



## VERDICT

Number 97/PUU-XIV/2016

FOR THE SAKE OF JUSTICE BASED ON BELIEF IN THE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Hearing constitutional cases at the first and final levels, has passed a verdict in the case of Judicial Review of Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration of the 1945 Constitution of the Republic of Indonesia, filed by:

1. Name : **Nggay Mehang Tana**

Occupation : Farmer

Address : Walakari, RT 13/04, Kelurahan Wunga, Kecamatan  
Haharu, Sumba Timur, Provinsi Nusa Tenggara Timur

As----- **Petitioner I;**

2. Name : **Pagar Demanra Sirait**

Occupation : Student

Address : Gopgopan, Sampuara, Kecamatan Uluan, Kabupaten  
Toba Samosir, Provinsi Sumatera Utara

As----- **Petitioner II;**

3. Name : **Arnol Purba**

Occupation : Entrepreneur

Address : LKIII Veteran Bagan Deli, Medan Belawan, Sumatera  
Utara

As----- **Petitioner III;**

4. Name : **Carlím**

Occupation : Entrepreneur

Address : Cikandang, RT 02/02, Cikandang, Kersana, Kabupaten  
Brebes, Jawa Tengah

As----- **Petitioner IV;**

Based on the Special Power of Attorney dated September 1, 2016 authorizing **Muhnur, S.H., Iki Dulagin, S.H., M.H., Sandoro Purba, S.H., Ronald Siahaan, S.H., M.H., Judianto Simanjuntak, S.H., Adzkar Ahsinsin, S.H., Fathudin, S.HI., S.H., MA.Hum., M.H., Fatilda Hasibuan, S.H., Syamsul Alam Agus, S.H., Fatiatulo Lazira, S.H. Adiani Viviana, S.H., Muhammad Irwan, S.H., Abdul Wahid, S.H., Bernhard Ruben F. Sumigar, S.H., Azhar Nur Fajar Alam, S.H., Lintang Setianti, S.H., Miftah Fadhli, S.H., and Sekar Banjaran Aji, S.H.,**

the Advocates and Legal Barristers who are affiliated in the Citizenship Barrister Team, having its registered address at Jalan Siaga II Nomor 31, Pejaten Barat, Pasar Minggu, Jakarta Selatan 12510, their jointly or individually acting for and on behalf of the authorizer;

Hereinafter referred to as ----- **Petitioners;**

[1.2] Having read the petition of the Petitioners;

Having heard the statement of the Petitioners;

Having heard and read the statement of the President;

Having read the statement of the House of Representatives;

Having heard and read the statements of the Related Parties, in this case the Indonesian Glorious Assembly of Belief in the One Almighty God;

Having heard the statements of witnesses and heard and/or read the statements of the Petitioners' experts;

Having examined the Petitioners' documentary/written evidences;

Having read the conclusion of the Petitioners.

## **2. FACTS OF THE CASE**

[2.1] Considering whereas the Petitioners filed an petition dated September 28, 2016 which was received at the Clerk of Constitutional Court (hereinafter referred to as the Clerk of Court) on September 28, 2016 based on the Deed of

Receipt of Petition File Number 195/PAN.MK/2016 and has been recorded in the Constitutional Case Registration Book on October 20, 2016 under Number 97/PUU-XIV/2016, which was amended and received by the Clerk of Court on November 22, 2016, in essence outlining the following matters:

**A. THE CONSTITUTIONAL COURT AUTHORITIES**

1. Whereas Article 24 paragraph (2) of the Third Amendment to the 1945 Constitution states: "Judicial power shall be exercised by a Supreme Court and the judicial body under it and by a Constitutional Court";
2. Whereas subsequently Article 24C paragraph (1) of the Third Amendment to the 1945 Constitution states: "The Constitutional Court has the authority to adjudicate at the first and final instance whose decisions are final to judicial review the law against the Constitution, decide upon the dispute over the authority of a state institution whose authority is granted by the Constitution, decide upon the dissolution of the political parties and decide upon disputes over the results of general elections";
3. Whereas based on the above provisions, the Constitutional Court has the right or authority to conduct a judicial review of the Constitution which is also based on Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning the Constitutional Court which states: "The Constitutional Court has the authority to adjudicate at the first and final instance whose decisions are

- final to: (a) judicial review of the law against the 1945 Constitution of the Republic of Indonesia";
4. The Constitutional Court was formed as the guardian of constitution. If there are laws that contain or are formed contrary to the constitution (unconstitutional), the Constitutional Court can annul them by canceling the existence of the Law in whole or in part;
  5. Whereas as a guardian of the constitution, the Constitutional Court is also entitled to provide an interpretation of the provisions of the articles contained in the law in order to be in accordance with the values of the constitution. The interpretation of the Constitutional Court to the constitutionality of the articles of the law is the sole interpretation of the constitution which has legal force. So that the articles which have the meaning of ambiguous, unclear, and/or multiple interpretations can also be asked to interpret them to the Constitutional Court;
  6. Whereas based on the above matters, it is clear that the Constitutional Court of the Republic of Indonesia has the authority to examine and hear this petition for judicial review. Whereas because the object of this petition for judicial review is Law Number 23 of 2006 concerning Population Administration in conjunction with Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration (Population Administration Law) of the State Constitution of the Republic of Indonesia 1945 (the 1945 Constitution). Therefore

based on that, the Constitutional Court has the authority to examine and hear the a quo petition;

## **B. LEGAL STANDING OF THE PETITIONERS**

1. Whereas the recognition of the right of every Indonesian citizen to file petitions for judicial review of the Law on the 1945 Constitution is an indicator of the positive development of state administration which reflects the progress made in strengthening the principles of the rule of law;
2. Whereas the Constitutional Court of the Republic of Indonesia functions among other things as a "guardian" of the "constitutional rights" of every citizen of the Republic of Indonesia. The Constitutional Court of the Republic of Indonesia is a judicial body tasked with safeguarding human rights as constitutional and legal rights of every citizen. With this awareness, the Petitioners then decided to file a petition for judicial review of Article 61 paragraph (1); Article 61 paragraph (2); Article 64 paragraph (1); and Article 64 paragraph (5) of the Population Administration Law which is contrary to the spirit and soul as well as the articles contained in the 1945 Constitution;
3. Whereas Article 51 paragraph (1) of the Constitutional Court Law states, "Petitioners are parties who consider their constitutional rights and/or authorities to be impaired by the enactment of the law, namely: (a) individual Indonesian citizens, (b) the unity of indigenous and tribal peoples, as long as they are alive and in accordance with the development

- of the people and the principles of the Unitary State of the Republic of Indonesia provided for in laws, (c) public and private legal entities, or (d) state institutions";
4. Based on the Constitutional Court Verdict Number 006/PUU-III/2005 and the verdicts of the successive Constitutional Court, the Constitutional Court has determined 5 conditions regarding constitutional impairment as referred to in Article 51 Paragraph (1) of the Constitutional Court Law, which is as follows:
    - a. the Petitioner must have constitutional rights and/or authorities granted by the 1945 Constitution; the constitutional rights and/or authorities are deemed to have been impaired by the coming into effect of the law petitioned for review;
    - b. the impairment of constitutional rights and/or authorities is specific and actual in nature, at least potential in nature which according to logical reasoning will certainly occur;
    - c. there is a causal verband between the impairment of constitutional rights and/or authorities and the law petitioned for review; and
    - d. it is possible that with the granting of the petition, the postulated constitutional rights and/or authorities will not or no longer occur.
  5. Whereas the Petitioner I, a citizen of the Republic of Indonesia adheres to the belief of Marapu Community in East Sumba, Sumba Island. The Petitioner I is one of the 21.000 adherents of Marapu Community's belief

in East Sumba and to the number of 40 thousand people in Sumba Island who have been violated their rights to population services;

6. The Belief of Marapu Community believes in the power of the Most High (which in modern religious terms is called God or Allah). This supreme being is too great, sacred and transcendent, so that for adherents of Marapu, just mentioning his name must abide by various rituals laden with spiritual mantras, such as DAPPA NUMA NGARA, DAPPA TEKKI TAMO - in regional language/Wewewa tribe (which may not be named, and may not be called an alias). Other sacred expressions to refer to the Supreme Being are: A KANGA WOLLA LIMMA, A BOKKA WOLLA WA'I - in the regional language/Wewewa tribe (He who created and He made); AMA A MAGHOLO, INA A MARAWI - in the regional language/Wewewa tribe (the Father who made/carved, the mother who weaved/made; AMA PADEWAMA, INA PAURRAMA - in the regional language/Wewewa tribe (without Father, we are ownerless, without Mother, we are ownerless or Father who protects us and Mother who looks after us. These spells are usually sung by RATO (Marapu priest) on certain nights, for example on the night during the Saiso ceremony (a special ceremony to dialogue with Marapu with a certain form). This belief believes that all aspects of life are interrelated and are a unified whole **(Exhibit P-3)**;
7. Based on data quoted from Sesawi.Net in the article of an Overview of the Weetebula Diocese Profile, Sumba Island, NTT in 2008, the population of Sumba Island to the number of 644.144 people. The composition of



population based on religion are: Islam 26.606 people (4,12%), Protestant 391.739 people (60,81%), Catholic 143.122 (22,22%), Hinduism 742 people (0,12%), and Marapu adherents 81.953 people (12,73%) This data indicates that Marapu adherents rank third after Protestant and Catholic. However, the number of Marapu adherents has been shrinking from time to time. As happened in Southwest Sumba Regency, according to 2007 BPS data, Marapu adherents in this region (at that time still joined with West Sumba Regency) amounting to 16,08% of the total population. But in 2012, the number was 4,96%. In just 5 years, the decline was more than 3 times. This decline trend also occurred in West Sumba Regency and two other regencies. There are several reasons behind this fact. *First*, the Marapu adherents' need for official religious ownership. This relates to interests in population matters and the need to access social assistance and public services. *Second*, the very fast and systematic reporting of modern religions. With all its superiority, such as organizing, human capacity, funding of modern religions conducts a systematic and massive reporting, so that Marapu's belief was increasingly pressed and depressed. The conversion of religions among adherents of modern religions is very small, mostly for reasons of marriage. The greatest increase in adherents was obtained by modern religions from the Marapu adherents. *Third*, the conversion of Marapu adherents to modern religions is not difficult and hardly causes great social pressure, when compared to when it occurs between modern religions. This is reinforced by the fact

- that by adhering modern religion, they have greater access and opportunities to progress and develop;
8. Whereas with their identity as adherents of the belief, marriages between adherents of the Marapu Community which are solemnized in a customary manner are not recognized by the State. As a result, their children find it difficult to obtain a Birth Certificate. Likewise, with the issue of electronic Resident Identity Card, to obtain an electronic Resident Identity Card easily, some adherents are forced to lie writing down religion outside of their belief in electronic Resident Identity Card (**Exhibit P-4**);
  9. The event that was experienced by Petitioner I was the result of the existence of the articles of the Population Administration Law which stated that the religious column in the Family Card or the electronic Resident Identity Card for adherents of belief was left blank. By leaving blank the religious column for adherents of belief in electronic Resident Identity Card and Family Card, Petitioner I along with other Marapu communities was labeled old-fashioned, infidels and heretics, and impacted on violations of constitutional rights, as well as violations in population administration services;
  10. Petitioner II is a Parmalim adherent in North Sumatra. The Parmalim Center itself is located in Toba Samosir Regency, but its adherents spread to various regions, including Medan City and Deli Serdang. Based on the investigation of the United North Sumatra Alliance Team in March-April 2015, Parmalim adherents in Deli Serdang Regency were found in

Sunggal district, Mulia Rejo Village (92 people), and in Medan they were spread in Medan Denai, Medan Amplas, Medan Kota and Medan Sunggal (a total of 373 people). Adherents of Parmalim's beliefs experience various problems and exclusions from aspects of fulfilling basic rights and public policies, namely the many mismatches between religious identities written in the Family Card and electronic Resident Identity Card. In addition, the head of the environment in charge of handling of Family Cards and electronic Resident Identity Cards often forces the Parmalim adherents to choose a 'recognized' religion, so that the process of making electronic Resident Identity Cards is said to be "easier". This is as experienced by Petitioner II **(Exhibit P-5)**;

11. The constitutional loss experienced by the Parmalim adherents is that there are those who are required to convert to religion if they want to be accepted at the job they are proposing. Other findings from the United North Sumatra Alliance also namely, a teacher (Bharlin School) as the Parmalim adherent was forced to have to resign because the school did not allow him to attend worship on Saturday **(Exhibit P-11)**;
12. Whereas the existence of Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law which left blank the religious column for the adherents of the belief, has harmed Petitioner II and the Parmalim adherents. Because by leaving blank the belief in the religious column of electronic Resident Identity Card had an impact on violations in fulfilling population rights that should have been obtained by

Petitioner II. In fact, by leaving blank the belief in the religious column of Petitioner II's electronic Resident Identity Card, there has been discrimination experienced by the petitioner in various forms, such as: difficulties in accessing work, unable to access rights to social security, difficulties in accessing population documents, such as electronic Resident Identity Card, Family Card, Marriage Certificate and Birth Certificate;

13. Petitioner III is an Ugamo Bangsa Batak adherent in Medan, North Sumatra. The number of the Ugamo Bangsa Batak adherents in Medan City is spread in the district of Medan Helvetia, Medan Denai, Medan Belawan with a total of 40 people. With the existence of Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law which states that the religious column in the Family Cards and electronic Resident Identity Cards for belief is left blank, Petitioner III has indirectly experienced discrimination **(Exhibit P-6)**
14. Whereas the son of Petitioner III who is also an adherent of Ugamo Bangsa Batak in Medan, North Sumatra, named Dessy Purba, her right to work has been violated. This began when Dessy was refused a job application, despite good grades and achievements. The rejection was because the religious column in the electronic Resident Identity Card was marked with a dash. Prospective employers assume that the dash is identical with atheists or infidels. Despite meeting all the required criteria and having

good grades in her diploma, Dessy was not accepted as a worker. Dessy also had difficulty when she wanted to receive wages from the company where she worked, because the company and the bank questioned the religious column that was left blank and asked for clarification from the local government and the Adherents of Ugamo Bangso Batak Belief;

15. Whereas besides that, Petitioner III also apparently could not access business capital from financial institutions. The dashes on the Petitioner III's electronic Resident Identity Card cause them to not be able to access business capital from financial institutions, such as banks or cooperatives. In the end, to save the lives of their children in the future, Petitioner III was forced to change the religious column in the electronic Resident Identity Card and his Family Card with Christianity. **(Exhibit P-12)**;
16. Whereas Petitioner IV was an adherent of Sapto Darmo's belief. One group of adherents or in the language of the government referred to as "the flow of belief" whose adherents had reached hundreds of thousands in Indonesia, especially in Java. However, since 1965, due to political pressure, adherents of this belief declined rapidly and were only practiced covertly **(Exhibit P-7)**;
17. Since the Reformation, these adherents of the belief began to manifest themselves. One of them is in the Brebes Regency. Their numbers are very small and often under pressure, both from the surrounding people and the government who consider them as 'heretics'. In the Brebes area, the number of adherents is around 192 people spread over 9 districts:

Brebes, Wanasari, Larangan, Kersana, Losari, Bulukumba, Ketanggungan, Bumi Ayu, and Tanjung. Most of them are farmworkers, builders, traveling toy traders, fishermen and other "grassroots" professions. The progress and survival of their lives as communities only persists in family networks, which are also weakened by various political and social pressures;

18. Most of Sapto Darmo's adherents come from the lower middle class, some are even poor and the process of impoverishment continues because most of them only attend school up to the intermediate level. In addition to economic factors, one of the reasons they are reluctant to continue schooling is the existence of demands, both subtly and roughly, that they follow religious lessons recognized by the government;
19. For Petitioner IV, the existence of Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law has had an impact on Petitioner IV. As a adherent of belief, because in his electronic Resident Identity Card the religious column was left blank (Exhibit P-8), Petitioner IV and other followers of Sapto Darmo received a deviant stigma from the general public. As a result of his religious column being left blank, the family burial of Petition IV was rejected at any public cemetery in Brebes Regency. This has been experienced by the family of Petitioner IV, and clearly has the potential to also occur to Petitioner IV;

20. Furthermore, the continued impact of the religious column being left blank on the electronic Resident Identity Card, i.e. children of Petitioner IV also had difficulty accessing education and entering primary school, because they were known to adhere the Sapto Darmo Belief and when having school, children of Petitioner IV were forced to follow subjects and teachings of Islamic Religious education which is contrary to his beliefs as Sapto Darmo adherents;
21. Whereas the existence of Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law which instructs adherents of belief or for followers of unrecognized religions to leave blank the religious column on the Family Card and the electronic Resident Identity Card is a form of state reluctance to recognize the existence of adherents of belief and followers of other religions that are not the majority in Indonesia. The unwillingness of the state to recognize this is an act of direct discrimination, which in this case was at least experienced by Petitioner I, Petitioner II, Petitioner III and Petitioner IV;
22. Whereas thus, the existence of the Population Administration Law is factually or at least potentially detrimental to the constitutional rights of the Petitioners. The presence of a quo law in a direct or indirect way has harmed the Petitioners and other adherents of belief in Indonesia who have been experiencing discrimination;

23. Whereas therefore the Petitioners have fulfilled the quality and capacity as the Petitioners for Judicial Review of the 1945 Constitution as provided for in Article 51 point c of the Constitutional Court Law, as well as a number of Constitutional Court verdicts that provide an explanation of the requirements to become Petitioners for the Judicial Review of the Law against the 1945 Constitution. So that, it is also clear that all Petitioners have the legal rights and interests representing the public interest to file petitions for the review of the Population Administration Law against the 1945 Constitution;

### **C. REASONS FOR PETITION**

#### **Scope of the Reviewed Articles**

#### **Article 61 of Law Number 23 of 2006 concerning Population Administration**

paragraph (1)

*"The Family Card contains information about the Family Card number column, the full name of the family head and family members, Personnel Registration Number, gender, address, place of birth, date of birth, religion, education, occupation, marital status, relationship status in the family, citizenship, immigration documents, parents' name."*

paragraph (2):



*"Information on religion as referred to in paragraph (1) is for residents whose religions have not yet been recognized as a religion based on the provisions of laws and regulations or for the adherents of belief is left blank, but still served and recorded in the population database."*

**Article 64 of Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration**

paragraph (1):

*"Electronic Resident Identity Cards include images of the Garuda Pancasila emblem and a map of the territory of the Unitary State of the Republic of Indonesia, containing elements of population data, i.e. Personnel Registration Number, name, place and date of birth, male or female, religion, marital status, blood type, address, occupation, citizenship, passport photo, validity period, place and date of issue of electronic Resident Identity Cards, and signature of the bearer of electronic Resident Identity Cards."*

paragraph (5):

*"The element of population data on religion as referred to in paragraph (1) for residents whose religion has not been recognized as a religion based on the provisions of laws and regulations or for adherents of belief is left blank, but still served and recorded in the population database."*

- I. **The provisions of Article 61 paragraph (1) and paragraph (2) in conjunction with Article 64 paragraph (1) and paragraph (5) of the Population Administration Law Are Contrary to the Principles of the**

## **Rule of Law Guaranteed in Article 1 paragraph (3) of the 1945 Constitution**

1. Whereas one of the most important pillars of the formation of the Indonesian state in addition to relying on the principle of popular sovereignty, is also affirmation on the principle of the state of law, as contained in the provisions of Article 1 paragraph (3) of the 1945 Constitution which expressly states, "*The State of Indonesia is a State of Law*";
2. Whereas the Statement of Article 1 paragraph (3) of the 1945 Constitution, according to Jimly Ashiddiqie, implies recognition of the supremacy of law and constitution, the adoption of the principle of separation and limitation of power according to the constitutional system stipulated in the Basic Law, guarantees human rights in the Basic Law, the existence of the principle of free and impartial justice that guarantees the equality of every citizen in the law, as well as guarantees justice for everyone including the abuse of authority by the ruling party;
3. Whereas the concept of the state of law as quoted by Jimly Asshiddiqie in the Constitution & Constitutionalism of Jakarta: The General Secretariat and Registrar of the Constitutional Court, 2006, page 152-162, according to Julius Stahl is (1) protection of human rights, (2) distribution of power, (3) governance based on the law, and (4) existence of a State Administrative Court. Important Characteristics of the Rule of Law according to A.V. Dicey, i.e. (1) Supremacy of law, (2) Equality of law, (3)

Due process of law. The International Commission of Jurist, adding the principles of the rule of law are (1) the state must comply with the law, (2) the government respects individual rights, and (3) free and impartial justice.

4. Whereas in a state of law, the laws and regulations created must contain the values of justice for all people. As quoted by Jimly, Wolfgang Friedman in his book "Law in a Changing Society" distinguishes between organized public power (the rule of law in the formal sense) and the rule of just law (the rule of law in the material sense). The rule of law in the formal (classical) sense involves the legal definition in the narrow sense, that is, in the sense of written laws and regulations, and does not necessarily guarantee substantial justice. The rule of law in the material sense (modern) or the rule of just law is an embodiment of the rule of law in a broad manner that involves the notion of justice in it, which is of the essence rather than just the functioning of laws and regulations in the narrow sense;
5. Whereas one of the principles of the rule of law as mentioned above is the protection of human rights. In this regard, Indonesia has experienced much progress in the field of Human Rights after the reform, namely the amendment to the 1945 Constitution, the birth of several laws and regulations including through the ratification of the International Covenant that guarantees and protects Human Rights, including Law Number 11 of 2005 concerning Ratification of International Covenant on Economic,

Social and Cultural Rights (ICESCR), Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR), Law Number 39 of 1999 concerning Human Rights;

6. Whereas the responsibility of the state in relation to human rights is to protect, respect and to fulfill the rights of citizens, both civil and political rights as well as economic, social and cultural rights, such as the right to work, the right to a decent life, the right to education, the right to freedom of discriminatory treatment, the right to equality before the law, the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law, the right to life and other rights;
  
7. Whereas the existence of Article 61 paragraph (1) and paragraph (2) in conjunction with Article 64 paragraph (1) and (5) of the Population Administration Law violates the human rights of adherents of belief and the petitioner as a citizen. Because Article 61 Paragraph (2) of the Population Administration Law states that the information regarding the religious column in the Family Card for residents whose religion has not been recognized as a religion based on the provisions of laws and regulations or for the adherents of belief is not filled out, but is still served and recorded in the population database. Furthermore, Article 64 paragraph (5) of the Population Administration Law states that information about religion in the Electronic Resident Identity Card (KTP) for Residents whose religion has not been recognized as a religion based on the provisions of laws and regulations or for the adherents of belief is not filled

out, but is still served and recorded in population database. Both of these articles have the potential to eliminate the right of citizens to obtain a Family Card (KK) and an electronic Resident Identity Card (KTP), even though in the article of a quo law is said to be still served and recorded in the population database;

8. Whereas the phrase "still served and recorded in the population database" as mentioned in the article of a quo law is basically unconstitutional, because with the article of a quo law results in several things, namely:
  - a. The adherents of belief and Petitioners find it difficult to get Family Card and electronic Resident Identity Card;
  - b. Although the Government Apparatus serves by giving Family Card and electronic Resident Identity Card with the religious columns left blank or dashed for the adherents of belief and the Petitioner, but it also causes problems if the adherents of belief and the Petitioner require electronic Resident Identity Card and Family Card in their daily needs, such as not being accepted at work because the religious column is left blank or dashed (-), and other problems. This was experienced by Petitioner II, with no inclusion of religion of belief in the Petitioner II's electronic Resident Identity Card, there had been discrimination experienced by Petitioner II in various forms, such as: difficulties in accessing work, unable to access rights to social security, difficulties in accessing population documents, such as electronic Resident Identity Card, KK,

marriage certificate, and birth certificate. Likewise, the son of Petitioner III Dessy Purba also experienced the same thing. Petitioner III's child was refused an application for work because the religious column on the electronic Resident Identity Card was marked with a dash. Petitioner IV also experienced the same thing because the religious column in electronic Resident Identity Card is left blank, the funeral of the family of Petitioner IV had been rejected at any public cemetery in Brebes Regency;

- c. The Government Apparatus recommends those who handling the Family Card and electronic Resident Identity Card to choose one of the religions outside of their religion/belief, by being forced the adherents of belief accept the of one of the religions outside their religion/belief. As experienced by Petitioner I and his community as adherents of belief from the Marapu community in East Sumba, Sumba Island, many of them did not have a Family Card. And to get an electronic KTP was forced to lie to write religion outside of their beliefs;
9. Whereas the rights of the adherets of belief and the petitioner as citizens should also be protected, respected, and fulfilled by the state. Besides the existence of a quo article has the potential to eliminate and deny the Human Rights of the adherents of belief and Petitioners. Though the 1945 Constitution, Law Number 12 of 2005, Law Number 11 of 2005, Law Number 39 of 1999 mandates that the state is obliged to protect and

guarantee the rights of every citizen without any distinction, such as race, color, gender, language, religion, creed, politics or other opinions, national or social origins, wealth, birth or other status;

10. Whereas in fact, the existence of the article of a quo Law resulted in violations of the Human Rights of the Petitioners and their Communities as adherents of belief, namely the right to obtain population documents as referred to in Article 2 point a of the Population Administration Law which states that each resident has the right to obtain a Population Document;

11. Whereas the situation of Petitioner II and Petitioner III Dessy Purba's children who were not admitted to work because the column of religion was marked with dashes or left blank on an electronic Resident Identity Card was a violation of the right to work, the right to a decent life, the right to develop themselves and the right to social security;

The right to work is provided for in Article 27 paragraph (2) of the 1945 Constitution in conjunction with Article 38 paragraph (1) and paragraph (2) of Law Number 39 of 1999 concerning Human Rights in conjunction with Article 6 of Law Number 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights;

The right to a decent life is provided for in Article 28H paragraph (1) of the 1945 Constitution in conjunction with Article 27 paragraph (2) of the 1945 Constitution in conjunction with Article 40 of Law Number 39 of 1999

concerning Human Rights in conjunction with Article 11 paragraph (1) Article 6 Law No. 11/2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights. The right to self-development is provided for in Article 15 of Law Number 39 of 1999 concerning Human Rights;

Petitioner II who cannot access the right to social security is a violation of Article 28H paragraph (3) in conjunction with Article 41 paragraph (1) of Law Number 39 of 1999 in conjunction with Article 9 of Law Number 11 of 2005 which states that every citizen has the right for social security;

12. Whereas the Petitioners and other Adherents must be guaranteed by the state to fill out the religious column in each population document including the electronic Resident Identity Card and Family Card in accordance with their Belief.
13. Whereas therefore, the provisions of Article 61 paragraph (1) and paragraph (2) in conjunction with Article 64 paragraph (1) and paragraph (5) of the Population Administration Law, are contrary to the principles of rule of law state as stipulated in Article 1 paragraph (3) of the 1945 Constitution;
14. Whereas because it is clearly contrary to the 1945 Constitution, Article 61 paragraph (1) and paragraph (2) in conjunction with Article 64 paragraph (1) and paragraph (5) of the Population Administration Law are declared to have no binding legal force with all legal consequences;



**II. The provisions of Article 61 paragraph (1) and paragraph (2) in conjunction with Article 64 paragraph (1) and (5) of the Population Administration Law are Contrary to Legal Certainty and Equal Treatment before the Law Guaranteed in Article 28D paragraph (1) of the 1945 Constitution**

15. Whereas the 1945 Constitution has affirmed the guarantee of legal certainty and equal treatment before the law for every citizen in the scope of Indonesian state of law, as written in Article 28D paragraph (1) of the 1945 Constitution, *"Every person has the right to recognition, guarantee, protection and legal certainty that is just and equal treatment before the law"*;

16. Whereas legal certainty is also one of the main elements of legal morality. This is as stated by Lon L. Fuller, who stated that a legal rule needs to be subject to internal morality, therefore in its formulation must noting to the following four conditions:

- a. The laws must be made in such a way that they can be understood by ordinary people. Fuller also named this as a desire for clarity;
- b. Rules must not conflict with each other;
- c. In law there must be firmness. The law must not be amended every time, so that everyone no longer orientates his activities to him;
- d. There must be consistency between the rules as announced and the actual implementation;

17. Whereas legal certainty is intended that each legal norm must be formulated with the sentences in it not containing different interpretations. This will bring compliance or non-compliance with the law;
18. Whereas a quo article violates legal certainty, this is because the formulation contains different interpretations. Article of a quo Law states that the Family Card contains elements of religious information in it, as well as an electronic Resident Identity Card containing elements of population data, including the religion of the holder of an electronic Resident Identity Card. However, specifically for adherents of belief or for followers of a religion that has not been recognized as a religion based on the provisions of laws and regulations, the religious column is left blank;
19. Whereas the article of a quo Law indicates that there is a conflict with each other, because there are differences in the handling of Family Cards and electronic Resident Identity Cards between the adherents and the applicant of other citizens, because for the adherents, the religious column is left blank, even though in a quo Law is mentioned but still served and recorded in the Population database. This indicates the lack of clarity and violates the basic rights of citizens, as experienced by the Petitioner. Whereas for citizens in general, the religious column is not left blank;
20. Whereas the principle of law of equal treatment before the law is one of the most important principles in modern law, which means that all people are equal before the law. The principle of equal treatment before the law

is the principle where there is an equality in law for each individual without any exceptions;

21. Whereas thus the article of a quo law contradicts the principle of law of equal treatment before the law. This is because the a quo articles indicate there is no equality in the law for every citizen and indicate a different treatment between citizens, i.e. differentiate the handling of Family Cards and electronic Resident Identity Cards between the adherents of belief with citizens in general by emptying the religious column for the adherents of belief;
22. Whereas in Article 58 paragraph (2) point h of the Population Administration Law has been stated that "religion/belief" is a part of individual data that must be recorded in the population database. However, the data is only stored in a qualitative and quantitative individual data system in population aggregate data, but it is not explicitly included in the data element in the physical documents of Family Cards and electronic Resident Identity Cards, so that the existence of the a quo articles ordering the emptying of the Adherents of Belief does not in line and in accordance with Article 58 paragraph (2) point h of the Population Administration Law and finally it creates legal uncertainty and inconsistencies in the regulation of filling out of the column of religion/belief;
23. Whereas in Article 58 paragraph (4) point a of the Population Administration Law is also explained:

*"Population Data as referred to in paragraph (1), paragraph (2), and paragraph (3) which are used for all purposes are Population Data from the Ministry in charge of domestic government affairs, among others for the utilization of: a. public service....;*

Further described in the explanation:

*Point a: "The meaning of" utilization of public services ", among others, for the issuance of driving licenses, business licenses, taxpayer services, banking services, land certificate issuance services, insurance, public health insurance, and/or labor social security."*

Based on the explanation of the article above, it becomes clearer that the existence of an electronic Resident Identity Card and Family Card is the main entrance to be able to feel its use of access to public services, such as Driving License issuance, business licenses, bank loans, etc. However, the utilization of the data in access to public services above cannot be carried out, because the public service officials only examine data that is written explicitly in the electronic Resident Identity Card and Family Card data elements, which finally again are the Adherents of Belief whose religious column data is left blank or marked with a dash enjoy access public service. As experienced by Petitioner III who could not access venture capital from financial institutions such as banks and cooperatives;

24. Whereas by looking at the formulation, it is clear that the article of a quo Law is also incompatible, even contradictory to Article 2 point a of the Population Administration Law which states that Every Population has the right to obtain a Population Document. In addition, Article of a quo Law also contradicts Article 58 paragraph (2) point h of the Population Administration Law in conjunction with Article 4 of Law Number 25 of 2009 concerning Public Services, namely point b (legal certainty), point c (equality of rights), and point g (equality of treatment/non-discrimination). Because by leaving the religious column blank in the Family Card and the electronic Resident Identity Card results in legal uncertainty for the adherents and the Petitioners, there is no equality of rights between the adherents of belief and the Petitioners with citizens in general. This also indicates that there is no equal treatment before the law for adherents and the Petitioners when compared with citizens in general. And this clearly constitutes discrimination for the Adherents of Belief and the Petitioners; Article 4 of Law Number 25 of 2009 concerning Public Services states that the implementation of public services is based on:

- a. public interest
- b. legal certainty
- c. equality of rights
- d. equality of rights and obligations
- e. professionalism

- f. participative
- g. equality of treatment/non-discrimination
- h. openness
- i. accountability
- j. facilities and special treatment for vulnerable groups
- k. timeliness, and
- l. speed, convenience, and affordability

25. Whereas the existence of the a quo Law that contradicts each other results in different interpretations, which constitutes legal uncertainty and results in the adherents of belief and the Petitioner having difficulties and being unable to obtain a Family Card and an electronic Resident Identity Card. Petitioner I on behalf of Ngay Mehang Tana was a victim of this discriminatory regulation, he was not recorded by the state through an electronic Resident Identity Card registration system and did not get a Family Card;

26. Whereas the non-filling of the religious column as an element of population data in the Family Card or electronic Resident Identity Card has violated other basic rights of the Petitioners. As experienced by the family of Petitioner I, with their identity as adherent of Marapu, the family of Petitioner I solemnized traditionally was not recognized by the state, so it did not have a Marriage Certificate and Family Card. Furthermore, their

children have difficulty obtaining Birth Certificates. Meanwhile, the biological son of Petitioner III (adherent of Ugamo Bangso Batak), because in the religious column of his electronic Resident Identity Card was only marked with a dash, was rejected when applying for a job, even though he had fulfilled all the required criteria. Finally, Petitioner IV, as a adherent of Sapto Darmo, has experienced a derivative impact from its unconstitutional of Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law, because as a result of electronic Resident Identity Card with the religious column left blank, the family burial of Petition IV has been refused at any public cemetery;

27. Whereas by not having an electronic Resident Identity Card will result in the Petitioner as a citizen being unable to access and obtain other basic rights such as the right to work, the right to education, the right to social security, along with all its services. This is a violation of Human Rights. Besides the right to education, the right to work, the right to health, the right to social security, along with all its services are regulated and guaranteed in the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, Law Number 11 of 2005 concerning Ratification of Covenant on Economic, Social and Cultural Rights;

28. Whereas it is thus very clear that the provisions of a quo article law are a form of inconsistency of legal rules, given the fact that Indonesia already has legal instruments that guarantee and protect human rights. The right

to population documents is guaranteed and protected in Article 2 point a of the Population Administration Law, while the right to work, the right to health, the right to social security, along with all its services, the right to a decent life, the right to self-development is regulated and guaranteed in the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, Law Number 11 of 2005 concerning the Ratification of the Covenant on Economic, Social and Cultural Rights;

29. The Petitioners and other Adherents must be guaranteed by the state to fill in the Religion column in all population documents including electronic Resident Identity Card and Family Card in accordance with their beliefs.
30. Whereas thus, the provisions of Article 61 paragraph (2) in conjunction with Article 64 paragraph (5) of the Population Administration Law are contrary to the principle of fair legal certainty and equal treatment before the law as guaranteed by Article 28D paragraph (1) of the 1945 Constitution;
31. Whereas because Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law have clearly contradicted the 1945 Constitution, it is fitting for Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law is declared not to have binding legal force with all its legal consequences;



**III. The provisions of Article 61 paragraph (1) and paragraph (2) in conjunction with Article 64 paragraph (1) and paragraph (5) of the Population Administration Law Violate the Guaranteed Equality of Citizens before the Law Guaranteed in Article 27 paragraph (1) of the 1945 Constitution**

32. Whereas the state of Indonesia is the people who uphold the equality of citizenship before the law and government as mandated in Article 27 paragraph (1) of the 1945 Constitution, i.e.:

*"All citizens have the same position in Law and Government and are obliged to uphold the Law and Government with no exception";*

33. The principle of equality of citizens before the law and government can be found in Article 2 of the Population Administration Law, i.e.:

"Every resident has the right to obtain:

a. *Population Documents;*

b. **The same service in Population Registration and Civil Recording;**

c. *Protection of Personal Data;*

d. *Legal certainty over document ownership;*

e. *Information regarding data on the results of Population Registration and Civil Recording of himself and/or his family; and*

- f. *Compensation and restoration of reputation as a result of errors in Population Registration and Civil Recording, as well as misuse of Personal Data by Implementing Agencies.”*
35. Whereas Article 2 point b of the Population Administration Law above which states that every resident without exception has the right to obtain "the same service in Population Registration and Civil Recording", in fact is in accordance with and properly implements the provisions of principle of equality of citizens before the law and government in Article 27 paragraph (1) of the 1945 Constitution. However, the contradiction that arises then is the exclusion and differentiation of treatment in Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Law, because the article of a quo Law states "for residents whose religion has not yet been recognized or adherents of belief, his religion column is not filled." This is clearly a differentiation of treatment that is contrary to the 1945 Constitution, especially Article 27 paragraph (1) of the 1945 Constitution;
27. In part considering point a of Population Administration Law mentioned:
- "Whereas the Unitary State of the Republic of Indonesia based on the **Pancasila and the 1945 Constitution of the Republic of Indonesia** is essentially obliged to provide **protection and recognition** of the determination of personal status and legal status for each Population and Important Event experienced by **Indonesian People** who is in and/or outside the territory of the Unitary State of the Republic of Indonesia"*

Thus, it becomes clear that the administrative obligation to be carried out by the State through the Population Administration Law is a mandate to provide protection and recognition of personal status and legal status for every population and important event experienced by the Indonesian people without exception, without distinction of race, ethnicity, religion/belief or ideology inherent in the soul and body of the Indonesian people everywhere as an order from the Pancasila and the 1945 Constitution;

28. Whereas in the concept of a modern rule of law, as explained by B. Brief Sidharta, "Philosophical Studies of the Rule of Law", in Jentera (Journal of Law), "Rule of Law", Center for Law and Policy Studies (PSHK), Jakarta, 3rd edition Year II, November 2004, page 124-125. One of the most important principles in the rule of law is the application of equality (Similia Similius or Equality before the Law) where the government cannot "privilege" certain people or groups of people, or discriminate against certain people or groups of people. In this principle, contained (a) the existence of guarantees of equality for all people before the law and government, and (b) the availability of mechanisms to demand equal treatment for all citizens;
33. Based on the basic purpose of providing protection and recognition as mandated by the Pancasila and the Constitution, then the act of recording is not expected to discriminate against the actions of its citizens;
34. Therefore, it is necessary to observe the existence of Article 61 paragraph

(2) of the Population Administration Law that:

*"Information regarding the column of religion as referred to in paragraph (1) is for residents whose **religion has not been recognized** as a religion based on the provisions of laws and regulations or **for the adherents of belief are not filled out**, but still served and recorded in the Population database."*

And the existence of Article 64 paragraph (5) of the Population Administration Law which states:

*"The element of population data on religion as referred to in paragraph (1) for residents whose religion **has not been recognized** as a religion based on the provisions of laws and regulations or for adherents of belief is not filled out, but still served and recorded in the population database."*

It clearly and evidently violates the provisions of Article 27 paragraph (1) of the 1945 Constitution and violates the principle of the rule of law which upholds equality before the law and government. In a quo articles, namely in the data elements of the Family Card ("KK") and the electronic Resident Identity Card (KTP), there is a data that is differentiated in the treatment. The differentiation in treatment of such records is the column of religion for Residents whose **religion has not been recognized** as a religion based on the provisions of Laws and Regulations or for such adherents of belief is "not filled out". So it is clear that through a quo articles the state has "privileged treatment" by only filling out the religion column for certain

- religious groups which clearly violate the soul and spirit of the principle of equality before law and government;
35. According to Ramly Hutabarat, in his book "Equality before the law", the contents of Article 27 paragraph (1) of the 1945 Constitution, is a chain-link between rights and obligations which must function according to their respective positions. Equality before the law means that every citizen must be treated fairly by law enforcement officials and the government. In terms of constitutional law, every government agency, especially law enforcement officials, is constitutionally bound to the value of justice which must be realized in practice;
  36. The implementation of fair practices that need to be realized in Population Registration and Civil Registry is what has actually been regulated in Article 2 of the Population Administration Law. But then, it cannot be practiced in the implementation because of the existence of Article 61 paragraph (2) in conjunction with Article 64 paragraph (5) of the Population Administration Law;
  37. As the basic considerations in the formulation of the Population Administration Law cited at the initial point, it will be found that for the protection and recognition of the constitutional rights of Indonesian population and citizens themselves, this Population Administration Law was formulated. Where, the protection and recognition that the State of Indonesia intends to give to its population and citizens is not carried out by discriminating between the population and their citizens. Because

Indonesia does not distinguish between ethnic, religious, racial and intergroup treatment;

38. Until now, there has not been a law to discriminate between certain ethnic groups, certain religions, certain races or groups. Therefore, it is also necessary to pay attention to the confusion given in Article 8 paragraph (4) of the Population Administration Law, namely:

*"The obligation as referred to in paragraph (1) for the requirements and procedures for the recording of important events for residents whose religion has not been recognized as a religion based on the provisions of laws and regulations or for the adherents of belief guided by the laws and regulations".*

39. The above can provide confusion in carrying out Population Registration and Civil Recording. Because, law and constitution guarantee that every citizen is equal in law without distinction of ethnicity, color, religion/belief. This also can potentially be misinterpreted in the implementation of Article 61 paragraph (2) in conjunction with Article 64 paragraph (5) of the Population Administration Law;

40. Population administration is a part of public service which is an inherent right for every citizen. Article 2 of the Population Administration Law as explained above states that population documents and population data are the rights of every citizen that must be served equally. The state's obligation to guarantee population administration as part of public

services as provided for in Law Number 25 of 2009 concerning Public Services. The consideration of this law states that the state is obliged to serve every citizen and resident, to fulfill their basic rights and needs in the context of public services. In carrying out public services according to Article 4, it must be based on the principle of equal rights, fairness and non-discrimination, and the existence of facilities and affirmative action for vulnerable groups. Meanwhile, the 1945 Constitution Article 28H paragraph (2) guarantees the constitutionality of special treatment for vulnerable groups;

41. The treatment of the non-filling of the religious column for the adherents of belief and religious groups that have not been recognized in the Family Card (KK) and electronic Resident Identity Card (KTP) has also violated the affirmative action in the principle of equality of citizens before the law and government. Where affirmative actions should be addressed to the adherents of belief in which the majority is the religion and ancestral beliefs and indigenous peoples in order to encourage and accelerate the groups of adherents of belief or indigenous peoples to pursue progress so as to achieve the same level of development and equal to the majority community groups that much more advanced, could not be realized through the existence of a quo articles. Where it has also been felt by Petitioners II and Petitioner III who were forced to lose their jobs just because their religious column was dashed and not filled out, and had been stigmatized by infidels or atheists by the company, even though the right to work for the petitioners was also the same was constitutional rights

provided for in Article 27 paragraph (2) of the 1945 Constitution;

42. Whereas the Petitioners I to IV are also citizens who have paid taxes and participated in developing and struggling for the Indonesian State, then they must also be treated equally in population data collection and administration as well as access to public services;

43. In managing a country especially concerning the protection and recognition of the human rights of a country's population or citizens, the only action that can take a person's life is only and only if the person is found guilty by a proper court. In the book "Compilation of Human Rights Instruments" (Goran Melander.ed., Language transfer: Madayuti Petiwi (et al), revised edition, Raoul Wallenberg Institute, (Brill Academic Publishers 2004), page 66), states:

*"The rights of every person must be protected by law, no one may be deprived of his/her life intentionally, except in the execution of law by the court after he/she is tried for a crime that is threatened with punishment under the law."*

In this case, when it comes to the personal data of a resident or citizen, certainly no court decision will be made to eliminate a person's personal identity. Because in a court decision in Indonesia the possible sanctions are imprisonment or fines and payment of compensation or payment of dwangsom in civil cases and other administrative actions in the form of dismissal from office;



44. Whereas in fact, the Petitioners and other Adherents must be guaranteed by the state to fill in the religious column in every population document including the electronic Identity Card and Family Card in accordance with their Belief.

45. Therefore, the act in filling the religious column for "not filled out" as referred to in Article 61 paragraph (2) in conjunction with Article 64 paragraph (5) of the Population Administration Law is contrary to the principle of equality before the law and government guaranteed in Article 27 paragraph (1) of the 1945 Constitution;

46. Whereas because Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law have clearly contradicted the 1945 Constitution, it is fitting for Article 61 paragraph (1) juncto paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law is declared not to have binding legal force with all its legal consequences;

**IV. The provisions of Article 61 paragraph (1) and paragraph (2) in conjunction with Article 64 paragraph (1) and paragraph (5) of the Population Administration Law are Contrary to the Right to Freedom of Discriminatory Treatment on any basis guaranteed in Article 28I paragraph (2) of the 1945 Constitution**

47. Article 28I paragraph (2) of the 1945 Constitution states, *"every person has the right to be free from discriminatory treatment on any basis and has the right to get protection against such discriminatory treatment"*;
48. Article 1 point 3 of Law Number 39 of 1999 concerning Human Rights states that: *"Discrimination is any limitation, harassment, or exclusion that is directly or indirectly based on human differentiation on the basis of religion, ethnic group, race, ethnicity, group, class, social status, economic status, gender, language, political beliefs. which results in the reduction, deviation or elimination of the recognition, implementation or use of human rights and basic freedoms in both individual and collective life in the political, economic, legal, social, cultural fields. and other aspects of life".;*
49. Guaranteed freedom from discrimination are affirmed in Article 26 of the International Covenant on Civil and Political Rights: "All people are equal before the law and are entitled to the same legal protection, **without any discrimination**. Regarding this, the law prohibits all discrimination and guarantees to all people equal and effective protection against discrimination on any basis such as ethnicity, color, gender, language, religion, political views, etc., national or social origin, wealth, birth or other status".;
50. Whereas the principle of non-discrimination based on ICCPR norms must be understood as a prohibition on all forms of "distinction, exclusion, restriction or preference" on any basis, such as race, color, gender,

language, religion, political flow or other opinions, citizens or social origin, ownership, birth and other status, which aim or impact the recognition, enjoyment or fulfillment of all human rights and freedoms (General Comment Human Rights Committee No. 18: Non-discrimination (1989), pharagraph 7) **(Exhibit P-9)**;

51. Whereas the contents of the article that the Petitioners reviewed in the Constitutional Court was that the religious column in the Family Card and electronic Resident Identity Card for followers of beliefs or for adherents of religion that had not been recognized by Indonesian Laws, to be left blank [Article 61 paragraph (2) in conjunction with Article 64 paragraph (5) of the Population Administration Law]. This is a article that is discriminatory towards the followers of beliefs or for adherents of a religion that has not been recognized by the state through its legislation;
52. Both articles have fulfilled the definition of discrimination given in Article 1 point 3 of the Human Rights Law. Because by leaving the religion column blank for followers of beliefs or adherents of a religion that has not yet been recognized by the state, it is exclusion based on differentiation on the basis of religion or belief, which results in the reduction, deviation or elimination of the recognition, implementation or use of human rights and basic freedoms in life both individually and collectively in the political, economic, legal, social, cultural. and other aspects of life;
53. Whereas discriminatory treatment is also felt specifically by women who adhered Beliefs as attached in the National Commission for Women

Monitoring Results Report on Discrimination and Violence against Women in the Context of Freedom of Religion and Belief for Followers/Adherents and Practitioners of Traditional Rituals. Whereas more than half of the 65 discrimination cases studied were from 11 communities spread across 9 provinces (such communities are Bayan Wetu Telu indigenous people in North Lombok, West Nusa Tenggara (NTB); Botti and Jinitiu indigenous people in East Nusa Tenggara (NTT); Sunda Wiwitan indigenous people in Kuningan, West Java, Sapto Dharmo Adherent community in West Java, Central Java, and East Java; Indigenous people of Kajang, Bulukumba, South Sulawesi; Bissu indigenous people in Pangkep, South Sulawesi, Tolotang indigenous people in South Sulawesi, Ngatatoro indigenous people in Palu, Central Sulawesi, Musi indigenous peoples, North Sulawesi and Kaharingan adherents in Central Kalimantan are cases of neglect in population administration. The remaining 9 cases differed in accessing the right to work and benefited from the work, 8 cases differed in accessing education, 3 cases were inhibited in accessing government assistance, 3 cases were prevented from accessing funerals, 2 cases were prevented in establishing houses of worship, 5 cases were inhibited in worship, and 1 case of prohibition in organizing beliefs **(Exhibit P-10)**;

54. Whereas the soul and spirit of population administration is in harmony and contains such principles and affirmed in Article 4 of Law Number 25 of 2009 concerning Public Services which states that the principles of public service include: public interest, legal certainty, equality of rights,

professionalism, participation, equality of treatment/non-discrimination, openness, accountability, facilities and special treatment for vulnerable groups;

55. Whereas the above principles not only provide a strong legal basis in the administration of non-discriminatory public services, but also become a moral foundation for the state apparatus to always prioritize the public interest in carrying out the public service function to every citizen;

56. Whereas the existence of the a quo Law causes the Petitioners difficulties and cannot obtain Family Card and electronic Resident Identity Card. The Petitioners and their families and other adherents are victims of this discriminatory regulation, they are not recorded by the State through the electronic Resident Identity Card registration system and do not get a Family Card. Whereas the non-filling of the religious column as an element of population data in the Family Card or electronic Resident Identity Card has violated other basic rights of the Petitioners. As experienced by the family of Petitioner I, with their identity as the Marapu adherents, the family of Petitioner I solemnized traditionally was not recognized by the State, so it did not have a Marriage Certificate and Family Card. Furthermore, their children have difficulty obtaining Birth Certificates. Meanwhile, the biological child of Petitioner III (Ugamo Bangso Batak adherent), because in his electronic Resident Identity Card religion column was only marked with a dash, was rejected when applying for a job, even though he had fulfilled all the required criteria. Finally,

Petitioner IV, as a Sapto Darmo adherent, has experienced a derivative impact from the unconstitutional of Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law, because as a result of electronic KTP with the religious column is left blank, the family burial of Petition IV has been denied at any public cemetery;

57. Whereas the a quo articles which are discriminatory in the a quo Law directly inevitably has encouraged the regional government apparatus to carry out discriminatory actions in the name of the law. And indirectly has encouraged different interpretations from one region to another in the application of the law. In practice, the bureaucratic apparatus which is often applied form of different services to citizens based on their religion or beliefs. In some regions, adherents of beliefs take care of electronic Resident Identity Cards and Family Cards, by some Civil Registry and Population officials often forced to fill the religious column with one of six (6) religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism or Confucianism (Wahid Institute, 2014: 8) **(Exhibit P-2)**;
58. Whereas the Petitioners and other Adherents must be guaranteed by the state to fill in the religious column in every population document including the electronic Resident Identity Card and Family Card in accordance with their beliefs.
59. Therefore, the existence of Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph

(5) of the Population Administration Law, has made an exception for the Petitioners by not filling the religious column in the Family Card and electronic Resident Identity Card constituting a form discrimination that occurs because of the a quo articles. Even as a result of this, the Petitioners have experienced the impact of further human rights violations. Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with Article 64 paragraph (5) of the Population Administration Law is contrary to Article 28l paragraph (2) of the 1945 Constitution;

60. Whereas because Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law have clearly contradicted the 1945 Constitution, it is fitting for Article 61 paragraph (1) in conjunction with paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law is declared not to have binding legal force with all its legal consequences;

**D. PETITUM**

Based on the reasons described above and the evidence submitted, the Petitioners appealed to the Panel of Judges of the Constitutional Court who examined the a quo case, to make the verdict as follows:-----  
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1. To grant all petitions for Judicial Review submitted by the Petitioners;--
2. To state Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Law is contrary to the 1945 Constitution, and has no binding legal force insofar as it is not interpreted as (conditionally constitutional) the phrase "Religion" including Belief; -----
3. To declare Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Law is contrary to the 1945 Constitution and does not have binding legal force with all its legal consequences; -----
4. To order the containing of this verdict in the State Gazette of the Republic of Indonesia as appropriate; -----  
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If the Panel of Judges of the Constitutional Court has another verdict, we request the fairest possible verdict (*ex aequo et bono*) -----

[2.2] Considering whereas in order to substantiate their arguments, the Petitioners have submitted documentary evidence of letters/writings which are marked with exhibit P-1 to exhibit P-14 as follows:

1. Exhibit P-1 : Photocopy of Law Number 23 of 2006 concerning Population Administration in conjunction with Law



Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration;

2. Exhibit P-2 : Photocopy of *Policy Brief "Population Administration Services for Minority Groups"*, The Wahid Insitute, 2014;
3. Exhibit P-3 : Photocopy of Marapu Adherents' Chronology
4. Exhibit P-4 : Photocopy of Marapu Community's Resident Identity Card;
5. Exhibit P-5 : Photocopy of Chronology of Parmalim Adherents Group's history;
6. Exhibit P-6 : Photocopy of Chronology of Ugamo Bangso Batak's history;
7. Exhibit P-7 : Photocopy of Chaptology of Sapto Darmo's history;
8. Exhibit P-8 : Photocopy of Sapto Darmo Adherents' Resident Identity Card;
9. Exhibit P-9 : Photocopy of *General Comment Human Rights Committee No. 18: Non-discrimination* (1989);
10. Exhibit P-10 : Photocopy of Research Report on Discrimination and Violence against Women in the Context of Freedom of

Religion and Belief for Adherents of Beliefs/Ancestors  
and Practitioners;

11. Exhibit P-11 : Photocopy of Assessment Report on Parmalim and Ugamo Bangso Batak "Fulfillment of Constitutional Rights of Ancestors and Other Religious Minorities in North Sumatra" by Aliansi Sumut Bersatu (ASB);
12. Exhibit P-12 : Photocopy of Petitioner III's Resident Identity Card (KTP);
13. Exhibit P-13 : Photocopy of Basic Considerations for Ombudsman's Advice to the President of the Republic of Indonesia on Equality and Fair Treatment for Minority Groups and Adherents of Beliefs;
14. Exhibit P-14 : Photocopy of Paper Reviewing the Definition of Religion, World Religion, and Ancestral Religion, Samsul Maarif, CRCS UGM.

In addition, to prove their argument, the Petitioners in the hearing on 2 February 2017, 22 February 2017 and/or 3 May 2017 presented 8 (eight) experts, namely **Dr. Sidharta, S.H., M.Hum., Dr. W. Riawan Tjandra, S.H., M.Hum., Hj. RA. Tumbu Saraswati, S.H., Dr. Indraswari, Budi Santoso, S.H., LL.M., Samsul Maarif, Ph.D, Enny Soeprpto, Ph.D, and Al Khanif, S.H., LL.M., Ph.D**, who delivered their oral statements under oath/promise in the

hearing and/or submit a written statement stating the following matters, as follows:

**1. Dr. Sidharta, S.H., M.Hum.**

In Law Number 12 of 2011 concerning Formulation of Laws and Regulations, an understanding is obtained that the philosophical elements which are considered and the reasons for the formulation of a law must be listed in the consideration of that law. This philosophical element is then followed by the formulation of its sociological and juridical elements. The philosophical element illustrates that the regulations that are formulated to consider the outlook on life, awareness, and the ideals of the law which includes the atmosphere of mysticism and the philosophy of the Indonesian people which originate from Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia. Sociological elements illustrate that the regulations were formulated to meet the needs of people in various aspects. The juridical element illustrates that regulations are formulated to overcome legal problems or to fill legal vacuum by considering existing rules, which will be amended, or which will be revoked to ensure legal certainty and a sense of justice.

What is the philosophical element in consideration of Law Number 23 of 2006 concerning Population Administration in conjunction with Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration (hereinafter abbreviated as the Population Administration Law)? Stated in this law:

- a. *Whereas the Unitary State of the Republic of Indonesia based on the Pancasila and the 1945 Constitution of the Republic of Indonesia is essentially obliged to provide protection and recognition of the determination of personal status and legal status for every Population Event and Important Event experienced by Indonesian People who is in and/or outside the territory of the Unitary State of Republic of Indonesia;*
- b. *Whereas in order to provide protection, recognition, determination of the personal status and legal status of every Population Event and Important Event experienced by Indonesian People and Indonesian Citizens who are outside the territory of the Unitary State of the Republic of Indonesia, it is necessary to regulate Population Administration;*
- c. *Whereas the regulation on Population Administration can only be implemented if it is supported by professional services and increased awareness of the people, including Indonesian citizens who are abroad.*

First of all, the expert wants to give notes on the philosophical elements in the Population Administration Law. The key phrase giving the philosophical element message in the Population Administration Law lies in the state's obligation to protect and recognize the determination of: (1) personal status, (2) legal status for any population and important events experienced by the Indonesian people.

In connection with the issues raised in the Population Administration Law review, the question arises whether the activities related to religion are population events and important events? Article 1 point 11 and point 17 of the Law on Population Administration do not include "religiousness" as population events and important events. However, it should be noted that in the definition of population events there are the words *"events experienced by residents that must be reported because they have an impact on the issuance or change of family cards, identity cards and/or other population certificates ...."*. Meanwhile, important events are interpreted as *"the events experienced by a person include birth, death, stillbirth, marriage, divorce, child recognition, child endorsement, adoption, change of name and change of citizenship status"*.

Indeed, from the two understandings of Article 1 point 11 and point 17 of the Population Administration Law, the words "religion" do not appear. However, the reality of "religion" is an important column that is present in the Family Card and ID Card. Religion also has consequences for a number of important events such as death, marriage, and divorce. So, there is no doubt that the state also recognizes that religion/belief is personal data (a term used in Article 58 of the Population Administration Law) which is consciously seen as a necessity to be displayed in the Family Cards and ID Cards. This individual data, according to Article 58 paragraph (4) is used among others for the utilization of: public services, development planning, budget allocation, democracy development, law

enforcement and crime prevention. In essence, there is a state's interest in requesting data on religion/belief to be included. Because this data is important for the country, this data must be accurate, i.e. data that describes the actual situation. The inaccuracy of the data will affect its usefulness in terms of public services, and others as mentioned in Article 58 paragraph (3) above.

Then, can this personal data about religion/belief not be filled out (left blank) or given a dash (-)? According to Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Law this is permissible, that is, specifically for residents whose religion has not been recognized as a religion based on the provisions of laws and regulations or for the adherents of beliefs. The state actors may argue that emptying does not mean that the state does not serve the adherents of beliefs. Data about their belief is still recorded in the population database, it's just not included in the Family Card and electronic Resident Identity Card.

The two paragraphs above show there is a different treatment for adherents of recognized and unrecognized religions (still labeled adherents of belief). What are the reasons for this different treatment? It is unfortunate that the explanation of the Population Administration Law does not state anything, even though the provision is truly serious because it has the potential to contradict the philosophical elements of the existence of such Population Administration Law. Different treatment without justified rational reasons is a form of discriminatory behavior. In

fact, the first consideration of the Population Administration Law as quoted above clearly states that the state is obliged to provide "protection and recognition" of the determination of personal status (please read: including personal data) of each of its inhabitants. This recognition is now expected to come from the state, not just stored in the population database, but also explicitly recognized in official document columns such as Family Cards and ID Cards.

The expert observes, one of the provisions of the 1945 Constitution which was used as a touchstone in this review was Article 1 paragraph (3). This provision states that Indonesia is a state of law. The expert wishes to give a special note on the position of the Indonesian state of law in the theoretical constellation of the state of law.

A legal theorist and philosopher named Brian Z. Tamanaha, in his book *On the Rule of Law* (2004: 91) distinguishes the types of state of law in formal and material terms. He then made a scheme that is very relevant to describe the condition of a state of law, including the Indonesian state of law.

<b>ALTERNATIVE RULE OF LAW FORMULATIONS</b>			
	Thinner -----> to ----->	-----> Thicker	
<b>FORMAL VERSIONS:</b>	<b>1. Rule-by-Law</b>  – law as instrument of government action	<b>2. Formal Legality</b>  – general, prospective, clear, certain	<b>3. Democracy+ Legality</b>  – consent determines content of law
<b>SUBSTANTIVE VERSIONS:</b>	<b>4. Individual Rights</b>  – property, contract, privacy, autonomy	<b>5. Right of Dignity and /or Justice</b>	<b>6. Social Welfare</b>  – substantive equality, welfare, preservation of community

Formally our country can be said to have fulfilled all the requirements to become the highest state of law (thicker). It was marked by the implementation of the principles of democracy and legality in the formation of law. However, according to Tamanaha, the state of law is not enough just in terms of its formal form. The state of law must also be measured by its substance. The contents of the state of law which at least pay respect to individual rights, include, among others, protection of property rights, protection of freedom of association and contracting, protection of personal data (privacy), which is then better known as human rights. At a thicker level, there is a state of law that has clearly reached the "right of dignity and/or justice" which is characterized by among others the low level of corruption. While at the highest level is the state of law which in real terms provides welfare for the people and their supporting communities.

According to a survey from an independent institution called Indonesian Legal Roundtable (ILR) in 2015, the index of the Indonesian



State of Law indeed increased to 5,32 from the previous year of 5,18. However, of all the principles used as benchmarks, the field of human rights got the lowest score of 3,82. There are six indicators used to assess the 2015 Indonesian State of Law for human rights, namely the guarantee of the right to life, the right to be free from torture, the right not to be enslaved, the right not to be imprisoned based on contractual obligations, the right not to be punished for actions that are not crime and the right to freedom of thought, religion and belief.

So, if we use the scheme introduced by Tamanaha, we can conclude that the Indonesian state of law that we are building has entered into a thick version of the formal legal state, but is still substantive. Like people who wear clothes, our country is like a person whose body is thin but wears enormous clothes (oversized). A country like this is only a country that formally promises many things, but in practice is unable to realize these promises. Countries that apply double standards because of the inability to take a clear stance. The issues raised in the Adminduk Law review show this phenomenon.

First, it can be seen how the asynchronous between the philosophical foundation of the state's obligation to "protect and recognize the determination of personal status and legal status for every population event and important event experienced by [every] population" with actions to clear individual data on religion/belief that incidentally is an important element related to the population/important event. First, it can

be seen how the asynchronous between the philosophical foundation of the state's obligation to "protect and recognize the determination of personal status and legal status for every population event and important event experienced by [every] people" with actions to clear individual data on religion /belief that incidentally is an important element related to the population/important event.

Second, the asynchronous between the State's desire to ask for the inclusion of "religion/belief" data as individual data (Article 58 of the Population Administration Law writing the word "religion" is coupled with the word "belief") with the order to fill out in the "religion" data but empty the "belief" data for residents whose religion has not been recognized by the state. The asynchronous attitude we have on one side wants to protect and recognize, but on the other hand we want to eliminate it, not a characteristic that deserves to be accepted as the character of the state of law.

Third, sociologically, the asynchronous attitude of the state administration actors in serving the people by emptying the religious column in the Family Card and electronic Resident Identity Card, had an impact that had been disclosed by the petitioners. Some of them expressed difficulties when they had to get public services, such as working and school. Some institutions are worried about recruiting them to work or their children for school when they know that the religious column is not filled out in their Family Cards and Resident Identity Cards.

Such conditions lead these people into civil death (*civilliter mortuus*; *burgelijke dood*). The prohibition on civil death is written in Article 3 of the Civil Code. The original formulation of this article reads as follows: "*Geenerlei straf heeft with burgerlijken dood of het verlies van alle burgerlijke regten ten gevolge*" (There is no sentence that can result in a civil death or loss of all civil rights).

Of course we do not want any of our citizens, including petitioners who become the adherents of beliefs, to receive the punishment in the form of civil death.

In this room, some time ago the petitioners were sworn in before the honorable panel of judges of the constitutional court. They were sworn based on their beliefs, not based on one of the mainstream religions, which is said to be politically recognized by the state. If the panel of judges of the constitutional court are willing to accept their oaths as legal oaths before a high state institution called the Constitutional Court, then there should be no reason for other state institutions not to recognize their existence, including the recognition of individual data in legal documents such as Family Cards and Identity Cards.

With the explanation above, the expert came to the conclusion that Article 61 paragraph (1) and (2), as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Law indeed contradicts the 1945 Constitution, especially Article 1 paragraph (3) which declares Indonesia is a state of law. The contradiction with the provisions of Article

1 paragraph (3) of the 1945 Constitution has logical consequences on the contradiction with other provisions, as also stated by the petitioners, namely Article 28D paragraph (1) concerning the right of everyone to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law; Article 27 paragraph (1) concerning the equal position of all citizens in law and government and their obligation to uphold such law and government without exception; and Article 28I paragraph (2) concerning the right of every person to be free from discriminatory treatment on any basis and entitled to get protection against such discriminatory treatment.

On the basis of the above thought, the expert came to the conclusion to agree if the honorable Panel of Judges of the Constitutional Court to: (1) grant all petitions for Judicial Review filed by the petitioners; (2) declare that Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Law are contrary to the 1945 Constitution, and has no binding legal force insofar as it is not interpreted as (conditionally constitutional) the phrase "Religion" including "Belief"; and (3) declare that Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Law are contrary to the 1945 Constitution and do not have binding legal force with all its legal consequences; (4) order the containing of this decision in the State Gazette of the Republic of Indonesia as it should.

In addition to delivering the information above, the expert added information in the proceedings which in essence were as follows:

- If defending a quo provisions, there will be many victims who do not have the right of dignity just because they have to follow the mainstream, even though they should show their true identity;
- Whereas the state may regulate religion as long as it stays in the corridor of agreement as a state that guarantees the freedom of each resident to have a religion and practice their beliefs. It becomes a problem if the rules drawn up then come into rules that are very personal, for example related to population administration;
- Whereas the services should not be limited to the database, because for those who are interested in showing identity, while the easiest document to show is Resident Identity Card;
- Whereas the state conducts an connivance, so there is an effort to review Article 61 and Article 64 of the Population Administration Law, and the task of the Court to maintain its upstream, meaning that even though later the a quo articles are declared to be non-binding, concrete steps and tireless struggle are still needed

## **2. Dr. W. Riawan Tjandra, S.H., M.Hum.**

The petition for a quo judicial review basically starts from the basic concept in the State Administrative Law which consists of 3 (three) dimensions:

1. Dimensions of implementation of governmental authority (sturende functie)

The government in the state of law system is provided the authority to administer government by using the government facilities (bestuursmiddelen) and administrative sanctions. The government facilities include: juridical facilities (juridische middelen), public facilities (materiele middelen), personnel facilities (personele middelen) and state financial facilities (financiele middelen).

2. Dimensions of legal protection (*rechtsbescherming*)

The government in carrying out its functions must always provide legal protection for the people both preventive (information disclosure, supervision and no objection statements) and those that are repressive (civil lawsuits, judicial review and State Administrative Decision).

3. Dimensions of participation

The government in carrying out its functions must always provide a mechanism for the people to be able to participate in the implementation of government through the right to submit complaints (inspraak) or advisory by the expert commission (adviesering).

With regard to the dimensions of the implementation of government in the state of law system which is based on Pancasila and the 1945

Constitution which have a single diversity, the implementation of such government functions must always be based on the principles contained in the Preamble of the 1945 Constitution and the 1945 Constitution which at least include the following principles:

1. Principle of protection of the entire Indonesian nation and the entire Indonesian homeland
2. Principle of realization of people's welfare
3. Principle of social justice
4. Principle of unity and oneness
5. Principle of diversity (*Bhinneka Tunggal Ika*)
6. Principle of democratic legal state
7. Principle of popular sovereignty
8. Principle of equality before the law
9. Principle of protection of human rights

Article 61 paragraph (2) of Law Number 23 of 2006 shall regulate that:

*Information about religion as referred to in paragraph (1) is for residents whose religion has not been recognized as a religion based on the*

*provisions of laws and regulations or for adherents of beliefs is not filled out, but is still served and recorded in the population database.*

Article 64 paragraph (5) of Law Number 24 of 2013 shall regulate that:

*"The element of population data on religion as referred to in paragraph (1) for residents whose religion has not been recognized as a religion based on the provisions of the laws and regulations or for adherents of beliefs is not filled out, but is still served and recorded in the population database."*

The second formulation of legal norms is based on the basis of legal logic foundation that is wrong and discriminatory because it has reduced the degree of "belief of the adherents of the beliefs" to be aligned with "a religion that has not been recognized based on the laws and regulations". Aside from the fact that these two things are different (unrecognized religion and belief of the adherents of the beliefs), it also has opened a discriminatory space in implementing a legal norm. The legal norms which essentially contain discriminatory treatment in Article 61 paragraph (2) of Law Number 23 of 2006 are parallel with the formulation of legal norms as contained in Article 64 paragraph (5) of Law Number 24 of 2013. The second formulation of a quo legal norms [Article 61 Paragraph (2) Law Number 23 of 2006 and Article 64 Paragraph (5) Law Number 23 of 2014] have actually caused the legal norms contained in the previous paragraphs contained in the same article to become meaningless or to be obscured, besides also having no coherence and



linearity in the formulation of legal norms with the previous paragraphs in the same articles. Why suddenly regulate and equate "unrecognized religion" with "belief of the adherents of the beliefs" in the two legal norms in question which were never intended to be regulated in the previous paragraphs and never even regulated in other articles in the Population Administrative Law? In fact, the object regulated in the two paragraphs in the two articles has never been defined in a stipulative manner in the General Provisions of the two a quo laws. Formulation of norms whose meaning is vague, does not have such coherence and linearity, there is a danger of implicating the occurrence of fallacy known as Non Causa Pro Causa (Post Hoc Ergo Propter Hoc), which is a type of fallacy that occurs when there is a mistake in drawing conclusions based on causal relationship. These legal norms can be a cause for the consequences of wrong state administration decision making, discriminatory and irrational.

The impact is sociologically, decision making on state administration based on norms that are constitutional defect, has the effect of a fallacy in the form of Elenchi Ignoratio, which is a type of fallacy that occurs when someone draws a conclusion that is irrelevant to the premise. Such leap from the premise to conclusions, is generally motivated by prejudice, emotions, and subjective feelings. Ignoratio elenchi is also known as "red herring" fallacy. By not filling out in the religious column in accordance with the fact that beliefs are adhered by the adherents of the beliefs in the Family Card and/or electronic ID card,

it can cause "negative" prejudice towards the owner of the Family Card and/or electronic ID card.

By using the phrase: "information and so on ... not filled out, but is still served and recorded in the population database" in Article 61 paragraph (2) of Law Number 23 of 2006 in conjunction with the phrase: "Population data elements and so on ... not filled out, but is still served and recorded in the population database "in Article 64 paragraph (5) of Law Number 24 of 2013 if it is related to the expert's legal opinion described previously above, it can be assessed as follows:

1. Vertically reviewed in the first degree, the series of legal norms is contrary to the principles contained in Article 2, Article 7, and Article 18 of the Universal Declaration of Human Rights which was accepted and announced by the UN General Assembly on December 10, 1948 through resolution 217 A (III).

### **Article 2**

Everyone has the right to all rights and freedoms set forth in this Declaration with no exceptions whatsoever, such as differences in race, color, gender, language, religion, politics or other opinions, national or social origins, proprietary rights, birth or other position.

### **Article 7**

All people are equal before the law and are entitled to the same legal protection without discrimination. All have the right to equal

protection against any form of discrimination that conflicts with this Declaration, and against any incitement that leads to this kind of discrimination.

### **Article 18**

Everyone has the right to freedom of thought, conscience and religion; in this case includes the freedom to convert religion or belief, with the freedom to express religion or belief by teaching it, doing it, worshiping and obeying it, either individually or jointly with others, in public or alone.

2. Vertically reviewed in the second degree, the series of legal norms that are contrary to the principles contained in the 1945 constitution especially: the principle of protection for all Indonesian people and the entire homeland of Indonesia (protectational principle), the principle of unity and integrity, the principle of diversity (Bhinneka Tunggal Ika), the principle of a democratic state of law, the principle of equality of citizens' rights, and the principle of protection of human rights.
  
3. Horizontally reviewed, the series of legal norms is contrary to the principles contained in state administrative law (the principle of legal certainty, the principle of equality, the principle of justice or fairness and the principle of protection of personal view of life).

Article 10 paragraph (1) point a (principle of legal certainty), Article 10 paragraph (1) point c (principle of impartiality), and Article 10 paragraph (1) point h (principle of good service) Law Number 30 of 2014 concerning Government Administration , Article 5 point a (principle of clarity of purpose), Article 5 point c (conformity between types, hierarchy and substances), Article 5 point f (clarity of formulation); Article 6 point a (principle of guarding), Article 6 point e (principle of archipelago), Article 6 point f (principle of unity in diversity), Article 6 point g (principle of justice), Article 6 point h (principle of equality in law and government and Article 6 point l (order and legal certainty) of Law Number 12 of 2011 concerning Drawing Up of Laws and Regulations and Article 4 point b (principle of legal certainty), Article 4 point c (principle of equal rights), and Article 4 point g (equality of treatment/non-discrimination) Law Number 25 of 2009 concerning Public Services. The entire principle in the law also originates and is derived from the 1945 Constitution. Thus, in essence it also contradicts the constitutional norms derived from the three related laws. Likewise, contrary to Article 18 paragraph (1) and paragraph (2) and Article 26 of Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights.

### **Article 18**

1. Everyone has the right to freedom of thought, belief and religion. This right includes the freedom to determine a religion or belief of his/her own choice, and freedom, both individually and jointly with others, whether in public or in closed places, to practice his/her religion and beliefs in worship, observance, experience and teaching.
2. No one can be forced, so that his/her freedom is disrupted to adhere or determine his/her religion or belief according to his/her choice.

#### **Article 26**

All people are equal before the law and are entitled to the same legal protection without any discrimination. In this case the law must prohibit any discrimination, and guarantee equal and effective protection for all people against discrimination on any basis, such as race, color, gender, language, religion, politics or other opinions, national or social origin, wealth, birth or other status.

In connection with the series of legal norms petitioned for review by the petitioner and related parties above, they have been vertically (upward) or horizontally (sideways) conflicted, has implicated the occurrence of discriminatory facts in the petition of the legal norm by the state administrative agencies or officials authorized in the field of population administration. This is due to the legal norms in which the

formulation causes a quo legal norms to conflict with the principles and norms of the 1945 Constitution and causes the legal norms in various related laws as mentioned above cannot be applied, causing the state administrative agencies or officials who are given the power to apply the legal norms are unable to carry out the obligation to provide adequate reasons for carrying out state administrative actions (the duty to give reasons) (refer to Longley and James, 1999, Administrative Justice: Central Issues in the UK and European Administrative Law, Cavendish Publishing, p. 208 and so on). That is because the legal norms petitioned for such review are unconstitutional because they conflict with the 1945 Constitution. Agencies or officials who use a quo legal norm basis that already contain "innate constitutional defects" since formulation also have implications for state administrative agencies or officials in implementing a quo legal norms are unable to adequately use reasons for decisions (refer to Esparraga and Ellis-Jones, 2011, Administrative Law-Guidebook, Oxford University Press, p. 168 and so on). That is, because the legal norms petitioned for review are contrary to constitutional norms (vertically) and legal norms in related laws (horizontally), have implications for: a. state administrative agencies or officials granted the power are unable to stimulate careful consideration of the lawfulness and correctness of state administrative decisions or state administrative actions undertaken to implement Article 61 of Law Number 23 of 2006 and Article 64 Law Number 24 of 2013; b. unable to guarantee that the state administrative decisions or actions carried out by the state administrative agencies or

officials are placed on the basis of rational foundations by stimulating state administrative agencies or officials who make state administrative decisions to identify and formulate reasons for consideration of a state administrative decisions and state administrative actions. Without proper legal underpinning for its actions, state administrative officials do not have the power to regulate, supervise, etc. (Le Seuer and Sunkin, 1997, Public Law, Longman, London, UK, p. 169). Failure to provide reasons or a sufficient reason can invite judicial institution review to decide that decision makers do not have good reasons for determining and have acted to abuse the power (Ian Ellis-Jones, 2001, Essential Administrative Law, Cavendish Publishing Limited, Australia, p. 50). This requires the existence of formulations for good legal norms, constitutional, non-discriminatory and meet the general principles of good legislation (algemene beginselen van behoorlijk wetgeving).

If related to the three dimensions of the basic concept of State Administrative Law above, the constitutional defect of legal norms Article 61 paragraph (1) and paragraph (2) of Law Number 23 of 2006 and Article 64 paragraph (1) and paragraph (5) of Law Number 24 of 2013 which has implications for the inability of state administrative bodies or officials to provide the right reasons for carrying out population administrative actions and stating the right reasons (statements of facts) to implement the obligation to act in a fairness and equal manner in administering citizens' rights administrative in the Family Card and electronic ID Card refer to Article 61 paragraph (1) and paragraph (2) of Law Number 23 of 2006 and

Article 64 paragraph (1) and paragraph (5) of Law Number 24 of 2013 have caused the government to be unable to implement the dimension of legal protection (*rechtsbescherming*) which is also incapable of implement the dimensions of authority appropriately which results in a series of actions that reveal the occurrence of misuse/abuse of power in the form of discriminatory treatment of citizens (in this case the adherents of beliefs) in administering citizens' administrative rights in the family cards and electronic ID cards. The laws and regulations can be declared invalid if the legal norms are unreasonable or irrational (Ian Ellis-Jones, 2001, *Essential Administrative Law*, Cavendish Publishing Limited, Australia, p. 17).

## **Conclusion**

Based on expert arguments in the field of State Administrative Law as described above, it can be concluded that Article 61 paragraph (1) and (2) of Law Number 23 of 2006 and Article 64 paragraph (1) and paragraph (5) of Law Number. 24 of 2013 is contrary to the principle of protection for all the people of Indonesia and the entire homeland of Indonesia (protectational principle), the principle of unity and integrity, the principle of a democratic state of law, the principle of equality of citizens' rights, and the principle of protection of human rights as formulated in the Preamble of the 1945 Constitution and become the basis for the formulation of constitutional norms in the 1945 Constitution. This is expected to be used as a theoretical basis for legal considerations of the Constitutional Court



Decision to: *First*, stating Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Law is contrary to the 1945 Constitution, so that it does not have binding legal force as long as it is not interpreted (conditionally constitutional). "The Phrases of Religion also include the adherents of any belief and religion"; *Second*, stating Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Law is contrary to the 1945 Constitution; and *Third*, stating Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Law does not have binding legal force with all its legal consequences.

### **3. Hj. RA. Tumbu Saraswati, S.H.**

#### **I. Indonesia is a State of Law**

Article 1 paragraph (3) of the 1945 Constitution states that, "Indonesia is a State of Law".

This provision emphasizes that Indonesia is a state of law, both in the administration of the state and in the life of the nation, community and state.

The application of the concept of a state of law is characterized by three basic principles, namely:

1. Supremacy of law;
2. Equality before the law;

3. Due process of law.

In its description the characteristics of a state of law are indicated by the following:

1. Guaranteed protection of human rights;
2. Independency of judiciary;
3. The validity of the principle of legality, in the sense that the state/government/authorities and citizens must act according to/based on the law.

## **II. Human Rights Protection**

In the Republic of Indonesia, human rights are guaranteed in the 1945 Constitution as regulated in Article 28A through Article 28J.

Equality before the law, Article 28 D paragraph (1) "Everyone has the right to recognition, guarantees, protection, and fair legal certainty, and equal treatment before the law".

Human rights related to the issue of the beliefs are the human rights of citizens to adhere religion as mentioned in Article 28E.

- (1) Every person is free to adhere religion and worship according to his/her religion, choose education and teaching, choose a job, choose citizenship, choose a place to live in the territory of the country and leave it, as well as has the right to return.

- (2) Everyone has the right to freedom to believe in beliefs, express thoughts and attitudes, according to his/her conscience.

Furthermore, in Law Number 39 of 1999 concerning Human Rights, Article 4 states that the right to religion is one of human rights that cannot be reduced under any circumstances and by anyone. Therefore, the right to choose religion and practice worship according to religion or belief belongs to the scope of the right to personal freedom and is *inderogable*.

In reality, in social life, even in the life of a state, the adherents of beliefs often receive very discriminatory treatment, even though the 1945 Constitution has guaranteed that everyone should not be treated discriminatively, as stated in Article 28I paragraph (2), namely:

- (2) Every person has the right to be free from discriminatory treatment on any basis and has the right to get protection against discriminatory treatment.

With the formulation of human rights in the 1945 Constitution, the constitutional rights of every citizen and Indonesian population to adhere to a religion or a belief and not be treated discriminatively are guaranteed by the state.

### **III. State Obligations**

Furthermore, TAP MPR Number V/MPR/2000 concerning Consolidation of National Unity has given the mandate to state actors to do the following:

"It is necessary to realize national unity, among others through a government that is able to manage life in a good and fair manner, as well as formulate various policies and draft laws and regulations to realize national unity and guarantee the integrity of the Republic of Indonesia".

#### **IV. Protection of Human Rights against the adherents of beliefs related to Population Administration**

Even though human rights have been recognized and guaranteed by the 1945 Constitution, but in reality the implementation for the adherents of beliefs is not as expected. Until now, their existence seemed not to be recognized, especially with regard to population administration matters.

Fundamentally this is due to the adherents of beliefs has not been recognized as is the case with other religions, so that in the electronic ID Card there is no record that a person is an adherents of beliefs. Even normatively, for an adherents of beliefs, the electronic ID Card column is left blank and only filled with strips.

About this matter there are a number of things that can be stated, namely:

##### **1. There is Disharmony in Basic Population Administration Regulations**

In Law Number 23 of 2006 concerning Population Administration as amended and supplemented by Law Number 24 of 2013 (Population

Administration Law) there is a disharmony between Article 58 and Article 64.

In Article 58 paragraph (2) it is stated that the individual population data that must be recorded are:

- (2) Personal data, including:
  - a. .... to g ..... and so on;
  - h. religion/belief;
  - i. .... to ee ..... and so on.

The necessity to include religion/belief in individual population data indicates that the state is aware that religion/belief is data attached to individuals. This is very useful in obtaining public services for those concerned, especially related to population events and/or important events as referred to in point 11 and point 17 of Article 1 of the Population Administration Law.

Moreover, according to Article 58 paragraph (4) of population data as referred to in paragraph (1), in which there is a religion/belief data, is useful for:

- a. public service;
- b. development planning;
- c. budget allocation;

- d. democracy development; and
- e. law enforcement and crime prevention.

By stating that the beliefs adhered by a person do not need to be included in the religious column on the electronic ID Card (simply blank or striped) as mentioned in Article 64 (1), it means that the Government has ignored the politics of law.

According to Article 64 paragraph (5), even for residents whose religion has not been recognized as a religion based on the laws and regulations or for the adherents of beliefs, the religious column is not filled or emptied or striped, but they are still served and recorded in the population database.

Nevertheless, in our opinion the recording service should not be limited only to the data base. We need records that can be accessed as well, because they are not only interested in recording events in the database. Recording in the database must be reflected in important documents that show their identity. And one of the most important and easiest documents for them to carry is their ID Card.

Thus the disharmony in question is the data contained in the Resident Identity Card as a single identification card about the population data (ID card) is not the same as the population data stored in the data base. Emptying the data about religion in an electronic ID Card will lead to a negative interpretation that the ID Card holder does not adhere to any

religion/belief or atheist.

## **2. There is Discriminatory Treatment against Beliefs of Trust.**

By leaving the religious column blank on the Resident Identity Card, many people assume that the adherents of beliefs are people who have no religion or no god. Even sometimes they are roughly considered infidels. This further has impacts or constraints, including:

- a. Marriage conducted by adherents of beliefs based on the procedures for beliefs adopted by them cannot be recorded. As a result, they cannot obtain a marriage certificate and in the end children born of their marriage cannot obtain a birth certificate as a legal child of both parents. To overcome obstacles like this it is not uncommon for them to lie by claiming to be adherents of one religion. Even though marriages for adherents of beliefs have been regulated in Government Regulation No. 37 of 2007, which states that marriages between them can already be recorded, but the conditions determined are difficult to fulfill, such as the need to form an organization, the obligation to establish marriages and so on.
- b. Difficulties in the field of education. Not a few educational institutions or schools that refuse their presence to become students.

**According to Law Number 20 of 2003 concerning National Education System**

- Chapter V concerning students in Article 12 paragraph (1) point a which reads "every student has the right to obtain religious education in accordance with the religion they profess and is taught by educators of the same religion".
- Chapter X curriculum Article 37 paragraph (1) point a which reads "primary and secondary education curriculum must contain religious education".

Therefore, in formal education that is education of beliefs for students who believe in God Almighty are not yet regulated in the Law in question.

### **Issues**

Educational services for students with a belief in God Almighty are not accommodated in the legal umbrella, so there have been cases of students who did not get a grade because they did not have religious values on their report cards. In fact they are forced to follow one religion. However, even though there is no legal umbrella yet, in some regions there are already students who have received the trust education services. Therefore, from the side of trust trusters hope that the government through the Ministry of Education and Culture can immediately provide a legal umbrella solution related to the education of trust services. So that in all regions simultaneously want to carry out the education of trust



services.

- c. Difficulty in obtaining/applying for a job. Experience shows that many faith seekers are rejected when applying for a good job as a civil servant, National Police. or National Army, just because they are considered to be godless.

The religious column for residents whose religion has not been recognized as a religion based on statutory provisions or for faith followers is not filled out, but is still served and recorded in the population database.

### **Issues**

Adherents of the belief of God still have difficulties in registering Armed Forces/Civil Servant, as is the case experienced by Ugamo Bangso Batak residents.

### **Solutions by the Adherents of Belief:**

1. Send a letter to the Ministry of Education and Culture with letter Number 42/A-2/PK-UBB/P/2015 addressed to the Minister of Education and Culture which is essentially:
  - Delivering information from the Banda Aceh Armed Forces coach that to enter the Ground Forces the religious column in the Resident Identity Card must be filled in.

2. By telephone he informed that the residents finally registered themselves by filling one of the religions (Christian).
  
3. Sending a letter to the Ministry of Education and Culture with letter Number 48/UBB/P/VI/2015 dated April 23, 2015. The point is:
  - When recruitment of the Navy in Belawan, the religious column for adherents of beliefs towards God was not registered.
  - Then he filled the religious column with Christianity. Finally, he was able to register the Armed Forces in Belawan.
  - On probation, according to the committee he was ranked 7th out of the hundred received, but during the last interview he was questioned about the religious column not being filled, and subsequently he was declared not qualified.
  - Finally, requesting the government that every recruitment of civil servants, Armed Forces, National Police, etc. be attached to the religious column for the adherents of the belief in God throughout Indonesia (via the internet)

In the General Explanation of the Adminduk Law, it is stated that the administration of population administration, among others, aims to: (1) provide validity of identity and legal certainty of population documents for any population and important events experienced by the population; (2) provides protection of the status of civil rights of the population; and (3) realizing an orderly and integrated national Population administration.

The administration of population administration is one form of public service. Article 4 of Law Number 25 of 2009 concerning Public Services states that the principle of public service is aimed at the public interest, legal certainty, professionalism, participation, equality of treatment/non-discrimination. This principle must be applied in the administration of population administration, especially in fulfilling the rights of every citizen in obtaining services related to population administration. Article 2 of Law Number 23 of 2006 concerning Population Administration, states that every resident has the right to obtain:

- a. Population Documents;
- b. The same service in Population Registration and Civil Registration;
- c. Protection of Personal Data;
- d. legal certainty over document ownership;
- e. information regarding data on the results of Population Registration and Civil Registration of himself and/or his family; and

- f. compensation and restoration of good name as a result of errors in Population Registration and Civil Registration as well as misuse of Personal Data by Implementing Agencies.

The right of the trustees to obtain special population administration services has been guaranteed in Article 8 paragraph (4) of Law Number 24 of 2013 concerning amendments to Law Number 23 of 2006 concerning Population Administration. Article 8 stipulates that the implementing agency is obliged to carry out population administration matters. Article 8 paragraph (4) specifically states that:

“The obligation as referred to in paragraph (1) for the requirements and procedures for the recording of important events for residents whose religion has not been recognized as a religion based on the provisions of the laws and regulations or for adherents based on laws and regulations.”

Therefore, the expectations of the followers of the trust, in the electronic Resident ID Card, in addition to the religious column there is also a column of belief that must be filled in accordance with their respective beliefs. Therefore, there is no discrimination in treatment or service in population administration.

In addition to delivering the above statement, the expert added a statement in the trial which in essence stated among other things the rights of every citizen are equal especially if human rights must be fulfilled. Emptying the column of trust is discriminatory treatment.

#### **4. Dr. Indraswari**

My statement here supports the petition of the Petitioners. This information is based on the monitoring report of the National Commission on Violence Against Women (National Commission for Women) on "The Struggle of Women Beliefs, Ancestors and Executors of Traditional Rituals in Facing Institutionalization of Intolerance, Violence and Discrimination Based on Religion" which was launched on August 3, 2016. Report this is as evidence P-10 number diposita number 53 submitted by the Petitioners in the judicial review session of this Population Administration Law.

National Commission for Women is one of the three national human rights institutions in Indonesia and is a national mechanism for the fulfillment, protection and promotion of Women's Rights in Indonesia. National Commission for Women was established based on Presidential Decree RI Number 181/1998 which was updated with Presidential Regulation RI Number 65/2005.

The duties and authority of National Commission for Women include: (a) carrying out monitoring including fact finding and documenting cases of violence against women and violations of women's human rights; (b) provide advice, considerations and recommendations to the government, legislative and judicial bodies and community organizations to encourage a legal and policy framework that supports efforts to prevent and combat all forms of violence against women.

The National Commission for Women sees that the existence of faith-followers and adherents of ancestral religions was present from the beginning of the history of Indonesian civilization, and even existed long before Indonesia as a nation-state was established. Before the religions now known as "official" state religions - Islam, Protestant Christianity, Catholicism, Hinduism, Buddhism and Confucianism - developed, the Indonesian archipelago had a diversity of beliefs that had grown in the midst of local communities for generations. (Guidelines for the Empowerment of Believers of Trust in God Almighty, Department of Culture and Tourism Directorate General of Cultural Values, Art and Film, 2009, page 7)

The monitoring of the National Commission on Violence Against Women began with the complaint of more than 30 representatives of indigenous women and faith followers throughout the archipelago in 2010. Among them were representatives of indigenous women in Bayan Wetu Telu, North Lombok, West Nusa Tenggara (NTB), indigenous peoples of Botti and Jinitiu in Nusa. Southeast East (NTT), Tolotang, Kajang and Bissu indigenous peoples in South Sulawesi (Sulsel), Ngatatoro indigenous people in Palu, Central Sulawesi, Kaharingan adherents in Central Kalimantan, Parmalim indigenous peoples in North Sumatra, Osing indigenous people, the Anak Dalam tribe in Riau, the Sunda Wiwitan indigenous community, and the Sapta Darma community. They were accompanied by the Indigenous Peoples Alliance (AMAN) and the Unity in Diversity Alliance (ANBTI). In this complaint they hope that

Komnas Perempuan will pay special attention to the issues of fulfilling human rights and the rights of Indigenous Peoples, particularly related to the beliefs they profess.

The entire monitoring process is carried out together through a number of stages of consultation. In this consultation it was agreed that data was obtained through information gathering in the field and also desk review or document review, especially related to relevant policies.

In gathering information, the interviewees were met through the snowballing method, namely women who believe in religion, adherents of ancestral religion and customary practitioners who are willing to tell and record their experiences of discrimination and violence because of their religion/beliefs.

The data that has been collected is then recorded and analyzed in a format by referring, among others, to similar formats that have been developed by Komnas Perempuan in previous monitoring with relevant adjustments.

Monitoring and documentation of these groups is not a stand-alone effort, not separate from advocacy that has been carried out by organizations or groups of advocates and adherents of ancestral religions at the local, national and international levels. This can then be seen in the series of monitoring preparation activities and during the process. Komnas Perempuan also builds dialogue spaces with local and national

authorities, such as the Ministry of Law and Human Rights, the Ministry of Home Affairs, and the Ministry of Religion to make breakthroughs in policies related to the fulfillment of the rights of ancestral groups and adherents. Given that 2012-2014 is Indonesia's reporting year on a number of international commitments to uphold human rights, this monitoring process also coincides with international advocacy carried out at home and abroad.

For the National Commission on Violence Against Women, supporting the struggle of women who are followers and adherents of ancestral religion is an inseparable part of efforts to promote the fulfillment of state responsibilities in the implementation of the constitution and the promotion of women's human rights.

The monitoring of the National Commission for Women uses three terms, namely: adherents of the faith, adherents of the ancestral religion and implementing traditional rituals. These three terms are based on the explanation from the speakers in the field.

The term advocates of beliefs and adherents of ancestral religions refer to those who embrace a religion/belief that has been passed down through generations and is not one of the 6 "official" religions based on the provisions of Law Number 1/PNPS/1965.

Implementers of traditional rituals, those who at the same time embrace one of the 6 "official" religions of the state while also continuing



the ritual traditions of faith that are interpreted as part of traditional activities.

The two categories above are vulnerable to violence and discrimination.

Recognizing that believers, adherents of ancestral religions and ritual implementers are minority groups in Indonesian society, National Commission for Women monitoring also refers to the declaration of the rights of those who are part of a national or ethnic, religious and linguistic minority (or often called the Declaration of Minority Rights). In signing this Declaration, countries agreed to provide protection against the existence of minority groups and seek conditions that promote their identity. An inseparable part of this protection is the protection of the right for minority groups to be able to enjoy their cultural identity and to embrace and practice their own religion and beliefs.

Because it focuses on the experience of women, National Commission for Women monitoring also refers to the framework of the concept of fulfilling human rights developed in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which has been ratified by Indonesia through Law Number 7 of 1984.

Article 2-5 of the CEDAW convention binds States to take immediate and meticulous action to effectively produce substantive equality between women and men in terms of access, enjoyment or

benefit from the protection of their rights as human beings. Furthermore Articles 3-16 contain a number of specific topics in the issue of gender equality, including in terms of access to education, health, politics, citizenship and in marital and family relations. The issue of power relations in society between men and women needs to be a concern because in the case of freedom of religion and belief, it is suspected that women are in a position that is more vulnerable to violence and discrimination because they are women.

What is meant as discrimination in monitoring the National Commission on Violence Against Women, refers to the meaning conveyed in Article 1 of CEDAW, namely:

*“...differentiation, exclusion or restriction carried out on the basis of sex that has an impact or with the aim of reducing or ignoring the recognition, enjoyment and use of women, regardless of their marital status, on the basis of equality between men and women, their basic rights and fundamental freedoms in the political, economic, social, cultural, civil and other fields.”*

The CEDAW Convention also contains the meaning of violence and its relation to discrimination, as explained in General Recommendation Number 19 (1992). This interpretation is seen as important because the state does not necessarily capture the close link between discrimination against women and gender-based violence, with violations of human rights and fundamental independence experienced by

women. This interpretation was originally adopted in the Declaration on the Elimination of All Forms of Violence against Women, which in Article 1 states that violence against women is:

*“any act based on gender based discrimination that results in or may result in women's physical, sexual or psychological misery or suffering, including threats of such acts, arbitrary coercion or deprivation of liberty, whether that occurs in the public sphere or in private life.*

In terms of the experiences of women of faith-believers, adherents of ancestral religions and implementers of traditional rituals, the basis of discrimination experienced is not only because of their gender. The experience of violence and discrimination was also present related to his identity as a certain religion/belief. This situation is known as experience of violence or multiple discrimination.

Other frameworks used in establishing this monitoring are Law Number 5 of 1998 concerning Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). In this convention, as set out in Article 1, the term torture refers to:

*any act in which intense pain or suffering, whether physical or mental, is done intentionally on a person for purposes such as obtaining recognition or information from that person or from a third person, punishing him for an act that has been done or is suspected to have been committed by a person that or a third person, or threatening or coercing that person or third person, or for a reason based on any form of discrimination, if the pain or suffering is caused by or incitement from or with the approval or knowledge of a public official. The action in question does not cover pain or suffering that arises solely from, is attached to, or is caused by a sanction of applicable law.*

In the constitution, the right to be free from discrimination and torture is explicitly stated in Article 28 of the 1945 Constitution. The Constitution also mandates that these rights cannot be reduced under any circumstances. Thus, the state is responsible for ensuring these rights are fulfilled either through a legal umbrella to prohibit these actions, breaking the impunity of the perpetrators through law enforcement and ensuring the recovery of victims.

Monitoring by the National Commission for Women revealed 115 cases, 50 of which were cases of violence and 65 cases of discrimination experienced by 57 women of faith, adherents of ancestral religions and implementers of traditional rituals from 11 communities spread across nine provinces namely the Bayan Wetu Telu indigenous community in

Lombok North, West Nusa Tenggara (NTB); the indigenous people of Botti and Jinitiu in East Nusa Tenggara (NTT); Sundanese Wiwitan indigenous people in Kuningan, West Java (West Java); Sapta Darma community in West Java (West Java), Central Java (Central Java), and East Java (East Java); Indigenous people of Kajang, Bulukumba, South Sulawesi (South Sulawesi); the Bissu indigenous people in Pangkep, South Sulawesi (South Sulawesi); Tolotang indigenous people in South Sulawesi (South Sulawesi); Ngatatoro indigenous people in Palu, Central Sulawesi (Central Sulawesi), indigenous Musi communities, North Sulawesi (North Sulawesi) and Kaharingan adherents in Central Kalimantan (Central Kalimantan).

Of the 57 female victims, the youngest age when experiencing discrimination or violence is 11 years, and the oldest age recorded is 68 years. As many as 51 of them are direct victims and 23 of them have experienced more than one violence and discrimination repeatedly.

It should be understood that the number of cases, women victims and the area covered as mentioned earlier are the tip of the iceberg considering that not all faith followers, adherents of ancestral religion and traditional ritual implementers are willing to openly express their problems.

In the case of violence there are three forms, viz

1. Psychic violence was found in 14 cases of stigmatization / labeling and 24 cases of intimidation,

2. Sexual violence was found in seven cases of coercion and three cases of sexual harassment, as well
3. Physical violence in three cases of mistreatment and two cases of murder.

The National Commission for Women's Monitoring found that discrimination specifically occurred in the following areas:

1. Neglected in population administration, namely:
  - Access to divorce records is complicated.
  - Obstacles in making birth certificates
  - Obstacles in marriage registration
  - Obstacles in making Resident ID cards
  - Obstacles in making family cards
2. Distinguished in job access and benefits, namely:
  - Dismissal
  - Job access and promotions are blocked
  - Loss of benefits and facilities
3. Access to government assistance is blocked.
4. Distinguished in access to education, namely:

- Forced belief
- Access of student administration is inhibited
- Forced fashion

5. Prohibition of belief, namely:

- Difficulties in establishing houses of worship
- Difficulties in carrying out religious ceremonies/traditional ceremonies
- Funeral access is blocked

In terms of numbers, more than half of the 65 discrimination cases are neglect cases that are ignored in population administration. The remaining nine cases differed in accessing the right to work and benefited from the work, eight cases differed in accessing education, three cases were blocked in accessing government assistance, three cases were prevented from accessing funerals, two cases were prevented in establishing houses of worship, five cases were inhibited in worship, and one case banning the organization of beliefs.

In the case of population administration, positions as trustees, adherents of ancestral religions and traditional ritual implementers make it difficult for them to obtain personal documents such as Resident ID Cards, Family Cards, marriage certificates, birth certificates, and so forth. In the electronic Resident ID card for the adherents of belief, the religion

column is not filled out or emptied as Article 64 of the Adminduk Law Number 23 of 2006. Just as in the family card, the religious column is not filled in as Article 61 of the Population Administration Law Number 23 of 2006.

As a result of the empty column of religion they are vulnerable to stigma as a communist or atheist which results in difficulties in accessing jobs, access to banking, burial, establishing places of worship, and so forth. Their marriages were also carried out in a customary manner so that those who chose 'no organization' because for one reason or another they did not get a marriage certificate as in the Government Regulation Number 37 of 2007 Article 81 (1-3).

As a result, children who are the result of their marriages are considered not children born from marital relationships but as mother children, meaning children born out of wedlock. They are also considered when they are single even though they have a husband and children, there is no allowance for their families. When living outside the community they are vulnerable to being criminalized as a cohabiting couple because they do not have a marriage certificate and have difficulties when staying in some hotels that require providing marriage certificates as a condition of stay.

Specifically for women of faith, adherents of ancestral religions and implementers of traditional rituals the impact of violence and discrimination as described earlier is:



1. Physical impact
2. Reproductive disorders
3. Psychic impact
4. Economic impact
5. Legal impact
6. Social impact

Women of faith followers, adherents of ancestral religions and implementers of traditional rituals are prone to experience multiple discrimination, meaning that the basis of discrimination they experience is not only because of their gender. The experience of violence and discrimination was also present related to his identity as a certain religion/belief. Women experience sexual harassment, coercion and domestic violence. Women are also vulnerable to losing protection in marriage and bear the stigma of being an immoral woman due to not being able to register her marriage, as well as experiencing reproductive function disorders. Gender role in the family causes women as mothers to be very worried about the impact of not being able to present a complete birth certificate to their children's lives, worrying about children's education and so on.

Briefly, it can be conveyed based on the monitoring of the National Commission for Women, if the Resident ID Card column of trustees

continues to be left blank or filled with dashes (-), then there will continue to be legal uncertainty, injustice, inequality, obstructed access to education and work which is detrimental to not only the survivors trust but also harm the nation.

As for the violations or potential violations of constitutional rights that afflict trust followers, adherents of ancestral religion and implementers of traditional rituals are:

1. The right to equality in law and government (Article 27 paragraph [1], Article 28D paragraph [1], and Article 28D paragraph [3]).
2. The right to develop oneself through meeting basic needs, getting education and benefiting from science and technology, arts and culture (Article 28C paragraph [1]).
3. The right to social security which enables self-development as a dignified human being (Article 28H paragraph [3]).
4. The right to education (Article 31 paragraph [1] and Article 28C paragraph [1]).
5. Right to freedom of belief (Article 28E paragraph [2]).
6. The right to freely embrace religion and worship according to religion (Article 28E paragraph [1] and Article 29 paragraph [2]).
7. The right to express thoughts and attitudes in accordance with conscience (Article 28E paragraph [2]).

8. The right to work and a decent living for humanity (Article 27 paragraph [2]).
9. The right to work and to receive fair and appropriate remuneration and treatment in relation to work (Article 28D paragraph [2]).
10. The right to live in physical and spiritual prosperity (Article 28H paragraph [1]).
11. The right to obtain health services (Article 28H paragraph [1]).
12. The right to form a family (Article 28B paragraph [1]).
13. Right to recognition, guarantee and protection and fair legal certainty (Article 28D paragraph [1]).
14. The right to equal treatment before the law (Article 28D paragraph [1] and Article 27 paragraph [1]).
15. The right to security and protection from the threat of fear to do or not do something that is a human right (Article 28G paragraph [1]).
16. The right to be free from discriminatory treatment on any basis (Article 28I paragraph [2]).
17. The right to protection from violence and discrimination (Article 28B paragraph [2] and Article 28I paragraph [2]).

The monitoring results of the National Commission for Women found nine factors that led to acts of violence and discrimination based on faith and gender can continue, namely:

1. The existence of legal products and policies that discriminate against believers, including Law Number 1 PNP/1965 concerning Prevention of Abuse and/or Blasphemy of Religion and Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, and discriminatory policies at the regional level;
2. Governance of government institutions that distinguish the person in charge of religious followers from adherents of the faith or adherents of the ancestral religion;
3. Public service supervision mechanisms that are not equipped with operational tools for examining the principle of non-discrimination;
4. Limited capacity of state administrators so that they have not been able to operationalize the principle of non-discrimination in public services and governance in general;
5. Attitudes of state administrators who underestimate the consequences faced by adherents of beliefs and adherents of ancestral religion as a result of discrimination;
6. Weak law enforcement against perpetrators of discrimination and violence;

7. Understanding of religions that positions the followers of beliefs and adherents of ancestral religions as other parties who are not religious;
8. A political process that is not equipped with a mechanism for implementing the principle of non-discrimination so as to enable the hegemony of the interests of certain groups, including religious groups, in the formulation of public policies; and
9. The attitude of the people who still tolerate violence and discrimination, including those based on religion/belief.

Thus I reiterate that Komnas Perempuan supports the efforts of the judicial review of the two articles of the Population Administration Act as proposed by the petitioners as a step to fulfill the constitutional rights of trust groups in Indonesia.

In addition to delivering the information above, the expert added the statement in the trial which in essence stated among other things that the treatment that was not the same as giving space or column to religion but emptied was a discriminatory policy that had a continued impact on education, work, and worship. He further said that the problem was more than the dynamics of the relations of the majority versus the minority, but the issue of legal certainty and equality before the law which had to be guaranteed by the constitution. Even though by filling in the column the problem of discrimination has not yet been completed, filling in the column

gives equal opportunity and treatment as a substantive step to eliminate discrimination.

**5. Budi Santoso, S.H., LL.M.**

First of all I need to say that actually different from Public Service as a scientific discipline, Public Service Law itself is a subject of knowledge in the field of law that is still relatively new in Indonesia, so that not many references have been written that specifically address Public Service Law, by therefore, when I was asked to become an expert (hereinafter referred to as Expert) in this trial, it was actually based on 8 years of expert experience (3 years as Deputy Chairperson of the Yogyakarta Provincial Regional Ombudsman Institute for the period 2005-2008 and 5 years as the Ombudsman Commissioner of the Republic of Indonesia for the year period 2011-2016). The experience of 8 (eight) years dealing with thousands of complaints and reports related to public administration in Indonesia is sufficient experience to be used as a provision to evaluate the extent to which the state obligation in the delivery of public services for each citizen has been properly fulfilled as mandated in Law Number 25 of 2009 concerning 'Public Services' which in consideration of 'Considering' point a (first item) reads: "that the state is obliged to serve every citizen and population to fulfill their basic rights and needs within the framework of public services which are mandated The 1945 Constitution of the Republic of Indonesia.

In the context of the current Public Service Law in Indonesia, two laws are always used which experts often say are like two sides of one coin that are mutually complementary namely Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia which regulates related to the supervisory agency for the implementation of public services in Indonesia and Law Number 25 of 2009 concerning 'Public Services'. Related to the request for this test, the expert will look more at the perspective from the perspective of the Law on Public Services.

In the application for examination of Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration [Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5)] if the expert concludes from the perspective of Public Service Law is actually related to equality before the law for the trustees when compared with other citizens in general, because it is a perceived discrimination treatment by the Petitioners; Article 4 of Law Number 25 Year 2009 concerning Public Services clearly states that the implementation of public services is based on:

- a. public interest
- b. legal certainty
- c. equal rights
- d. equality of rights and obligations

- e. professionalism
- f. participatory
- g. equality of treatment / non-discrimination
- h. openness
- i. accountability
- j. special facilities and treatment for vulnerable groups
- k. timeliness, and
- l. fastness, convenience, and affordability

Elucidation of Article 4 point c, Service delivery does not differentiate between ethnicity, race, religion, class, gender, and economic status, Article 4 item g Every citizen has the right to receive a fair service, so with that explanation the expert is of the opinion that in terms of fulfilling public service delivery in Indonesia, the terminology of every citizen does not require any other interpretation or, if reversed, the differentiation of the fulfillment of the provision of public services for every citizen in Indonesia is a form of injustice and discrimination that must be stopped immediately because it has caused many victims including those that have been experienced for a long time by the Petitioners. Because in the context of the rights of the Petitioners, the emptying of the religious column in the Family Card and Electronic KTP has resulted in legal



uncertainty, there is no equality of rights and discrimination between the believers, the applicant and other citizens.

In addition, in the context of the work of the Indonesian Ombudsman as a supervisory institution for the delivery of public services, the facts on the ground also show that from the thousands of reports/complaints that have been submitted, the Ombudsman RI data throughout 2016 alone, for example, there were 135 reports/complaints related to discrimination in the provision of public services and a part of this number befall citizens as experienced by the Petitioners. As has been conveyed from the statements of the Petitioners in previous sessions relating to the daily experience of the Petitioners by not being given access/opportunities that are supposed to get access to public services, even to obtain the most basic public services that is related to the evidence of the Petitioner's identity as a citizen such as an Electronic ID or Family Card. If the referral expert from Article 58 paragraph (4) letter a of Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2016 concerning Population Administration, for example, also explains that, *"Population Data as referred to in paragraph (1), paragraph (2), and paragraph (3) which are used for all purposes are Population Data from the Ministry responsible for domestic government affairs, among others for the utilization of: a. public service; etc. Furthermore, it is explained in the explanation: Letter a: "What is meant by" utilization of public services", among others is for the issuance of driving licenses, business licenses,*

*taxpayer services, banking services, land certificate issuance services, insurance, public health insurance, and/or Social Security.”*

Based on the explanation of the above article, it makes it clear that the existence of an electronic KTP and KK is the main entrance to be able to feel its utilization of the next access to public services such as in issuing SIMs, business licenses, bank loans and others. However, in the field it turns out that the utilization of the data in access to public services above cannot be carried out, because the public service provider only checks the data explicitly written in the electronic and KK identity card data, finally again acts of discrimination that must be experienced by the Dwellers of Trust as experienced by the Petitioners whose religious column data are empty or dashed so they cannot enjoy access to these public services.

It is necessary to emphasize the experts here, that in the context of the reception of public service delivery in Indonesia, the losses experienced by the Petitioners are not merely a gap between the norms governing and the implementation / implementation in the field, but are caused by material the petition for testing in the field at this time does indeed cause specific / real / actual losses that are no longer potential.

On this occasion the expert also felt it was important to convey in the forum of this noble session that at the level of implementation of Law Number 25 of 2009 concerning Public Services, also known levels of implementation or hierarchy referred to as the Trustees (Article 6), Guarantor (Article 7), Organizing Organizers/Administrators (Articles 8 to

15) and Implementers (Article 16 to Article 17), where these Executors are those who carry out service activities in accordance with the assignments given by the organizer and so on to a level/hierarchy more high. So that it can be said that the implementer is the front guard/downstream that is directly related to public service users in the administration of public services. The expert's experience of about 5 years since his promulgation in overseeing the implementation of the Public Service Law in the field actually found the fact that at the level of the Executor this was one of the triggers for embryo acts of discrimination in organizing public services against minority groups as experienced by the Petitioners. From the identification of the problem, the problem of ambiguity, unclear rules / regulations related, multi-interpretation of the meaning of an article and so on become a significant cause. Therefore, it is not surprising that in the cases experienced by the Petitioners, the treatment in the field is different, it is caused by the unequal interpretation of an Article and so on, while the direction/guidance of the Operator, the Responsible Person, even the Trustees are not to the full and complete level up to the level of Implementers who are the front guard in the implementation of public services in Indonesia. This condition in the opinion of the expert is once again not merely a gap between the governing norms and the implementation in the field, but furthermore because the material requested for this test in the field at the present time does indeed cause concrete/real/actual losses. specific and no longer potential. This means that at the level of the law that gives rise to

discrimination being applied for testing in accordance with the provisions of the a quo Law is a form of inconsistency of legal rules, given the fact that Indonesia actually has legal instruments that should be able to guarantee the fulfillment of the implementation of public services that good, quality, fair, and non-discriminatory.

The Ombudsman of the Republic of Indonesia as a state agency overseeing the administration of public services in accordance with the authority granted under Article 8 paragraph (2) of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, which states that the Ombudsman is authorized:

- a. submit advice to the President, regional head, or other State Administration leaders for the improvement and improvement of public service organizations and/or procedures;
- b. submit advice to the House of Representatives and/or the President, the Regional House of Representatives and/or regional heads so that changes in the law and regulations are made in order to prevent the maladministration.

In the past 2016 has conveyed "OMBUDSMAN SUGGESTIONS OF THE REPUBLIC OF INDONESIA TO THE PRESIDENT OF THE REPUBLIC OF INDONESIA CONCERNING THE EQUALITY OF STATUS AND TREATMENT OF FAIR FOR MINORITY AND TRUSTING GROUPS", experts who cite among the points of advice are as follows

(expert in accordance with the aims and objectives of MINORITY AND CONFIDENTIALITY OF TRUST " this test request):

- Bringing back the state to protect the whole nation and giving a sense of security to all citizens.
- The government needs to make provisions that equalize and equality between followers of religions and Trustees through legislation or rules based on the constitution of equality as stated in Article 27 paragraph (1) and Article 28E of the 1945 Constitution, and revoke the rules that are not in accordance with the constitution.
- In order to guarantee and protect the rights of citizens, the Government must amend or delete Article 8 paragraph (4), Article 61 paragraph (2), and Article 64 paragraph (5) of Law Number 24 Year 2013 concerning Amendments to the Law Number 23 of 2006 concerning Population Administration, especially along the sentence "whose religion has not been recognized as a religion" in the three articles and the provisions not to fill in the element of special religion in Article 64 paragraph (5) which reads, "Population data elements about religion as intended Paragraph (1) for residents whose religion has not been recognized as a religion based on the provisions of the legislation or for the founders of the Trust is not filled, but still served and recorded in the population database ", with consideration: a). The phrase

"whose religion is not yet recognized" does not have a legal and constitutional basis but has implications for discrimination against certain religious groups and has implications for sects or followers of the faith that are distinguished from their religious status as citizens. b). Not filling (emptying) elements of population data on religion on KTP and / or Family Cards in practice becomes a trigger for discrimination and a hindering factor for them in obtaining other public services because the groups concerned are considered to have no religion.

The suggestion was conveyed based on various reports / complaints that came from the public as well as the results of the Ombudsman's own RI study, which was carried out in an effort to uphold the principles of public service delivery as regulated in Article 4 of Law Number 25 of 2009 concerning Public Services.

## **Conclusions**

That based on the explanation and arguments presented by the experts above, from the perspective of Public Service Law in Indonesia it is very clear that the provisions of the a quo Law are a form of inconsistency of legal rules, given the fact that Indonesia already has adequate legal instruments/guarantee the fulfillment of the implementation of public services, including the most basic right to public services, namely the right to obtain a proof of identity in the form of an electronic Resident ID Card and Family Card as the main entrance to be

able to feel its use of access to the next public service such as the issuance of SIM, business licenses, bank loans and others, while the right to residence documents is clearly guaranteed and protected in Article 2 letter a of Law Number 23 of 2006 concerning Population Administration, while the right to work, the right to health, the right to social security, and with all its services, the right to live in prosperity (the right to a decent life), the right to develop oneself is regulated and guaranteed in the 1945 Constitution.

Population administration is a part of public service that is an inherent right for every citizen. Article 2 of the Adminduk Law as explained above states the population documents and population data are the rights of every citizen that must be served equally. The state's obligation to guarantee population administration as part of public services as regulated through Law Number 25 of 2009 concerning Public Services. Consideration of this law expressly states that the state is obliged to serve every citizen and citizen, to fulfill their basic rights and needs in the context of public services. In carrying out public services according to Article 4, it must be based on the principle of equal rights, fairness and non-discrimination and the existence of facilities and special treatment (affirmative action) for vulnerable groups, meanwhile we know that the 1945 Constitution Article 28H paragraph (2) has very clearly guaranteed constitutionality of special treatment for vulnerable groups.

Whereas because it is clearly contrary to the 1945 Constitution, Article 61 paragraph (1) and paragraph (2) of Law No. 23 of 2006 concerning Population Administration juncto Article 64 paragraph (1) and (5) of Law Number 24 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration was declared not to have binding legal force with all its legal consequences.

In addition to delivering the above statement, the expert added a statement in the trial which, among other things, stated that the editorial of the a quo Law had indeed led to multiple interpretations so that the implementation varied between the implementers of one public service with another public publisher. Therefore, from the editor of the a quo Law to its implementation, it needs to be corrected as requested by the Petitioners. Furthermore, emptying the religion column opens up the issue of majority-minority, but the state obligation or obligation of the government in fulfilling economic, social and cultural rights.

**6. Samsul Maarif, Ph.D**

STATE RELATIONS, RELIGION ("OFFICIAL"), AND BELIEF (ANCESTRAL RELIGION) IN THE POLITICS OF RECOGNITION (RELIGION)

- The history of state relations, religion and belief has always been in the context of "the politics of recognition".



- Political recognition here is intended as a political effort by certain groups of citizens by using "religion" as an instrument of legitimacy of "power", and at the same time "pressure" and "control" over certain groups of citizens (belief). The politics of religion is carried out through mobilization and public pressure in the name of the majority (religion) identity and infiltration of the state. The infiltrated state in turn issues policies and legislation on behalf of religious politics that distinguish citizens: "who can be served" (adherents to "official" religions) and "who can NOT be served" (beliefs/adherents of local religions).
- The Population Administration Law, in particular Article 61 and Article 64 regarding the emptying of the religious column in Family Card/electronic Resident ID Card is an example of a rule (legal norm) that distinguishes and discriminates against a portion of citizens (trust), especially in terms of public services. The principle of diversity is ignored.

Old Order: (adherents) "religion" to be served, and (adherents) "beliefs" are NOT to be served?

- 1945 Constitution, Article 29 (2): "... his religion and beliefs".
  - Debate: "belief" is part, or different and separate from "religion"
  - Ministry of Religion (formed on 3 January 1946)

- Definition of religion (according to depag): holy books, prophets, and international recognition. This definition is exclusive, ignores diversity aspects, and should be abandoned.
- The definition determines "who can be served" and "who can NOT be served by the state.
- Belief is part of religion: religion is served, and belief is not served
- Establishing Community Trust Flow Monitoring (PAKEM) in 1953 to supervise beliefs so they would not become religious; PAKEM was transferred to the Prosecutor's Office in 1960
- Stigma is built that trust is dangerous, endangering the state, and therefore must be controlled, must be returned to the state. In fact, trust is not dangerous.
- Sociological facts (more important to consider):
  - There is a group of citizens declaring themselves as beliefs/mysticism, different or outside of religious groups that are defined and served by the Ministry of Religion.
  - They consolidate themselves, form various organizations/associations "mysticism"

- Ministry of Religion Report (1952): 29 mysticism/belief organizations
- Ministry of Religion Report (1953): 360 mysticism/belief organizations
- Formed the Indonesian Kebatinan Coordinating Board (BKKI) in their first congress on 19-21 December 1955. Chair: Mr. Wongsonegoro (one of the framers of the 1945 Constitution).
- BKKI corresponds and asks President Sukarno that mysticism be recognized as equal to religion (1957)

Events of September 30, 1965: Adherents to ancestral religion are "communist".

- PNPS Law 1/1965 concerning blasphemy (27 January 1965):
  - Religion is "sanctified" (purified, must not be polluted); claimed beliefs (precisely accused) endanger the state and public order.
- Anti-communism movement:
  - Religion was made a "counter ideology" against communism.

- Every citizen must have a religion (embrace one of the 6 religions mentioned in the PNPS Law)
  - "Beliefs" were designed and accused of being part of communism
  - Adherents of belief are forced to convert to religion.
  - BKKI vacuum: threatened with "anti-communism" campaigns
- New Order I: Religion and Belief are "equal"
- Golkar formed the Belief Cooperation Secretariat in 1970.
  - BKKI is transformed into BK5I (Indonesian Congress Council of Beliefs, Psychology, Spirituality and Mysticism)
  - Adherents of belief in Java and indigenous peoples (generally) outside Java are assembled.
  - BK5I held a symposium on 7-9 November 1970:
    - The definition of "belief" is the mystical, psychological, and spiritual.
    - The position of "belief" is parallel to religion.
  - On 20 January 1971, the belief group appeared President Suharto and proposed:

- 1) the legality of a belief life (mysticism, spirituality, psychology),
  - 2) Pancasila moral education,
  - 3) the position of the Belief Cooperation Secretariat, and
  - 4) the celebration of One Syuro as a holiday of Belief.
- 1972: 427 Belief Branches (PAKEM Report). Evidence of the existence of groups of citizens outside religion.
  - TAP MPR 1973 concerning GBHN: "belief" and "religion" are expressions of belief in God who is equally valid; religion and belief are EQUAL.
  - In 1975, Trust was managed by provincial MoRA in several provinces

New Order II: The state's "official" religions, and beliefs are "cultured"

- TAP MPR RI IV/MPR/1978: "Field of Religion and Belief in God Almighty, Social - Cultural"
  - (f) Belief in God Almighty is not a religion. Fostering of belief in God Almighty is done:
    - In order not to lead to the formation of new religions.

- To make effective the necessary steps so that the exercise of trust in God Almighty is truly in accordance with the basis of the Almighty God according to a just and civilized humanity.
- Various policies, circulars/instructions from state institutions such as Ministry of Religion, Ministry of Home Affairs, Prosecutors and local government: ONLY 5 religions that are recognized, protected and served: Islam, Protestant Christianity, Catholic Christianity, Hinduism, and Buddhism (Confucianism is prohibited from being immediately banned after 30 September 1965 to 2001) (see Trisno Sutanto, et al. 2011).
- Every citizen must have a religion.
  - All civil registration forms have a religious column, and must be filled with a choice of 5 religions above (OFFICIAL RELIGION). Before 1978, Resident ID Card did not include religion as identity.
- Belief is cultured, adherents must "convert to religion" as a condition of getting state service.

Post-Reformation: The state has acknowledged, but continues to discriminate

- Some Progress:

- Ancestral religion is a human rights issue: a victim of discrimination
- Not "forced" (again) to convert / affiliate to an official religion, but may not register their credentials (Adminduk 2006/2013)
  - o State administration are not in sync
- Services for fulfilling civil rights are carried out by local governments (PBM Tourism and Domestic 2009)
  - The majority of regional governments are "reluctant" to provide services to trust in the name of their trust.

#### STATE, RELIGION and BELIEF in the Population Administration

##### Law

- State:
  - Preserving "religious politics".
  - Discriminating adherents of faith (adherents of ancestral religion)
  - Institutionalizing social stigma: communist (not/not yet religious), animist (pseudo-religion, heresy), culture (not religion).
- religious (group):

- Stigmatizing "belief": misguided, animistic, old-fashioned
- Adherents of Belief are "scramble"/conversion target
- sometimes with violence.
- Social stigma is institutionalized into "social norms" and even "legal norms".
  - state institutions
  - local government officials
  - public
- Belief/Ancestral Religion
  - Victims of discriminatory treatment
  - Victims of social stigma

## RECOMMENDATION

- Requests for improvements to the Population Administration Law are accepted:
  - Belief needs to be registered as an identity, as is religion.
  - Will solve significantly the majority of problems experienced by outreachers of trust.
  - Not all of them, but most of them.



- The citizenship status of adherents of ancestral beliefs/religions that has been discriminated against throughout Indonesian history **MUST BE RESTORED:**
  - Special Task Force: a comprehensive solution formulation that involves cross-sectoral state institutions, civil society, and trust followers is needed.
- Public services to every citizen regardless of religion and belief must be the same without any difference.
- The rule of law in the Adminduk Law should treat all citizens equally (religion/belief) in the service of electronic Resident ID Card and Family Card (the column for religion is not emptied for followers, but is recorded as followers of other religions). This distinction is discrimination.
- Articles of emptying the religion column, the Adminduk Law, must be declared invalid because they are discriminatory (religious adherents are listed, but the penghayat is emptied).

In addition to delivering the above statement, the expert added the statement in the trial which in principle included as follows:

- The politics of recognition is used to influence the state in issuing policies whose consequences are discrimination;

- In the early stages of the new order, knowing 1968 to 1978 in the context of public services in the name of religion and belief was better than in other periods;
- Whereas the right to free discrimination of citizens is the state. Emptying the religion column only perpetuates the history of political recognition that has discriminated many people to this day;
- The problem of the religion column being left blank is not just a matter of implementation, but the social stigma that is now a social norm. This means that there is an endorsement that people are not religious and have the right to discriminate.
- Whereas social stigma is unavoidable and commonplace, but the problem is when such stigma is legalized as the norm. Therefore, stigma must not obstruct public services;
- Whereas what discriminates is the different treatment carried out by the state which is transformed into legal norms, so it is not the stigma;
- The state recognizes the followers of the faith but is still half-hearted because it does not treat it equally or discriminatory;

## **7. Enny Soeprpto, Ph.D**

### **I. INTRODUCTION**

1. Two things that become the main characteristics of human rights are, first, human rights have universal values and, secondly, their implementation must be non-discriminatory, which is the fundamental principle (s) of human rights that is most important in the implementation of human rights.
2. The basic principle of non-discrimination, which is universally applicable and is the most basic basic principle in the implementation of human rights, is affirmed in a number of international instruments that contain provisions on human rights or which are indeed international human rights instruments and which are legally binding or valuable as recommendations, appeals, or are morally binding or political. The said instruments are referred to below.

## II. INTERNATIONAL INSTRUMENTS THAT CONFIRM NON-CRIMINATIVE BASIC PRINCIPLES

3. The main international instruments that emphasize the basic principle of non-discrimination in the implementation of human rights are as follows:
  - (a) Charter of the United Nations (UN), 1945;
  - (b) Universal Declaration of Human Rights (UDHR), 1948;

- (c) International Covenant on Economic, Social and Cultural Rights (KIHESEB), 1966; and
- (d) International Covenant on Civil and Political Rights (KIHSP), 1966.

A. THE 1945 UN CHARTER

4. The UN Charter, which is a constitutive instrument of the UN Organization, in matters relating to human rights, stipulates as follows:

(a) Article 1 paragraph (3), the second sentence (which establishes one of the objectives of the United Nations):

" Encourage respect for human rights and basic freedoms for all without distinction regarding race, gender, language or religion ";

(b) Article 11 paragraph (1) letter b, second sentence (which establishes one of the tasks and authority of the United Nations General Assembly):

Initiating studies and making recommendations on "providing assistance for the realization of human rights and basic freedoms for all without distinction regarding race, sex, language, or religion";

- (c) Article 55 letter c (which sets one of the United Nations goals in the promotion of international cooperation in the economic and social fields):

Promotion of "universal respect and respect for basic human rights and freedoms for all without distinction regarding race, gender, language or religion.

- (d) Article 76, letter c, first sentence (which establishes one of the objectives of the trusteeship regime:

" Encourage respect for human rights and basic freedoms for all without distinction regarding race, gender, language or religion".

- 5. The State of the Republic of Indonesia has been a member of the United Nations since September 28, 1950.

## B. The 1948 UDHR

- 6. (a) The 1948 UDHR, which was proclaimed by the MUPBB on December 10, 1948 and which was intended as a "standard of achievement for all people and nations", established. a set of basic human rights and freedoms whose respect should be promoted;
- (b) Article 2 paragraph (1) of the UDHR 1948 stipulates as follows:

"Everyone has the right to the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, political views or other views, origins of social or social ownership, birth, or other status".

7. (a) (i) The 1948 UDHR, as a "declaration", indeed, *stricto sensu*", is not a legally binding international instrument. As such, conceptually, the contents of the UDHR (only) are declarative, valued as recommendations, and (only) moral and political power;
- (ii) However, in view of the fact that the contents of the 1948 UDHR have become a reference for many international instruments on human rights, the international community in international relations, and many regional and national instruments on human rights (including Indonesia), then, at least, even if it is only a "declaration", the 1948 UDHR has the weight of customary international law;
- (b) (i) The letter d consideration of Law 39/1999 concerning Human Rights confirms

"The Indonesian people as members of the United Nations carry moral and legal responsibility to uphold and implement the Universal Declaration of Human Rights established by the United Nations, as well as various other international instruments on human rights that have been accepted by the Republic of Indonesia";

- (ii) With this statement, stated in a statutory regulation, in essence, the Republic of Indonesia accepted the UDHR 1948 as customary international law in the field of human rights.

C. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966

- 8. (a) KIHESB -1966 is one of two "main" or "principal" international human rights law instruments, transforming the provisions of the 1948 DUHAM concerning economic, social and cultural rights, which are declarative in nature, into legally binding provisions;

- (b) The Republic of Indonesia has ratified this international human rights legal instrument with Law Number 11 of 2005 (enacted on October 28, 2005). With this ratification, based on the provisions of Article 7 paragraph (2) of Law Number 39 of 1999 concerning Human Rights states that "Provisions of international law that have been accepted by the Republic of Indonesia concerning human rights become national law." ) ;
  - (c) Article 2 paragraph (2) of the 1966 KIHESB stipulates the following:

"The Parties' States to this Covenant promise to guarantee that the rights stated in this Covenant will be exercised without discrimination, of any kind, such as race, color, sex, language, religion, political views or other views, of origin social or social origin, ownership, birth, or other status.";
- 9. (a) This "main" or "principal" international human rights law instrument guarantees a number of basic human rights and fundamental freedoms in the economic, social and cultural fields, including the right to work (Article 6), the right to social security (Article 9), and the right to education (Article 23);



- (b) Implementing basic human rights and freedoms in the economic, social and cultural fields referred to in KIHESB 1966 which has been ratified by the Republic of Indonesia and as such"; for the Republic of Indonesia it is a legal obligation, both national and international law.

D. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

- 10. (a) This second "main" or "principal" international human rights law instrument transforms the provisions of the 1948 UDHR provisions concerning political rights, from declarative provisions to legal provisions and outlines them;
- (b) International Covenant on Civil and Political Rights (KIHSP), 1966 was ratified by the Republic of Indonesia with Law Number 12 of 2005 (enacted on October 28, 2005) and accordingly, based on the provisions of Article 7 paragraph (2) of Law 39/1999 concerning Human Rights (see supra, paragraph 5 (B), p. 3) into national legal provisions;
- (c) Thus, complying with the provisions of KIHSP 1966 is a legal obligation for the Republic of Indonesia,

both according to international law and according to national law.

11. (a) Article 2 paragraph (1) KIHSP 1966 establishes the principle of non-discrimination in the application of human rights and basic freedoms, which in the context of this Covenant is a civil and political right. The provisions read as follows;

"Each Party's State to this Covenant promises to respect and ensure that all individuals within its territory and in the territories under its jurisdiction, the rights recognized in the Covenant without distinction of any kind, such as race, color, sex, language, religion, political views or other views, origins of national or social cohesion, ownership, birth, or other status.";

- (b) Human rights and fundamental freedoms in the civil and political fields referred to in KIHSP 1966 are grouped into 22 substantive articles (Article 6-Article 27), including:

- (i) The right to freedom of thought, conscience, and religion or belief (Article 18); and

- (ii) Recognition of the equality of everyone before the law (Article 26).

12. Article 18 and Article 26 of the 1966 KIHSP states, respectively, as follows:

(a) Article 18

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to have or embrace the religion or belief of his choice, and freedom, individually or together with others and in public or private places, to manifest his religion or belief in worship, adherence, practice, teaching and teaching.
2. No one may be subject to coercion that would interfere with his freedom to possess or embrace the religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs can only be limited as established by law and is necessary to protect public safety, public order, public health, or public morals or the basic rights and freedoms of others.

4. The Parties' States to this Covenant promise to respect the independence of parents and, if applicable, legal guardians to ensure the religious and moral education of their children in accordance with their own beliefs.";

(b) Article 26

All people are equal before the law and are entitled, without any discrimination, for equal protection of the law. In this connection, the law must prohibit any discrimination and must guarantee all persons equal and effective protection against discrimination on any basis such as race, color, sex, language, religion, political views or other views, origin nationality or social, birth, other status.";

13. Noting the provisions of Article 18 and Article 26 of KIHSP 1966 (W 12/2005) as cited in para 9 above, discriminatory application of religious freedom, which includes freedom of belief, and the right to equality before the law (in Indonesia those rights and freedoms also recognized and guaranteed by national legislation), constitutes a violation not only of national human rights law but also a violation of international human rights law.

1. (a) The right to religion and belief: (i) 1945 Constitution, Article 29 paragraph (2); (ii) Law 39/1999 concerning human rights, Article 22); (b) The right to equality before the law: (i) 1945 Constitution, Article 27 juncto Article 28 paragraph (1); (ii) Law 39/1999 concerning Human Rights: Article 3 paragraph (2) in conjunction with Article 5 paragraph (1).
- III. Law 23/2006 as amended by Law 24/2013 concerning administration of the population, especially article 61 paragraph (1) and paragraph (2) of Law 23/2006 and article 64 paragraph (1) and paragraph (5) of Law 24/2013 and international human rights law.
14. (a) (1) Article 58 paragraph (2) of Law 23/2006 as amended by Article 58 paragraph (2) of Law 24/2013 stipulates that one of the personal data (which is part of population data), is "religion/belief" (letter h);  
  
(ii) However, both Article 61 paragraph (1) and paragraph (2) of Law 23/2006 and Article 64 paragraph (1) and paragraph (5) of Law 24/2013 only mention "religion", not "religion/belief" as referred to in Article 58 paragraph (2) of Law 23/2006 as amended by Article 58 paragraph (2) of Law 24/2015;

- (b) In this connection are noted as follows:
- (i) The provisions of Article 58 paragraph (2) of Law 23/2006 as amended by Article 58 paragraph (2) of Law 24/2013 are in line with the provisions of Article 18 paragraph 1 of KIHSP 1966, which in essence recognizes the right of each to embrace religion or adhere to their respective beliefs as well as the right to manifest it (see supra, paragraph 9 (a), page 5):
  - (ii) However, the provisions of Article 58 paragraph (2) of Law 23/2006 as amended by Article 58 paragraph (2) of Law 24/2013 (especially with regard to letter h) are not consistently translated into its application provisions, in this case Article 61 paragraph (1) and paragraph (2) of Law 23/2006 and Article 64 paragraph (1) and paragraph (5) of Law 24/2013;
  - (iii) In addition to being inconsistent with the previous provisions (Article 58 paragraph (2) of Law 23/2006 and Article 58 paragraph (2) of Law 24/2013 (especially concerning letter

h), the absence or omission of the word "belief" in Article 61 paragraph (1) and paragraph (2) of Law 23/2006 and Article 64 paragraph (1) and paragraph (5) of Law 24/2013 contain the following meanings:

- (A) On the one hand recognizes the existence of adherents of belief, [Article 58 paragraph (2) of Law 23/2006 as amended by Article 58 paragraph (2) of Law 24/2013], but on the other hand does not apply equally to the state's treatment of adherents of religious beliefs;
- (B) The absence, or omission, of the word "trust" is a manifestation of discriminatory treatment of adherents of belief, even though the right to adhere and manifest it is recognized and guaranteed by international human rights law. This discriminatory treatment is contrary to all the provisions of international human rights

law and customary international law regarding human rights, in this case:

- UN Charter of 1945, Article 1 paragraph (3); Article 11, paragraph (1), letter b; Article 55 letter c; and Article 76, letter c (see supra, paragraph 2 (a) - (d) page 1-2);
  - KIHSP 1966, Article 2 paragraph (1) (see supra, paragraph 8 letter a, page 4); and
  - UDHR 1948, Article 2 paragraph (1) (see supra, paragraph 3 letter b, letter (2), page 2);
- (iv) In addition to being in conflict with international human rights law and customary international law regarding human rights (as noted in number (iii) above, the absence or omission of the word "trust" in Article 61 paragraph (1) and paragraph (2) of Law 23/2006 and Article 64 paragraph (1) and paragraph (5) of Law



24/2013 also contradicts the provisions concerning human rights contained in national legislation itself, because non-discriminatory treatment as one of the main bases of human rights is the principle of non-discrimination. national invitation, especially:

(A) 1945 Constitution, Article 28I paragraph (2)

(B) Law 39/1999 concerning Human Rights, Article 3 paragraph (3)

15. Noting the points as noted in paragraph 11 above can be confirmed that the absence or omission of the word "trust" in Article 61 paragraph (1) and paragraph (2) of Law 23/2006 and Article 64 paragraph (1) and paragraph (5) of the Law 24/2013 conflicts not only with national human rights law but also against international human rights law.

**B. LEAVING BLANK RELIGIOUS COLUMN**

16. (a) The inclusion of the word "belief" in the population document referred to in Article 61 paragraph (1) and paragraph (2) of Law 23/2006 and Article 64 paragraph (1) and paragraph (5) of Law 24/2013 is the first discriminatory treatment in the context of the

Act 23/2006 and Law 24/2013 which are imposed on adherents of faith, which is contrary to one of the basic principles of human rights, which is recognized and guaranteed both by international human rights law and by national laws and regulations, including the 1945 Constitution;

(b) Adherents of the belief still have to experience discrimination again with the provisions that do not fill the "religion" column in the population documents as referred to in Article 61 paragraph (2) of Law 23/2006 and Article 64 paragraph (5) of Law 24/2013. This provision is discriminatory as can be "reviewed" both with the provisions of international human rights law and with the provisions of national laws and regulations as follows:

(i) International Human Rights Law:

(A) KIHSP 1966 (authorized by the Republic of Indonesia with Law 12/2005) stipulates, inter alia, that the right to freedom of religion includes freedom to embrace religion or belief (Article 18 paragraph (1), second sentence; see supra, para 9 ( a), p. 5);

(B) The "order" of emptying the religious column as stipulated by Article 61 paragraph (2) of Law 23/2006 and Article 64 paragraph (5) indicates that Law 23/2006 and Law 24/2013 do not mean religious freedom including freedom of belief, which is not in accordance with international human rights law, in this connection KIHSP 1966, Article 18, paragraph (1);

(C) Such provisions also constitute discriminatory treatment of adherents of trust, whose right to trust, such as the right to religion, is also guaranteed by KIHSP 1966, contrary to Article 26 of KIHSP 1966, whose essence stipulates, inter alia, that "All persons are equal before the law and have the right, without any discrimination, for equal legal protection (KIHSP 1966, Article 26, first sentence; see supra, para 9 (b), p. 5);

(ii) National Laws and Regulations:

(A) The "order" emptying the "religious pool" in the population documents as referred to in Article 61 paragraph (2) of Law 23/2006 and Article 64 paragraph (5) of Law 24/2013 which is a manifestation of the disparity in the treatment of unequal rights for people with the same rights recognized and guaranteed both by the constitution and by law, with the adherents of the aggrieved trust, is clearly a discriminatory act, which is contrary to one of the most basic human rights principles;

(B) Non-discriminatory treatment constitutes both constitutional rights and rights on the basis of the law of each person, because it is guaranteed, both by the constitution and by law, namely, respectively: 1945 Constitution, Article 28l paragraph (2) (see supra, footnote 2 , p. 7); and Law 39/1999 on Human Rights, Article 3

paragraph (3) (see supra, footnote 3, p. 7).

IV. DISCRIMINATIVE TREATMENT, WHICH IS A BREACH OF BASIC HUMAN RIGHTS, BECOMING TRIGGERS, CAUSES, OR OTHER BREACHES OF HAM

17. (a) From the points stated in the preceding paragraphs it can be noted that, due to the provisions of Article 61 paragraph (1) and (2) of Law 23/2006 and Article 64 paragraph (1) and paragraph (5) of Law 24/2013, adherents of belief experiencing direct human rights violations as follows:

(i) Violations of the right not to be targets of discrimination;

(ii) Violation of the right of equality before the law without discrimination on anything; and

(iii) The right to equal legal protection;

(b) The absence of the words "trust" and "order" to empty the "religion" column in the population documents as referred to in Article 61 paragraph (2) of Law 23/2006 and Article 64 paragraph (5) of Law 24/2013, which has led to direct human rights violations as mentioned in letter a above, will lead to other human

rights violations that will be experienced by adherents of the faith. Human rights violators other than those that have the potential to occur due to the fulfillment of certain human rights, in practice are subject to the completeness of individual data contained in population documents; such as Family Cards and Resident Identity Cards. Other human rights that have the potential to be violated as a result of violations of the right to freedom from discrimination, the right to equality before the law and in the protection of the law can be referred to, inter alia, as follows:

- (i) Right to work [KIHESB 1966, Article 6 paragraph (1); 1945 Constitution, Article 28D paragraph (2); Law 39/1999, Article 38 paragraph (1)];
- (ii) The right to social security [KIHESB 1966, Article 9; 1945 Constitution, Article 28H paragraph (3); Law 39/1999, Article 41 paragraph (1)];
- (iii) The right to education (KIHESB 1966, Article 13 paragraph (1); 1945 Constitution, Article 31 paragraph (1); Law 39/1999, Article 12);

- (iv) The right to gather peacefully (KIHSP 1966, Article 21; 1JD 1943, Article 28E paragraph (3); Law 39/1999, Article 24);
- (v) The right to freedom to associate with people. others (KIHSP, Article 22 paragraph (1); 1945 Constitution, Article 28E paragraph (3); Law 39/1999, Article 24);
- (vi) The right of women and men who have reached the age of marriage to marry and form a family '(KIHSP, Article 23 paragraph (2); 1945 Constitution, Article 28D paragraph (1); Law 39/1999, Article 10).

18. Various potential violations, and some of which have been experienced by adherents of faith, as referred to in Article 14 (b) above, will be able to cause problems for the Republic of Indonesia, among others, in the following international bodies:

- (a) The Committee on Economic, Social and Cultural Rights (a monitoring body established by the UN Economic and Social Council to monitor the implementation of the 1966 KIHESB by Parties' States, including Indonesia);

- (b) The Human Rights Committee (a monitoring body established, based on KIHSP 1966 which is tasked with monitoring the implementation of KIHSP 1966 by States Parties, so including Indonesia; and
  - (c) Human Rights Council (a body formed by the UN General Assembly in 2006 to replace the Commission on Human Rights, which is tasked with monitoring the human rights performance of all UN Member States through, inter alia, the Universal Periodic Review (UPR) system, which done every four years for each country).
19. If the matter referred to in paragraph 15 above occurs and the relevant body gives a negative note on the implementation of international human rights instruments for which the Republic of Indonesia is a State Party and / or the performance of the Republic of Indonesia in respect, promotion, protection, enforcement and fulfillment human rights and basic freedoms as a whole, which are of universal value and must be implemented without discrimination on any basis, such conditions will adversely affect the political image of the nation and the state which can have other adverse effects.

## V. CLOSING



20. Observation of the provisions of Article 61 paragraph (1) and paragraph (2) of Law 23/2006 and Article 24 paragraph (1) and paragraph (5) of Law 24/2013 as referred to in paragraphs 1 to paragraph 15 above, which is made from the perspective international human rights law, can be considered as well as possible by the Panel of Judges of the Constitutional Court in examining and deciding Case Number 97/PUU-XIV/2016 concerning Judicial Review of Law Number 23 of 2006 regarding Population Administration as amended by Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration of the 1945 Constitution of the State of the Republic of Indonesia.

**8. Al Khanif, S.H., LL.M., Ph.D,**

**Religious Rights in Pancasila and the 1945 Constitution of the Republic of Indonesia**

Pancasila as the basic norm of the Indonesian people makes God as the fundamental norm of the other four norms. God Almighty in addition to being a spiritual norm that is believed by the community, also becomes a moral value that is understood to contain norms of good and bad, right and wrong as the moral guidance of society. Not only that, the first precepts of the Pancasila contained the teachings of religious tolerance. This means that the principle of "Godhead of Pancasila" supports human

rights, which includes respect for the right to religion. Therefore, if humans believe in the sovereignty of God, then every human who adheres to a religion must also understand that the issue of human faith is a prerogative of God that must not be limited or prohibited.

The freedom to choose a religion or believe in a belief is the right of every individual that exists and is inherent in humans since they were born. The most sacred freedom of will is freedom to choose his religion and beliefs. Therefore, as a very sacred right, choosing a religion and belief is a transcendental relationship between humans and their creators. Religion is closely related to how someone is free to determine his beliefs and not infrequently also leads to fanaticism. Fanaticism is an attitude giving birth to intolerant attitudes towards adherents of different religions from those adhered to by a group. Intolerance acts such as spreading hate (hate speech) and encouraging violence (condoning) is a bad capital for strengthening democracy and human rights. The First Precept provides room for followers of different religions and beliefs to live together peacefully in a life of diverse cultural backgrounds. Philosophically, this first precept underlies the spirit of nationality that respects the diversity of religions, beliefs and cultures in the frame of Unity in Diversity which means different but still one. The ideals of the first precept are the spirit of diversity which is based on the highest respect for freedom to choose a particular religion and belief.

The first precept of Pancasila as the source of all sources of law in Indonesia has been confirmed in the 1945 Constitution of the Republic of Indonesia both before and after the amendment. Article 29 of the 1945 Constitution states that the state is based on a supreme divinity. This means that the state encourages its citizens to believe in and believe in religion and to carry out worship according to their religion and beliefs. The right to religion is a mandate from the 1945 Constitution which must be derived in the form of more operational regulations so that it can be implemented. The mandate contains the right of every citizen to embrace religion and practice worship in accordance with their religion and beliefs.

The problem is about the classification of recognized and unrecognized religions. Religion with the status of a religion of belief or known by the religion of the reneration does not receive the same treatment in the context of inclusion in the religion column on the Resident ID Card. This is contrary to PNPS Number 1 of 1965 which explains that the state recognizes religion and beliefs other than official religion and has the same rights as stated in Article 29 paragraph (2) of the 1945 Constitution.

Although religious beliefs are still recorded in the population data, on the other hand the consequences of the column that are not filled in actually also indicate the state discriminates in regulation. First, the state discriminates against religion by filling the religion column for official religions and emptying the religion column in the religion of belief. When

the state insists it does not prohibit religion or belief, the state must ensure accessibility for its adherents. Citizens' rights to recognition as residents, starting from identities such as Family Card, Resident ID Card, marriage certificate, birth certificate must be granted and guaranteed legal certainty for its implementation. Not only then giving, but also must carry out supervision and guarantee of legal protection for adherents of belief outside the official religion recognized by the state. Often citizens who have religious columns in their Resident ID Cards are intentionally left blank or marked with stripes, are accused of being communist, atheist and heretical and having an impact on religious issues with nuances of Ethnicity, Religion, Race and Intergroup. this is very much not in line with the national spirit directed at the noble values of Pancasila, that respect for religious freedom is highly upheld as the practice of the first precept, namely the Godhead of the Almighty.

The complexity of minority religions that are not included in the official religion category in Indonesia indicates that although Indonesia does not recognize the concept of a theocratic state where the highest source of law comes from a particular religious teaching, in practice the state of influence of religion cannot be avoided from legal practice and government policy. Indonesia is a Pancasila country where all positive laws must be in harmony with the five precepts contained therein. But the values contained in Pancasila also cannot be separated from religious discourse in Indonesian history. This means that the concept of protecting the basic rights of minority religions also cannot be separated from the

first precepts of the Pancasila because Indonesia is a Godhead God or a secular God. I call it "Secular-Theistic" because Pancasila does not mention one of the names of God in religions. Anyone who believes in the Oneness of God must have the same rights as other citizens. Differences in beliefs or ways of understanding God's revelation should not be used as a legal basis for the state and society to discriminate against a particular religious group. In fact, until now there are still many religious groups that get discriminatory treatment and even more in number after the collapse of the New Order Era in 1998.

Reading the phenomenon of religious rights for minority religious groups based on the perspective of Pancasila becomes important because Pancasila is the highest source of law in the hierarchy of national law in Indonesia. In addition, Pancasila has also been established by the founders of the nation as the state philosophy so that the principles contained therein must be a source of inspiration for the development of law and human rights in Indonesia. Therefore, outlining the problem of religious minorities cannot be accurate without knowing the Pancasila doctrine. However, because the precepts contained in Pancasila are very common, Pancasila is often understood freely in the current democratic era. Therefore, the enforcement of the religious principles and beliefs of the Pancasila monotheism to protect minority religious groups often clash with the influence of religious orthodoxy.

### **Pancasila Monotheism Discourse**

Pancasila was the result of President Sukarno's thoughts because he wanted to create an ideology that had the original character of Indonesia. Referred to as "native to Indonesia" because Sukarno at that time wanted to combine the principles of socialism, religion and democracy that were characteristic of Indonesia. The result emerged five precepts resulting from the agreement of the founders of the nation where the first precepts, namely the Almighty God, became the spirit of the other precepts. The five precepts also become the spirit of the opening of the 1945 Constitution so that it can be emphasized that everything contained in Pancasila is the source of law from the Constitution and also becomes the basic norms of the state or "staatsfundamentalnorm." amended four times in a span of four years, the enactment of laws on human rights and the ratification of various international instruments, the principles contained in the Pancasila and the opening of the 1945 Constitution cannot be amended and should instead inspire the development of law and human rights in Indonesia.

In the minority religious rights discourse, Indonesian people must use the spirit of the Pancasila, especially the first principle and the principles of humanism contained in the second principle because Pancasila is the ideological foundation of religious rights and tolerance between religious communities so that all types of acts that damage the religious rights actually endanger those rights. . It must be a joint consensus that Indonesia under Pancasila must guarantee religious rights

for all its citizens because that right is also the essence of the slogan Bhinneka Tunggal Ika which characterizes Indonesia.

Based on the principle of the Godhead of Pancasila, the concepts of religion and the divinity of monotheism in Indonesia must be understood openly by anyone. This open understanding is very much influenced by the arguments of Sukarno who asserted that God is open and undefined. That is, Pancasila prohibits a religion from monopolizing the concept of God and therefore every citizen has the same right to translate and understand the religious principles of Pancasila as long as this understanding is constructive towards religious rights in Indonesia. In addition, one of the founders of the Indonesian nation Mohammad Hatta argued that the principle of Pancasila monotheism functioned as the main principle that became a reference for the principles of humanism, unity, democracy, and social justice in Pancasila.

The principle of Pancasila monotheism can be called the highest religious principle in the development of religious rights in Indonesia because it must be an inspiration for legal and social development in Indonesia. The principle of Pancasila monotheism contains ethics and spiritual values because it believes in secular theistic religions because it does not make one particular religion a role model. In addition, this principle also does not put one particular religion in a higher position than other monotheistic religions. That is, each religious adherent is given the

same freedom to translate the concept of monotheism based on their respective beliefs.

If we combine the two principles of Pancasila, namely the principles of humanism and monotheism, both are complementary principles because both insist that all religions must be protected. Pancasila, although derived from Javanese Sanskrit terminology, is the embodiment of Islam and other monotheistic religions in Indonesia. The concept of religious ideology is intended by the creators of Pancasila to accommodate and protect religious pluralism in Indonesia so that Pancasila should be able to maintain and inspire all aspects of the development of religions in Indonesia. This proposition wants to emphasize that all religions and sects within religion have the same right to live and develop in Indonesia. That is, all followers of religion are free to translate the principle of Pancasila monotheism must also get the same treatment in the state. This can be seen from religious adherents who translate the principle of monotheism based on liberal and secular understanding, but on the other hand there are also religious groups who translate these principles exclusively for their own interests.

### **Religion and Marriage**

It is emphasized that part of human rights is to form a family and continue the descent in a legal marriage. While the legal requirements for a marriage are carried out in accordance with their respective religions and beliefs. For this requirement it might not cause much debate except



for mixed marriages. But the next provision is that marriages recorded according to applicable regulations are very likely to have a negative impact on religious adherents/beliefs whose religion/belief is not written in population documents. Some of the reasons are because for citizens who are Muslim, marriage registration is carried out by Registrar of Marriage who is domiciled in Religious Affairs office while those of other religions are carried out at the Civil Registry Office. Marriage registration for followers of other religions and beliefs should not be difficult because it is the authority of the civil registry office. However, the problem is that not including their religious identity and beliefs causes difficulties for religious believers in terms of the legal recognition of marriage. This incomplete identity causes an "additional procedure" that they must go through so that this procedure can be categorized as discrimination against religion and beliefs other than the six official religions. The consequence if this procedure is not undertaken is a marriage that is not legally recognized by the state. This unrecognized marriage will cause a long problem, which is not only borne by married couples ie not having a marriage certificate but also not being recognized as a result of the law of the marriage. Also impacted on the non-recognition of the formation of a family as evidenced by a Family Card, the existence of a child as evidenced by a birth certificate which in the end will have difficulty in handling Resident ID Card. Religion is no longer a matter of belief and faith, rather than being a political issue.

Resident ID Card is a right that must be given by the state, because it will strengthen the state's existence and guarantee the granting of rights to its citizens. Citizens who do not have the same identity as citizens who are not recognized as Indonesian citizens. Adherents of religions/beliefs in addition to the six official religions in Indonesia often face discriminatory treatment so the practice must be interpreted as a violation of the basic rights of citizens. Discrimination against the inclusion of trust in the column of religion makes it difficult for adherents of the faith as Indonesia's native religion to get proper access such as health insurance (BPJS), education, economy, politics and the right to defend their lives and lives.

The sacredness of religious rights is not only demonstrated by the Pancasila and the 1945 Constitution but is also protected by various human rights instruments. Freedom of religion is protected by the Universal Declaration of Human Rights (UDHR) in Article 18 which includes: choosing and converting, worshiping and preaching both individually and in groups. In Article 28E paragraph (1) and paragraph (2), Article 28I paragraph (1), and Article 29 paragraph (2) of the 1945 Constitution states a state based on the divinity of the Almighty and that the state guarantees the freedom of every citizen to embrace their respective religions and worship according to his religion and beliefs. In the 1945 Constitution it is stated that the protection, promotion, enforcement and fulfillment of human rights is a state obligation. Marriage as a basic right to choose a partner and regenerate for human life is a right that must be given in full with all its consequences. That the

population as adherents of belief outside the six official religions should have legal certainty regarding their legal actions. Making a legal marriage according to the law must be followed by the fulfillment of civil rights as residents of Indonesia, namely the recording of every important event, as stated in Article 8 letter b of Law Number 24 of 2013 concerning Population Administration.

### **Religion and Culture**

Religion and culture are two things that can not be separated. On the one hand religion comes from God as a guide to human life, on the other hand culture is born from the habits that live in society, where these two things become mutually influential to one another. It cannot be denied, the Indonesian nation has become a unique nation in terms of the variety of lives that are so patterned to one another. Culture will not be released in the life of a nation that was born and respected since ancestors. The original religion of Indonesia was born from beliefs in magical powers centered on natural forces (the cosmos) such as mountains, rivers, trees, and caves. Article 4 of the Minister of Religion Regulation No. 9 of 1952 states that the flow of belief is a form of culture that still refers to the beliefs of the ancestors, even though the flow of beliefs existed before the arrival of world religions in Indonesia.

Marzuki explained that through religion humans believe in the existence of safety, help, zest for life and happiness. This is because religion is a source of absolute truth that is believed by its adherents, a

source of information about the future, a source of moral teachings about good and bad, right and wrong, and contains advice. Considering that religion is a belief it is impossible that religion can be changed easily, because of the limitations of the types of religions that are recognized. In a diverse and culturally diverse society, the problem of religion is not easy. Individuals prefer to firmly defend their religion and beliefs. Expression of religion is an empirical form of thinking about things that are felt by humans as phenomena that cannot be explained through logic and reason, that the matter of faith cannot just be rationalized. Religion becomes very diverse due to the attitude of acceptance of what God created and the inner experience of the purpose of human life is very different. In terms of humanism, humans will obtain the meaning of diversity by becoming a pillar and moral designer of theology that brings harmony and happiness from each other.

Human need for religion becomes very crucial because religion is present in every event of human life such as birth, death, marriage and artwork. It is undeniable that religion is a guide to human life and therefore there should be no compulsion in religion because the basis of religion is voluntary, not a matter of coercion of God's will on humans. The will to religion for humans is a matter of how humans believe and feel free to have faith in God. Respect for one's faith is to glorify his dignity as a human being. Human glory can be seen from the tolerant attitude towards each other, both religious and other religions.

There are hundreds of tribes in Indonesia in which each tribe has its own characteristics and cultural identity with a variety of different languages and consists of world religions and indigenous religions. Indigenous religions can be interpreted as religions that are not originated and influenced by world religions, but were born from the original human civilization of Indonesia. Animism and dynamism are forms of belief that are often labeled bad simply because their religious rituals are considered to be in conflict with the concept of official state religions. Therefore, protecting the flow of beliefs and local religions born from Indonesian culture is a state obligation.

Julius Stahl in the concept of the rule of law known as *rechstaat* states that the element of protection of human rights is something that must be the main benchmark of the rule of law. Discrimination that occurs in the flow of belief is the killing of dignity for the predecessors of the indigenous population. When the state does not guarantee the protection of religions in Indonesia, just as the authorities have denied the second norm in a fair and civilized humanitarian Pancasila.

### **Religious Rights as God's Rights**

Wolhof refers to human rights as a nature that cannot be revoked or transferred to others. Soetandyo Wignyosoebroto asserted that violations of human rights caused humans to not be able to live properly as beings who were glorified by God. Strictly speaking, Frans Magnis Suseno explained that human rights are not gifts from society or the state

but are accepted from the Creator to every human being (universal). Because of its universal nature, it must be enjoyed by every human being without exception. Human rights characteristics are regulated in the UDHR into 4 groups, namely individual rights, collective rights, civil and political rights and social and cultural economic rights. Differentiation of individual and collective rights is based on the process of fulfillment, where individual rights are owned and can be fulfilled by everyone, while collective rights are rights that can only be enjoyed together, where fulfillment depends on others. However, whether or not it is fulfilled depends on state policy for the fulfillment of these rights.

In Indonesia, the protection of human rights is regulated in Law Number 39 of 1999 concerning Human Rights. Article 1 states that human rights originate from the inherent God and must be upheld and respected by the State. The right to religion becomes an important part of human rights because as individuals, the relationship with God must be placed in a unity with the right to choose a religion and belief in accordance with their faith. Article 18 of the UDHR gives the right to freely choose and obey religion whether done alone or in public. That is, each person is free to show the choice of religion and belief, with guaranteed security and calm in carrying out religious worship.

Seeing from the various perspectives above, the "different" treatment carried out by the state towards minority religions such as emptying the religion column on the KTP indicates that it is discriminatory

treatment of these religious groups. Therefore, the policy should empty the religion column for adherents of minority religions other than those recognized by the state to be reviewed by the Constitutional Court because the practice often causes discrimination. Actually, the policy of "emptying the religion column" is allowed as long as the policy does not cause discriminatory treatment against adherents of certain religions. But when the policy results in discrimination, it should be revoked or replaced with a new, more inclusive policy.

Whereas in addition to submitting experts as mentioned above, to prove their arguments, the Petitioners in the hearing on January 23, 2017 and February 2, 2017 submitted 6 (six) witnesses, namely Rosni Simarmata, Lambok Manurung, Kalendi Nggalu Amah, Warjo, Dewi Kanti and Drs. Khristopel Praing, M.Sc. who submit verbal statements under oath/promise at the hearing stated the following matters:

**1. Lambok Manurung**

- Whereas the witness is an adherent of the Batak ancestor's religious belief, commonly called Ugamo Malim, based in Huta Tinggi, Toba Samosir Regency, there are around 6,500 people or around 1,400 households and are scattered in several provincial districts throughout Indonesia;
- Whereas the Parmalim community in Medan currently has around 400 people or 102 families with experience of

discrimination related to public services such as filling religion in the Resident ID Card column and filling religion in the family card column, such as the experience of a witness's Resident ID Card is written the Adherent in a Family Card is left blank, but it is different from the witness's Resident ID Card, which is two people who already have Resident ID Card in the empty religion column and in some community friends have got electronic Resident ID Card, among them filling in the different religious column. The most striking difference between Resident ID Card and Family Card;

- Whereas the confession of their community friends was forced to choose one of the official religions. The aim is to facilitate administration because Parmalim has not been recognized as a religion, where the occupation service does not want to write down beliefs;
- Whereas many complaints from fellow communities such as the experience of witnesses' children when he showed his Resident ID Card in an affair always received ridicule. First, because of their blankness on the Resident ID Card, witness's children complained that they were often ridiculed by their friends as having no religion, as well as at the school service, often being emphasized by teachers regarding the



issue of Parmalim's ancestral religion rather than religion so witnesses' children were required to study certain religions;

- Whereas the children of the Parmalim community often complained, some were not even accepted at a workplace company because they had a Resident ID Card whose religion was empty on the grounds that it would later be difficult in providing Religious Holiday Allowance, so they were required to fill in one of 6 official religions;
- Whereas the reason the Parmalim community chose a religion that they did not believe in Resident ID Card was because of pressure and consideration when taking care of administrative matters in the government. For example, there are also friends who are civil servants, but when filling in the following data there is no religion or Parmalim column, then they must choose one of the six official religions. Including related to teacher certification allowances. Likewise, filling in online data related to work and opening an account cannot be carried out because religious blanks on Resident ID Cards are left blank.

## **2. Rosni Simarmata**

- Whereas witnesses from the Ugamo Bangsa Batak community;

- Whereas the image or perception of Ugamo Bangsa Batak is very bad, there are still many people consider it as Sipelebegu, meaning worshiping ghosts, even though only trust in all the ancestral heritage. For example, followers of the belief respect parents by making ritual offerings because they believe that is what makes the ancestors convey to God what is asked.
- Whereas the Ugama Bangso Batak community was tired or tired of asking about its existence, so asking the Constitutional Court Judge Panel to help in its Resident ID Card column not to be a column of dashes (-), but a adherent;
- Whereas Petitioner III's child, Desi Purba was not accepted to work at the Ibu dan Anak Hospital in Batam because of the religious column in the Resident ID Card was filled with a dash (-). After it was received at a hospital in Jakarta, however, opening a bank account for salary purposes was made difficult only because the religion column of the Resident ID Card was left blank, and could only open an account after obtaining a statement that he was residing in Bagan Deli;
- Whereas the experience of not being able to apply for a job online was also experienced by the witness'

brother, Ogi, because the religious column in his Resident ID Card was filled with a dash (-).

### **3. Kalendi Nggalu Amah**

- Whereas witnesses from the Marapu Adherents Community. In East Sumba, there are more than 33.900.
- Whereas in the Resident ID Card all Marapu adherents in East Sumba Regency were intentionally left blank;
- Whereas children who are going to tertiary education are required to be baptized first, even though their parents have not yet converted to Christianity.

### **4. Warjo**

- Whereas the witness underwent the teachings of Sapta Darma obtained from parents;
- Whereas when he was in elementary school, the witness had to fill in the book of Ramadhan activities because according to the religious teacher, if he did not want to fill in later, he would not get a grade and possibly not pass, so the witness was forced to carry out what the teacher ordered. Likewise, in middle school, witnesses are required to choose one religion. The same thing was experienced

during high school. However, these things can still be resolved properly until graduation;

- Whereas when handling the Resident ID Card in 2004, the Neighborhood Association Head said that the Sub-District Office could not serve the residents of Sapta Darma, so the witness finally asked to be given a stamped and signed statement. But in the end the religion column on the Resident ID Card witness contained the religion of Islam, even though at the time of filling in the village written Sapta Darma;
- Whereas the Resident ID Card officer stated that the important thing was that the witness was served, but the witness stated that the witness's belief in the Resident ID Card had to be the same as the witness's belief and in the end the religion column in the Resident ID Card remained blank, even though when he took care of the Resident ID Card in 2007 the witness knew that the religion column in the Resident ID Card was filled with Sapta religion. Dharma and also other beliefs, so the witness was confused about the Population Administration Law;
- Whereas by leaving the religious column blank in the Resident ID Card, residents of Sapta Dharma were rejected

at the Public Cemetery, so that they were then buried in the land of Sapta Dharma residents themselves;

- Whereas the witness also experienced difficulties when arranging the making of a bank account, it was said that the bank system refused because the religion column was empty, so then inevitably the witness was forced to fill the religion column with a religion that the witness did not believe in the interest of salary.

## **5. Dewi Kanti**

- Whereas the witness was a survivor with a background from the Indigenous Community of Karuhan Sunda Wiwitan;
- Whereas according to the witness, blanking the Resident ID Card column for adherents is not a solution because it continues to feel injustice, even though there should be no discrimination as mandated by the constitution;
- Whereas the true identity of every citizen or fundamental rights is an absolute obligation of the state, so that there are no exceptions and without burdensome conditions;
- Whereas the problem is not merely administrative, nor is it simply a lack of socialization of the a quo article, but how to straighten out the a quo article which ends up providing

public services to protect, not discriminate and differentiate any organization or religion;

- Whereas the witness believes that ancestral religion will establish diversity, not uniformity, let alone abolish it, it must be respected by local wisdoms, because ancestral religion existed long before the Republic of Indonesia existed;
- The understanding and experience of the witness have not found a constitutional explanation for the empty column of religion for residents outside the recognized religion;
- The witness's Resident ID Card was previously left blank, but when the displays were issued a Resident ID Card with an Islamic religious identity, the witness objected to this and after seeing the monitor column printing Resident ID Card in the religious column there were other options, so the witness chose another option but after printing it appeared that came out on the column written religion flow. Although the witness also objected to this matter, he finally signed it compelled because he needed an Resident ID Card;
- Whereas all this time the filing of the Resident ID Card was done verbally, from experience then the witness questioned the filling of the religious column and although the Sub-

District Office had apologized, the religious column was still filled with a dash (-);

- Whereas even now for the change of identity there is a fine, although it is insignificant but is a form of harassment because it basically only demands according to the identity believed;
- The witness was told by a resident that when registering his child to school it was recommended to choose a religion so that he would not experience difficulties later on;
- Likewise in employment matters, it is difficult to administer support services only because of its identity as a Sunda Wiwitan adherent;
- Whereas the witness could not be certain of the number of adherents;
- Whereas when the meeting with the Director General concerned conveyed that the a quo Law had not been amended, there was nothing that could be done to change the issue of the religious column on population identity.

**6. Drs. Khristopel Praing, M.Si.**

- Whereas the witness is the State Civil Apparatus (ASN) serving in the Population and Civil Registry Service of East Sumba Regency, East Nusa Tenggara;
- Whereas the population in East Sumba Regency is 244,081 people, while the number of Marapu sufferers as of December 2016 is 18,714;
- Whereas since being appointed as Head of Population Service in 2013, witnesses found that there were approximately 2,000 family heads whose marriages could not be recorded because they had not been registered with the relevant ministries as referred to in Article 82 and Article 83 of Government Regulation Number 27 of 2007. Likewise, still it was found that there were people whose KPT and Family Cards were marked with dashes (-) which, after being studied because of orders from Article 61 paragraph (1) and paragraph (2), Article 64 paragraph (1) and paragraph (5) of the Population Administration Law;
- To overcome this, the witness proposes to be accommodated in the organization, until on December 19, 2013 Marapu leaders and the people of East Sumba agreed to form the Marapu Organization which was then registered with the Ministry of Education and Culture and in February 2015 a letter of inventory of the Marapu Organization was



issued. then followed up by the Government of East Sumba Regency by issuing a registered certificate in August 2015. On this basis, the marriage of fellow Marapu residents was recorded;

- Whereas when collecting requirements to register marriages, one of which is by collecting the Resident ID Cards. Of the 193 couples served, 128 of their Resident ID Cards were written as Christians. This is according to them because there is no other choice besides 6 religions, so they follow which religions are important to be served immediately;
- Whereas in East Sumba no one from the creed of faith became an employee;
- Whereas Marapu residents still have hopes that among others their existence will be recognized in the forum of religious communities, able to attend and provide opinions and ideas. Next their children can be educated according to their beliefs. Furthermore, Marapu residents can also be represented in parliament, for example to become Candidates for Legislative Members.

[2.3] Considering whereas in response to the petition of the Petitioners, the President in the hearing on December 6, 2016 submitted oral

statements and written statements received at the Registrar's Office on January 23, 2017, outlining the following matters:

**I. Principal Petitions of the Petitioners**

1. Whereas according to the Petitioners Article 61 paragraph (1) and paragraph (2), Article 64 paragraph (1) and paragraph (5) of the Population Administration Act is contrary to the principle of the rule of law and the principle of equality of citizens before the law because in its formula it is written that Family Card and electronic Resident ID Card contain elements of religious information in it, but specifically the followers of the religious column are emptied so that it contradicts Article 1 paragraph (3), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution.
2. Whereas the a quo articles do not clearly and logically regulate so as to cause different interpretations and violate the basic rights possessed by Indonesian citizens.
3. Whereas the provisions on the emptying of the religious column for adherents of faith have violated the basic rights of the Petitioners, such as the marriage of Petitioner I traditionally not recognized by the state and resulted in the relevant person not having a marriage certificate and Family

Card so that the children of Petitioner I find it difficult to obtain a birth certificate and biological child of Petitioner III is difficult to get a job despite having good competence, besides the funeral of the family of Petitioner IV is rejected by the local burial place so that he must look for another burial place;

4. Whereas by emptying the religious column on the electronic Resident ID Card for adherents of trust, the Petitioners as citizens cannot access and obtain other basic rights, such as the right to education, right to work, right to health, right to social security along with all of their services, so that it can be categorized as a violation of Human Rights as regulated and guaranteed in the 1945 Constitution.
5. Whereas Article 61 paragraph (1) and paragraph (2), Article 64 paragraph (1) and paragraph (5) of the Population Administration Law causes the Petitioners to feel isolated and discriminated against by not filling the religious column in their Family Card and electronic Resident ID Card. This causes the fulfillment of the basic rights of the Petitioners which should have been regulated and guaranteed in the 1945 Constitution, so that, the a quo articles contradict Article 28I paragraph (2) of the 1945 Constitution.

## **II. Legal Standing**

The description of the legal standing of the Petitioners will be explained in more detail in a complete Government statement to be submitted at the next hearing or through the Registrar's Office of the Constitutional Court.

However, the Government requested the Honorable Chairperson/Panel of Judges of the Constitutional Court to consider and assess whether the Petitioners had legal standing or not, as determined by Article 51 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as amended lastly by Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning the Constitutional Court or based on previous Constitutional Court decisions, such as Decision Number 006/PUU-III/2005 and Decision Number 11/PUU-V/2007.

### **III. The Government's explanation of the material petitioned.**

Regarding the petition of the Petitioners, the Government provides the following information.

1. Whereas Indonesia not only has diverse ethnic groups, but also has diverse religions and beliefs. There are six official religions in Indonesia, namely Islam, Catholicism, Protestantism, Hinduism, Buddhism, and Confucianism. In addition to official religion, in Indonesia also grows and develops other beliefs called traditional beliefs.

2. With the diversity of religions in Indonesia, Indonesian people must respect the differences. This has been regulated in Article 29 paragraph (2) of the 1945 Constitution which guarantees the community to have freedom in religion. Every individual is freed to embrace the religion of his choice, thus there is no religious discrimination. Every individual must respect and maintain tolerance of their respective religions/beliefs.
  
3. The belief in God Almighty plays an important role in the life of the Unitary Republic of Indonesia, this is manifested in the first principle of the Pancasila and contained in the opening of the 1945 Constitution. As the main foundation for every person who lives in it.

We need to understand together that the choice of words contained in the precepts of the Pancasila and the dialectical opening of the constitution is the Almighty God. This implies a deep philosophical meaning that Indonesia is a country based on a non-religious God, so that every belief based on a Godhead is recognized by the Government.

4. This is based on a civilization that grew and developed long before religions entered the archipelago, where some archipelago or Indonesian people already had a belief in the Godhead that survived until now and is considered a noble

value of life. In almost all regions of Indonesia there are native religions or beliefs such as Sunda Wiwitan which are embraced by Sundanese people and in Kanekes, in Lebak Banten, Sunda Wiwitan madrais also known as Cigugur religion or/and there are several other names in Cigugur, Kuningan, West Java, Buhun religion in West Java, Kejawen in Central Java and East Java, Parmalim religion, Original Batak religion, Kaharingan religion in Kalimantan, Tonaas Walian belief in North Sulawesi Minahasa, Tolotang in South Sulawesi, Wetu Telu in Lombok, Naurus on Island Spooky in Maluku Province, and others.

5. Whereas the Indonesian state respects the existence of every belief that accompanies the life of the nation and state as outlined in the basis of the Indonesian state. This is the background of the birth of the provisions regarding the emptying of the religion column on Resident ID Card in Law Number 23 of 2006 concerning Population Administration. If we trace it is because of the provisions regarding the recognition of religion in Indonesia, in essence the state recognizes the diversity of the six religions that have existed and are embraced by the Indonesian people. The six religions are Islam, Catholicism, Protestantism, Hinduism, Buddhism, and Confucianism. Beyond the above religions, the state continues to allow its existence on condition that it

does not interfere with and violate the provisions in Indonesia.

6. The Resident ID Card as the identity of the population included elements that could not be separated, including the symbol of the Pancasila Garuda, the state map, and religion, including that. Where only the six religions are then included in the Resident ID Card column in Indonesia. So that there will be no problems in the future, a regulation governing religion that is "not recognized" by the Indonesian state is made. By emptying the religion column in the Resident ID Card for religion or beliefs that have not been recognized by the Indonesian state.
7. Whereas the state must have an orderly administration, one of which is related to the identity of the population, including the religion of the population. This becomes important for Indonesia which adheres to a variety of religions and beliefs, because it will have important correlations with several administrations in the field such as marriage, inheritance, material ownership, child adoption issues, and other administrative matters.
8. The religion of a person will have an important correlation to the legal actions taken, because in Indonesia written law becomes important in the effort to uphold and ensure the

law itself. As in the case of a Muslim's marriage, the identity of Resident ID Card's religion, is still used as authentic evidence to determine the religion that was embraced before 5 marriage. This means that written evidence is important as a person's legality as a subject and object of law.

9. The government is of the view that the existence of the religious column is of great benefit to both the owner of the identity and the state in order to provide a legal limit for every adherent of the faith and religion to ensure their constitutional rights.
10. It should be noted together that up to now there has not been one of the original religions and beliefs of the archipelago that is recognized as a religion with rights to be included on the Resident ID Card, birth certificate, marriage registration at the civil registry office, and so on. This raises the number of adherents of the beliefs or teachings of ancestors or native religions in Indonesia are still forced to choose a religion or are recognized or do not make a Resident ID Card at all.
11. In addition to this, the government needs to convey that in the a quo law there are indeed a number of norms that have not been included so that a more definite instrument in



assessing the religion of belief can be recorded in the population administration.

12. Noting the various dynamics mentioned above, the Government requests the Constitutional Court to be able to provide constitutionality considerations regarding regulations related to the religious column in order to determine better policy directions for the government as the state organizer. That the Government highly appreciates the efforts made by the community in contributing to and contributing ideas in developing an understanding of state administration. These people's thoughts will become an invaluable reference for the Government in particular and the Indonesian people in general. Based on these ideas, the Government hopes that dialogue between the community and the Government will continue to be maintained with a common goal to build a national life for the sake of a better future for Indonesia and develop itself in governance with the aim of contributing positively to realizing the ideals of the Indonesian nation as in fourth paragraph of the 1945 Constitution.

#### **IV. Petitum**

Based on the explanation above, the Government requests the Honorable Chairperson/Panel of Judges of the Constitutional Court

of the Republic of Indonesia to examine, hear and decide upon the petition for review of Law Number 23 of 2006 concerning Population Administration of the 1945 Constitution to be able to give a ruling as fair as possible in accordance with the applicable constitution.

[2.4] Considering whereas in response to the petition of the Petitioners, the House of Representatives submitted a written statement received at the Registrar's Office of the Court on April 17, 2017, outlining the following matters:

**1. Legal Standing of the Petitioners**

The qualifications that must be fulfilled by the Petitioners as Parties are regulated in the provisions of Article 51 paragraph (1) of Law Number 24 of 2003 in conjunction with Law Number 8 of 2011 concerning the Constitutional Court (hereinafter abbreviated to the Constitutional Court Law), which states that "The Petitioners are parties who consider their constitutional rights and/or authorities impaired by the coming into effect of the law, namely:

- a. *individual Indonesian citizens;*
- b. *indigenous and tribal peoples unit as long as it is still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia as stipulated in the law;*
- c. *public or private legal entity; or*

d. *state institutions.*”

The constitutional rights and/or authorities referred to in the provisions of Article 51 paragraph (1), are emphasized in the explanation, that what is meant by "constitutional rights" are "rights regulated in the 1945 Constitution of the Republic of Indonesia." Article 51 Paragraph (1) confirms that only rights explicitly regulated in the 1945 Constitution are included as "constitutional rights".

Therefore, based on the Constitutional Court Law, so that a person or party can be accepted as a Petitioner who has a legal standing in the petition for judicial review of the 1945 Constitution, then he must first explain and prove:

- a. His qualifications as Petitioner in the a quo petition as referred to in Article 51 paragraph (1) of the Constitutional Court Law;
- b. His constitutional rights and/or authorities as referred to in "Explanation of Article 51 paragraph (1)" are deemed to have been impaired by the coming into effect of the Law.

Regarding the parameters of constitutional impairment, the Constitutional Court has provided definitions and limitations regarding constitutional impairments arising from the enactment of a Law must fulfill 5 (five) requirements (refer to Decision on Case No. 006/PUU-III/2005 and Case Number 011/PUU-V/2007) as follows:

- a. the Petitioners have constitutional rights and/or authorities granted by the 1945 Constitution;
- b. whereas the Petitioner's constitutional rights and/or authorities are deemed by the Petitioner to have been impaired by a Law that was reviewed;
- c. whereas the impairment of constitutional rights and/or authority of the Petitioner referred to is specific and actual or at least potential in nature which, according to logical reasoning, will certainly occur.
- d. there is a causal verband between the loss and the coming into effect of the Law petitioned for review;
- e. there is possibility that with the granting of the petition, the argued constitutional impairment and/or authority will not or no longer occur.

If the five conditions are not fulfilled by the Petitioners in the a quo judicial review case, then the Petitioners do not have the legal standing qualifications as the Petitioners.

Based on the aforementioned matters, the House of Representatives fully surrenders to the Chairperson/Panel of Judges of the Majesty Constitutional Court to consider and assess whether the Petitioners have a legal standing as stipulated in Article 51 Paragraph (1) of the Constitutional Court Law, Constitutional Court's Decision Number

006/PUU-III/2005, and Decision Number 011/PUU-V/2007 concerning parameters of constitutional impairment.

**2. Reviewing of Law Number 23 of 2004 in conjunction with Law Number 24 of 2013**

With regard to the arguments presented by the Petitioners, the House of Representatives holds the view by giving the following information:

- 1) Whereas the Unitary State of the Republic of Indonesia is based on Pancasila and the 1945 Constitution is in essence obliged to provide protection and recognition of the legal status of Population Events and Important Events Experienced by Population. Law Number 23 of 2006 which is the elaboration of Article 26 paragraph (3) of the 1945 Constitution aims to realize the orderly Population Administration with the development of a national population database and the validity and truth of the population documents issued. Population Administration as a system, is expected to provide residents with the fulfillment of administrative rights of the population in public services and provide protection relating to the issuance of Population Documents without any discriminatory treatment through the active role of the Government and regional governments. The current application of electronic ID Card is part of efforts to accelerate and support the accuracy of the establishment of a population database in the district/city, province and population database nationally. With the application of the

electronic ID Card, it is no longer possible for every resident to have more than one ID Card and/or falsified his ID Card, bearing in mind that the ID Card contains security codes and electronic records of population data which include iris and fingerprints, among others Population finger.

- 2) Whereas with the application of the electronic ID Card, the period of enactment of the electronic ID Card regulated in Article 64 paragraph (4) is valid for 5 (five) years to become a lifetime, as long as there is no change in the Population data element and the resident domicile change. This needs to be done in order to obtain the ease and smoothness of public services in various sectors both by the government and the private sector as well as obtaining state financial savings every 5 (five) years. In line with the development of the population database, it is also necessary to clarify the regulation of access rights for the utilization of Population Data both for officers at the Operator, Implementing Agency, and Users. Furthermore, in connection with the application of administrative sanctions for residents, in order to better reflect the absence of discriminatory fellow residents, it is necessary to adjust the amount of administrative fines for both Indonesian citizens and foreign residents, so that in addition to encouraging orderly Population Administration and eliminating discrimination in the service of issuing population documents, but to further encourage the investment climate to Indonesia.

- 3) Whereas in Indonesia, the concept of the rule of law is contained in Article 1 paragraph (3) of the 1945 Constitution, which explains that the Indonesian state is based on law (*rechtstaat*) not based on mere power (*machstaat*). Therefore, the state must not carry out its activities on the basis of mere authority, but must be based on law. The provisions of Article 61 paragraph (1) in conjunction with paragraph (2) of Law Number 23 of 2006 and Article 64 paragraph (1) of juncto paragraph (5) of Law Number 24 of 2013 refers to the constitution of Article 29 of the 1945 Constitution and the country's basis of Pancasila precepts first.
  
- 4) Whereas Article 1 number 1 of Law Number 23 of 2006 is a series of structuring and controlling activities in the issuance of Population documents and Data through Population Registration, Civil Registration, Management of Population Administration information as well as utilization of the results for public services and development of other sectors. In this case each resident has the right to a series of population administration. For adherents of beliefs continue to be served and recorded in the population database. This proves that the state recognizes the existence of Adherents of trust and guarantees Adherents of trust by obtaining population documents, equal services in population registration and civil registration as well as legal certainty over document ownership (Article 2 of Law Number 23 of 2006).

- 5) Whereas Article 27 paragraph (1) of the 1945 Constitution contains the principle of equality in law and government (equality before the law) with the obligation to uphold the law and government without exception. That is, not only ordinary citizens or people, but high officials are also obliged to uphold the law and government. On the basis of "the obligation to uphold the law", the regulation of Article 61 paragraph (1) in conjunction with paragraph (2) of Law 23/2006 and Article 64 paragraph (1) juncto paragraph (5) of Law Number 24 of 2013 refers to the 1945 Constitution which is a written basic law which contains the basis and legal outline in the administration of the country. Article 61 paragraph (1) in conjunction with paragraph (2) of Law Number 23 of 2006 and Article 64 paragraph (1) in conjunction with paragraph (5) of Law Number 24 of 2013 relating to Article 29 paragraph (2) of the 1945 Constitution. Article 29 paragraph (2) The 1945 Constitution implies that "his belief" is a series that is inseparable from the word "religion" or belief in the religion in question. However, the state still protects and recognizes the existence of Adherents of Trust by recording the Flow of Trust in the population database.
- 6) Whereas on the basis of Article 29 of the 1945 Constitution, a state based on the Almighty God, guarantees the independence of each resident to embrace their respective religions and to worship according to their religion and belief. The a quo law petitioned for review does not regulate the ratification of religious recognition by



the State, but it contains arrangements and the establishment of a system that reflects reforms in the area of Population Administration, one of which is the regulation regarding the use of Population Identification Number. Population Identification Number is the identity of Indonesian citizens and is the key to access in verifying and validating the identity data of each resident to support public services in the area of Population Administration. Population Identification Number is used as an access key in population services, Population Identification Number is developed towards a single identification for each resident. Population Identification Number is unique or unique, single and attached to someone who is registered as an Indonesian resident is part of the entire Population Document.

- 7) Whereas although the flow of belief is not a religion, followers of faith, including the Petitioners, do not lose their constitutional rights to obtain the same services in population registration and civil registration. In this case the Law a quo regulates the administration of population registration and civil registration for each population without discrimination so that Adherents of Trust are recorded in the population database as a Population Document. That the absence of the flow of trust in the electronic Resident ID Card column or the Family Card did not cause the loss of the constitutional rights of adherents of the trust including the

Petitioners. Every person's constitutional rights are guaranteed in the 1945 Constitution.

8) Whereas in order to understand the articles of the a quo Law it is deemed necessary to read and examine the background to the formulation and discussion of related articles in the a quo Law as follows:

a. Minutes of Meeting on the Discussion of Draft Bill on Population Administration related to Article 61 paragraph (1) in conjunction with paragraph (2):

- **Working Meeting on March 14, 2006.**

• **MINISTER OF HOME AFFAIRS (M. MA'RUF):**

.... "Mr. Chairman, the Government includes religion so that with our constitution that freedom to embrace religion is what is included in our constitution. Therefore, religion is included here ..."

• **FPD (IGNATIUS MUL YONO):**

The first problem with the problem of writing religion here in our opinion is a very basic thing and it has already taken place in various

interests that we do or use that we only use the problem of written religion. We really appreciate the flow of trust, but in the context of writing in one product that is a requirement here, we think so far we only use one religion...

- **F.PPP (H. ROMZI NIHAN, S.IP):**

First, I agree to be pampered only as a matter of thought, to include religion as one of the identities is fitting, because it is one of the basic identities of humans and we recognize the religions recognized in this republic clearly. Regarding the reality of the flow of belief, that is another matter but they are not aligned with that religion, so as a thought I support the concept of the inclusion of religion as an identity.

- **F.PAN (IR. SAYUTI ASYATHRI):**

I just want to refer to this debate that we should not revive the impression that the debate over religion and belief has been completed with the latest amendment to the

2003 Constitution, in Article 28E it is clear that there is only the word religion so there is no belief, namely Article 28E verse (1) everyone is free to embrace religion and worship according to his religion. In the past there was an additional word of belief, namely paragraph (2), the state guarantees the independence of each population to embrace their respective religions, so there is no belief, and to worship according to their religion and beliefs, their belief refers to religion again but no longer the column of belief.

- **Working Committee Meeting on 29 June 2013.**
  - **CHAIRMAN OF THE WORKING COMMITTEE OF FPG (AGUN GUNANDJAR SUDARSA):**

...“Whereas is what ultimately Article 26 on religion formulated in Chapter XI of our constitution is titled religion. The title is religion, Mr. Chariman, the state is based on Godhead. That's what was then used in the end 26 verses eh sorry 29 verses (1) and verses (2) that became one unit.” ( ... **the**

**results of the agreement in the Ad Hoc  
Committee 1 MPR Workers Body, ....)**

“The recognized religion started from Islam, Catholic Christianity, Protestant Christianity, Hinduism, Buddhism and finally by Gus Dur it was decided Confucianism. That is the religion referred to in our Basic Law in Chapter IX. Outside it is not religion. Beyond that is trust. Because he is still in the category of trust, he is not placed in his coaching, his protection, his protection, is not carried out in the Ministry of Religion, but outside the Ministry of Religion, so placed in the Ministry of Education and Culture because it is culture. It is in this position that things like this are formulated like that so that at the level of implementation of all these formulations because religion is included in the constitution, so only in Indonesia is there a Department of Religion. In various countries there is no Department of Religion. Until the debate about it reinforced the constitution at the time when it entered the opening. (Page 57 and 58)

- **F-PKS (H. JAZULI JUWAINI, LC. MA):**

“In the Pancasila, it is mentioned that the Godhead is of course the description of the 1945 Constitution, which in Article 29 is approximately what we understand so that there is no collision.”

... we at PKS with this perspective without wanting to suppress and torment citizens because humanity we must protect them as citizens but when talking about the inclusion of religion let us stand on the existing consensus footing be it Pancasila, the 1945 Constitution or presidential policies given in the course of this nation. "... (page 60)

- **CHAIRMAN OF FPG MEETING (AGUN GUNANDJAR SUDARSA):**

...”must refer to the applicable legal rules. The rule of law that applies we have an idiotic foundation, a constitutional basis. The ideals of our ideology Pancasila as a basis and an ideology whose principle of mindset is different from the mindset that ideologically

say departs from ideological notions outside Pancasila.”...

..” Our Pancasila consists of 5 precepts, whose first precepts read the Almighty God. Constitutionally we have a constitution which also regulates religion and belief in Chapter XI on religion. Those are actually the references we have debated at the level of implementation and application. "... (page 63)

**b. Final Faction's opinion on 7 December 2006**

- **F. PAN (IR. Hj. ANDI YULIANI PARIS, M.Sc):**

....” Establishment of a population administration system that is in line with advances in information and communication technology, so that it can serve the community in a more measured and professional manner. because, one of the basic principles in the draft law on population administration is the effort to eliminate all forms of discrimination in accordance with

article 28 of the 1945 Constitution of the  
Republic of Indonesia”....

Whereas based on the aforementioned arguments, the House of Representatives requests that the Chairperson of the Constitutional Court Judge Panel give the following verdict:

1. Declaring the Petitioners do not have a legal standing (legal standing) and the application is not accepted; Declaring the a quo petition to be rejected in its entirety or at least the a quo request cannot be accepted;
2. Declaring the statement of the Indonesian House of Representatives received in its entirety;
3. Declaring Article 61 paragraph (1) and paragraph (2) of Law Number 23 of 2006 concerning Population Administration and Article 64 paragraph (1) and paragraph (5) of Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration does not conflict with the 1945 Constitution of the Republic of Indonesia;
4. Declaring Article 61 paragraph (1) and paragraph (2) of Law Number 23 of 2006 concerning Population Administration and Article 64 paragraph (1) and paragraph (5) of Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006



concerning Population Administration continues to have binding legal force.

If The Majesty Chairperson of the Constitutional Court Judge Panel is of a different opinion, ask for a fair and just decision (*ex aequo et bono*).

[2.5] Considering whereas the Related Party of the Supreme Council of Trust in God Almighty Indonesia (MLKI) in the hearing on December 6, 2016 submitted oral statements and written statements received at the Registrar's Office on November 10, 2016 which were corrected and received when the Court's verdict on November 22, 2016 , describe the following matters:

The Majesty Constitutional Court Panel, before we submit the main points of the petition as Related Parties, please allow us to convey in advance the description of the problems experienced by the followers of the belief in the Almighty God so far which could be taken into consideration in the decision of the Majesty Constitutional Court Panel.

1. The problem of discrimination and suffering experienced by communities that believe in God Almighty is a long journey for decades since the colonial era, which until now has not been fully liberated, and guarantees of protection of their beliefs as mandated in Article 28D, Article 28I, and Article 29 of the 1945 Constitution.
2. It is ironic in our beloved Republic of Indonesia that only belief systems that come from outside the archipelago are categorized as religion. While the belief system that was born from the motherland, is not recognized as

a religion. Whereas religious phrases as trigama, adhigama, parigama, duhagama, gurugama, kertagama, and others are native phrases of the archipelago.

3. Religion becomes recognized as a belief system that originates from the outside while the local belief system of the archipelago is the real owner, is not allowed to use religious phrases and is replaced with the flow of mysticism, or spirituality, or psychology, and which is then called the flow of belief or belief in God Almighty.
4. In the era of the struggle for independence until the early period of the old order, the community of believers developed well and contributed to the process of struggle and maintain independence, as well as filling independence. But when DI/TII developed in the 1950s, many of the faith-bearing communities became victims because they were accused of not being religious or infidel.
5. Treading in the New Order era at the beginning, many of the civilian communities became victims because of Indonesian Communist Party accusations. Then starting in 1973 obtained service improvements from a country where the existence of belief in God Almighty was recognized by the state and equated with religion even though it was not recognized as a religion so that it was accommodated in the Outlines of State Policy and in every statutory regulation there was always a belief behind the religious phrases. At that time, a phrase of belief in the column of religion on the Resident ID Card may be included and the community of the believers

could have a marriage without having to go through one of the 5 religions at that time. Can be a civil servant and also provided an oath of office for the rookie.

6. But this independence did not last long because starting in 1978, these rights began to be stripped down or amputated. Starting from the identity on the Resident ID Card, revocation of marital rights in confidence, and so on so that the followers of the faith must include one of the 5 religions that are not believed if they do not want to be discriminated or ostracized.
7. In the current reform era, the treatment of discrimination and injustice experienced by the followers of trust has not experienced significant changes. Even though there have been improvements, there have been several setbacks where in the laws and regulations of the reform era, there are many articles found that eliminate the phrase of belief behind religious phrases so that it impacts the loss of the rights of the followers or the existence of a legal vacuum for the defenders as in Law Number 20 of 2003 concerning the National Education System. Then, Law Number 35 of 2014 concerning amendment to Law Number 23 of 2002 concerning Child Protection, this is also a phrase of lost confidence. Law Number 23 of 2006 concerning Population Administration which was later changed to Law Number 24 of 2014 recognizes the existence of a faithful believer and is permitted to enter into a marriage without going through the marriage of one of the 6 religions. However, the caretakers cannot include their

beliefs because the identity in the religion column must be emptied which in practice contains small dashes.

9. In some districts/cities have made a breakthrough or discretion by including the identity of the belief in the column of religion on the Resident ID Card, so that it will make the happier. However, it turns out later revoked again and returned to the blank identity or dashes.
10. Inclusion of blank identities or dashes in the Resident ID Card raises other problems which are detrimental to the followers of trust as experienced by the Petitioners in various regions.
11. The negative impact and the loss of constitutional rights experienced by the followers of the trust as experienced by the Petitioners, among others, the blank or filled with dashes on the religious identity in the Resident ID Card raises the stigma of the owner of the Resident ID Card as a person who is not religious or considered atheist which can lead to discriminatory treatment and oppression of the mourners. As we all know, our society in general is very anti or hostile to people who are not religious or atheist. Emptying or inserting dashes in religious identity on Resident ID Card is often considered a heretical sect. Then, blanking or inserting dashes in the religion column on the Resident ID Card is also often interpreted or suspected by some as a communist group that endangers the Resident ID Card owner and this causes historical traumatic. Furthermore, as a group of people considered to be non-religious or atheist or communist further impacts on discrimination, oppression, and restrictions. Among

other things, the prohibition of carrying out trust activities in the environment and being accused of being heretical and misleading, the difficulty of having a marriage, especially in the context of obtaining an NA form from a village or village. Then, if you die it's hard to be buried in a public cemetery. Then, they cannot apply to become candidates for civil servants or the military/police. In some cases it is also difficult to become a private employee. Then, difficulties also in opening a bank account and access to finance. Then, those who are categorized as poor do not get social or health assistance. That is among others experienced by several communities. With the emptying of religious identity in the Resident ID Card for the followers of the faith, most of the followers have not yet dared to admit the true beliefs because of the traumatic nature and there are still many discriminatory treatments, thus obscuring the real data collection. On the basis of the description of the problems experienced by the aforementioned defenders, we hope that the Honorable Panel of Judges can open the door to humanity and justice by granting the petition of the Petitioners.

Henceforth, we will read out the main points of our application from MLKI as a Related Party. First from the standpoint or legal standing of the legal interests of the Applicant as a Related Party.

1. That the Related Party Applicant is an organization in the form of a legal entity, an association that has been registered through Notary Public, Indah Setyaningsih, SH, in Jakarta with Deed Number 01 dated

- September 8, 2014. No. AHU-00554.60.10.2014 concerning Ratification of the Establishment of the 10 Legal Institutions of the Assembly of the Noble Trusts towards the Almighty God or exhibit P-3.
2. Whereas the Related Party Petitioner is a single national body of trust organizations in Indonesia that specifically moves and strives for the realization of respect, protection, and fulfillment of constitutional rights that have not been fully enjoyed by members of the faith trustees. The Related Party Applicant was officially declared on October 13, 2014 in Yogyakarta in conjunction with the National Workshop on the Trust for God Almighty, which took place from 13 to 17 October 2014 at the Ngayogyakarta Hadiningrat Palace which was facilitated by the Directorate of Trust Development towards God and Tradition, Directorate General of Culture, Ministry of Education and Culture.
  3. Whereas until now the Related Party Petitioner has actively carried out organizational activities and the task of socializing the existence of faithful believers and the expansion and strengthening of organizational capacity that has developed in nine provinces throughout Indonesia.
  4. Whereas the function and purpose of the establishment of the Related Party Petitioner are closely related to the struggle for the fulfillment of constitutional rights which is also part of the struggle of the a quo Petitioners as confirmed in the articles of association of the organization, states that

## Article 9

### Functions:

1. As the sole partner of the Government to facilitate members in terms of organizational verification, ceremonial leader certification, and other interests related to trust in God Almighty that will be arranged later.
2. Bridging the reciprocal relations of members with the government or other parties as part of the national solution in accordance with the objectives of Article 8.
3. Creating mutual understanding and respect among believers in God Almighty and inter-faith belief in God Almighty with followers of other religions towards national unity and unity framed in Unity in Diversity, Tan Hana Dharma Mangrwa imbued with love in accordance with Article 6.

## Article 10

### Duties

1. Fostering its members to maintain the purity of the teachings of God in accordance with the first principle of Pancasila, namely the Godhead.
2. Fostering citizens to achieve happiness and well-being physically and mentally both in the world and then in the eternal realm.

3. Guiding members to always be aware of the law and comply with the laws and regulations of the Unitary Republic of Indonesia.
  4. Fight for the right of existence and the right to live the belief in God Almighty in the legislation, including its implementation.
  5. Helping members who face difficulties according to their abilities.
  6. Assist in fostering members to live and practice their teachings, each in order to become a virtuous human being.
  7. Exploring, upholding and preserving the noble values of ancestral heritage.
5. Whereas the Petitioner, the Related Party is an organization formed to accommodate groups or communities of faith followers, both those that have been registered as an organization, and those that have not been organized in the Directorate of Trust in God Almighty and the tradition of the Directorate General of Culture Ministry of Education and Culture as reflected in the budget basic organization.

## Article 18

### Membership

1. Membership of the Luhur Council of Trust in God Almighty, Indonesia is voluntary to be actively carried out and agreed to an agreement on the nature of belief in God Almighty.



2. Members of the Supreme Council of Trust in God Almighty, Indonesia is an organization or group of adherents of belief in God Almighty.
3. Members of the Supreme Council of Trust in God Almighty, Indonesia consists of ordinary members, extraordinary members, and honorary members.
6. Whereas the legal standing and state recognition of the Petitioner, Related Parties and also all groups or communities that support the belief to be recognized and respected by their traditional rights, including the right to religion according to their traditional customs, are also recognized by the constitution in Article 18B paragraph (2) of the Constitution 1945 which states, "The State recognizes and respects the units of customary law communities along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as stipulated in the law."
7. Whereas by referring to Article 28C paragraph (2) of the 1945 Constitution, it can be said that the Petitioner, the Related Parties have a legal standing or legal standing collectively (organization or association) to fight for the 12 interests of the rights of communities or groups of trustees in terms of guaranteed fulfillment all constitutional rights, like other citizens. As regulated in Article 28C paragraph (2) of the 1945 Constitution states, "Every person has the right to advance themselves in fighting for their collective rights to develop society, nation and state."

8. Whereas the Petitioner and the Related Parties have the same legal position, rights and obligations as Indonesian citizens. And especially as a citizen of faith such as the Petitioners in the a quo case, so that the Petitioner and the Related Parties feel it is important to be involved in fighting for the fulfillment of the constitutional rights that are being tested through the petition to review the a quo Law.
9. Whereas in a judicial review session in the Constitutional Court, it is possible for the involvement of Related Parties who feel their rights and authority will be affected by the process of testing an Act in the Constitutional Court.
10. Whereas based on the provisions of the Constitutional Court Regulation Number 5 of 2006 concerning Guidelines for Procedure in judicial review cases, the parties referred to in Article 13 paragraph (1) letter g, referred to as Related Parties are Related Parties with direct and indirect interests, as regulated in Article 14 paragraph (3).

Related Parties with indirect interests are:

- (a) parties because the position of the main tasks and functions need to be heard by their statements; or
- (b) the party whose statement needs to be heard as ad informandum, that is the party whose rights and / or authority are not directly affected by the principal of the application, but because of their high concern for the intended application.

11. Whereas as an organization formed to become a forum for the struggle for the fulfillment of the constitutional rights of citizens of trust, the Related Party Petitioners have an indirect interest in what is being tested in the a quo Law. Considering the right and authority of the Noble Assembly which up to now has been around 157 organizations or communities of trust followers will be greatly affected, both the impact and the consequences arising from the Judgment of Law Number 23 of 2006 concerning Population Administration in conjunction with Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration of the 1945 Constitution of the State of the Republic of Indonesia. Whereas the constitutional impairment suffered by the Petitioner reviewing the a quo Law was also experienced by the Related Party Applicant, both individually and organizationally. The non-recognition of the trustees of God Almighty in the a quo Law certainly has a constitutionally negative impact and effect and this is certainly not in accordance with the guarantee of respect and recognition that is stated in the 1945 Constitution that there are derivatives of violations of human rights. other constitutional rights which are present as a logical consequence of violation of the failure to fulfill recognition and respect for belief in God Almighty as a religion have also been experienced by Petitioners Related Parties so far.
12. Whereas based on the description above, the Related Party Petitioner as an organization of the Association of Supreme Assemblies of Trust in God Almighty Indonesia who is dedicated to fighting for the rights and interests

of the residents of the faithful group also has a legal standing or legal standing as a Related Party in accordance with the intent in Article 14 paragraph (1) Constitutional Court Regulation Number 06/PMK/2005 which states that the Related Party referred to in Article 13 paragraph (1) letter g is a party that has a direct or indirect interest in the subject matter of the petition.

Therefore, the Related Party Petitioner believes that the Related Party Petitioner has a legal standing or legal standing and legal interests as Related Parties in the petition for a quo review of the 1945 Constitution.

### **Arguments of Related Party Petitioners**

Article 61 paragraphs (1) and (2) of Law Number 23 of 2006 in conjunction with Article 64 paragraphs (1) and (5) of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration is in conflict with 1945 Constitution.

1. Whereas the norm of the law being petitioned for review is Article 61 paragraph (1) and paragraph (2) of Law Number 23 concerning Population Administration reads  
  
paragraph (1):

“The Family Card contains information about the Family Card number column, the full name of the head of the family, and family members, Personnel Reg. No., gender, address, place of birth, date of birth, religion,

education, occupation, marital status, relationship status in the family, nationality, immigration documents, parents' name.”

paragraph (2):

“Religious information as referred to in paragraph (1) is for residents whose religion has not been recognized as a religion based on the provisions of the legislation or for the followers of the faith is not filled out, but still served and recorded in the population database.”

And Article 64 paragraph (1) and paragraph (5) of Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration reads

paragraph (1):

“The electronic ID Card includes a picture of the Garuda Pancasila symbol and a Map of the Unitary State of the Republic of Indonesia, containing population data elements, namely Personnel Reg. No., name of place/date of birth, male or female, religion, marital status, blood type, address, occupation, citizenship, passport photo, validity period, place and date of issuance of electronic ID Card, and signature of the owner of electronic ID Card.”

paragraph (5):

“Population data elements regarding religion as referred to in paragraph (1) for residents whose religion has not been recognized as a religion

based on the provisions of the legislation or for followers of faith are not filled in, but are still served and recorded in the population database.”

2. Whereas the provisions of Article 61 paragraph (1) juncto paragraph (2) and Article 64 paragraph (1) in conjunction with paragraph (5) of the Population Administration Law are contrary to the principles of guarantee, recognition, protection, and fair legal certainty, as well as fair treatment. the same before the law as guaranteed by Article 28D paragraph (1) of the 1945 Constitution that everyone has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law.
3. The a quo articles do not guarantee full recognition as citizens who are entitled and free to choose their beliefs and religions in accordance with their beliefs. By way of recognition of beliefs and religions that are only limited to formalities, filling population databases, and not included in the religion column on the electronic ID Card or Family Card.
4. Whereas with no inclusion of trust in the religious column of electronic ID Card and Family Card, even though in the a quo Law it is mentioned but still being served and recorded in the population database causes unequal treatment between citizens. Making the certainty of the service of his constitutional rights erased and the obscurity of the service ultimately violates the basic rights of citizens generally not fulfilled.

5. Whereas the Related Party Petitioner assesses what is often experienced by groups or communities that support the faith and the a quo Case Petitioner due to the presence of a variety of different interpretations among stakeholders regarding the services of electronic ID Card and Family Card as well as other constitutional rights such as birth certificates, recognition legal marriage 15 through marriage registration in marriage book, and marriage registration database sourced from Article a quo which requires the religious column to be left blank for religious beliefs and adherents outside the six recognized religions. All these discriminatory treatments certainly do not reflect what the Petitioners must have a quo case. Petitioners of Related Parties and other groups of trustees as referred to in Article 28D paragraph (1) of the 1945 Constitution that everyone has the right to recognition of guarantees, protections and fair legal certainty, and equal treatment before the law.
  
6. Whereas the a quo articles contradict the principle of equality before citizens of the law (equality before the law). This is because the a quo articles show there is no equality or equality in law for every citizen. Shows a different treatment between citizens, namely differentiating the management of KK and electronic ID cards between the followers of the faith and the citizens in general, by emptying the column of religion for the followers of the trust.

7. Whereas the services referred to in the a quo articles that do not guarantee legal certainty, equal rights and discriminatory also contradict the principles and principles of service.
  
8. Public services regulated in Article 4 of Law Number 25 of 2009 concerning Public Services which states, "The delivery of public services is based on:
  - a. Public interest.
  - b. Legal certainty.
  - c. Equal rights.
  - d. Equal rights and obligations.
  - e. Professionalism.
  - f. Participatory.
  - g. Equality of treatment/non-discrimination.
  - h. Openness.
  - i. Accountability
  - j. Facilities and special treatment for vulnerable groups.
  - k. Timeliness, and
  - l. Fastness, convenience, and affordability."



9. Whereas discriminatory treatment with no flow of faith believers in the column of religion is clearly also contrary to Article 28I paragraph (2) of the 1945 Constitution which states, "Every person has the right to be free from discriminatory treatment on any basis and has the right to get protection against discriminatory treatment. that."
10. Whereas the discriminatory treatment of followers of beliefs and adherents of religions outside of the six religions is not in line with the opinion of the Constitutional Court in Decision Number 19 / PUU-VI / 2008 concerning the testing of the Religious Courts Law which has given a view on the Indonesian state's understanding of relations between state and religion. According to the Court in the a quo Decision it has been expressly stated that Indonesia is not a religious state based on only one particular religion. However, Indonesia is also not a secular state which does not pay attention to religion at all and surrender religious affairs entirely to individuals and society. Indonesia is a Godhead that protects every religion to carry out their respective religious teachings.
11. Whereas the Petitioner, the Related Party finally considered that Law Number 23 of 2006 concerning Population Administration in conjunction with Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration, as the substance of the reasons for the petition for judicial review the law currently being examined by the Constitutional Court, particularly Article 61 paragraph (1) and paragraph (2) of Law Number 23 of 2006 in conjunction with Article

64 paragraph (1) and paragraph (5) of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration, in our understanding, does not reflect the principle of equality of citizens before the law. Contrary to the principles of the rule of law, violations of citizens' security guarantees constitute discriminatory provisions for citizens. Violation of these constitutional rights ultimately results in the impact of logical consequences in the form of derivatives of violations of other human rights violations, such as violations of the right to education, the right to work, the right to obtain birth rights, the right to obtain marriage books, etc., as perceived by the applicants for testing this law. In fact, the opening and trunk of the constitution also has recognized the existence of rights to indigenous peoples, along with the existing flow of belief and life in it as an inseparable unity in diversity. Therefore, the a quo articles are very contradictory to the 1945 Constitution.

12. Petitem. Based on the reasons described above and the evidence submitted, the Petitioners, the Related Parties, are asking the Panel of Judges of the Constitutional Court who examined the a quo case to make a decision with the following decision.

- 1) To grant the petition of the Petitioner as a Related Party who is not directly interested in the a quo case.
- 2) Stating Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Act is contrary to the 1945 Constitution. Therefore, it does not have binding legal force insofar as it is not

interpreted or conditional constitutional, religious phrases, including believers of any faith and religion.

- 3) Stating Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Act is contrary to the 1945 Constitution.
- 4) Stating Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Act does not have binding legal force with all its legal consequences.
- 5) Order the loading of this ruling in the Official Gazette of the Republic of Indonesia accordingly.

If the Honorable Constitutional Justice Panel has another opinion, ask for the fairest decision.

[2.6] Considering whereas the Petitioners submitted written conclusions received by the Registrar's Office of the Court on May 12, 2017 which in essence remained at their founding;

[2.7] Considering whereas to shorten the description in this decision, everything that happens in the trial is sufficiently appointed in the Minutes of the Trial, which is an inseparable part of this decision;

### **3. LEGAL CONSIDERATIONS**

#### **Court Authorities**

[3.1] Considering whereas based on Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), Article 10 paragraph (1) letter a of Law Number 24 of 2003 concerning the Constitutional Court as amended by the Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia of 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as MK Law), and Article 29 paragraph (1) letter a Law Number 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076), the Court has the authority to adjudicate at the first and last level whose decisions are final to test the Law against the 1945 Constitution;

[3.2] Considering whereas because the Petitioners' petition is a constitutionality review of the Act in casu Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of Law Number 23 of 2006 concerning Population Administration as already amended by Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Number 232 of 2013 and Supplement to the State Gazette of the Republic of Indonesia Number 5475, hereinafter referred to as Population Administration Law) of the 1945 Constitution The Court has the authority to adjudicate the petition of the Petitioners;

### **Legal Standing of the Petitioners**

[3.3] Considering whereas based on Article 51 paragraph (1) of the Constitutional Court Law and its Elucidation, those who can submit applications for judicial review of the 1945 Constitution are those who consider their constitutional rights and/or authorities granted by the 1945 Constitution to be impaired by the enactment of a Law, namely:

- a. individual Indonesian citizens (including groups of people who have the same interests);
- b. customary law community unit as long as it is still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia as stipulated in the Law;
- c. public or private legal entity;
- d. state institutions;

Therefore, the Petitioner in the examination of the Law against the 1945 Constitution must explain and prove in advance:

- a. his position as Petitioner as referred to in Article 51 paragraph (1) of the Constitutional Court Law;
- b. impairment of constitutional rights and/or authorities granted by the 1945 Constitution resulting from the coming into effect of the Law petitioned for review;

[3.4] Considering also that the Court since Decision of the Constitutional Court Number 006/PUU-III/2005 dated May 31, 2005 and Decision of the Constitutional

Court Number 11/PUU-V/2007 dated September 20, 2007, and subsequent decisions have the opinion that the loss of rights and/or authority constitutional as referred to in Article 51 paragraph (1) of the Constitutional Court Law must meet five conditions, namely:

- a. there are constitutional rights and/or authorities granted by the 1945 Constitution;
- b. the constitutional rights and/or authorities are considered by the Petitioner to be impaired by the coming into effect of the Law petitioned for review;
- c. the constitutional impairment must be specific and actual or at least potential which according to logical reasoning will certainly occur;
- d. there is a causal verband between the intended loss and the enactment of the Law petitioned for review;
- e. there is possibility that with the granting of the petition the constitutional impairment as argued will not or no longer occurs;

[3.5] Considering whereas based on the description as referred to in paragraph [3.3] and paragraph [3.4] above, then the Court will consider the legal standing of the Petitioners as follows:

1. Whereas the Petitioners postulate as individuals of Indonesian citizens who adheres to trust;
2. Whereas Petitioner I is one of the 21,000 followers of the Marapu Community's faith in East Sumba and as many as 40 thousand people on

Sumba Island who have been violated their rights to population services. With its identity as an adherent of trust, according to Petitioner I, marriages between adherents of the Marapu Community are traditionally not recognized by the state. As a result, the children of the Marapu Community have difficulty in obtaining a Birth Certificate. Likewise with the issue of the electronic ID Card, to get your electronic ID Card easily, some adherents are forced to lie writing down religion outside of their belief in the electronic ID Card;

3. Whereas Petitioner II is a Parmalim religious believer in North Sumatra who had been forced to choose a recognized religion to make it easier in the process of making electronic ID Card;
4. Whereas Petitioner III is an adherent of the Ugamo Nation Batak belief in Medan, North Sumatra. Petitioner III argues that his son who is also a follower of Ugamo Bangso Batak has been refused a job, even though his grades and achievements are good because the religious column on electronic ID Card has a striped mark. Likewise, when working, the person has difficulty receiving wages because the company and the bank question the religious column that is left blank. In addition, in order to be able to access business capital from banks or cooperatives Petitioner III was forced to change the religious column in electronic ID Card and Family Card with Christianity;
5. Whereas Petitioner IV is a follower of the Sapto Darmo faith which, along with other Sapto Darmo followers, received a misguided stigma from the

community due to the emptying of the religious column on the electronic ID Cards. In addition, according to Petitioner IV, due to the emptying of the religious column on his electronic ID Card, his family's funeral was denied at any public cemetery in Brebes Regency. Likewise, their children who have difficulty in accessing education and entering primary school, because they are known to hold the Sapto Darmo Trust and when they have been forced to attend school subjects and teachings of Islamic education which actually contradicts their beliefs and beliefs as Sapto Darmo Beliefs;

6. Whereas hereby, the Petitioners assess the factual existence of the Population Administration Law or at least the potential to impair the constitutional rights of the Petitioners. The presence of the Population Administration Law in a direct or indirect way has harmed the applicant and other adherents of belief in Indonesia because it was treated discriminatively;

[3.6] Considering whereas based on Article 51 Paragraph (1) of the Constitutional Court Law, and decisions of the Court regarding the legal position, as well as the argument of the Petitioners who feel disadvantaged due to the enactment of Article 61 paragraph (1) and paragraph (2) and Article 64 paragraph (1) and paragraph (5) of the Population Administration Law, one of which causes discrimination, according to the Court, the Petitioners have constitutional rights that have been impaired by the coming into effect of the Law petitioned for review. The loss is specific and actual in nature and there is a



causal relationship (causal verband) between the intended loss and the enactment of the norms of the Law petitioned for review, so there is a possibility that if the application is granted then the constitutional loss as argued will not occur. Accordingly, according to the Court the Petitioners have the legal standing (legal standing) to submit the a quo petition;

[3.7] Considering whereas because the Court has the authority to adjudicate the a quo petition and the Petitioners have the legal position to submit the a quo petition, then the Court will consider the principal of the petition.

#### Principal Petition

[3.8] Considering whereas the Petitioners argue that Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Law, respectively, states as follows.

#### **Article 61**

- (1) *The Family Card contains information about the Family Card number column, the full name of the head of the family and family members, NIK, gender, address, place of birth, date of birth, religion, education, occupation, marital status, relationship status in the family, citizenship, immigration documents, names of people old.*
- (2) *Information regarding the column of religion as referred to in paragraph (1) for residents whose religion has not been recognized as a religion based on the provisions of the legislation or for*

*followers of faith is not filled in, but is still served and recorded in the Population database.*

#### **Article 64**

- (1) *Electronic ID cards include a picture of the Garuda Pancasila symbol and a map of the territory of the Unitary Republic of Indonesia, containing population data elements, namely Personnel Reg. No., name, place of birth, male or female, religion, marital status, blood type, address, occupation, citizenship, passport photo, validity period, place and date when the Electronic ID cards was issued, and the signature of the owner of the Electronic ID cards.*
  
- (5) *Population data elements regarding religion as referred to in paragraph (1) for residents whose religion has not been recognized as a religion based on the provisions of the legislation or for the followers of faith are not filled out, but are still served and recorded in the population database.*

contradicts Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution, with reasons as follows:

- 1) Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Law are contrary to the rule of law state as affirmed in Article 1

paragraph (3) of the 1945 Constitution because of human rights and / or the constitutional rights of the Petitioners to obtain potential KK and KTP-el are eliminated by the provisions of the aforementioned articles, even though in the a quo provision it is stated to be still served and recorded in the population database;

- 2) Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Law are contrary to legal certainty and equal treatment before the law guaranteed by Article 28D paragraph (1) of the 1945 Constitution because between one norm and another are considered to be contradictory and give birth to different interpretations. Based on these articles, for adherents of faith/followers or for adherents of a religion that has not been recognized as a religion, the religion column is left blank, while in accordance with Article 58 paragraph (2) of the Population Administration Act "religion/belief" is part of individual data that must be recorded in population database. At the same time, these articles also lead to differences in the management of KK and KTP-el between the followers of trust and other citizens. Where the management of family cards and KTP-el between trust supporters and citizens in general there are different treatments;
- 3) Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration

Act violates the guarantee of equality of citizens before the law as guaranteed by Article 27 paragraph (1) of the 1945 Constitution because of the treatment which is not the same before the law between citizens, that is between adherents / followers of faith and religious citizens who are recognized according to statutory regulations in accessing public services. The unequal treatment referred to has caused conflict with the principle of equality of citizens before the law and government as guaranteed in the 1945 Constitution;

- 4) Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Law violates the right of citizens not to be treated discriminatively as guaranteed by Article 28I paragraph (2) of the 1945 Constitution because of the article -pasal a quo is a discriminatory provision for followers of faith or for adherents of a religion that has not been recognized by the state. By not filling the religious column for the followers of the faith, this is an exception based on the distinction on the basis of religion or belief which results in the reduction, deviation or elimination of the recognition, implementation or use of human rights (HAM) and basic freedoms in the life of the individual. and collectively in the political, economic, legal, social, cultural and other aspects of life.

5) Based on all the arguments above, the Petitioners conclude that Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Act are in conflict with:

- a) the principle of the rule of law, as regulated in Article 1 paragraph (3) of the 1945 Constitution;
- b) the right to legal certainty and equal treatment before the law, as provided for in Article 28D paragraph (1) of the 1945 Constitution;
- c) the right to guarantee equality of citizens before the law, as provided for in Article 27 paragraph (1) of the 1945 Constitution; and
- d) the right to be free from discriminatory treatment on any basis, as provided for in Article 28I paragraph (2) of the 1945 Constitution,

therefore the Petitioners therefore request that the Court declare:

1. The word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Law contradicts conditionally with the 1945 Constitution and has no binding legal force insofar as it does not include "belief";

2. Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Law is contrary to the 1945 Constitution and has no binding legal force.

[3.9] Considering whereas in order to strengthen their arguments, the Petitioners have submitted evidence of letters/writings that were given evidence of P-1 through evidence P-14 as well as 6 (six) witnesses and 8 (eight) experts, each of whom had heard his statement in the hearing and/or have read the written statement (as fully contained in the Seated Case section). The Petitioners also submitted their conclusions received at the Registrar's Office of the Court on May 12, 2017;

[3.10] Considering whereas the President gave a statement at the hearing on December 6, 2016 (as detailed in the Seated Case section).

[3.11] Considering whereas the DPR submitted a written statement received at the Registrar's Office of the Court on April 17, 2017 (as detailed in the Seated Case section).

[3.12] Considering whereas the Related Party of the Supreme Council of Trust in God Almighty Indonesia (MLKI) has provided information in the trial on December 6, 2016 (as fully contained in the Seated Case section).

[3.13] Considering whereas after closely examining the petition of the Petitioners, written evidence/letters, expert statements and witnesses submitted by the Petitioners, and the Petitioners' conclusions as well as the statements of the President, the DPR's statement, and the statements of the Related Parties

of the Supreme Council of Trust in God Almighty Indonesia (MLKI ), The Court considers the following:

**[3.13.1]** Whereas before considering further the constitutionality review of Article 61 paragraph (1) and paragraph (2) and Article 64 paragraph (1) and paragraph (5) of the Population Administration Law relating to the emptying of the religious column in KK and KTP-el, the Court will emphasize first In the past, the establishment of religious rights included the right to adhere to the belief in God and the right to public services, as follows:

Whereas the right to embrace religion or belief in God Almighty is a constitutional right of citizens, not a gift from the state. In the idea of a democratic state based on democratic law or rule of law, which is also adopted by the 1945 Constitution, the state is present or formed precisely to protect (which also means respecting and guaranteeing the fulfillment) of these rights. In this case, the Fourth Paragraph of the Preamble of the 1945 Constitution, among others, states, *“Then rather than that to form an Indonesian Government that protects all of the Indonesian people and all of Indonesia's blood spilled ..., then the Indonesian National Independence was compiled in an Indonesian Constitution ...”*;

The basic/elementary statement explicitly stated in the Fourth Paragraph of the Preamble of the 1945 Constitution does not merely explain that the Government of the Republic of Indonesia which was formed with the 1945 Constitution is a continuation of Indonesian National Independence, which was proclaimed on August 17, 1945, but also contains a mandate or order that the

Government One of the tasks of the State of Indonesia to be formed is to protect the entire nation of Indonesia. The task of "protecting all Indonesians" does not only mean protecting the body and soul of Indonesian citizens, including when they are outside Indonesian jurisdiction, but also protecting the rights of the citizens of the country, especially rights which are their human rights. This mandate is then stated more explicitly in Article 28I paragraph (4) of the 1945 Constitution which states, *"The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government"*.

The basic right to adhere to religion, which includes the right to adhere to a belief in God Almighty, is part of human rights in civil and political rights groups. That is, the right to embrace religion and belief in God Almighty is one of the rights in civil and political rights groups derived from or derived from the conception of natural rights. As a human right that comes from natural rights, this right is inherent in every person because he is a human being, not a gift from the state. In the Indonesian context, this statement is no longer merely a doctrinal value but has become the norm in basic law (constitution) and therefore binds all branches of state and citizen power, because it is stated normatively in Article 28E paragraph (1) and paragraph (2) as well as Article 29 paragraph (2) of the 1945 Constitution. Article 28E paragraph (1) of the 1945 Constitution states, *"Everyone is free to embrace religion and worship according to his religion, choose education and teaching, choose work, choose citizenship, choose a place to live in the territory of the country and leave it, and the right to return "*. Furthermore, in Article 28E paragraph (2), it is also emphasized, *"Every person*



*has the right to freedom of belief, to express his thoughts and attitudes, in accordance with his conscience". As for Article 29 paragraph (2) of the 1945 Constitution asserts, "The state guarantees the independence of each population to embrace their respective religions and to worship according to their religion and belief."*

Whereas if the basic legal norms (constitution) above are systematically linked, there are two important points that can be understood. First, Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution are part of Chapter XA related to Human Rights, while Article 29 is the content of Chapter XI related to Religion. Thus, Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution contains recognition of the right of every human being to embrace religion and the right to believe in beliefs. This recognition has the implication that embracing religion and believing in trust is a right inherent in everyone. As a consequence, Article 29 of the 1945 Constitution appears with the formula that the state guarantees the independence of each population to embrace their religion and to worship according to their religion and beliefs. This means that the provisions of Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution constitute recognition of the constitution (state) of the right to freedom of religion and belief for anyone, while Article 29 of the 1945 Constitution is an affirmation of the role that must be performed by the state to guarantee each each resident to be independent in embracing the religion and beliefs professed. Apart from the fact Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution was formulated later when compared to Article 29 of the 1945 Constitution, but the systematic relationship can be understood as such. In fact,

because it was formulated later, Article 28E Paragraph (1) and Paragraph (2) of the 1945 Constitution emphasized the recognition of the right to religious freedom of everyone who had also existed before in the 1945 Constitution.

Based on the description above, it becomes appropriate when Article 28I paragraph (1) of the 1945 Constitution confirms that this right is included in a group of rights which cannot be reduced under any circumstances. Furthermore, because religious rights and beliefs are part of human rights as well as constitutional rights, obligations or responsibilities arise for the state, especially the government, to respect, protect, and fulfill rights [vide Article 28I paragraph (4) of the 1945 Constitution].

If placed in a more universal context, the recognition of religious rights and the belief in God Almighty as mentioned in the constitution is in accordance with the spirit of the formulation of religious freedom as stated in the Universal Declaration of Human Rights and the International Declaration of Human Rights Covenant on Civil and Political Rights (ICCPR) which has been ratified through Law Number 12 Year 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights);

Whereas textually, Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution and Article 29 paragraph (2) of the 1945 Constitution places religion always in relation to belief, where religion is the belief itself. It's just that, by reading and understanding the existence of Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution, religion and belief are very likely to be understood as two different or unequal things, but both are equally recognized

for their existence. Such understanding arises because textually Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution regulates religion and belief separately. Article 28E paragraph (1) of the 1945 Constitution regulates "religious rights and worship according to religion", while Article 28E paragraph (2) of the 1945 Constitution regulates "the right to freedom of belief". Furthermore, by using the conjunctions "and" in the phrase "... and to worship according to his religion and belief", Article 29 of the 1945 Constitution places the matter of "his belief" in proportion to "his religion". Although the phrase is intended for worship, but if the "belief" is considered part of "religion", then the phrase "and belief" would certainly not be used in the formulation of Article 29 of the 1945 Constitution. By only using the phrase "to worship according to his religion", the purpose of guaranteeing the implementation of worship according to religion believed by each resident is enough. However, in reality this is not the case, the word "religion" and the word "belief" are actually used together by using the conjunctions "and". When viewed from the technical aspects of norm formulation, the use of the words "and" indicates cumulative nature. In terms of the terms "religion" and the word "belief" as something that is formulated cumulatively, then both of them are two things that can indeed be grouped differently. If it is understood in the same sense or one is part of the other, then the conjunction "and" certainly will not be used in the formulation of Article 29 of the 1945 Constitution. That when compared with the norm formulations related to religious rights contained in the DUHAM Charter and the International Covenant on Civil and Political Rights, the words "religion" and "belief" are formulated using the conjunctions "and", and also the word "or" as in Article 18

of the UDHR which states that "every person has the right to freedom of thought, belief and religion; this right includes freedom to change one's religion or belief, and freedom to practice his religion or belief in teaching, worship, worship and obedience, both alone and together with others, in public or in private. "(Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance ). The thing that is not much different is also in Article 18 paragraph (2) of the International Covenant on Civil and Political Rights, "no one may be forced to interfere with his freedom to adhere to or accept a religion or belief according to his choice" (no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice). That is, the use of the word "and" means cumulative, while the word "or" indicates an alternative nature. Thus, the terms "religion" and "belief" are understood as two different things that are equalized.

Based on this explanation, the understanding that is built by using lexical interpretation as described in the paragraph above, at least can be used as an initial basis for understanding the position and relationship of "religion" and "belief" as stated in Article 28E paragraph (1) and paragraph (2) 1945 Constitution and Article 29 of the 1945 Constitution. It's just that, to further clarify this matter, a re-examination of the spirit that is behind the formulation of the norms of Article 29 and Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution.

Historically (historical background), the formulation of Article 29 of the 1945 Constitution cannot be separated from discussions on the basis of the state by the founders of the state in discussing the basic matters of the state and the constitution of Indonesian independence before Indonesia gained its independence, both in sessions at BPUPK and in PPKI. In the Grand Meeting of the Constitution Designers Committee, July 13, 1945, in the position of Chair of the Small Committee on the Design of the Constitution, Soepomo conveyed the draft Article 29 which states that "the State guarantees the independence of each population to embrace any religion and to worship according to their respective religions". Furthermore, Oto Iskandardinata proposed that the formulation of Article 29 be changed to:

- (1) *The State is based on God with the obligation to carry out Islamic law for its adherents.*
- (2) *The State guarantees the independence of each population to embrace any religion and worship according to their respective religions.*

On the same occasion, Wongsonagoro proposed that Article 29 paragraph (2) be added with the words "and belief" between the words "religion" and "each" so that the proposal in the second draft of the 1945 Constitution became:

- (1) *The State is based on God with the obligation to carry out Islamic law for its adherents.*

*(2) The state shall guarantee the independence of each population to embrace any religion and worship according to their respective religions and beliefs.*

Whereas later, in the BPUPK Large Meeting on July 15, 1945, in explaining the draft constitution, Soepomo raised the background of the presence of the norm, namely to eliminate the worries or doubts of citizens who were not Muslim. Because there is a norm in paragraph (1) that imposes the obligation to carry out Islamic law for its adherents, to guarantee the rights of citizens who are not Muslim can also practice their religion and belief, then the paragraph (2) was formulated. In connection with this proposal, Dahler proposed a revised formula to be, "The state guarantees the independence of each population to embrace their religion and will worship according to their religion and beliefs". Dahler's proposal was then approved by Hatta and Soepomo, formulating Article 29 paragraph (2).

Whereas in the next stage, in the PPKI Session on August 18, 1945, based on the agreement of the Founders of the Nation, Hatta conveyed the changes to the preamble and the articles of the Draft Constitution which had been produced by the BPUPK before. One of the agreed amendments is Article 29 paragraph (1) to become "a State based on the Almighty God", and eliminate the phrase "with the obligation to carry out Islamic law for its adherents". That was then established as the norm of Article 29 paragraph (1) of the 1945 Constitution that applies today.

From the process of formulating Article 29 paragraph (2) of the 1945 Constitution as described above, the phrase "belief" is indeed not meant to be separate from religion. The inclusion of the word "trust" is for the purpose that followers of religions other than Islam are guaranteed the right to practice religion in accordance with their beliefs. That is, to citizens who are not Muslim, their beliefs are still protected in accordance with these provisions.

Whereas such understanding can also be read when Article 28E paragraph (1) and paragraph (2) are formulated in the amendment to the 1945 Constitution. in the Commission A Meeting of the 2000 MPR Annual Session departing from the BP MPR proposal related to religious rights contained in the draft Article 28E paragraph (1) and paragraph (2) with two alternatives (Comprehensive Text, Book VIII, page 304), namely:

**paragraph (1)**

the first alternative, everyone is free to embrace religion and worship according to their respective religious beliefs.

the second alternative, each person is free to embrace their respective religions and to worship according to his religion and beliefs.

That related to the alternative, Harun Kamil as chairman of the Commission A meeting asked the question, can we solve it by separating religion and beliefs, for example right? To this question, M. Dawam Anwar (from F-KB) responded that the belief was his religion. He stated, "So religion and belief are one, not separate, so religion is its belief. So that is not another meaning, ..

"(Comprehensive Manuscript, Book VIII, p. 305). Along with that response, Hanif Muslih (from F-KB) stated that the F-KB chose the first alternative. Likewise, the F-Reformation, also chose the first alternative and emphasized the word "trust" whose original language from the Koran language is its religious beliefs, because that belief is deeper than belief. In addition, Abdullah Alwahdi (from F-PDU) also agreed to the first alternative, but with the proposed change to the word "trust" replaced with "belief", so the formula became, "everyone is free to embrace religion and worship according to their respective religious beliefs" (Comprehensive Text, Book VIII, page 332).

Whereas in the meantime, on the other hand, Hobbes Sinaga stated the attitude of the F-PDIP who chose the second alternative because it was considered to be in line with Article 29 of the 1945 Constitution. According to him, Article 29 regulates freedom for every citizen, while in Article 28E religious freedom for everyone. So, it can be understood, according to F-PDIP, what distinguishes the regulation of religious rights in Article 28E and Article 29 is the scope of its validity. This opinion was strengthened by Muhammad Ali (also from F-PDIP) who stated that the second alternative clashed with Article 29 paragraph (2) which already existed in the 1945 Constitution (Comprehensive Text, Book VIII, page 319).

From the proposal and discussion related to Article 28E paragraph (1) and paragraph (2), in the VI Meeting of Commission A led by Hamdan Zoelva (F-PBB) concludes the formulation of Article 28E paragraph (1) and paragraph (2) which separates the rights arrangement for "Religion" and "Belief" so that it reads



as follows:

paragraph (1):

“Every person is free to embrace religion and worship according to his religion, choose education and teaching, choose work, choose citizenship, choose a place to live in the territory of the country and leave it and the right to return”.

paragraph (2):

“Everyone has the right to freedom of belief, to express his thoughts and attitudes in accordance with his conscience”.

Whereas based on the explanation of the process of the formation of Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution, "religion" and "belief" are placed as two separate things, where religion and belief are formulated in two different verses. It's just that, as explained above, by placing religious and belief arrangements in two different norms, the 1945 Constitution basically also places beliefs differently from religion. Thus, on the one hand, religion and belief are placed as separate things [Article 28E paragraph (1) and paragraph (2)], but on the other hand, belief is also understood as part of religion (Article 29). However, if it is related to the context of Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution as a regulation of human rights and Article 29 of the 1945 Constitution as a state guarantee of freedom to embrace religion, then in the matter in question concerns the limitation of human rights related to religion and trust, constitutional norms that are more appropriate to

refer to are the provisions of Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution, where religion and belief are regulated as two separate matters. This pattern of regulation, for example, has also been followed by Article 58 paragraph (2) letter h of the Population Administration Act which places religion and belief as two separate matters equally. Population administration is part or one form of meeting the needs of public services as an inherent right for every citizen, so it becomes an obligation for the state to guarantee and fulfill it. Related to this, in consideration of Law Number 25 Year 2009 concerning Public Services (Public Service Law) it is stated that the state is obliged to serve every citizen and population to fulfill their basic rights and needs in the context of public services. Based on the provisions of Article 4 of the Public Service Law, the implementation of public services must be grounded, among other things, on the principle of equal rights and equality of treatment/non-discrimination. The equality of rights is meant that in providing services do not distinguish between ethnicity, race, religion, class, gender, and social status. Furthermore, with regard to equality of treatment/non-discrimination, Elucidation of Article 4 of the Public Service Act outlines that every citizen has the right to receive fair services.

Whereas related to discrimination has actually been given a limit by the Court in Decision of the Constitutional Court Number 024/PUU-III/2005 dated March 29, 2006 which among others states that discrimination can be said to occur if there are any restrictions, harassment, or exclusion that are directly or indirectly based on human differentiation on the basis of religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, political beliefs, which results in the reduction, deviation or elimination of the recognition,

implementation or use of human rights and basic freedoms in life both individually and collectively in the political, economic, legal, social, cultural, and other aspects of life [vide Article 1 number 3 of Law Number 39 of 1999 concerning Human Rights]. The provisions concerning the prohibition of discrimination above are also regulated in the International Covenant on Civil and Political Rights which have been ratified by Law Number 12 of 2005. Article 2 of the International Covenant on Civil and Political Rights states That related to discrimination has actually been given a limit by the Court in Decision of the Constitutional Court Number 024/PUU-III/2005 dated March 29, 2006 which among others states that discrimination can be said to occur if there are any restrictions, harassment, or exclusion that are directly or indirectly based on human differentiation on the basis of religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, political beliefs, which results in the reduction, deviation or elimination of the recognition, implementation or use of human rights and basic freedoms in life both individually and collectively in the political, economic, legal, social, cultural, and other aspects of life [vide Article 1 number 3 of Law Number 39 of 1999 concerning Human Rights]. The provisions concerning the prohibition of discrimination above are also regulated in the International Covenant on Civil and Political Rights which have been ratified by Law Number 12 of 2005. Article 2 of the International Covenant on Civil and Political Rights states, *“Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language,*

*religion, political or other opinion, national or social origin, property, birth or other status.* Mahkamah dalam putusan tersebut menegaskan bahwa benar dalam pengertian diskriminasi terdapat unsur perbedaan perlakuan tetapi tidak setiap perbedaan perlakuan serta-merta merupakan diskriminasi.

Previously, in Decision of the Constitutional Court Number 070/PUU-II/2004 dated April 12, 2005, the Court stated that discrimination could only be said to exist if there were different treatments without any reasonable reason (reasonable ground) in order to make that difference. It is precisely if things that are actually different are treated uniformly that it will cause injustice. In another decision, Decision of the Constitutional Court Number 27/PUU-V/2007, dated February 22, 2008, the Court stated that discrimination is to treat differently the same thing. On the other hand, it is not discrimination if treating differently about different things.

**[3.13.2]** That based on the description in paragraph [3.13.1] above, then the Court will consider the arguments of the Petitioners regarding the constitutionality of Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Law , as follows.

**[3.13.2.1]** Whereas the arguments of the Petitioners who stated Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Law do not reflect guarantees of protection by the state of the rights or independence of citizens who believe in God Almighty and therefore contrary to the principles or ideas of the rule of law

as referred to in Article 1 paragraph (3) of the 1945 Constitution, the Court is of the following opinion:

Whereas the existence of Article 61 and Article 64 of the Population Administration Law aims to realize the orderly population administration with the establishment of a national population database as well as the validity and truth of the population documents issued. KTP-el is part of an effort to accelerate and support the accuracy of building a national population database. Efforts to realize orderly population administration through the construction of a population database in accordance with the Law a quo is a very appropriate step for the progress of life as a nation and state. Therefore, planning and implementation of government programs will run well if departing from an orderly and correct population data. Even more so when referring to Article 61 and Article 64 which is under the sub-chapter "Population Documents" in which population documents are documents that have legal force as authentic evidence that includes the regulation of a number of citizens' rights including rights to freedom religious and belief. Therefore, efforts to conduct orderly population administration absolutely must not reduce the rights of the citizens concerned including the right to freedom of religion and belief. The population database that is compiled must be in the framework of respecting, protecting, and fulfilling the rights in question so that the population database will be arranged more accurately, because there will be no citizens recorded in the population database in which the population data element is not filled in or filled in incorrectly. with exactly what religion or beliefs they profess.

That the understanding of the term "religion" in Article 61 paragraph (1) will only be found if the context is understood in paragraph (2). The same thing applies to the term "religion" in Article 64 paragraph (1) which means that understanding can only be found by understanding the context with paragraph (5). Therefore, an evaluation of the constitutionality of the term "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Law must also be placed in such a context.

In order to assess the constitutionality of the context of a norm, there are three principles in contextual interpretation, namely: first, the principle of *noscitur a sociis*, which implies that a word or term must be related to its chain; second, the principle of *eiusdem generis*, which implies that the meaning of a word or term is specifically limited in its group; and third, the principle of *expressio unius exclusio alterius* which implies that if a concept is used for one thing, it does not apply to other things. If the three principles in contextual interpretation are applied in the *a quo* petition, then:

- (i) in accordance with the principle of *socioscis a sociis*, the word or term "religion" in Article 61 paragraph (1) and in Article 64 paragraph (1) of the Population Administration Act if observed in the series with the word or term "religion" in Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Law has turned out that the word or term "religion" is intended as a religion in the sense of "being recognized as a religion in accordance with the provisions of the Statutory Regulations", which means not including belief in God Almighty One;

- (ii) in accordance with the principle of *eiusdem generis* it has also been shown that the word or term "religion" in Article 61 paragraph (1) and in Article 64 paragraph (1) as well as the term "religion" in Article 61 paragraph (2) and in Article 64 paragraph (5) The Population Administration Act by the legislators is indeed used solely for the definition of religion "which is recognized as a religion in accordance with the provisions of the Statutory Regulations", so that it cannot be used as an understanding that includes belief in God Almighty;
  
- (iii) in accordance with the principle of *expressio unius exclusio alterius* it has also been found that the legislators refer to the concept of "religion" in Article 61 paragraph (1) and paragraph (2) as well as in Article 64 paragraph (1) and paragraph (5) of the Law Population Administration is only intended to be used for one thing, in this case religion "which is recognized as a religion in accordance with the provisions of the Legislation", so again in this case it does not include the notion of belief in God Almighty.

Based on the three principles in the contextual interpretation above, it has been proven that the Population Administration Law, in casu Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5), hold to or adhere to the position that "Religion" in question is a religion that is recognized in accordance with statutory regulations. In other words, the right or freedom of citizens to adhere to a religion is limited to a religion that is recognized in accordance with statutory regulations. Consequently, in a *contrario* manner,

the constitutional responsibility or obligation of the state to guarantee and protect the rights or independence of citizens to adhere to religion, which in fact also includes trust in God Almighty, is also limited to citizens who adhere to a religion recognized in accordance with the provisions of the regulations legislation. This is not in line with the spirit of the 1945 Constitution which expressly guarantees that each citizen is free to embrace religion and beliefs and to worship in accordance with that religion and belief.

Whereas there is a statement in Article 61 paragraph (2) and in Article 64 paragraph (5) of the Population Administration Law which states that for trustees the "religion" column is not filled in, but is still served and recorded in the Population database, it is not intended to provide protection and state guarantees for citizens who believe in God Almighty, but are merely a confirmation of the state's obligation to provide services to every citizen in accordance with the data contained in the population database which is indeed the duty and obligation of the state.

Another thing that is more fundamental is that by analyzing the norm formulation in Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Act means the Act a quo implicitly constructs rights or freedom of religion, which in fact also includes belief in God Almighty, as a gift of the state. On the contrary, the right or freedom to adhere to religion (including adhering to the belief in God Almighty) is a right that is inherent in every person because that right is derived from a group of natural rights, not a state gift. Because the right to religion and



adherence to trust is one of human rights, then as a rule of law which requires one of them the protection of human rights, so that it brings the consequences of the state's responsibility to ensure that the rights of its citizens are truly embodied in practice or the reality of the day. -day. Moreover, when those rights are firmly stated in the Constitution, so they become part of the constitutional rights, the responsibility of the state to guarantee the enjoyment of those rights becomes stronger because it has become the constitutional obligation of the state to fulfill them as a consequence of recognition of the position of the Constitution (in casu of the 1945 Constitution) as the supreme law.

Based on all the above considerations, the Petitioners' argument stating that the word or term "religion" in Article 61 paragraph (1) if connected to Article 61 paragraph (2) and the word or term "religion" in Article 64 paragraph (1) if connected Article 64 Paragraph (5) of the Population Administration Law is contrary to the principles or ideas of the rule of law, as referred to in Article 1 paragraph (3) of the 1945 Constitution, as long as it is not interpreted as including "trust", it is grounded according to law;

**[3.13.2.2]** Whereas the arguments of the Petitioners stating Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Law are contrary to legal certainty and equal treatment before the law as guaranteed by Article 28D paragraph (1) The 1945 Constitution and violates the guarantee of equality of citizens before the law as determined in Article 27 paragraph (1) of the 1945 Constitution, the Court is of the following opinion:

Whereas with no understanding of the terminology of "religion" in Article 61 paragraph (1) and in Article 64 paragraph (1) of the Population Administration Law including trust, the norms of the a quo Law do not provide recognition, guarantees, protection and legal certainty. fair and equal treatment before the law for citizens who believe in the Almighty God with citizens who are referred to by the a quo Law as adhering to "a religion recognized as a religion in accordance with statutory provisions". With the establishment of a legislator that the meaning of "religion" is religion in the sense that it is recognized as a religion in accordance with the provisions of the Statutory Regulations, for adherents of the faith certainly do not get recognition, guarantees, protection, and legal certainty, moreover, moreover equal treatment before the law. Confession is not possible because belief is not included in the understanding of religion. Likewise, legal certainty. Because legal certainty is obtained by adherents of belief in God Almighty is certainty that they are not adherents of a religion that is recognized in accordance with the provisions of the legislation. This at the same time makes it impossible for them to enjoy equal treatment before the law in a fair manner because conceptually in the construction of the Population Administration Law they are not included in the notion of religion.

Likewise, if it is associated with guarantees of equal treatment before the law and government, believers have been distinguished from the start with adherents of religions recognized in accordance with statutory regulations in which such distinctions, as considered above, are not based on constitutional reasons. Meanwhile, the obligation to uphold the law and government remains attached to them as Indonesian citizens.

In addition, the factual existence of Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Law in fact has caused uncertainty, different interpretations, and is not consistent with other norms in the law the same law as Article 58 paragraph (2), where it has the effect that the citizens of a faithful group find it difficult to obtain Family Card or electronic Resident Identity Card. The blanking of the population data element on religion has also impacted on the fulfillment of other rights, such as marriage and population services. Thus, adherents of trust do not get guarantees of certainty and equality before the law and government as obtained by other citizens. At the same time, this is a loss of constitutional rights of citizens which should not be allowed to occur. The events experienced by Petitioner II, Petitioner III, and Petitioner IV where they encountered obstacles in accessing public services, even to the difficulty of finding work, were not a matter of implementing norms but rather of logical consequences of the notion of "religion" embraced by the Population Administration Law which does not include believers in God Almighty as a part of it. Likewise the events experienced by Petitioner I so that the person concerned was forced to lie about his beliefs by including certain religions which were said to be recognized in accordance with the laws and regulations in order to obtain public services.

Whereas the argument of the Petitioners who stated Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Law violates the right of citizens not to be treated discriminatively as guaranteed by Article 28I paragraph (2) 1945 Constitution, the Court is of the following opinion:

**[3.13.2.3]** Whereas the argument of the Petitioners who stated Article 61 paragraph (1) and paragraph (2) as well as Article 64 paragraph (1) and paragraph (5) of the Population Administration Law violates the right of citizens not to be treated discriminatively as guaranteed by Article 28I paragraph (2 ) 1945 Constitution, the Court is of the following opinion:

Whereas by referring to the definition of discrimination in the decisions of the Court, including the Decision of the Constitutional Court Number 070/PUU-II/2004, dated April 12, 2005, Decision of the Constitutional Court Number 024/PUU-III/2005, dated March 29, 2006, and Decision The Constitutional Court No. 27/PUU-V/2007, dated February 22, 2008, differences in the arrangements between citizens in terms of inclusion of population data elements, according to the Court, are not based on constitutional reasons. The arrangement has treated differently the same thing, namely to citizens of faith-followers and religious citizens who are recognized according to statutory regulations in accessing public services. Besides, if it is associated with restrictions on the rights and freedoms with the law as referred to in Article 28J paragraph (2) of the 1945 Constitution, according to the Court such restrictions do not relate to respecting the rights and freedoms of others and also not to fulfill fair demands in life democratic society. On the contrary, the limitation of the a quo right actually results in the unfair treatment of trust-bearing citizens as argued by the Petitioners. By not fulfilling the reasons for limiting rights as contained in Article 28J paragraph (2) of the 1945 Constitution, restrictions on the basis of beliefs that have implications for the emergence of different treatment among citizens constitute discriminatory acts. Therefore, the Petitioners' argument that the

provisions of Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Law are contradictory to Article 28I paragraph (2) of the 1945 Constitution insofar as the word "religion" in the a quo article is not interpreted including trust is grounded according to law.

**[3.13.3]** Whereas based on legal reasons as described above, the word "religion" as contained in Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Law must be declared contrary to the 1945 Constitution as long as it does not include "belief";

**[3.13.4]** That in order to guarantee the constitutional rights of the Petitioners, due to the existence of Article 61 paragraph (2) and Article 64 paragraph (5) the Population Administration Law is a continuation of the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) of the Administrative Law Population which, according to the Court, must be interpreted as including "trust", therefore Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Law loses its relevance and is also subject to arguments regarding the conflicting word "religion" in Article 61 paragraph (1) and Article 64 paragraph (4) of the Population Administration Law above, so that it is declared contrary to the 1945 Constitution, and therefore has no binding legal force. Therefore the Petitioners' argument regarding the unconstitutionality of Article 61 paragraph (2) and Article 64 paragraph (5) of the Population Administration Law is grounded according to law;

**[3.13.5]** That in order to achieve the orderly administration of population can be realized and to remember that the number of believers in Indonesian society

is very large and varied, the inclusion of the element of population data on religion for the followers of trust is only by listing the concerned as a "trust gainer" without specifying the beliefs held in KK and KTP-el, as well as followers of other religions;

[3.14] Considering whereas based on the entire description of the considerations above, according to the Court the Petitioners' argument is grounded according to law;

#### **4. CONCLUSION**

Based on an evaluation of the facts and laws as described above, the Court concluded:

[4.1] The Court has the authority to adjudicate a quo petition;

[4.2] The Petitioners have the legal position to submit the a quo petition;

[4.3] Principal requests are grounded according to law;

Based on the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226), and Law Number 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076);

## **5. INJUNCTION**

### **Adjudicating,**

1. To grant the petition of the Petitioners for all;
2. To declare 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 Amendment to Law Number 23 of 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Number 232 of 2013 and Supplement to the State Gazette of the Republic of Indonesia Number 5475) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force conditionally as long as it does not include "belief";
3. To declare Article 61 paragraph (2) and Article 64 paragraph (5) of Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendment to Law Number 23 of 2006 concerning Administration Population (State Gazette of the Republic of Indonesia Number 232 of 2013 and Supplement to State Gazette of the Republic of Indonesia Number 5475) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force;
4. To order the proper containing of this Verdict in the State Gazette of the Republic of Indonesia.

Thus was adjudicated at the Judicial Consultative Meeting represented by nine Constitutional Justices, namely Arief Hidayat as Chairman concurrently serving as Member, Anwar Usman, Suhartoyo, Wahiduddin Adams, Saldi Isra, I Dewa Gede Palguna, Aswanto, Maria Farida Indrati, and Manahan M.P Sitompul, respectively as Members, on Wednesday, the eighteenth day of October, two thousand and seventeenth, pronounced in the Plenary Session of the Constitutional Court is open to the public on Tuesday, the seventh day of November, two thousand and seventeen, was finished at 10.27 WIB, by seven Constitutional Justices, namely Arief Hidayat as Chairman concurrently serving as Member, Anwar Usman, Saldi Isra, I Dewa Gede Palguna, Aswanto, Maria Farida Indrati, and Manahan M.P Sitompul, respectively as Members, accompanied by Syukri Asy'ari Subtituter Clerk, as well as presented by the Petitioners and/or their proxies, President or representative, House of Representatives or representative and Related Party/their proxies.

**CHAIRMAN,**

**[Signature]**

**Arief Hidayat**

**MEMBERS,**

**[Signature]**

**Anwar Usman**

**[Signature]**

**Saldi Isra**



**[Signature]**

**I Dewa Gede Palguna**

**[Signature]**

**Aswanto**

**[Signature]**

**Maria Farida Indrati**

**[Signature]**

**Manahan MP Sitompul**

**SUBSTITUTER CLERK,**

**[Signature]**

**Syukri Asy'ari**