by the religion that becomes their identity and is printed on their KTP and Family Card, has undergone quite fundamental changes. Believing in God has a broader meaning which does not merely mean being religious but also means embracing belief (having faith).

This can be read in the MKRI's decision, which states, among other things, that the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) of Law no. 23 of 2006 concerning Adminduk as amended by Law no. 24 of 2013 is contrary to the 1945 NRI Constitution and does not have conditionally binding legal force as long as it does not include "trust". The decision also stated that "Article 61 paragraph (2) and Article 64 paragraph (5) of Law no. 23 of 2006 as amended by Law no. 24 of 2013 is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force".

Among the MKRI's considerations when making this decision was that "... Recognition of believers is impossible to obtain because belief is not included in the definition of religion. Likewise with legal certainty. Because legal certainty is obtained by believers in the Almighty God, namely the certainty that they are not adherents of a

religion recognized in accordance with the provisions of the Legislation. This also makes it impossible for them to enjoy equal treatment before the law fairly because conceptually in the construction of the Population Administration Law they are no longer included in the definition of religion. Likewise, when it comes to guaranteeing equal treatment before the law and government, since the beginning, believers have been differentiated from adherents of religions that are recognized in accordance with statutory regulations, not based on constitutional reasons. Meanwhile, the obligation to uphold the law and government remains with them as Indonesian citizens.

Beliefs are not religions. According to the Big Indonesian Dictionary (KBBI), the meaning of belief is an understanding that recognizes the existence of one Almighty God, but does not include or is not based on the teachings of one of the five "official" religions in Indonesia (Islam, Catholicism, Christianity, Protestantism, Hinduism), Buddhism, and Confucianism). Beliefs are not considered religions because they cannot prove the existence of prophets, holy books and specific religious systems, so they are not recognized as a religion.

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In the early days of the Constitutional Court's decision, there were pro and con opinions among the public. Head of the MUI Law and Legislation Division, Basri Bermanda, said the MUI deeply regrets the decision. According to him, the Constitutional Court's decision hurt the feelings of religious communities, especially Muslims. However, Deputy Chair of the MPR Study Institute, Ahmad Farhan Hamid, said that "the Constitutional Court's decision is in accordance with Articles 28A to 28J of the 1945 Constitution of the Republic of Indonesia".

There are those who suspect that with the MKRI's decision there will be a "alignment" and "equalization" between belief and religion. That is, a religious system is the same as a belief system. Regarding this, the leaders of the Yogyakarta Faith and Kebatinan sect stated that their sect was not a religion. Even though it is not a religion, the beliefs they adhere to do not conflict with Pancasila and the 1945 Constitution. If this statement is held, then it can be stated that belief is within the frame of a national state that has faith in God (religious nation state). Thus, it must be read that placing believers on an equal footing with religious believers does not mean equating believers with religious adherents. What is parallel and the same are civil rights such as the right to business, the right to education, the right to marry, and so on.

MKRI Decision No. 97/PUU-XIV/2016 is confirmation of the recognition of the Indonesian national state as having a Godhead regarding the existence of beliefs in Indonesia. Based on this Decision, believers whose existence of constitutional rights is based on Article 28E paragraph (2) which states: "Everyone has the right to freedom to believe in beliefs, express thoughts and attitudes, in accordance with his conscience", obtain legal guarantees, legal certainty, and obtain justice. and equal treatment before the law with followers of existing religions.

The legal configuration of a country with a Godhead, which was initially interpreted as a country whose population is religious, certainly changed after MKRI Decision No. 97/PUU-XIV/2016 with the recognition of the existence of believers. This means that philosophically and juridically the Indonesian national state is a country that has Godhead after MKRI Decision No. 97/PUU-XIV/2016 will undoubtedly expand its understanding as a national state whose citizens consist of citizens who are religious and citizens who believe. The choice of religion or belief is a human right guaranteed by the state. Anyone, including the state, cannot force its citizens to choose and embrace a particular religion or belief, because religion or belief is a right guaranteed by law. Religion and belief are expressions of a national state that believes in God.

State recognition of religion is based on Law no. 1/PNPS/1965. Concerning Prevention of Abuse and/or Blasphemy of Religion. Based on the Explanation of Article 1, there are 6 (six) religions recognized (embraced) by the Indonesian population, namely Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism. However (still in the Explanation to Article 1) it is also formulated that "This does not mean that other religions, for example: Judaism, Zarasustrian, Shinto, Taoism are prohibited in Indonesia. They receive full guarantees as provided by article 29 paragraph 2 and they are allowed to exist, as long as they do not violate the provisions contained in this regulation or other laws and regulations.

If examined further, Law no. 1/PNPS/1965 also recognizes the existence of beliefs besides religion. The belief system is touched upon by Law no. 1/PNPS/1965 in one of the explanations as follows: "Regarding spiritual bodies/schools, the Government tries to channel them towards a healthy view and towards the Almighty God. This is in accordance with the provisions of the M.P.R.S. No. II/MPRS/1960, attachment A. Field I, number 6".

The MKRI decision is final and binding. Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia states: "The Constitutional Court has the authority to adjudicate at the first and final level whose decision is final to review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties and resolve disputes regarding the results of general elections." The phrase "the decision is final" emphasizes that the nature of the MKRI's decision is that it can be implemented immediately. Because, the MKRI judicial process is the first and last judicial process. In other words, after receiving a decision, there is no further judicial process that can be taken, in the sense that the MKRI decision cannot and there is no opportunity to submit ordinary legal remedies and further extraordinary legal remedies.

Elucidation of Article 10 paragraph (1) of Law no. 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court also states that the MKRI decision immediately obtains permanent legal force from the moment it is pronounced and no legal action can be taken. The final nature of the Constitutional Court's decision also includes binding legal force.

The MKRI Decision Number 97/PUU-XIV/2016 dated 18 October 2017 was responded to by the Minister of Home Affairs by issuing Circular Letter of the Minister of Home Affairs Number 470/1989/MD dated 19 May 2018 concerning Population Administration Services (Adminduk) for Believers. The Directorate General of Population and Civil Registration of the Ministry of Home Affairs has also issued instructions regarding improving data elements for Believers in the Almighty God in Family Cards (KK) to all Heads of Dukcapil Services throughout Indonesia so that changes to data elements can be made immediately.

The Minister of Religion at that time - Lukman Hakim Saifuddin - said that his ministry was not affected by the decision of the Constitutional Court which granted the lawsuit of some believers, with this decision believers could include their belief in the religion column when making their KTP.

Even though MKRI Decision Number 97/PUU-XIV/2016 is related to Law no. 23 of 2006 concerning Population Administration, but the legal spectrum is quite broad. Several laws and state policies will undoubtedly undergo adjustments/changes. Some examples of legal policies that need to be adjusted/changed are: the phrase oath of office, for example, was changed by including beliefs in it. If up to now the Marriage Law has formulated that marriage is valid if it is carried out according to the laws of each respective religion and belief, where the phrase of belief is interpreted as faith according to religion, it will undoubtedly be changed to mean that marriage is valid if it is carried out according to the laws of each religion and belief system. If until now in the field of education only religious education was known, after the MKRI Decision, legal policies were undoubtedly issued that accommodated education for adherents of religious beliefs. These are examples of legal policies that need to be adjusted/amended to be in line with the contents of MKRI decision no. 97/PUU-XIV/2016.

A significant adjustment to the existence of this religious sect is the inclusion of religious beliefs in the 2023 Criminal Code. In this new Criminal Code, in addition to the formulation of the offense of blasphemy of religion, the offense of blasphemy against religious beliefs is also formulated. This is contained in CHAPTER VII with the title 'Criminal Acts Against Religion, Belief and Religious Life or Belief'. There are three types of actions related to criminal acts of religion and belief that are prohibited in this new Criminal Code. Chapter VII consists of 2 parts and 6 articles, namely Articles 300 to Article 305.

The title of Part One: Crimes against Religion and Beliefs contains Articles 300 to Article 302. Meanwhile, the title of Part Two: Crimes against Religious Life or Beliefs and Means of Worship contains Articles 303 to Article 305. The formulation of the offense of blasphemy against religious beliefs is stated in Article 300 along with an explanation of this article. This can be seen in the words of Article 300 as follows: "Every person in public who:

- a. committing hostile acts;
- b. express hatred or hostility; or
- c. inciting hostility, violence or discrimination against another person's religion, belief, class or group on the basis of religion or belief in Indonesia, is punishable by a maximum imprisonment of 3 (three) years or a maximum fine of category IV.

In the explanation of Article 300 it is stated: "Every written or oral act or statement carried out objectively, limited to one's own circle, or of a scientific nature regarding a religion or belief accompanied by efforts to avoid words or sentence structures that are hostile, statements of hatred or hostility, or incitement to hostility, violence, discrimination or defamation is not a criminal offense according to this article".

The use of the word "or" in the formulation of the offense in Article 300 between the words religion and belief shows that the new Criminal Code has recognized the existence of beliefs that are parallel to religion. Such parallels are not meaningful as something that equates religion and beliefs. Religions stand alone with their teaching and belief systems that they already have and religious beliefs also stand alone with their teaching and belief systems, all of which are within the framework of belief in the Almighty God.

4. Conclusion

Philosophically, the Indonesian national state was built on the foundation of belief in the Almighty God. A state with a Godhead is not a religious state or is not the same as a religious state, nor is it a secular state. The appropriate term for the Indonesian national state which has a belief in God is a religious nation state.

The general view of a religious national state is often interpreted as a state whose citizens are religious. Therefore, the mainstream view maintains that belief in God is the same as religion. Holding a belief is not included in the category of having a belief in God because belief is not a religion.

This view changed with the publication of MKRI Decision No. 97/PUU-XIV/2016 which includes religious beliefs alongside religion in the Population Administration Law. This MKRI decision is of course in accordance with the 1945 Constitution of the Republic of Indonesia which recognizes the existence of religious beliefs besides religion.

Even though MKRI Decision no. 97/PUU-XIV/2016 only concerns the Administer Law, but its impact spectrum is quite broad and fundamental in both philosophical and juridical understanding. Philosophically, this will definitely change the view that a country with a Godhead is a country that, in addition to recognizing its citizens as religious, also recognizes its citizens as believers. In the legal sector, legal configurations and policies will certainly change.

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