

## Appreciate but not Acknowledge: (State Construction Towards Religion and Regulations with Discriminatory Nuances)

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***Abstract:** The meaning and recognition of religions in Indonesia are closely related to politics. Political sentiment during the transition of power from the old order to the new order affects how the State interprets religion in the constitution. Especially during the New Order period, minority religions or beliefs received discriminatory treatment, this fact was evidenced by various regulations that were impartial and protected minority religions and until now these policies continue to be used. The state, in this case, the government is intensively campaigning for the idea and practice of diversity, tolerance, and religious moderation, along with which there are many cases of violence and discrimination based on religious backgrounds. Using a socio-juridical approach, the author then found many regulations related to religion and beliefs that are still discriminatory and do not protect all citizens of the nation, as mandated by the 1945 Constitution.*

*Keywords: Religion, Regulation, Discrimination, Diversity, Government.*

**Abstrak :** Pemaknaan dan pengakuan Agama-agama di Indonesia sangat berkait erat dengan Politik. Sentimen politik saat peralihan kekuasaan dari orde lama ke orde baru berpengaruh terhadap bagaimana Negara memaknai Agama di dalam konstitusi. Terlebih di masa Orde baru agama atau kepercayaan minoritas mendapatkan perlakuan yang diskriminatif, fakta itu dibuktikan dengan berbagai macam regulasi yang tidak berpihak dan melindungi agama minoritas dan sampai sekarang kebijakan-kebijakan tersebut terus digunakan. Negara dalam hal ini pemerintah sedang gencar mengkampanyekan gagasan dan praktik kebhinekaan, toleransi, serta moderasi beragama, seiring dengan itu muncul banyak kasus kekerasan dan diskriminasi berlatar belakang agama. Dengan menggunakan pendekatan sosio-yuridis penulis kemudian menemukan banyak regulasi-regulasi berkaitan dengan agama dan kepercayaan yang masih bernuansa diskriminatif dan tidak melindungi segenap warga bangsa, sebagaimana amanat UUD 1945.

Kata Kunci: Agama, Regulasi, Diskriminatif, Kebhinekaan, Pemerintah.

### Introduction

The state's recognition of the existence of religion, which is limited to six, creates crucial problems in the management of religion in Indonesia. One of the problems that arises is the birth of the dichotomy between 'recognized' and 'unrecognized' religions, majority and minority, global religion and local religion, primitive and modern, and so on. The existence of (recognized) religions has been the 'opponent' of religions that have not been recognized. Recognized religions get conveniences, while unrecognized religions are always positioned as oppressed,

marginalized, and judged religions that do not have a proportionate space for religious expression.<sup>1</sup>

In fact, the development of religion in Indonesia is a process related to various other sectors of life that are very complex. Through a very long historical process, it is enough reason to conclude that gradually religion has become such an important part in mastering the mind of Indonesian society.<sup>2</sup> However, anyone who patiently and carefully reads the history of religion in Indonesia will conclude that another sector of life related to the development of religion in Indonesia is politics. Religion is at stake, starting from the ideological level, the formulation of the constitution, to laws and regulations. Or, to use the phrase Daniel Dhakidae, "Religion is the formulator of identity, if it is not an identity itself, or there is no identity and there may not be an identity without religion as the main contribution in it." However, Dhakidae continued with very plastic language;

*"If religion is so important, why can there only be five religions? With the presence of approximately 300 ethnic and linguistic groups directly related to it in Indonesia, it can be assumed that there are approximately 300 religions spread throughout the archipelago, and thus it can be assumed that there are 300 Gods and Gods worshipped. So where are the approximately 295 other religions?"*<sup>3</sup>

Dhakidae's question opens up another perspective in reading matters of religion and/or belief. Because, in the vocabulary that we use until now, "religion" has a special meaning, namely as a "religion recognized by the state" which, of course, does not include all types of "beliefs" or "beliefs". According to article 29 paragraph 1 of the 1945 Constitution concerning Religion, our country is based on the one and only Godhead, namely the first precept of Pancasila. History records that the first precept was a compromise between Islamic groups that included the obligation to implement Islamic sharia for Muslims by the State, and the national group that wanted a secular state that was neutral to religion. The formulation of "the one Godhead" seems to indicate that this country is more or less religious, but not specifically Islamic. This compromise was then institutionally realized with the establishment of the Ministry of Religious Affairs in 1946, an institution that primarily served the interests of Islam, but it also provided several directorates for other religions.

The root of the problem of the interpretation of the precepts of the one god is the answer to the following two questions: first, on the basis of this precept, should the Indonesian people believe in God and embrace a religion? and second, does the State determine the recognized religions? In the two decades after independence, the answers to these two questions tended to be dim. This is because the political forces at that time were still pulling each other. History records that in the fight between the

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<sup>1</sup> Hasse J, Bernard Adeney Risakotta, Zainal Abidin Bagir, Diskriminasi Negara terhadap Agama: Studi Atas Persoalan Hukum Towani Tolotang Pasca Pengakuan Agama Resmi, *Kawisata: Jurnal Ilmu Sosial dan Humaniora*, Vol. 1, No. 2, 2011, h. 181.

<sup>2</sup> G.J.W. Drewes, *Indonesia: Mistisisme dan Aktivisme*, dalam Von Grunebaum (ed.), *Islam Kesatuan dalam Keragaman* (Jakarta: Yayasan Perkhidmatan, 1983), h. 327.

<sup>3</sup> Daniel Dhakidae, *Cendekiawan dan Kekuasaan dalam Negara Orde Baru*, (Jakarta: Gramedia, 2003), h. 511.

two major political forces, namely the Army and the PKI in mid-1965 and 1966, it became the beginning of how the State constructed what was called Religion. After the events of September 30, 1965, the anti-PKI forces increasingly established close cooperation, especially between religious groups and the army. To strengthen the army's dominance over the PKI, various (political) regulations were made as an effort to block and limit the movements of the PKI. In the 1966 MPRS session, MPRS Decree No. XXV was issued regarding the prohibition of the PKI and Communism, one of Tap's explanations stated that Communism "is contrary to the principles and joints of the life of the Indonesian nation that is godly and religious". communism or precisely the PKI, which ideologically rejected religion and God finally collapsed as an official political force in Indonesia. Meanwhile, the Department of Religious Affairs continues to exist with strong support provided by Islamic parties and mass organizations.<sup>4</sup>

This paper will try to discuss the discourse of religious bagaimana juridical analysis in looking at various discriminatory regulations including how the state constructs religion in Indonesia. Political struggles in the period from 1950 to 1960 affected many policies, one of which was the formulation of religion in the constitution. The decision of the founding fathers to take a middle path in the ideology of the State, neither secular nor the Islamic State turned out to cause problems, one of which was the position of Indigeneous Religion in the State. The debate on this issue is still going on until now. The struggle of adherents of this belief so that their rights can be accommodated by the State continues to be carried out.

### **State Construction Towards "Religion"**

In his classic study, Niels Mulder showed that it was only in 1961 that the Ministry of Religious Affairs succeeded in formulating a minimum definition of "religion" which has become the official definition until now, after the previous attempt (1952) ran aground in the middle of the road.<sup>5</sup> Mulder reminded that the policy has political nuances. The definition of State Religion was motivated by the flourishing of spiritual groups at that time. The Ministry of Justice reported that in 1953 there were more than 360 spiritual groups throughout Java. These groups played a decisive role so that in the 1955 elections the Islamic parties failed to obtain a majority of the votes, and only got 42 percent of the votes. In addition, at the same time, BKKI (Badan Badan Kebatinan Kebatinan throughout Indonesia) was established under the leadership of Mr. Wongsonegoro. In 1957, the BKKI urged Soekarno to formally recognize that "spirituality" was equal to "religion".

It was this political constellation that prompted the Depag in 1961 to propose a definition of "religion". A "religion," by definition, must contain these essential elements: belief in the one and only God, the presence of prophets, scripture, people, and a legal system for its adherents. Of course, with such a definition, many belief groups, spirituality, or community groups that still maintain local religious customs and practices, such as animism, dynamism, are not included in it, so they are

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<sup>4</sup> Mujiburrahman, *MengIndonesiakan Islam : Representasi dan Ideologi*, (Cet I, Yogyakarta : Pustaka Pelajar, 2008), hlm. 281-282.

<sup>5</sup> Niels Mulder, *Kebatinan dan Hidup Sehari-hari Orang Jawa: Kelangsungan dan Perubahan Kultural*, (Jakarta: Gramedia, 1983), h. 5

classified as "unreligious" people. With such a definition, belief groups, spirituality, indigenous peoples, adherents of local beliefs scattered throughout the archipelago who, using the Dhakidae phrase above, belong to the "295 other religions" are marginalized, their local religious practices are denied, or even often labeled as "heretical and misleading". But, at the same time, they are also expected to enter and embrace one of the state-recognized religions. This, as Jane Monnig Atkinson shows in her essay that the use of the term "not yet religious" can be interpreted as "not yet embraced one of the religions recognized by the state".

This understanding, according to Atkinson, implies a modernization agenda that is at the same time a nationalist goal and vision. "The concept of religion implicitly contains an understanding of progress, modernization, and belief in nationalist goals," he wrote. "Groups of society that are considered ignorant, backward, or have no nationalist vision are those who, de facto, do not embrace a religion. Religion is the dividing line between the peasant masses in the countryside and the urban dwellers, on the one hand, and the traditional small communities (which are not fully absorbed into the economic and political system) on the other."<sup>6</sup>

At the paradigmatic level. At the end of January 1965, President Soekarno issued Presidential Decree No. 1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy, which was later confirmed during the New Order era into Law No. 1/PNPS/1965.<sup>7</sup> The emergence of Law No. 1/PNPS/1965 needs to be examined seriously because this law is the main juridical basis for many other laws and regulations in the religious field. Moreover, article 4 of Law No. 1/PNPS/1965 adds "religious offenses" to the Criminal Code (article 156a) which is very important, because it is intended to "protect the sanctity of religion".

I will not reveal in detail the "religious offense", which is now the focus of attention again because of the revision efforts to the Criminal Code which are considered excessive, even trapped in overcriminalization. As shown by Musdah Mulia, the Criminal Code Bill has three defects in terms of "religious offenses": first, it is too ambitious; second, intending to regulate religious life in detail; and, finally, the bill is highly discriminatory against religions outside of official religions.<sup>8</sup> In my opinion, especially in the last question, we must examine the roots in Law No. 1/PNPS/1965.

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<sup>6</sup> Jane Monnig Atkinson, "Religions in Dialogue: The Construction of an Indonesian Minority Religion", dalam Rita Smith Kipp dan Susan Rodgers (eds.), *Indonesian Religions in Transition*, Tucson: The University of Arizona Press, 1987, h. 171 – 186, khususnya h. 177. Untuk diskusi yang lebih luas soal ini, baca Albert Schrauwers' illuminating book, *Colonial 'Reformation' in the Highlands of Central Sulawesi, Indonesia, 1892 – 1995*, Toronto: University of Toronto Press, 2000.

<sup>7</sup> Teks UU dan penjelasannya secara lengkap dapat ditemukan dalam Weinata Sairin (ed.), *Himpunan Peraturan di Bidang Keagamaan*, Jakarta: BPK Gunung Mulia, cetakan kedua, 1996, h. 262 – 268.

<sup>8</sup> Siti Musdah Mulia, "Hak Asasi Manusia dan Kebebasan Beragama", makalah konsultasi publik "Perlindungan HAM Melalui Reformasi KUHP", Jakarta, 3-4 Juli 2007. Untuk tinjauan singkat dan menyeluruh RUU KUHPidana, baca Abdul Hakim Garuda Nusantara dkk., *Ringkasan Eksekutif Kajian Perlindungan Hak Asasi Manusia dalam RUU KUHPidana*, Jakarta: Komnas HAM, 2006; bdk. juga Fulthoni A.M. dkk., *Meninggalkan Jejak Kolonialisme: Catatan Kritis RUU KUHP*, Position Paper Bersama Yayasan TIFA, ELSAM, LBH Press, KRHN, Wahid Institute, Jakarta, 2007.

In article 1 of the explanation of the Presidential Decree of the Republic of Indonesia Number 1 of 1965 concerning the prevention of Abuse and/or Blasphemy. In that section, it is mentioned, among others.<sup>9</sup>

The religions embraced by the Indonesian population are Islam, Christianity, Catholicism, Hinduism, Buddhism, Khong Hu Cu. This can be proven by the history of the development of religions in Indonesia, because these 6 religions are religions that are embraced by almost the entire Indonesian population, so unless they receive guarantees as provided by article 29 paragraph 1 of the Constitution, they also receive assistance and protection as provided by this article. This does not mean that other religions, such as Judaism, Zoroastrianism, Shinto, Theism (Taoism) are banned in Indonesia. They are given full guarantees as provided by article 29 paragraph 2 and are allowed to exist, as long as they do not violate the provisions contained in this regulation or other legislation. Against the body/school of spirituality, the government tries to channel it towards a healthy view and towards the One Godhead.

It is very interesting if this law is placed in the context of its time. As explained in the official explanation, this law was born from the situation at that time where almost throughout Indonesia there were not a few sects or organizations of public beliefs that were contrary to religious teachings and laws. This situation is considered to have caused things that violate the law, break national unity and desecrate religion.<sup>10</sup> In other words, PNPS 1965 was born to protect religions (recognized by the state) from spiritual streams/beliefs. Therefore, when explaining the religions that are embraced by the Indonesian people, the issue of spiritual school or belief is given a special note. There the government tries to channel in the direction of a healthy view and towards the One Godhead. This is in accordance with the Decree of the People's Consultative Assembly No. II/MPRS/1960, Attachment A of Field I, Number 6."<sup>11</sup>

This policy of protection, and the denial of civil rights of those whose beliefs are outside the "state-recognized religion" was systematically and consistently carried out by the New Order regime with a very strong legal basis. At the 1978 MPR session, there was a fierce debate between the government party, Golkar, and the Islamic party PPP regarding the proposal for the sect of faith to be recognized as the official religion. After receiving strong protests from Islamic circles, the faith finally failed to be recognized as an official religion. This is stipulated in the MPR TAP No. IV/MPR/1978 concerning the Outline of the State Direction. In the Decree, it is emphasized that "Belief in God Almighty is not a religion". Departing from this decree, the Minister of Religion issued Instruction No. 4 and 14 of 1978 which outlined the core policy regarding the flow of non-religious beliefs so that it was not included in the religious development program, and sent letters to governors and regents/mayors regarding various aspects of the flow of beliefs.<sup>12</sup>

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<sup>9</sup> Weinata Sairin (Ed), h. 266

<sup>10</sup> Weinata Sairin (ed.), h. 265.

<sup>11</sup> Weinata Sairin h. 267.

<sup>12</sup> Lihat dokumen surat-surat yang dikumpulkan dalam *ibid.*, h. 116 - 145

### **Local Religion and Politics Exclusion**

The term local religions is not widely known in Indonesia. During the New Order period, to distinguish it from the five official religions recognized by the state, the government called it "(stream) of belief in God Almighty". Meanwhile, the adherents differ from each other in saying, some tend to use the terms belief school, spirituality, passion and so on. The current Reform Era laws tend to use the term "religion or belief that has not been recognized based on the provisions of the law". Academically, in addition to the term "local religions" is often used, the term indigenous religions is also often used. This paper tends to use the term local religions to exert the same pressure of necessity between local religions and other religions in terms of civil rights of their adherents. Among the local religions for example Parmalim from West Sumatra, Sunda Wiwitan from West Java, Sapta Dharma from Java, Kaharingan from Kalimantan, Tolotang from South Sulawesi, Wana from Sulawesi Middle and many more.

The pattern of the elimination of belief groups has gained concrete form in two important policies whose influence is still felt today, and the background of the substance of "religious offense" in the revision of the Criminal Code. First, the creation of the PAKEM (Community Belief Stream Supervisor) institution which was first established by the Ministry of Religious Affairs in 1954 to supervise new religions, spiritual groups and their activities. In the hands of the Religious Department, PAKEM has become a kind of "guard dog" against anti-Islamic spiritual movements.<sup>13</sup> In 1960, on the recommendation of Prof. Priyono, the Minister of Education at that time, the authority and duties of PAKEM were placed under the Attorney General's Office.

The PAKEM institution has proven to be very effective, especially since 1961, through the Circular Letter of the Prosecutor's Department of the Central Pakem Bureau No. 34/Pakem/S.E./61 dated April 7, 1961, the PAKEM institution was established in every province and district. Among the duties of PAKEM is to follow, observe, and supervise the movements and developments of all religious movements, all schools of belief/spirituality, checking/studying books, religious brochures/schools of belief, both from within and outside the country.<sup>14</sup> With such broad authority, PAKEM is actually the ultimate control tool in the hands of the state to determine whether a school of belief is classified as "deviant and misleading" and therefore needs to be acted upon. For example, in the case of "Haur Koneng", a sect of belief in West Java in 1993, a government official, as quoted by Dhakidae, asserted this:

*"The deviance and not of a religious sect is determined by a meeting called the Supervisor of the Community Belief Stream. The police only have the authority to take action against followers of the sect if a PAKEM meeting consisting of the Prosecutor's Office, the Ministry of Religious Affairs, the local government and the Police has determined that a religious activity is considered a heretical*

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<sup>13</sup> Niels Mulder, *op.cit*

<sup>14</sup>Ahmad Baso, *Islam Pascakolonial: Perselingkuhan Agama, Kolonialisme, dan Liberalisme*, Bandung: Mizan, 2005, h. 241. Untuk studi hukum kritis terhadap eksistensi Bakor PAKEM, baca Uli Parulian dkk, *Menggugat Bakor PAKEM: Kajian Hukum Terhadap Pengawasan Agama dan Kepercayaan di Indonesia*, Jakarta: ILRC, 2008.

*sect. Furthermore, the prohibition of activities is carried out by the Attorney General's Office.*"<sup>15</sup>

Dhakidae also quoted a Kompas report (August 5, 1993) which gives us a clear picture of the victims who had to fall at the hands of PAKEM: "According to data from the West Java PAKEM team, in West Java there are 63 schools of belief that are still growing and living in society. Previously, the number reached 133 streams, but some have been banned, or disbanded so that the remaining 63 streams. The Haur Koneng group is a new group that has not been registered in the West Java PAKEM Team. Meanwhile, the Head of Public Relations of the Attorney General's Office, Soeparman, SH. MH said, from 1949 to 1992, there have been 517 'dead' religious schools throughout Indonesia."

Until now, PAKEM is still standing and functioning as the ultimate weapon. The case of the attack on JAI (Indonesian Ahmadiyya Community) in Parung, Bogor, in mid-July 2005, for example, as reported by the *Republika* newspaper, was preceded by a meeting at the PAKEM office on January 18, 2005, six months before the attack, which decided to ban the existence of both Ahmadiyya Qadiani and Lahore in Indonesia (*Republika*, September 16, 2005). Likewise, part of the main duties of PAKEM is even included in Law No. 16/2004 concerning the Prosecutor's Office. In the law, according to article 30 (3) the prosecutor's office is also tasked with public order and order by, among other things, carrying out "(c.) supervision of the circulation of printed goods; (d.) supervision of the flow of beliefs that can endanger society and the state; (e.) Prevention of abuse and/or blasphemy".

### **Discriminatory Regulations**

*Policies have systematically marginalized the "unreligious" groups, and denied them civil rights as equal citizens before the law. In the letter of the Minister of Religion No. B/5943/78 addressed to the Governor of East Java, for example, it is stated: "Because the school of belief is not a religion and is a culture, it means that people who follow the school of faith do not lose their religion that they understand and embrace, so that there are no procedures for oaths, marriage, and so on according to the school of belief".<sup>16</sup> The same thing was also emphasized in the letter of the Minister of Religion No. B.VI/11215/1978 addressed to the Governor of KDH I throughout Indonesia. In this last mentioned letter it is explicitly stated: "... and also considering that the issues of mentioning religion, marriage, oaths, burial of the dead are related to religious beliefs, then in the Indonesian state based on Pancasila there is no known procedure for marriage, oath and burial according to the school of belief, and the mention of 'School of Belief' as 'religion' is also not known either in the Identity Card (KTP) and others".<sup>17</sup>*

Considering that KTP is a very important identity card for life in Indonesia, this provision also means that it completely denies the civil rights of citizens who happen to adhere to the school of faith. Including Law No. 23/2006 on Population

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<sup>15</sup> Daniel Dhakidae, h. 559 – 560.

<sup>16</sup> Daniel Dhakidae, h. 116.

<sup>17</sup> Daniel Dhakidae, h. 125.

Administration, which was just passed on December 8, 2006, still requires and continues the old policy, even though this law was drafted and passed during the reform period. This law is interesting because, for the first time, the term "religion that has not been recognized by the state" is used in official state documents to refer to belief groups outside of the six recognized religions. In fact, these groups are very numerous and spread throughout the archipelago.

At the practical level, usually the religion column on the ID card of the belief group must be blank or marked with "—". This, of course, poses its own vulnerability because, lest they are accused of being "atheists" who have no place in this country. Many of them, because of this concern, are forced to fill the religion column with one of the religions recognized by the state, even if they do not believe in or practice that religion.<sup>18</sup> For these groups, their marriages based on religious customs are also not recognized by the state. In fact, in article 2 (1) of Law No. 1/1974 concerning Marriage, it reads "Marriage is valid, if it is carried out according to the law of each religion and its belief". However, as explained in the Letter of the Minister of Religion No. B/5943/1978 dated July 3, 1978 to the Governor of East Java which has been referred to above, in the matter of marriage there are only religious procedures. As a result, the Civil Registry did not want to register their marriage. This discriminatory treatment has prompted many belief groups to complain to Komnas HAM. A report by Gatra Magazine (March 4, 2006, pp. 28-31) mentions 110 married couples in Cilacap, and another 30 couples in Kebumen, Central Java, who have made such efforts. Of course, this number is only a small part of the various local belief groups spread throughout the archipelago.

There is another pattern of discrimination that can be mentioned in the matter of the flow of belief. Given the diversity of forms, beliefs and local religious practices spread throughout the archipelago, it seems that the state is experiencing difficulties in handling them. Often, in this matter, the state takes shortcuts by classifying many local beliefs into one of the recognized religions. This, for example, is reflected in the Depag's policy towards the Tolotang people in South Sulawesi.

This Tolotang community, arbitrarily, was placed by the Ministry of Agriculture under the supervision of the Director General of Hindu Buddhist Guidance based on Decree No. 2 and 6 of 1966 which "appointed Mr. Makkatungeng to conduct guidance and counseling for Tolotang Hindus on behalf of the Director General of Hindu and Buddhist Community Guidance." So, as a result, the indigenous people of Tolotang are required to worship at the temple with rituals according to Balinese Hinduism which is completely foreign to them.<sup>19</sup> Likewise, the Dayak community that adheres to the "Kaharingan faith" has been arbitrarily incorporated into Hinduism since 1980, based on the Minister's Letter No. MA/203/1980 dated April 28, 1980 addressed to the Head of the Regional Office of the Central Kalimantan Provincial Department.<sup>20</sup>

The impact of the above policy is the elimination of the right to religion and belief which is different from the interpretation of the management of official

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<sup>18</sup> Lebih jauh lihat laporan *Forum Keadilan* No. 50, 16 April 2006, h. 18 - 19,

<sup>19</sup> Ahmad Baso, h. 246 - 247.

<sup>20</sup> Lihat dokumennya dalam Weinata Sairin (ed.), h. 146 - 147.



religious institutions Religion is no longer an internal human right, cannot be reduced (non-derogable rights) and is only an individual affair with his God, but religion and belief are authority and determined by the state, believing that outside the provisions of the state, their rights are eliminated. The regulations related to the right to freedom and belief above, it is very clear how the material and content in it clash. The 1945 Constitution, which is the apex regulation, prohibits discrimination against the right to freedom of religion and places it as an inalienable right, but on the other hand, it can be restricted, one of which is for religious reasons, the 1945 Constitution becomes unclear whether the conception of human rights that it adheres to is universal or specific.<sup>21</sup>

### **Conclusion**

The above explanation shows very clearly the consequences that must be borne due to the policy of segregation between state-recognized religions and those who are classified as "not religious". The excluded groups, who constitute the real majority of the nation, have become "foreigners" in their own land. Their beliefs are not respected, their ritual practices are not recognized (in fact, they are often accused of "blasphemy"), and even their civil rights as citizens are denied with all their consequences.

At the level of the policy paradigm, namely how the meaning of religion and/or beliefs or beliefs are constructed is inseparable from the tug-of-war of the political forces of that era (1950-1960s), there was actually no significant change after May 1998. The policy of separating between state-recognized and non-recognized religions is still maintained until now, as can be seen in the formulation of Law No. 23/2006 on Population Administration, which for the first time officially uses the term religion that has not been recognized by the state, as well as very strongly coloring the expansion of the "religious offenses" articles of the Criminal Code Bill. The two core policies of religious control Law No. 1/PNPS/1965 and the PAKEM instrument are still firmly enduring and are often used as the ultimate weapon to ensnare any interpretation or religious practice that is considered to deviate from the "main points of religious teachings" (article 1 of Law No. 1/PNPS/1965). At the same time, the law outlines that only the state (via the Ministry of Religious Affairs) has a monopoly on the authority to interpret which religious teachings are correct.<sup>22</sup>

The political demand for equality is a gamble on the fate of pluralism and even the fate of Indonesia as a "common home". Today, these political demands are increasingly urgent in the midst of the ongoing democratization transition. Because in the midst of today's transition turmoil, tolerance and dialogue are not enough. The democratization transition, if it is only centered on procedural tinkering, holds the

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<sup>21</sup> M. Syafi'i, *Ambiguitas Hak Kebebasan Beragama di Indonesia dan Posisinya Pasca Putusan Mahkamah Konstitusi*, Jurnal Konstitusi, Vol. 8, No. 5, Oktober 2011

<sup>22</sup> Penjelasan resmi pasal 1 UU No. 1/PNPS/1965 mengatakan begini: "Dengan kata-kata 'Kegiatan Keagamaan' dimaksudkan segala macam kegiatan yang bersifat keagamaan, misalnya menamakan suatu aliran sebagai agama, mempergunakan istilah dalam menjalankan atau mengamalkan ajaran-ajaran kepercayaannya ataupun melakukan ibadahnya dan sebagainya. *Pokok-pokok ajaran agama dapat diketahui oleh Departemen Agama yang untuk itu mempunyai alat-alat/cara-cara untuk menyelidikinya.*" Lihat Weinata Sairin (ed.), h. 267.

potential to become the tyranny of the majority, where the owner of the most votes takes all the votes (the winner-take-all device) and denies the rights of the minority, as well as the rights of those who are actually the "real majority" but, because of state policy, become "foreigners" in their own homeland. Regarding religious rights and civil rights of religious people, the state must continue to promote religious freedom, which is implemented in several ways, among others. First, the elimination of the paradigm of dualism of official and non-official religions. If the religion column in the ID card is maintained, the state must stipulate that all religious identities have the right to appear on the ID card. Second, all religions, including religious believers from the concept that has been standardized in the legislation as residents whose religion has not been recognized, must be able to obtain a marriage certificate according to their religion.

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