

# Indigenous Religious Freedom: A Goal to Pursue in Indonesia

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## INTRODUCTION

The legal term for indigenous religions in Indonesia is *kepercayaan* (Indonesian for ‘belief’). *Kepercayaan* may include what some scholars call new religious movements, Javanese mysticism, syncretic movements, and *adat* (indigenous customary practices and traditions). For the purposes of official state recognition of citizens’ religions, *kepercayaan* may even include world religions not otherwise officially recognized by the government such as Judaism, Baha’ism, and others. Prior to 2017, *kepercayaan* was regulated as relating to culture and did not qualify as (and was differentiated from) *agama*, the legal term for one of the six religions officially recognised by the State: Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism.

The politics of official religions are legally based in the Explanation to art 1 of Law No 1/PNPS/1965 (‘The Prevention of the Misuse and/or Blasphemy of Religion’)<sup>1</sup>, which says: ‘the religions that were *embraced* by the people of Indonesia are Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism.’<sup>2</sup> Although the other part of the explanation also says: ‘This does not mean that the other religions ... are banned in Indonesia. They also have the full guarantee as stated in art 29(2) [of the Constitution] ...’.<sup>3</sup> The government does not provide any citizenship services such as ID cards, marriage registration, education, and so on, to anyone who does not convert to one of the recognised six. Prior to 2017, followers of *kepercayaan*, which was governed as culture, were no exception to this rule. Such individuals were required to embrace one of the recognised six religions in order to access their citizenship rights. As Indonesian citizens, they declared their identities as followers of a recognised religion, but practiced *kepercayaan*.

Since 2017, followers of *kepercayaan* may declare *kepercayaan* as opposed to one of the six “official” religions in their ID cards. The State’s amended policy was based on the Decision of the Constitutional Court No 97/PUU-XIV/2016,<sup>4</sup> approving the Judicial Review of two articles of the

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<sup>1</sup> Penetapan Presiden Republik Indonesia Nomor 1/PNPS Tahun 1965 Tentang Pencegahan Penyalahgunaan Dan/Atau Penodaan Agama [Presidential Decree No 1 of 1965 on the Prevention of Misuse and/or Blasphemy of Religion] (Indonesia) art 1. The presidential decree was codified as law through Undang-Undang Republik Indonesia Nomor 5 Tahun 1969 Tentang Pernyataan Berbagai Penetapan Presiden dan Peraturan Sebagai Undang-Undang [Law No 5 of 1969 on Statements on Presidential Decree and Presidential Regulations as Law] (Indonesia) art. 1

<sup>2</sup> Penjelasan atas Penetapan Presiden Republik Indonesia Nomor 1/PNPS TAHUN 1965 Tentang Pencegahan Penyalahgunaan Dan/Atau Penodaan Agama [Explanation on Presidential Decree No 1 of 1965 on the Prevention of Misuse and/or Blasphemy of Religion] (Indonesia) art 1 (emphasis added).

<sup>3</sup> Ibid.

<sup>4</sup> Mahkamah Konstitusi [Constitutional Court of Indonesia], Nomor 97, PUU-XIV, 22 November 2016.

Law on Civic Administration that did not allow followers of anything other than one of the six religions to declare their religion or *kepercayaan* in family and ID cards. The Decision states that for legal purposes, religion must include *kepercayaan*. The government followed up this Decision with a policy with two different forms of ID cards. The first form was for the six religions, and the second was for *kepercayaan*.

In addition to ID cards, followers of *kepercayaan* may also have their own *kepercayaan* education as opposed to the religious education which is compulsory for all students. Each of the six recognised religions has its own form of religious education. Islam is taught by Muslims to Muslim students, and the situation is parallel for the other five religions. *Kepercayaan* education is based on the regulation of the Ministry of Education and Culture No 27/2016<sup>5</sup> on services for *kepercayaan* education. Due to the structure of an educational system that divides authorities of education governance, the regulation has not been effective in fulfilling the educational rights of *kepercayaan* followers. The Ministry of Education and Culture is authorized to govern higher education, whereas the elementary to high school levels are under the authority of local governments. If a school refuses to provide *kepercayaan* education, then the regulation, which is a legal directive on the implementation of *kepercayaan* education in schools, may not be used to sanction the refusal. Two thousand two hundred and eighty-eight students have now enjoyed *kepercayaan* education, but their 213 teachers have mostly taught voluntarily. Local governments may claim no responsibilities for budgeting on *kepercayaan* education. Due to such issues, many followers of *kepercayaan* reluctantly declare one of the six religions on their ID cards in order to provide their children with religious education.

After the Constitutional Court Decision No 97/PUU-XIV/2016, no laws were adjusted except the new Law on Criminal Code<sup>6</sup> which will be effective in 2026. The law reflects the Decision protecting both freedom of religion and *kepercayaan*. Many other laws still refer to the ‘official’ six religions and exclude *kepercayaan*. Given that fact, the rights of *kepercayaan* followers are still being litigated.

## LEGAL OPPORTUNITIES FOR THE RIGHTS OF FOLLOWERS OF INDIGENOUS RELIGIONS

It must be recognized that the Decision of the Constitutional Court No 97/PUU-XIV/2016 was a breakthrough to dismantle the established politics of official religions.<sup>7</sup> Since the establishment of the Ministry of Religious Affairs in 1946, the concept of official religions has been inherent in Indonesian politics. The Indonesian Constitution,<sup>8</sup> especially after the 2002 amendment, lays out the foundation of the rights of freedom of religion or belief and other rights in arts 28 and 29, but the government misuses Law No 1/PNPS/1965 to limit freedom of religion or belief to followers of only six religions. A Petition against the Law was brought to the Constitutional Court for judicial

<sup>5</sup> Peraturan Menteri Pendidikan Dan Kebudayaan Nomor 27 Tahun 2016 Tentang Layanan Pendidikan Kepercayaan Terhadap Tuhan Yang Maha Esa Pada Satuan Pendidikan [Regulation of the Ministry of Education and Culture No 27 of 2016 on Education Services Belief in God Almighty in Education Units] (Indonesia).

<sup>6</sup> Undang-undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana [Law No 1 of 2023 on the Criminal Code] (Indonesia).

<sup>7</sup> Samsul Maarif and Asfinawati, ‘Toward a (More) Inclusive FORB: A Framework for the Advocacy for the Rights of Indigenous People’ (2023) 6(2) *Interreligious Studies and Intercultural Theology* 205, 205–12.

<sup>8</sup> Undang-undang Dasar Negara Republik Indonesia Tahun 1945 [Constitution 1945] (Indonesia).

review due to its misuse in 2009,<sup>9</sup> but the Court disapproved it. The main argument of the judges was, however, that the Law of PNPS upholds norms reflecting that freedom of religion or belief is the natural right of every citizen, and the state has no authority to officially ‘recognise’ citizens’ religions but is instead obliged to *protect* freedom of religion or belief. The judges argued that the Explanation of the Law on PNPS must not be understood as the State’s recognition, because the word ‘embraced’ must be understood in a sociological rather than in a normative sense.

The two Court Decisions, which are final and binding, clarify and strengthen an inclusive understanding of freedom of religion or belief, but the government nonetheless perpetuates the political notion of ‘official’ religions. The Presidential Regulation No 12/2023 on the Ministry of Religious Affairs<sup>10</sup> ignores the two Decisions and restrengthens the political notion of there being officially recognised religions. In this Regulation, any religious affairs are under the authority of the Ministry, and the only religions recognised in the regulation are the traditional six. In 2022, the government proposed a draft law on the national education system to the House of Representatives, and it excluded *kepercayaan* education.<sup>11</sup> Should the House of Representatives pass the Bill, the Ministry of Education and Culture Regulation No 27/2016 on *keperayaan* education would be invalidated because its legal standing is on the Law No 20/2003 on National Education System<sup>12</sup> that the government’s draft is meant to replace or invalidate. These are only a few examples of how the politics of official religions is reproduced.

Again, rights of freedom of religion or belief are being litigated. The rights of freedom of religion or belief for followers of indigenous religions, guaranteed in the Constitution, should not be taken for granted as absolute, but qualified, meaning they are in the process of being investigated and considered for how they should be respected, protected, and fulfilled by the State.<sup>13</sup> The constitutional rights should be utilized as a legal opportunity for followers of indigenous religions and other non-official religions to push for their implementation. Judicial review of the Law on Civic Administration and the Constitutional Court Decision No 97/PUU-XIV/2016 was the result of litigation. The result provided a stronger legal opportunity to dismantle the existing limits created by the politics of official religions, and thus to engage the state branches and apparatus for implementation. Only by understanding these constitutional rights as a legal opportunity would followers of indigenous religions enjoy their rights of freedom of religion or belief.

## LEGAL MOBILIZATION ON FREEDOM OF RELIGION OR BELIEF FOR FOLLOWERS OF INDIGENOUS RELIGIONS

In 2019, significant numbers of activists of civil society organizations, academics, practitioners, community members, as well as the state apparatus, who were involved in advocating the rights of followers of indigenous religions agreed to consolidate and establish a coalition for further

<sup>9</sup> Mahkamah Konstitusi [Constitutional Court of Indonesia], Nomor 140/PUU-VII/2009 19 April 2010.

<sup>10</sup> Peraturan Presiden (PERPRES) Republik Indonesia Nomor 12 Tahun 2023 Tentang Kementerian Agama [Presidential Regulation No 12 of 2023 on the Ministry of Religious Affairs] (Indonesia) 26 January 2023.

<sup>11</sup> Rancangan Undang-Undang Tentang Sistem Pendidikan Nasional Tahun 2022 [Draft Law on National Education System] (Indonesia) August 2022.

<sup>12</sup> Undang-Undang Republik Indonesia Nomor 20 Tahun 2003 Tentang Sistem Pendidikan Nasional [Law No 20 of 2003 on National Education System] (Indonesia).

<sup>13</sup> Cf Beata Huszka, ‘Minorities as Citizens: The Legal Advocacy of Language Rights by the Hungarian Minority in Romania’ (2022) 28(4) *Nations and Nationalism* 1340, 1340–55.

advocacy. They observed that the legal rights were continually violated by the government even after the Constitutional Court Decision No 97/PUU-XIV/2016. The Court mandated the government to serve *agama* and *kepercayaan* equally, but the government's different ID cards for *agama* and *kepercayaan* have perpetuated discrimination.

The coalition had also long observed that the State's discrimination was interrelated with social exclusion by other citizen groups against followers of indigenous religions. Soon after the Constitutional Court announced its Decision No 97/PUU-XIV/2016 in November 2017, the Council of Muslim Ulama led a public protest against the Decision and insisted the government differentiate *kepercayaan* from *agama*. The government accepted the insistence, despite its (already manifesting) potential for discrimination.

The coalition deemed their legal rights should be enforced in the courts and agreed that advocacy of legal mobilization must continue. Legal mobilization must, however, be broadened. In their advocacy framework, the followers had to deal with three interrelated arenas: policies, state services, and social exclusion.<sup>14</sup> For the coalition, legal mobilization should therefore go with political and social mobilization to deal with the three arenas.<sup>15</sup> They established a consortium called Intersectoral Collaboration on Indigenous Religions ('ICIR')<sup>16</sup> to consolidate a broader advocacy strategy for the rights of followers of indigenous religions and other discriminated groups.

For legal mobilization, they worked across 25 state branches to establish a coordinating team mandated to provide services for followers of indigenous religions. Through the coordinating team, they could increase the speed of implementing existing legal rights. They published a guideline of effective services of rights for followers of indigenous religions. Some cases of services such as *kepercayaan* education, marriage administration, job seeking, and so on that needed quick responses were resolved. They reviewed several existing conflicting and overlapping laws and regulations that prevent effective services for followers of indigenous religions.<sup>17</sup> This last issue has been the most challenging, and so needs long-lasting legal mobilization.

ICIR, a voluntarily organized consortium, organized two main programs to initiate and consolidate a social movement. The first is an annual conference on indigenous religions that invites scholars, especially the young, civil society organisation ('CSO') activists, and community members. The conference consolidates knowledge production disseminated by academia and public discourse. Consolidation facilitates CSOs coming from all over Indonesia to coordinate and synergize their advocacy on issues affecting the followers of indigenous religions. The second is Forum Kamisan Daring ('FKD', Online Thursday Forum) that facilitates 2-3 main speakers drawn from representatives of followers of indigenous religions along with discussants drawn from academics,

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<sup>14</sup> Samsul Maarif, Husni Mubarak, Laela Fitriani Sahroni, Dyah Roessusita, *Merangkul Penghayat Kepercayaan melalui Advokasi Inklusi Sosial: Belajar dari Pengalaman Pendampingan* (2019) Yogyakarta: CRCS UGM, Yayasan Satunama Yogyakarta, dan Pusad Paramadina.

<sup>15</sup> Cf Huszka (n 13).

<sup>16</sup> See Intersectoral Collaboration for Indigenous Religions, 'ICIR Rumah Bersama' (Web Page, 2023) <<https://icir.or.id/>>.

<sup>17</sup> Tim Perumus. *Review Terminologi dan Strategi Pemenuhan Hak Penghayat Kepercayaan Terhadap Tuhan Yang Maha Esa dan Masyarakat Adat* (2022) Jakarta: Direktorat Kepercayaan dan Masyarakat Adat, Kemendikbud Ristek RI.

activists, or the State apparatus. The FKD facilitates followers' engagement with the public sphere and its discourses.

In addition to ICIR, there are other coalitions or CSOs that work on community empowerment as a strategy to push legal rights to implementation. As a result, some followers of indigenous religions found no issues to complain about, but many others are still reluctant to declare their identity as indigenous religion followers. They are not yet convinced that the breakthrough policy discussed above will last, that follow-up policies for inclusive freedom of religion or belief will be effective, and that everyday socio-religious participation will be safe.

## **CONCLUSION**

Due to the politics of 'official' religions (and other related forms of discrimination), enforcing the right of freedom of religion or belief for followers of indigenous religions remains challenging. Legally speaking, freedom of religion or belief, at least the way it is currently implemented by the state, remains limited. The legal rights of followers of indigenous religions as guaranteed by the Constitution are still vulnerable. These legal rights should therefore be viewed as an opportunity for further legal, political, and social mobilization.