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**ANALYSIS OF CHANGES IN PUBLIC SERVICES POPULATION  
ADMINISTRATION FOR SAMIN BELIEFS IN PATI**

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**ABSTRACT;** *Believers are a group of people who experience discrimination in the administrative system in relation to the religion column in the e-KTP. In general, when viewed from the population administration, the location of adherents of beliefs, adherents of ancestral religions and the implementation of rituals in adat makes it difficult for them during state administration in personal documents such as electronic identity cards (KTP), family cards (KK), marriage certificates, and birth certificates. Based on the article of the Population Administration Law which explains that religion in the religion column on the family card (KK) and electronic identity card (KTP) for adherents of faith is not filled in fundamentally, this is because the sect has not been recognized as well as other religions. another, so that in the electronic identity card (KTP) there is no record that someone is a believer. Meanwhile, the Population Administration Law is factually or at least potentially detrimental to constitutional rights. This is where discrimination arises against people who do not yet have an awareness of human rights. Cases of discrimination against adherents of certain religions are even carried out by bureaucracy, although the 1945 Constitution has stated to free people to practice their respective religions and beliefs.*

**Keywords:** *Population Administration, Trust in KTP, Constitutional Court Decision*

## INTRODUCTION

The world consists of various countries, one of which is Indonesia which also has various tribes, cultures and religions in it, that's why Indonesia has a famous motto, namely unity in diversity.<sup>1</sup> One of them is the Javanese tribe which has its own characteristics compared to other tribes in Indonesia. One of the Javanese cultures which to this day is still firm in its stance towards the many Indonesian people who have a westernized culture.

Just like what happens in society Brother Sikepor usually called Samin. Where this community adheres to the teachings of their ancestors, namely Saminism which adheres to spiritual knowledge. The origins of Saminism itself were discovered by a person named Samin Surosntiko who was a famous intellectual at that time where he strongly fought against the very arbitrary actions of the Dutch government towards small communities, especially those who worked as farmers. This is where the Saminism association comes from, many of whom work as farmers.

Samini's belief itself still exists today, proving that Indonesia has various kinds of diversity, especially in terms of religion and belief. Seeing that the Indonesian constitution regulates a person's right to believe in a particular religion and belief, it is stated in the 1945 Constitution of the Republic of Indonesia Article 29 paragraph (2) which explains "The state guarantees the freedom of every citizen to embrace their own religion and to worship according to their religion and beliefs." By explaining this regulation, Indonesia is positioned as a country of constitutional supremacy, which places law as the highest basis for the functioning of the country.<sup>2</sup>

Moreover, as an Indonesian country that adheres to a democratic government system, human rights are a top priority for the government. It is proven that the government took comprehensive steps to include Articles 28A-28J during the second constitutional amendment to the 1945 Constitution of the Republic of Indonesia.<sup>3</sup> The contents of this article provide 3 important things related to the human rights of all people in Indonesia by giving respect (to respect), protection (to protect), and fulfillment (to fulfill) of its citizens.<sup>4</sup>

One of the legal experts, Sri Soemantri, commented that a constitution can be said to be ideal if there are three main elements, including: (1) Determining the functional structure, (2) guaranteeing human rights, and (3) dividing the fundamental tasks of limiting and affirming. Thus, it can be emphasized that the constitution is obliged to provide protection, respect, and of course fulfill human rights as Indonesian citizens, adjusted to developments in each year's era.

So, as we know, the law must continue to develop to keep up with developments in the behavior of society itself. So in 2016 the Constitutional Court issued decision

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<sup>1</sup> H. Munir Salim, 2017, "Bhinneka Tunggal Ika as the Embodiment of the Traditional Bonds of Indigenous Peoples of the Archipelago", *Al-Daulah Journal*, Vol. 6(1): p. 66.

<sup>2</sup> Astim Riyanto, "Knowledge of Constitutional Law Becomes Knowledge of Constitutional Law", *Journal of Law and Development*, Year 44(2) p. 186

<sup>3</sup> Muhammad Amin Putra, 2015, "Development of Human Rights Content in the Indonesian Constitution" *Jurnal Fiat Justisia*, Vol 9(2): p. 209

<sup>4</sup> Gabor Rona, Lauren Aarons, 2016, "State Responsibility to Respect, Protect, and Fulfill Human Rights Obligations in Cyberspace", *Journal of National Security of Law and Policy*, Vol. 8(503): p. 506.

Number 97/PUU-XIV/2016 to strengthen guarantees for the right to religion and belief to be able to include identity in the Electronic KTP (e-KTP) column. Legally, this decision has provisions a quonamely confirming that people who are religious according to the beliefs of their ancestors can officially be included in the identity of "Faith Believers" in the Religion column on the e-KTP.<sup>5</sup>

From the past, many religious people have followed the beliefs of their ancestors, as in 2010 there was data showing that the number of believers reached 10 million people with different groups or organizations, moreover reaching 245 organizations at the national level.<sup>6</sup> Until 2019, it was found that more than 160 people had registered the identity of believers in their e-KTP and this was also directly proportional to the increase in belief organizations which reached 190 at the central level and 1000 at the branch level.<sup>7</sup>

Not only does it include trust in the e-KTP column, but MK decision no. 97/PUU-XIV/2016 also provides legal certainty by allowing the inclusion of beliefs on Family Cards, Registers and Civil Registration Excerpts through the introduction of regulations from the Minister of Home Affairs of the Republic of Indonesia Regulation No. 118 of 2017.

The existence of clear regulations regarding religion in e-KTP makes the public feel more relieved because they no longer need to hide their own beliefs. The author takes an example like the Samin Community, where before this regulation was introduced on e-TKP they wrote down the religion of the majority in Indonesia until in 2016 after the Constitutional Court Decision was issued they were able to immediately change their religion according to what they believed.

From here the state facilitates society as a whole in accordance with the various beliefs that exist in Indonesia. However, with this regulation, there are still many people who have not included their identity as "believers" in the religion column of their e-KTP. Brother Sikep in Baturetno Hamlet, Pati Regency. Seeing the situation in the field like that, the author is interested in conducting research with the title: ANALYSIS OF CHANGES IN PUBLIC ADMINISTRATION POPULATION SERVICES FOR THE SAMIN BELIEFS IN PATI. So, the problem formulation are :

## **PROBLEM**

1. What is the legal protection for believers? Brother Sikep Baturetno Village, Pati Regency includes the identity of believers on their e-KTP?
2. What are the legal implications for believers? Brother Sikep which includes the identity of the believer on the e-KTP?

## **RESEARCH METHODS**

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<sup>5</sup> Reko Dwi Salfutra, Dwi Haryadi, Darwance, 2019, "Implementation of the Constitutional Court Decision Number 97/PUU-XIV/2016 for the Lom People in the Bangka Belitung Islands", *Constitutional Journal*, Vol. 16(2): p. 259.

<sup>6</sup> Zakiyah, 2018, "Education for Belief in God Almighty: Fulfilling the Rights of Faithful Students in Schools", *Penamas Journal*, Vol. 31(2): p. 398.

<sup>7</sup> <https://bali.tribunnews.com/2019/08/07/nomor-penghayat-kebelian-terusbercepat-ini-sebaran-region-di-indonesia> accessed on May 13, 2022

This research uses a juridical legal research method with a normative juridical approach or statutory approach, namely by examining all statutory regulations related to the content of the law being handled. This approach will open up opportunities for researchers to study whether there is a constitution and compatibility between the law and other laws or between the law and the constitution or regulations and law number 1/PNPS/1965 concerning the prevention of abuse and/or blasphemy.

Religion; Law Number 23 of 2006 concerning Population Administration; Law Number 24 of 2013 concerning amendments to Law Number 23 of 2006 concerning Administration and Population; government regulation Number 37 of 2007 concerning implementation Law number 23 of 2006. Meanwhile, tertiary legal material was obtained from the internet.

## **DISCUSSION**

### **Legal Protection of the Sedulur Sikep Community, Inclusion of Believers in e-KTP**

The Constitutional Court is part of one of the institutions in the Indonesian state structure. Apart from that, this judicial institution is also included in the judicial realm and is at the same level as the DPR, MPR, President, Supreme Court, Judicial Commission and other institutions. The origins of the Constitutional Court began with the creation of the 1945 Constitution, Article 24 Paragraph (2), which explains that the Constitutional Court is a judicial authority that is independent and free from other institutions in enforcing the law.

Apart from that, the authority of the Constitutional Court has been established in Article 24 C Paragraph (1) which reads "The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final to review laws against the Constitution, decide disputes over the authority of state institutions that its authority is granted by the Constitution, to decide disputes regarding the results of the General Election." Apart from that, the Constitutional Court is also given the authority to do so Judicial Review related to statutory regulations and see whether these regulations are in accordance with the constitution or not and see whether these regulations have binding law.

From the description above, it is natural that many people apply Judicial Review related to the laws and regulations, it is felt that with the existence of these regulations the community has suffered a loss. One of them happened in 2016 where there was a community of believers who submitted a review regarding the Population Administration Law, Law Number 24 of 2013, including Amendments to Law Number 23 of 2006. Next, where is the request? The reason the community of believers filed the petition was because Article 61 Paragraphs (1) and (2) of the Population Administration Law were felt to have violated the applicant's constitutional rights as Indonesian citizens.

It can be seen that Article 61 paragraph (1) states that one of the Family Cards (KK) is religion. Meanwhile, Paragraph (2) provides.

There is a different explanation regarding the religion in question, namely that only official religions can be written on the Family Card, whereas the applicant feels that people who adhere to religious beliefs cannot be written and can only be left blank, even though they will still be served by the population registration officer and will still be included in the population database. Furthermore, Article 64 Paragraphs (1) and (2) of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration provide an explanation regarding the elements contained in e-KTP.

It was explained that there are elements of population data that are important in writing an e-KTP, one of the elements is religion which is explained in Article 64 Paragraph (1), which is continued with the description of the religion itself in Paragraph (2). Which explains that the religion in question is a religion that has been recognized by the state, while for religions or beliefs that have not been recognized, the religion column on the e-KTP will be left blank, but the community will still be served and recorded in the population database.

Things like this can happen because in the Population Administration Law, in one of the articles there is a sentence "still served and recorded in the population database". Electronic Identity Card. This problem was raised by the government apparatus, but despite getting a solution, they instead suggested choosing another religion other than the belief held by the applicant.<sup>8</sup>

However, even though they continue to be served, they believe that people who adhere to their beliefs are very disadvantaged because they have difficulty finding work, have difficulty accessing social security rights and even have difficulty opening population documents such as family cards, deeds, KTPs, etc., due to the religion column not being filled in. e-KTP.

One of the changes to the public administration system is to allow religion or belief to be included in the e-KTP. This is due to the decision of the Constitutional Council Number 97/PUU-XIV/2016. In this decision, the Panel of Judges was of the opinion that the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) is contrary to the 1945 Constitution and does not have conditionally binding legal force as long as it does not include adherents of religious beliefs.

This means that adherents of religious beliefs have the same legal position as adherents of six religions that have been recognized by the government in obtaining rights related to population administration. This is what is felt that the Government Apparatus is ignoring the foundations of the Indonesian state, namely Pancasila and the 1945 Constitution of the Republic of Indonesia.

Apart from that, the Constitutional Court decided that Article 61 Paragraph (2) and Article 64 Paragraph (5) of the Administration Law conflict with the 1945 Constitution and do not have binding legal force.

Article 61 paragraph 2 reads, "Information regarding the religion column as intended in paragraph (1) for residents whose religion has not been recognized as a religion in

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<sup>8</sup> Constitutional Court Decision Number 97/PUU-XIV/2016, 13

accordance with the provisions of statutory regulations or for believers is not filled in, but is still served and recorded in the population database.

Article 64 paragraph 5 reads, "The elements of population data regarding religion as intended in paragraph (1) for residents whose religion has not been recognized as a religion based on the provisions of statutory regulations or for people who believe in a religion are not filled in, but are still served and recorded in a database population.

Thus, the status of believers can be included in the religion column on the KK and KTP. The applicants previously assessed that the provisions in the Administering Law were deemed unable to provide guarantees of protection and fulfillment of equal rights to believers in God Almighty or believers, as citizen.

From here, according to the decision of the Constitutional Court, adherents of religious beliefs have legal provisions to be able to include their religion in the religion column on their family card and electronic identity card without needing to determine the sect of their belief. Previously, the religion column on the KTP and KK of people who believed in certain beliefs was not filled in or left blank. Differences in the provisions for filling in the religion column create discrimination against adherents in fulfilling their basic rights as citizens, one of which is getting a job.

There are quite a few adherents who cannot register as civil servants and members of the TNI-Polri because the religion column is empty on their KTP. Or, for some other reason, their beliefs are not included in the six religions recognized by the state. However, since the issuance of the Constitutional Court's decision, things like the above no longer apply and people who hold beliefs can follow and participate within the scope of beliefs can follow and participate within the scope of the state apparatus.

From here, it is not only the rules that have been enforced but also the accessibility of the adherents when in the field directly. It should be remembered that not only KTPs but also family cards, marriage certificates and birth certificates are given permission to include beliefs on the paper. This has been explicitly stated in the Constitutional Court Decision Number 97/PUU-XIV/ 2016 concerning Population Administration Testing

### **Legal Implications for Believers**

The implications of the inclusion of religious beliefs in the KTP are in accordance with Constitutional Assembly Decree Number 97/PUU-XIV/2016 concerning Population Administration. The Constitutional Court as a state institution is given the authority to review laws against the 1945 Constitution of the Republic of Indonesia. In the Supreme Court's decision The Constitution considers it philosophically, juridically and sociologically.

a. Philosophically;

- 1) Human rights are rights that arise when humans are born into the world. Human rights are not only the right to live, but also the right to determine their beliefs, where this right must be protected by the government through statutory regulations, especially as Indonesia adheres to a democratic legal

system, so the community will be freer to express their opinions, especially regarding the injustice they feel. The right to belief has also long been stated in the 4th Alenia which states "Furthermore, in order to form an Indonesian State Government that protects the entire Indonesian nation and the entire Indonesian bloodline, the independence of the Indonesian nation was established on the basis of the Constitution."

- 2) The second point is that there are articles that are systematically parallel and related to each other, but if we look again there are two points that are very contradictory which can be seen in Article 28 E paragraph (1) and paragraph (2) of the 1945 Constitution, in Chapter XA. based on Human Rights, while Article 29 Chapter XI is based on Religion. So from here it can be seen from the differences in the basis that it is concluded that there is a need to recognize the religion of each human being, especially Indonesian citizens, in order to obtain justice. If the basic legal norms (constitution) on above are connected systematically, there are two points crucial that can be understood. First, Article 28E paragraph (1) & paragraph (2) Constitution 1945 is part according to Chapter XA which related use Human Rights, while Article 29 is fill according to Chapter XI is related use Religion. Thus, Article 28E paragraph (1) & paragraph (2) Constitution 1945 contains recognition of everyone's rights human to embrace his religion and right for believes certain religion.

Besides that There is Article 29 of the 1945 Constitution which suggests that Indonesian citizens be given the freedom to embrace religion and worship according to their respective beliefs. From these two articles it follows that there has been recognition from the state in the form of a constitution which allows its people to be independent in various rights, in this case namely determining their religion. Regard less according to the news Article 28 E paragraph (1) and paragraph (2) Constitution 1945 formulated more then if compared to Article 29 Constitution 1945, but interaction systematically Can understood thus. That, because formulated Then, Article 28E paragraph (1) and paragraph (2) Constitution 1945 emphasized the recognition of everyone's right to freedom of religion which already exists previously inside Constitution 1945.

- 3) Considering that Article 28E paragraph (1) and paragraph (2) of the 1945 Constitution and Article 29 paragraph (2) of the 1945 Constitution link religion with faith, religion is faith itself. However, by reading and understanding the existence of Article 28E Paragraph (1) and Paragraph (2) of the 1945 Constitution, it is very possible to understand religion and belief as two different or unequal things, but both have the same existence. recognized. This understanding arises because Article 28E Paragraph (1) and Paragraph (2) of the 1945 Constitution separately regulate religion and belief in the wording. Article 28E Paragraph (1) of the 1945 Constitution regulates "the right to religion and worship according to one's religion". Meanwhile, Article 28E paragraph (2) of the 1945 Constitution regulates the "right to freedom of belief". Also use the conjunction "and" in the sentence "...and worship according to your religion and beliefs". Article 29 of the 1945 Constitution establishes the subject "belief" which is equivalent to "religion" as part of "religion", so that the phrase "and its beliefs" is

certainly not used in the wording of Article 29 of the 1945 Constitution. The Constitution uses the only expression "worship according to one's religion" is the aim to ensure the implementation of worship according to reality, not so that the word "religion" and the word "faith" are actually used together by using them connecting the word "and". Viewed from the technical side of rule making, the use of the word "and" shows a cumulative character.

- 4) Whereas from the explanation based on the formation process of Article 28E paragraph (1) & paragraph (2) of the 1945 Constitution, "belief" and "religion" are placed into 2 separate things, where belief and religion are formulated in 2 separate paragraphs not aligned. It's just that, as explained above, by placing the rules of belief and religion on two incompatible customs, the 1945 Constitution basically also places religion in an incompatible manner with belief. Thus, on the one hand, belief & religion are placed as separate things [Article 28E paragraph (1) and paragraph (2)], but on the other hand, religion is also understood to be part of belief (Article 29).

b. Sociologically;

- 1) Considering that Article 64(5) of the Population Law regulates religious information on electronic Resident Identity Cards (KTP) for residents whose religion has not been recognized as a religion according to the provisions of statutory regulations or has not been provided for their adherents. , but it is still sent and recorded in the population database. Even though government officials serve by providing KK and electronic KTPs with blank religious columns or strips for religious adherents and adherents, it also creates problems when adherents and applicants need electronic KTPs and family cards for daily needs, such as not being accepted for work because empty religion column or band/brand and other problems. This was experienced by Petitioner II because the Petitioner had difficulty accessing population documents such as KTP, Family Card, Marriage Certificate and Birth Certificate due to the omission of religious beliefs on the KTP;
- 2) Even though the article that is the target of the law violates legal certainty, this is because the wording contains different interpretations. Articles of the a quo law stipulate that family cards contain elements of religious information, such as (electronic) identity cards which contain demographic elements, including the religion of the electronic identity card holder. However, specifically for adherents/followers or adherents of a religion that has not been recognized as a religion based on the provisions
- 3) Whereas the a quo Law Article places a difference between e-KTP and KK between believers and the processing of applications as Indonesian citizens. This happened because in the e-KTP the religion column was left blank whereas the a quo law had regulated that it would still be served and recorded in the population database. That is what became one of the applicants to carry out a review regarding the administrative law because the regulations are still unclear and of course this has violated and harmed citizens who also have the right to obtain legal certainty.

- 4) That therefore Article of the Lawa quohave different views with legal principles to receive equal treatment in the eyes of the law. This incident can arise because there is still no clear article regarding equality for society between Indonesian citizens of different religions, where in practice believers get different behavior when processing family cards and e-KTP between believers leaving the Religion column blank is contrary to the legal principles of treatment. equal before the law. This is because the a quo articles show that there is no equality/sameness in law for every citizen and show different treatment between citizens, namely differentiating the processing of KK and electronic KTP between believers and citizens in general by leaving the religion column blank for believer;
- 5) The Administration Law also explains article 58 paragraph (2) which states that the religion column is part of the population administration system which is only stored in the database. This is where there are quantitative and qualitative differences in the data. However, in the physical form of e-KTP, the element of religion/belief is not explicitly stated on the KK and KTP documents. With the government ordering the contents of religion/belief to be left blank, this actually creates new problems in the absence of legal certainty and inconsistencies in the regulations for filling in the religion column on personal documents.

c. Juridically;

Juridically speaking, it must of course be based on positive legal regulations, which are meant by the regulations in force at that time. So regarding the administrative system, it is found that Article 51 paragraph (1) of the Constitutional Court Law states that those who can submit a judicial review are those who feel entitled to funds or have the constitutional authority granted by the 1945 Constitution to those who are disadvantaged by the implementation of these regulations, which include the following :

- 1) Is an Indonesian citizen,
- 2) Indigenous Peoples who still adhere to the same principles as the Republic of Indonesia.
- 3) Public or private legal entity;
- 4) State institutions.

Furthermore, if the requirements as above are met, the applicant needs to clearly explain the articles that the applicant feels are detrimental to him and include evidence:

- 1) In accordance with Article 51 paragraph (1) of the Constitutional Court Law
- 2) Losses that are felt due to the existence of regulations in the form of certain articles, causing losses in the form of rights and other things as long as the regulations are enforced, then constitutional authority will be given to submit a review of the regulations, as in accordance with Article 51 paragraph (1) of the Constitutional Court Law where The applicant must fulfill five conditions, namely:

- a) There are laws and regulations that provide rights and authority for the actions carried out,
- b) The authority relating to Population Administration in matters of religion has been explained in Article 64 paragraph (5) of the Population Administration Law that the provisions relating to religion in the Electronic Identity Card (KTP) have directed that people who have beliefs that have not been recognized by the state, then The religion column does not need to be filled in or left blank. However, the government is required to continue serving and registering it in the population data base. From this article, the related explanation has been explained. People whose beliefs have not been recognized will still be served, besides this, it also creates problems in the field where believers need e-KTP and KK for their daily needs, such as not meeting the administrative requirements for applying for jobs because the religion column is empty and there are also difficulties in accessing it. population documents such as electronic KTP, family card, marriage certificate and birth certificate;
- c) Next, the a quo law contains different meanings in the contents of the article, which is why the regulation violates the element of legal certainty. This article also explains that e-KTP holders contain important elements, including religion, but here it states that people whose beliefs are not listed can leave the religion column blank. This is where confusion arises between the meaning of these regulations.
- d) The next aspect shows in the sentence of this article that for adherents of a belief, the religion column can be left blank and it will still be served and recorded in the population database. This means that the religion column is not important to fill in because whether it is filled or not, it will still be served and also this. This has removed one of the rights of citizens because they also have the right to obtain justice and legal clarity from population administration;
- e) There is an inequality of articles in the law for citizens' rights and instead they provide different treatment

## **CONCLUSION**

Implications related to the Constitutional Court's decision Number. 97/PUU-XIV/2016 regarding legal certainty from the Population Administration which has provided legal certainty for believers where it clearly explains the legal uncertainty that occurs in Article 61 paragraph (1) and paragraph (2) and Article 64 paragraph (1) and paragraph (5) are not in accordance with Article 28J paragraph (2) and Article 28I paragraph (2) of the 1945 Constitution. Furthermore, there is also a preamble to the 1945 Constitution in the first paragraph which states that "belief in the one and only God" means, The Republic of Indonesia is a country of religious diversity and a country that believes in God.

From here, a community of Samin believers carried out a review at the Constitutional Assembly which saw that the article did not have binding legal force on the phrase "religion". So from here it can be seen that these articles and verses are very contrary to the state constitution, which in the end is the result of the hard efforts of the

community of believers in seeking justice, allowing religious beliefs to be included in the religion column on e-KTP and KK and there is legal certainty from Article 61 paragraph (2) and paragraph (5) of the Population Administration Law, which in the Constitutional Assembly's decision means "belief" can be included in the religion column.

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