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# The Politics of Intolerant Laws

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### **The Politics of Intolerant Laws against Adherents of Indigenous Beliefs or Aliran Kepercayaan in Indonesia**

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## *The Politics of Intolerant Laws against Adherents of Indigenous Beliefs or Aliran Kepercayaan in Indonesia*

### **Abstract**

Earlier studies have examined the discriminatory effects of laws and policies against *Aliran Kepercayaan* in Indonesia. However, those studies do not show how politics of law were developed through the particular socio-political processes in Indonesia's legislative history. This study analyzes how and why the government initiated and later put an end to discrimination against adherents of *Aliran Kepercayaan* - at least in the realm of population administration. Under the New Order era, political battles gave birth to the politics of law discriminating against the *Aliran Kepercayaan* adherents. Weakening political resistance in the *Reformasi* era as well as judicial review before the Constitutional Court forced the government to partially relax its discriminatory laws and policies. Nonetheless, progressive initiatives from secular nationalist parties are yet to taken in order to further ensure equality before the law of all minority – religious – groups within Indonesian society.

**Keywords:** *Aliran Kepercayaan*; history of law; politics of law; discrimination; human rights

### **1. INTRODUCTION**

The Wahid Foundation in early 2018 released the results of its survey on intolerance in Indonesia. The survey had been conducted among 1,500 respondents with a margin of error of 2.6%. One of the questions asked in the survey was "What group do you dislike?" The survey results show that only 44.2% of respondents said that they did not have any problems with or dislikes towards any group. The remaining 55.8% showed dislikes towards different groups. Two groups that had the most dislikes were the communists (21.9%) and those with different sexual orientations (17.8%). Other groups had a percentage of dislike below 10%, namely the Jews (7.1%), the Christians (3%), the Atheists (2.5%), the Shiites (1.2%), the Chinese (0.7%), the Wahabis (0.6%), the Catholics (0.5%), and the Buddhists (0.5%).<sup>1</sup>

This information can produce various interpretations. Firstly, the groups that have the most potential to become targets of intolerance are minority groups. This fact is alarming when linked to the identity politics which are currently on the rise.<sup>2</sup> Secondly, the hatred towards LGBT and communism that is continuously reproduced, despite communism being no longer existent,<sup>3</sup> evidently has a significant impact.

<sup>1</sup> Wahid Foundation & Lembaga Survei Indonesia (2018).

<sup>2</sup> Arifianto (2018).

<sup>3</sup> Zwass (2016).

There are varied opinions about the factors that have a strong influence on the reproduction of hatred or intolerance. Lindsey and Pausacker argue that religious interpretations affect intolerant views and behaviors in Indonesia. Pancasila was actually formulated to guarantee religious freedom and accommodate diverse religious identities. However, later interpretations have turned it into a homogeneous doctrine of One God which merely reflects the majority's perspective and rejects other interpretations. The homogeneous interpretations by the majority of the first principle of Pancasila (the foundational philosophical theory of the Indonesian state) are so embedded and institutionalized such that they legitimize false awareness widely spread especially among the poor and uneducated.<sup>4</sup>

Other research by Mietzner and Muhtadi shows that intolerance in Indonesia is due to the rising existence of conservative groups with majoritarian views. Mietzner and Muhtadi's findings show that about a quarter of conservative Indonesian Muslims support the Islamist socio-political agenda. Both show that the core constituency of conservative Muslims has become more an educated and prosperous, and more connected social classes in the past decade have increased their organizational capacity. The increased capacity of these conservative groups was mobilized when conservative Muslims felt excluded from the New Order<sup>5</sup> government before the 1990s.<sup>6</sup>

Hasan, using a different perspective, shows that the rise of intolerance is due to the state's failure to manage diversity. Hasan points out that the tensions and conflicts that occur within certain religious groups and among various religious groups in Indonesia are closely related to the dynamics of the political transition after the fall of Suharto's New Order authoritarian regime in 1998. Reform in politics failed to touch on the issue of management of religious diversity, putting religion in a complicated situation when facing democracy. In fact, even though the threat of Islamic radicalism and terrorism has decreased, Indonesia is not safely distanced from the possible explosion of religious conflicts.<sup>7</sup>

These varied opinions have come from the same perspective that the state plays a major role in putting an end to intolerance or, on the exact contrary, nourishing it. However, the three studies do not exemplify how the government should play its role in ending the intolerant and discriminatory laws and policies. The government, on the one hand, has instruments that can be used to perpetuate intolerance, namely through laws and policies. The

<sup>4</sup> Lindsey & Pausacker (2016).

<sup>5</sup> The New Order is a term to refer to the Suharto government in Indonesia. The term New Order was used by Soeharto to replace the era of Soekarno's government which he called the Old Order.

<sup>6</sup> Mietzner & Muhtadi (2018), pp. 479-97.

<sup>7</sup> Hasan (2017), pp. 105-26.



minority group, on the other hand, can also end the intolerance policies by challenging the law which has a major influence on such discriminatory practices.

In my opinion, Indonesia actually has witnessed the rise and fall of institutionalized intolerance towards a certain group. The government, in the context of this study, has once maintained intolerance through discriminatory policies and “denial” of the existence of the adherents of *Aliran Kepercayaan* (indigenous beliefs) in Indonesia. *Aliran Kepercayaan* refer to indigenous beliefs that differ from mainstream religions recognized by the government – which usually refer to Islam, Catholicism, Protestantism, Hinduism, Buddhism and Confucianism. We can find *Aliran Kepercayaan* on Sumba Island (Marapu), North Sumatera (Parmalim), or Java (Kejawen) and various other regions with different teachings and rituals because these beliefs are local and specific in their region.<sup>8</sup>

Discriminatory laws and policies against adherents of *Aliran Kepercayaan* had been preceded by Law No. 1/PNPS/1965, followed by Law No. 23 of 2006 on Population Administration (the Population Administration Law),<sup>2</sup> as well as various policies made by the New Order government. However, in 2017, the Constitutional Court of the Republic of Indonesia through its Decision No. 97/PUU-XIV/2016 eliminated discrimination against adherents of *Aliran Kepercayaan* in the field of population administration. The Constitutional Court’s decision marked the end of the decades-long systematic discriminatory and “denial” policies and the beginning of the state’s recognition of the identity of *Aliran Kepercayaan* adherents.

This experience shows that there is a possibility for minority groups to challenge intolerant and discriminatory laws and policies. Nevertheless, to identify this possibility, this article will address the following principal questions:

1. Why and how did the government initiate intolerance and discrimination against *Aliran Kepercayaan* through laws and policies?
2. How did the adherents of *Aliran Kepercayaan* restore their rights by challenging intolerant laws and policies before the Constitutional Court, and what was the socio-political impact of the Constitutional Court’s Decision?<sup>3</sup> How did the Constitutional Court’s Decision affect the stance of the government and the orthodox Muslim community about recognizing the existence of *Aliran Kepercayaan*?

<sup>8</sup> Butt (2019), p. 56.

Several studies have reviewed the legal aspect of intolerance and discrimination against *Aliran Kepercayaan* in Indonesia. The research conducted by Silalahi discusses Law No. 1/PNPS/1965 and its implications on religious freedom.<sup>9</sup> While also covering the impact of Law No. 1/PNPS/1965 on the adherents of these indigenous beliefs, that research does not analyze the aspect of political dynamics that led to the discriminatory laws and policies. Mutaqin's research analyzes the state's politics of the law on *Aliran Kepercayaan*. However, it focused more on the efforts of the adherents of these beliefs to avoid persecution due to the intolerant politics of the law.<sup>10</sup> Research by Rahmah and Sudrajat analyzes Law No. 1/PNPS/1965 and concluded that Law No. 1/PNPS/1965 must be repealed because it is contrary to the 1945 Constitution and Law No. 39 of 1999 on Human Rights. Yet, Rahmah and Sudrajat failed to analyze the socio-political context of the emergence of the discriminatory politics of law and compare it against the current context. A contextual reading was necessary to assess whether the measure of repealing Law No. 1/PNPS/1965 would be possible in the given socio-political context.<sup>11</sup>

In addition, various previous studies did not include a review of the socio-political impact of the Constitutional Court's Decision No. 97/PUU-XIV/2016. An analysis of the views of the orthodox Muslim community is also necessary because the community, as discussed in this article, is the group that has shown the strongest resistance to the existence of the *Aliran Kepercayaan* in Indonesia since the Soekarno Era until the *Reformasi*.<sup>12</sup>

This article will first provide a brief literature review on the polarization of *abangan* and *santri* that formed the background of discriminatory laws and policies towards adherents of *Aliran Kepercayaan*. The third and fourth sections will explain the emergence of the New Order regime which gave birth to a politics of discrimination against adherents of *Aliran Kepercayaan* and efforts of adherents to restore their rights in the *Reformasi* era. Then, this paper will describe the decline in oppression to *Aliran Kepercayaan* due to changes in power relations between the majority and minority in Indonesia.

<sup>9</sup> Silalahi (2010).

<sup>10</sup> Mutaqin (2014), pp. 1-23.

<sup>11</sup> Rahmah & Sudrajat (2009), pp. 115-24.

<sup>12</sup> The *Reformasi* is often also called Post-Soeharto began in mid-1998, precisely when President Soeharto resigned on May 21, 1998 and was replaced by vice-president B.J. Habibie. This era is seen as the beginning of a democratic period with open and liberal politics.

## 2. POLARIZATION OF *ABANGAN* AND *SANTRI* TO LEGITIMACY OF DISCRIMINATION THROUGH LAW NO. 1/PNPS/1965

The issue of the relations of the state, religions, and *Aliran Kepercayaan* in Indonesia is inseparable from the discussion of Law No. 1/PNPS/1965. This notorious law criminalizes anyone who gives a “deviant” interpretation of religious teachings or commits blasphemy against religions. It appears that this law exists solely for the purposes of protecting religious teachings. However, from the perspective of the history of law and the politics of law, the existence of this law is actually a form of political compromise stemming from a deeply-rooted tension that had led to the “elimination” of the groups of adherents of the *Aliran Kepercayaan*. This tension can be traced back to the era before the independence until the early period of independence when political and religious factors intertwined in forming ideological polarization at the grassroots level.

If traced back as far as towards the end of the 19<sup>th</sup> century, Javanese society was polarized along religious and social lines with such a pattern that had never existed before. Ricklefs has examined the history of polarization, especially that which occurred in Java, between the *santri* or *putihan* group (Javanese who practice a more orthodox version of Islam) and the *abangan* group (Javanese who practice a much more syncretic version of Islam). Based on Ricklefs historical research on reports from the colonial period, the polarization was formed from the emergence of a new middle class in Javanese society through the business activities that the Dutch colonial government did not engage in. This new middle class accepted the idea of Islamic purification which soon contradicted the practice of religion influenced by the local culture. Those who practice religion with the influence of the local culture were then called *abangan*, and the term *putihan* was coined for those who sought to purify the practice of Islam.<sup>13</sup>

In the early decades of the 20<sup>th</sup> century, conflicting *putihan* and *abangan* identities became institutionalized in modern organizations, especially in the political sphere. Political entities came into being which were later onwards categorised among the Indonesian political streams. The earliest organization was Budi Utomo, which was predominated by the *priyayi* (the Dutch-era class of the nobles of the Robe). Budi Utomo was not convinced that Islam was a good idea for the Javanese. The *abangan* group, after the founding of the Republic of Indonesia, was later affiliated with the Indonesian Communist Party (PKI) and the Indonesian

<sup>13</sup> Ricklefs (2008a), pp. 35-55.



National Party (PNI), a nationalist party predominated by the *priyayi* group. The devout Muslim group was affiliated with Islamic religious organizations (Muhammadiyah for modernist Islam, Nahdlatul Ulama/NU for adherents of traditional Islam) and political parties (Sarekat Islam, Masyumi, etc.).<sup>14</sup> Feith and Castles categorized the *abangan* group, which was affiliated with the PKI and PNI, as a separate political entity which is rooted in Javanese traditionalism and competes with the Islamic political parties and the Western-styled secular political parties.<sup>15</sup>

Throughout the first twenty years of Indonesian independence, political competition intensified between the devout *santri* group and the *abangan* group which was affiliated with the PKI and PNI. In the same period, precisely in the 1950s, the *Aliran Kepercayaan* movement saw a significant revival. This phenomenon occurred not only among the *priyayis* but also among the *abangans* who were the majority of the PKI masses.<sup>16</sup> *Aliran Kepercayaan* – as a movement that was growing exponentially at the time – was very difficult to define because it was rooted in local traditions and also syncretism. The influence of local traditions and syncretism resulted in a very broad definition of the *Aliran Kepercayaan*, which included every group basing itself on revelations or holy scriptures, and, further, religious sects, the *aliran kebatinan* (mysticism) sects, and adherents of the beliefs in God Almighty (*penghayat kepercayaan*), as well as the shamans, traditional healers and paranormal groups.<sup>17</sup>

The development of these indigenous beliefs was apparently counterproductive to the development of the anticommunist political groups. In 1951, the Ministry of Religious Affairs, which was predominated by Muslim groups, eventually formulated minimum standards for a religion, namely: “having a prophet, a holy book, and international recognition”.<sup>18</sup> The purpose of formulating these standards was to suppress the development of *Aliran Kepercayaan* by “degrading” these indigenous beliefs.<sup>19</sup> The formulation of these standards actually affected the other religious groups too. In 1952, a group of Balinese Hindu leaders sought clarification from the Ministry of Religious Affairs as to why the government had not recognized Balinese Hinduism and why Balinese Hindus were not represented in the Ministry. The Ministry of Religious Affairs responded that in order to obtain recognition,

<sup>14</sup> Ricklefs (2008b).

<sup>15</sup> Alfian (1970).

<sup>16</sup> Sukanto (2013), pp. 25–47.

<sup>17</sup> Research Team of the Research and Development Center at Attorney General's Office Republic of Indonesia (1995), pp. viii–ix.

<sup>18</sup> Tolkhah (2001).

<sup>19</sup> *Ibid.*

Hindus must show their “holy book” and the “founders” of their religion. In addition, the religion in question must have an internationally recognized standing and the adherents in Indonesia must form a “unity” with followers in other countries.<sup>20</sup>

Despite the delegitimization of its existence by the Ministry of Religious Affairs, the number of *Aliran Kepercayaan* adherents continued to grow in the following years. In 1953, the Ministry suspected the emergence of 360 new beliefs from 29 *Aliran Kepercayaan* groups by 1952. Accordingly, in 1954, the Ministry took further actions when establishing PAKEM – the *Aliran Kepercayaan* monitoring body. PAKEM had the function of monitoring spiritual movements that do not agree with Islam. In 1957, *Aliran Kepercayaan* groups responded to this new policy through BKKI – the Indonesian Kebatinan (mysticism) Congress – asking President Soekarno to declare *Aliran Kepercayaan* equal with the other religions.<sup>21</sup>

Even though efforts to diminish the adherents of *Aliran Kepercayaan* had been carried out systemically, there seemed to be no significant impact on the support base provided by the *Aliran Kepercayaan* groups to the communist party. Such link between the *Aliran Kepercayaan* groups and the communist party cannot be disassociated from the enactment of the Basic Agrarian Law in 1960. The latter law encouraged the consolidation of farmer workers from the *abangan* group in the framework of “unilateral action” in the countryside in order to seize land from landowners under the pretext of enforcing the agrarian reform as mandated by the law.<sup>22</sup>

It seems that the religious groups later thought that the last method that they could use to degrade the prestige of the *abangan* group in this political conflict was a repressive approach through laws and regulations. The repressive approach was carried out through a policy of criminalization of blasphemy against religion. The reason was that the practice of these indigenous beliefs was often interpreted as a form of deviant interpretation of main current religions, especially the divinely-revealed religions (composed of the Abrahamic religions, namely Judaism, Christianity and Islam).

Oemar Seno Aji – one of the speakers at the First National Law Conference in 1963 – was one of the leading figures behind the adoption of criminal laws in the realm of religious affairs. One of the agenda items at the First National Law Conference was to discuss specific regulations concerning violations of religion. Oemar Seno Aji asserted that the first principle of the Pancasila and Article 29 of the 1945 Constitution, which express the state’s official

<sup>20</sup> van der Kroef (1953), p. 123.

<sup>21</sup> Alfian, *supra* note 15.

<sup>22</sup> Utrecht (1972), pp. 187-95.

recognition of the existence of religion, must serve as the basis of religious life in Indonesia. Every religion in Indonesia is the same and their adherents must respect one another. Therefore, according to Oemar Seno Aji, specific laws needed to be drafted to protect religion from blasphemy and to avoid religious conflicts.<sup>23</sup>

At the same time, President Soekarno needed broad support from all political groups on in his conflict with Malaysia. Thus, his political ideas aimed to unite the Nationalist, Religious, and Communist (*Nasakom*) groups under the agenda of Guided Democracy.<sup>24</sup> Later, on 27 January 1965, President Soekarno promulgated Presidential Decree No. 1 of 1965 on Prevention of Abuse and/or Blasphemy of Religion (which was later enacted as Law No. 1/PNPS/1965 by Law No. 5 of 1969). Six weeks after the regulation was promulgated, several Islamic groups (NU, Muhammadiyah, Sarekat Islam Indonesia Party and the traditionalist group Jamiatul Washliyah) declared their support for Soekarno's broader revolutionary agenda, confrontation with Malaysia, and the idea of uniting the *Nasakom* groups within the framework of Guided Democracy.<sup>25</sup>

The socio-religious and political factors around the enactment of Law No. 1/PNPS/1965 were, according to Ropi, clearly present. The socio-religious factor was unprecedentedly associated with certain groups' being astonished with the rapid development of *Aliran Kepercayaan*. The development of the *Aliran Kepercayaan*, for several religious leaders, for example Natsir (Masyumi), was seen as a source of social disturbances, national disintegration, and religious "confusion" in society.<sup>26</sup> The spirit of this law to render the indigenous beliefs a "target of fire" is also reflected in the Elucidation of the General Section (Point 2). Point 2 of the Elucidation positions *Aliran Kepercayaan* as a group that tends to conflict with religious teachings and even endanger the established religions. Point 2 of the Elucidation of the General Section of Law No. 1/PNPS/1965 is directly quoted as follows:

It is evident that, as of late, there have sprung nearly all over Indonesia many *Kebatinan/Kepercayaan* (non religious, mystical/spiritual) sects or community organizations that are contrary to the teachings and laws of Religion. Among the teachings/doings by the adherents of these beliefs, many have caused things that are against the law, break National unity, and blaspheme Religion. From this fact, it is clear that the *Kebatinan/Kepercayaan* sects or community organizations that abuse and/or use Religion as the base of their beliefs have in recent times multiplied and developed in a direction that is very dangerous to the existing Religions.

<sup>23</sup> Kholiludin (2009).

<sup>24</sup> Borgias (2012), pp. 125–48.

<sup>25</sup> Menchik (2014), pp. 591–621.

<sup>26</sup> Ropi (2017), p. 121.



Article 1 of this law explicitly prohibits anyone from spreading, advocating, or seeking public support, and rendering interpretations of and performing activities that deviate from the religions recognized in Indonesia. Although the provisions of Article 1 are intended generally for all subjects of law, the provisions in Article 2 paragraph (2) clearly refer to the targetted group. Article 2 paragraph (2) explicitly imposes sanction to dissolve organizations or sects that violate the law:

In the event that the violation referred to in paragraph (1) is committed by a *Kepercayaan* Organization or sect, the President of the Republic of Indonesia may dissolve the Organization and declare the Organization or sect as a forbidden Organization/sect, after the President has received advice from the Minister of Religious Affairs, Attorney General, and Minister of Home Affairs.

Ever since the 30 September 1965 incident,<sup>27</sup> the political situation shifted and communist groups were purged especially in Central and East Java. Later in 1965-1966 suspicion and accusation towards the *abangan* group as communists stirred members of the group (which had previously identified themselves as Muslims) to convert into Catholicism or Hinduism. The World Council of Churches (WCC) in 1969 reported conversion of 2.5 million people of the *abangan* group into Christianity during the period from 1965 to 1968.<sup>28</sup>

Soekarno's fall from presidency and Soeharto's succession was the beginning of the New Order. The New Order, in the second decade of its ruling, would then continue the discriminatory paradigm set in Law No. 1/PNPS/1965 by means of politics of neglect or politics of recognition. The politics of neglect by the New Order allowed a "barrier to entry" and were carried out and maintained in detail.<sup>29</sup> The following discussion will explain how the government initiated intolerance and discrimination against the *Aliran Kepercayaan* through laws and policies.

### 3. THE NEW ORDER AND THE POLITICS OF RECOGNITION

At the beginning of the New Order government, adherents of *Aliran Kepercayaan* held a national symposium on *Kepercayaan*, *Kebatinan*, *Kejiwaan*, and *Kerohanian* (Beliefs,

<sup>27</sup> The 30 September 1965 incident was an incident that took place after the night of 30 September until the beginning of 1 October 1965 when seven high-ranking Indonesian military officers and several others were killed in a coup attempt. The communist party is accused of masterminding the killing and followed by mass killings of members and sympathizers of the communist party. Eickhoff, Van Klinken, and Robinson (2017).

<sup>28</sup> Maarif (2017), p. 39.

<sup>29</sup> Dhakidae (2003), p. 559.



Mysticism, Inner Spirituality, and Spirituality) in Yogyakarta, 7-9 November 1970. The symposium addressed the position of *Aliran Kepercayaan* and the need to change their relationships with religion, namely for *Aliran Kepercayaan* to be placed on par with religion. The results of the symposium were then followed by the establishment of the Indonesia Coordinating Body for Workers in Spirituality, Mysticism, and Inner Spirituality (BK5I). This organization was an extension of the Mysticism, Inner Spirituality, and Spirituality Consultative Body (BMK3I) which in 1966 became a component of the Golongan Karya group.<sup>30</sup>

Golongan Karya (Golkar) – a non-party political group that came to power during the New Order era – seems to try to accommodate *Aliran Kepercayaan* even though the negative stigma towards these indigenous beliefs was still very strong among the Islamic circles after the 30 September 1965 incident. One of the *Aliran Kepercayaan* groups accommodated by Golkar was Kaharingan, a traditional sect of the Dayak tribe with a significant number of adherents in the Kalimantan region. In 1967, Sarikat Kaharingan Dayak Indonesia was registered as one of the organizations affiliated with Golkar. In 1972, several members of the organization established a council known as the *Majelis Besar Alim Ulama Kaharingan Indonesia* (the Indonesia Great Assembly of Kaharingan Sect Leaders), an organization that claimed to be apolitical.<sup>31</sup> Even though it claimed to be apolitical, the affiliation of this organization with Golkar shows the efforts of the Kaharingan group to avoid stigmatization on the one hand and also Golkar's efforts to reinforce its influence on the other hand.

In 1973, during the General Assembly of the People's Consultative Assembly (MPR) – a state institution with the highest position at the time – Golkar and the military proposed the use of the term "kepercayaan" (beliefs) behind the word "religion". This proposal was strongly opposed by United Development Party (PPP) – a party born from the consolidation of several Islamic parties in 1973.<sup>32</sup> In the end, however, the MPR Decree No. IV/MPR/1973 on Broad Guidelines for State Policies (GBHN) still included religion and *kepercayaan* as having an equal position.

Although in the beginning the New Order tried to accommodate *Aliran Kepercayaan*, later on the New Order regime issued a series of policies that discriminated against the indigenous beliefs' adherents. The series of discriminatory laws and policies, including MPR Decree No. IV/MPR/1978, had their origin in 1978 not until the government at the MPR General

<sup>30</sup> Aryono (2018), p. 61.

<sup>31</sup> Schiller (1996), p. 413.

<sup>32</sup> *Ibid.*

Assembly was reluctant to introduce the concept of *Aliran Kepercayaan* in the GBHN. The government's reluctance at that time was due to the strong resistance from the PPP in the MPR. The party insisted that *Aliran Kepercayaan* was unacceptable because it contradicted Pancasila, the state's foundational philosophy.<sup>33</sup> Finally, the MPR Decree No. IV/MPR/1978 explicitly provided that *Kepercayaan terhadap Tuhan Yang Maha Esa* (literally belief in God Almighty) was not religion and must be guided so as not to form a new religion.

The MPR Decree No. IV/MPR/1978 was then implemented by Ministerial Instruction No. 4 of 1978 adopted by the Minister of Religious Affairs. The instruction essentially clarified the status of *Aliran Kepercayaan* as "non-religion". Thus, it would not be established as a new religion. The government only recognizes five religions in Indonesia, namely Islam, Protestantism, Catholicism, Hinduism and Buddhism.<sup>34</sup>

The change in Soeharto's attitude towards *Aliran Kepercayaan* in the second decade of his ruling was due to fears of an intensifying opposition of Islamic groups. This concern was explicitly expressed by the Minister of Religious Affairs, Alamsyah Ratu Prawiranegara, in an interview with *Panji Masyarakat*, one of the Muslim magazines, in October 1978. According to the Minister, the government wanted to establish harmonious relations with Islamic groups. He offered an explanation that implied a political compromise between the New Order regime and Islamic groups.<sup>35</sup>

Since the start of the New Order, government has opted to use circular letters to pursue its discriminatory policies towards the *Aliran Kepercayaan*. Given their weak legal nature they can conveniently be misused or applied arbitrarily under the pretext of discretion.<sup>36</sup> They include eight aspects of discrimination, namely:

1. Denial of recognition of identity of *Aliran Kepercayaan* adherents

Based on the Minister of Religious Affairs' Instruction No. 4 of 1978 *Aliran Kepercayaan* was no longer the concern of all ranks in the Ministry of Religious Affairs. After the *Reformasi*, the Population Administration Law did not give recognition of the existence of *Aliran Kepercayaan*. Adherents may not state their belief *Aliran Kepercayaan* on the religion section on their residential identity card (KTP). Instead, they can only leave the religion section blank ("--").<sup>37</sup>

<sup>33</sup> Grant (1979), p. 143.

<sup>34</sup> Susetyo (1998), p. 157.

<sup>35</sup> Mujiburrahman (2006), p. 79-80.

<sup>36</sup> Nalle (2013).

<sup>37</sup> See infra discussion on Indonesia's Constitutional Court Decision No. 97/PUU-XIV/2016 that cancelled that provision.

2. Labeling of *Aliran Kepercayaan* adherents

Article 15 paragraph (1) point h of Law No. 28 of 1997 concerning Indonesian National Police places *Aliran Kepercayaan* as an entity that can cause division and threaten the unity and harmony of the nation. This provision stigmatized *Aliran Kepercayaan* adherents as criminals.

3. Rejection of the marriage registration of *Aliran Kepercayaan* adherents at the Civil Registry Office

The marriage of the couples who are adherents of the *Aliran Kepercayaan* cannot be registered based on Circular Letter of the Minister of Home Affairs No. 477/74054 of 18 November 1978. The provision of this Letter stated that, "the Republic of Indonesia which is based on Pancasila (the foundational philosophical theory of the Indonesian state) does not recognize the procedures of marriage vows for *Aliran Kepercayaan*". The Attorney General also prohibited marriage based on Sapto Darmo beliefs by Indonesia Attorney General's Decision No. Kep-089/J.A./09/1978.

4. Rejection of the registration of birth of children of the *Aliran Kepercayaan* adherents based on Circular Letter of the Coordinating Minister for People's Welfare No. B.336/MENKO/KESRA/VII/198 of 16 July 1980 on Improvement of Civil Census forms

The children of *Aliran Kepercayaan* adherents are not only unable to enjoy education in accordance with their religion and beliefs, but are also forced to take a religion class of the religion which makes up the majority at the school. In addition, they are also stigmatized as children of communists and atheists. In some areas, married couples who are *Aliran Kepercayaan* adherents have to produce a statement that their children were born out of wedlock.

5. Rejection and obstacles faced by *Aliran Kepercayaan* adherents in burial arrangements for their deceased family member based on Letter from the Minister of Religious Affairs No. B.VI/11215/1978 of 18 October 1978 on the Names of Religion, Marriage, Oaths and Burial for Adherents of Religions in relation to the *Aliran Kepercayaan* adherents

There are many cases which show that the deceased adherent of *Aliran Kepercayaan* cannot be buried in public cemeteries pursuant to the provisions of this letter stating that: "the Republic of Indonesia, which is based on Pancasila (the foundational philosophical theory of the Indonesian state) does not recognize burial procedures for *Aliran Kepercayaan*, and *Aliran Kepercayaan* is not recognized as a religion, and thus



cannot be stated in the religion section of the adherents' resident ID cards and other documents."<sup>38</sup>

6. Rejection of the establishment of places of worship for *Aliran Kepercayaan* adherents. In addition to 'minority' religious groups which face difficulties in establishing houses of worship, followers of *Aliran Kepercayaan* also find it equally difficult especially since the adoption of the Joint Decision of the Minister of Religious Affairs and the Minister of Home Affairs No. 01/ber-Mdn/1969, dated 13 September 1969. The Joint Decision regulated the establishment of places of worship. This Decision was later renewed in the *Reformasi* Era with the issuance of a Joint Regulation by the same Ministries (Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs No. 9 of 2006 and No. 8 of 2006, dated 21 March 2006).

7. Freedom of expression and self-development for the community of *Aliran Kepercayaan*

*Aliran Kepercayaan* are deliberately reduced or eliminated. In this case, the team of PAKEM, the *Aliran Kepercayaan* monitoring body, is tasked with carefully investigating and assessing the development of *Aliran Kepercayaan* to determine its impact on Public Order and Peace, and to take active and preventive measures in accordance with applicable laws and regulations, including:

- Decision of the Chief of East Java Prosecutor Office No. Kep-297/I.5.1/11/1967 and Decision of the Chief of the North Sumatra Prosecutor Office No. Kep-B.8301/H.2.1/1967 which prohibit Budha Jawi Wisnu.
- Decision of the Attorney General of the Republic of Indonesia No. KEP-115 / JA/10/1980 concerning the Prohibition of Sanyoto's Activities and Teachings of Javanese Religion.
- Attorney General's Decision No. KEP 108/J.A./5/1984 concerning the establishment of an *Aliran Kepercayaan* Monitoring Team. The decision was renewed by the Attorney General's Decision No. Kep. 004/J.A./01/1994 concerning the Establishment of the Team of PAKEM, the *Aliran Kepercayaan* monitoring body.

8. Proselytization of *Aliran Kepercayaan* adherents

The Minister of Religious Affairs and Minister of Home Affairs issued the Joint Decision No. 1 on Procedures for Religious Broadcasting and Foreign Assistance to

<sup>38</sup> Illiy (2015).



Religious Institutions in Indonesia dated 2 January 1979. Article 4 of the Joint Decision outlined that religious broadcasting was not to be directed towards people or groups of people who had embraced/adhered to other religions by providing goods, money or reading material. This Joint Decision can be interpreted as a justification for the broadcasting of religious information to people who do not adhere to a religion. Since *Aliran Kepercayaan* is not considered a religion, the adherents are justified as “targets” of proselytization.

President Soeharto’s speeches in the 1970s and 1980s also supported those various discriminatory policies<sup>39</sup> which essentially emphasized that *Aliran Kepercayaan* were not a (new) religion, that guidance provided for *Aliran Kepercayaan* adherents was a form of guidance on their morals and virtues and that *Aliran Kepercayaan* adherents had to embrace a religion that was recognized by the state.

The New Order government’s politics of recognition against *Aliran Kepercayaan* had an impact its bargaining position too. Since it did not consider the *Aliran Kepercayaan* as a religion, they are guided under the Ministry of Education and Culture instead of the Ministry of Religious Affairs. On the other side of the bargaining spectre, groups amongst the *Aliran Kepercayaan* responded differently to the government’s politics of recognition. Kaharingan followers – who from the beginning of the New Order were affiliated with Golkar through the Great Assembly of Kaharingan Ulema of Indonesia – had chosen to be identified with the Hindu religion. The Ministry of Religious Affairs approved the Kaharingan grouping into Hinduism based on its Decision No. MA/203/1980 dated 28 April 1980.<sup>40</sup>

Kaharingan’s integration into Hinduism was inseparable from the response of the Great Assembly of Kaharingan Ulema of Indonesia to the Joint Decision of the Minister of Religious Affairs and Minister of Home Affairs No. 1 of 1979 dated 2 January 1979. The Joint Decision outlined that religious broadcasting should not be imposed upon people or groups of people who have embraced/adhered to a religion. This strategy shows the need for the sacrifice of one group of faiths at a very substantive level in its teachings just so that it could be recognized as a religious equivalent by the government. The sacrifice was made so that they were not used as a proselytization target by other religious groups.<sup>41</sup> After the New Order, several new groups among Kaharingan followers complained about their integration

<sup>39</sup> Susetyo, *supra* note 34.

<sup>40</sup> Schiller, *supra* note 31.

<sup>41</sup> Mahin (2009), p. 248.

into Hinduism which also led to the obligation to include the identity of a Hindu in the religious section on their resident identity card.<sup>42</sup>

#### 4. PERIOD OF *REFORMASI*: RESTORATION OF RIGHTS

After the fall of Soeharto from power, Law No. 1/PNPS/1965 and other discriminatory policies continued to violate the freedom of *Aliran Kepercayaan* adherents. Not only did the government fail to take positive measures to reverse such situation. To the contrary, President Yudhoyono's politics of accommodation by towards radical Islam endorsed discrimination of religious minorities. Yudhoyono appointed Suryadharma Ali who was close to the Islamic Defenders Front (*Front Pembela Islam*, FPI) and anti-Ahmadiyya as Minister of Religious Affairs and General Timur Pradopo who was pro-FPI as Chief of Police.<sup>43</sup> The government's post-*Reformasi* perspective in positioning the *Aliran Kepercayaan* can be seen in Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Prosecutor's Law) that authorised the monitoring of the *Aliran Kepercayaan* that could endanger the community and the state.

Since the enactment of Law No. 1/PNPS/1965, the National Commission on Violence against Women reported 87 incidents of violence and discrimination experienced by 57 female adherents of *Aliran Kepercayaan*.<sup>44</sup> The vulnerability of the position of *Aliran Kepercayaan* adherents can also be seen in violations of freedom of belief documented by SETARA Institute in 2010.<sup>45</sup> Violations of freedom of belief lead to three main groups: Christians, Ahmadis, and various *Aliran Kepercayaan* groups. In 2010, SETARA Institute recorded 59 (fifty-nine) places of worship that experienced disruptions in various forms: assault, sealing, rejection, prohibition on worship activities, and others.<sup>46</sup>

Since it was considered normal that the *Aliran Kepercayaan* adherents could not have the same rights as the followers of religions and various practices of discrimination and violence against them were legitimized by Law No. 1/PNPS/1965, a coalition of non-government organizations (NGOs) filed for a judicial review of the Law with the Constitutional Court in 2010. The cancellation of the Law was expected to stop the practice of discrimination against,

<sup>42</sup> The House of the Representatives of the Republic of Indonesia (2013) "Komisi VIII terima Aduan Kaharingan," <http://www.dpr.go.id/berita/detail/id/5121/t/Komisi+VIII+Terima+Aduan+Umat+Kaharingan> (accessed 10 January 2019).

<sup>43</sup> Suryadinata (2018), p. 10.

<sup>44</sup> Reproductive disorders may be caused by depression experienced by women due to discriminatory treatment, Komisi Nasional Anti Kekerasan terhadap Perempuan (2016).

<sup>45</sup> Research Team of SETARA Institute (2011).

<sup>46</sup> *Ibid*, pp. 26-27.

criminalization of adherents of *Aliran Kepercayaan* and its minority denomination by any of the 6 official religions in Indonesia. The filed judicial review received great attention from the media and several religious organizations pressurized activist figures involved in the coalition to succeed in their efforts.<sup>47</sup>

This coalition argued that Article 1–4 of Law No. 1/PNPS/1965 is contrary to religious freedom guaranteed in Article 28E and Article 29 of the 1945 Constitution. According to the coalition, the government is not allowed to limit citizens' *forum internum* (individual dimension), namely the constitutional freedom of personal or internal thinking, conscience, religion and beliefs. In their opinion, Law No. 1/PNPS/1965 actually intervened in the citizens' *forum internum*.<sup>48</sup> In addition, Law No. 1/PNPS/1965 did not guarantee the same/equal treatment, but rather distinguishes the position of citizens depending on the interpretation of the majority religion which ultimately conflicts with the principle of legality for minority groups. The coalition in the judicial review presented one of the witnesses, Sardi, who was a victim of discrimination due to his status as an adherent of *Aliran Kepercayaan*. Sardi had failed to become a member of the Indonesian military not because he did not qualify, but because he was an adherent of *Aliran Kepercayaan*. Sardi was forced to convert to one of the six religions recognized by the state.<sup>49</sup> Sardi's testimony at the Constitutional Court was a concrete example of discriminatory treatment experienced by adherents of *Aliran Kepercayaan* due to the enactment of Law No. 1/PNPS/1965.

Conversely, the government and 18 other religious organizations – also named Related Parties – rejected the NGO coalition's arguments. The government presented 17 witnesses who expressly rejected the equalization of religion and the *Aliran Kepercayaan*. In their opinion, Law No. 1/PNPS/1965 was the right instrument for protecting the 6 official religions from blasphemy or misguided interpretation. According to Crouch, the arguments conveyed by the government and the Related Parties in the trial cannot be separated from the perspective used in looking at the *Aliran Kepercayaan* that was built from the early establishment of the Ministry of Religious Affairs in Indonesia to the birth of Law No. 1/PNPS/1965.<sup>50</sup>

In the end, the Constitutional Court rejected the petition for the judicial review. The Constitutional Court was of the opinion that although the interpretation of beliefs in religious

<sup>47</sup> Eramuslim.com (2010) "Gelar Uji Materi UU Penodaan Agama, Massa FUI Kepung MK", <https://www.erasmuslim.com/berita/nasional/gelar-uji-materi-uu-penodaan-agama-massa-fui-kepung-mk.htm> (accessed 13 May 2019).

<sup>48</sup> Decision of the Constitutional Court of the Republic of Indonesia Number 140/PUU-VII/2009.

<sup>49</sup> *Ibid.*

<sup>50</sup> Crouch (2012), p. 6.



teachings was part of the freedom in the *forum internum*, the interpretation had to be in accordance with the core of religious teachings, namely through the correct methodology based on the scriptures of the said religious teachings. Therefore, the freedom to interpret a religion is not absolute. Interpretations that are not based on such methodology – generally recognized by adherents of religions – were found to threaten security and public order when expressed or carried out in public.<sup>51</sup>

Civil society in Indonesia soon criticised of. Human rights activists and academics published their review of the decision of the Constitutional Court in a book entitled “*Bukan Jalan Tengah*” (literally no middle road). They criticized the Court’s disregard for developments in international law and ignorance of the vulnerability of minority rights in Indonesia due to the enactment of Law No. 1/PNPS/1965.<sup>52</sup>

Prior to the judicial review of Law No. 1/PNPS/1965, the government had enacted the Population Administration Law in 2006 which little impact upon various identity-based discriminations against adherents of *Aliran Kepercayaan*. The Population Administration Law only gives the right to include religious identity in the Identity Card for Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. *Aliran Kepercayaan* adherents can only leave the religion section in the Resident Identity Card blank even though their beliefs are still recorded by the government in the population database.

Nevertheless, the consecutive policies of the government concerning the identity of adherents of *Aliran Kepercayaan* after the the Population Administration Law had entered into force indicate that it is trying to loosen discriminatory policies towards adherents of *Aliran Kepercayaan* in several fields. This easing can also be seen when the government promulgated:

1. Government Regulation No. 37 of 2007 on the Implementation of Law No. 23 of 2006 concerning Population Administration (Government Regulation No. 37 of 2007)

Chapter X of this Government Regulation specifically addresses the requirements and procedures for marriage for *Aliran Kepercayaan* adherents. Article 81, for example,

<sup>51</sup> Decision of the Constitutional Court of the Republic of Indonesia Number 140/PUU-VII/2009. Judge Maria Farida Indrati presented a dissenting opinion in the decision. She was of the opinion that Law No. 1/PNPS/1965 is a law that is no longer relevant because it was promulgated when the 1945 Constitution was not yet amended. The 1945 Constitution, after the amendment, according to Maria, underwent very fundamental changes in the field of human rights. Maria also acknowledged that the Law had resulted in the emergence of discriminatory treatment against adherents of *Aliran Kepercayaan*.

<sup>52</sup> Margiyono, Rumadi, Muktiono, and Irianto (2010). After the decision, in 2017 there was another attempt for a judicial review of Article 1-3 of Law No. 1/PNPS/1965. The Constitutional Court stood by its decision to reject it through the Decision of the Constitutional Court of the Republic of Indonesia Number 56/PUU-XV/2017 (dated 27 July 2018). However, the Constitutional Court in the decision also argued that Law No. 1/PNPS/1965 needed to be revised because it was often interpreted differently when implemented.



allows the *Aliran Kepercayaan* adherents to before an *Aliran Kepercayaan* leader and their marriage is duly recognized by the state.

2. Joint Regulations of the Minister of Home Affairs and Minister of Culture and Tourism No 43 and 41 of 2009 concerning Guidelines for Service for the Adherents of Beliefs in God Almighty

Based on these regulations, a deceased adherent of *Aliran Kepercayaan* may be buried in public cemeteries. The local government is given the task of providing a public burial spot if the deceased adherent of *Aliran Kepercayaan* is rejected by the community to be buried in public cemeteries originating from *waqf* (endowed land). Given the changes in the demographic structure associated with the number of followers of religions and the *Aliran Kepercayaan* these regulations seem to be adopted in the absence of the government's analysis of burial land requirements.

3. Minister of Education and Culture Regulation No. 27 of 2016 concerning Educational Services on the Beliefs in God Almighty in Educational Units

Based on this regulation, students who adhere to the *Aliran Kepercayaan* receive religious education through Religious Belief Education in accordance with the laws and regulations governing the curriculum.

However, the population administration policy on identity on the Resident Identity Card led to underground protests from *Aliran Kepercayaan* adherents. They challenged state's politics of recognition and denial of existence of their identity of *Aliran Kepercayaan*. Eventually, some adherents of *Aliran Kepercayaan*, in particular Nggay Meheng Tana, Pagar Demanra Sirait, Arnol Purba, and Carlim, decided to restore their basic rights through constitutional means and, accordingly, filed a petition judicial review of the **Population Administration Law to the Constitutional Court**. Four of the petitioners were acting in their position as particular adherents of *Aliran Kepercayaan* including the Marapu, Parmalim, Ugamo Bangso Batak, and Sapto Darma beliefs. They filed to annul the rules for filling out the religion field on the Resident Identity Card given their violation of Article 28I of the 1945 Constitution. In particular, Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Law only allowed for six options of religion.<sup>53</sup>

<sup>53</sup> Unlike the judicial review of Law No. 1/PNPS/1965 in 2010, the proceedings at the Constitutional Court for the judicial review of the Population Administration Law did not receive much attention from religious organizations. There were no protests from these organizations similar to what had happened in 2010.

Sidharta, one of the experts who provided his testimonies in the trial supported the abolition of intolerant and discriminatory legal norms against *Aliran Kepercayaan* adherents. According to Sidharta, denying the identity of the *Aliran Kepercayaan* adherents by not stating their belief in the Identity Card shows that the state has ignored their right.<sup>54</sup> In addition, Samsul Maarif, one of the experts in the judicial review of the Population Administration Law at the Constitutional Court, called upon the government to free citizens from the current practices of intolerance and discrimination. Various policy rules in the New Order era that discriminated against adherents of *Aliran Kepercayaan*, according to Maarif, were a form of politics of recognition instrumentalised by the majority over against the minority. If the government permits a policy that denies the identity of the *Aliran Kepercayaan* in resident identity cards, the government also perpetuates the politics of recognition.<sup>55</sup>

On 18 October 2017, the Constitutional Court issued its <sup>3</sup> Decision No. 97/PUU-XIV/2016. In its ruling, the <sup>2</sup> Constitutional Court declared that the term “religion” in Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Law is contrary to the 1945 Constitution insofar as it did not include “beliefs” in its interpretation. The Constitutional Court argued that the exclusion of *Aliran Kepercayaan* in the “religion” field on the Resident Identity Card neglected fair recognition, assurance, protection, and legal certainty as well as equal treatment before the law for Indonesian citizens that embrace *Aliran Kepercayaan*. Therefore, in the opinion of the Constitutional Court, the government must not only accommodate 6 options of religion to be filled out in the religion field on the Resident Identity Card as well as the Household Registration Card, but also the *Aliran Kepercayaan* beliefs. The Constitutional Court decision became the starting point of state recognition of the identity of *Aliran Kepercayaan* adherents. It affirmed that past violations of constitutional rights as a result of the non-recognition of the identity of *Aliran Kepercayaan* adherents including of the inherent right to embrace a religion and/or belief. Therefore, the government is obliged to provide protection for these rights including through recognition of the belief to be stated in the Resident Identity Cards.

In this regard, the government issued Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration. It finally provided legal certainty for *Aliran Kepercayaan* adherents to obtain services in the process of recording births, marriages, deaths, and Identity Cards. The *Aliran Kepercayaan*

<sup>54</sup> Decision of the Constitutional Court of the Republic of Indonesia Number 97/PUU-XIV/2016.

<sup>55</sup> *Ibid.*



entity is explicitly stated in the regulation of population identity in this presidential regulation.

The Constitutional Court's nullification of the discriminatory provisions in the Population Administration Law and the consecutive presidential regulations show proof that the government is able to protect vulnerable groups by ending intolerance brought about by its previous laws and policies; even though this change of course is limited to the realm of population administration. Nonetheless, during the trial of the judicial review of the Population Administration Law, the government, represented by the Ministry of Home Affairs, not only acknowledged the impact of the non-recognition of the right to identity of the adherents of *Aliran Kepercayaan*. It also understood the compulsion experienced by those adherents to choose one of the six religions that had to be stated on the KTP (the Resident Identity Card), birth certificate, marriage record and other documents.<sup>56</sup>

Yet, the Attorney General's Office issued new policies that did not go in line with the spirit of the Constitutional Court's Decision. At the end of 2018, the Jakarta High Prosecutor's Office issued a policy with the same spirit as that of Law No. 1/PNPS/1965. The Jakarta High Prosecutor's Office launched an online application called SMART PAKEM to maintain peace and public order. It is stated on the application page that SMART PAKEM has been created to keep watch on *Aliran Kepercayaan* which is considered to "have the potential to put the community and the state in danger..." and to prevent abuse and/or blasphemy of religion. The online application contains a list of *Aliran Kepercayaan* beliefs existing in Jakarta, their profile, and the presence or absence of fatwas from the Indonesian Ulema Council concerning the prohibition of these *Aliran Kepercayaan* beliefs.<sup>57</sup> This perspective is a legacy of the New Order era during which *Aliran Kepercayaan* was placed in a lower status than religion and is in fact re-legitimized by the Jakarta High Prosecutor's Office through the online application. Ironically, the position of Attorney General at that time was held by a cadre of a secular nationalist party (the National Democratic Party or NasDem), which is part of the Joko Widodo government coalition. The policy was later criticized by one of the other government supporting parties, i.e. the Indonesian Solidarity Party (PSI). PSI considered that the data collected from the monitoring via the application could easily be misused for persecution purposes. However, one of NasDem's leaders, Irma

<sup>56</sup> See the statement by the Ministry of Home Affairs in the *Decision of the Constitutional Court of the Republic of Indonesia No. 97/PUU-XIV/2016*.

<sup>57</sup> The SMART PAKEM application and the list of *Aliran Kepercayaan* beliefs can be viewed at The Jakarta High Prosecutor's Office (2018), "Daftar Aliran Kepercayaan", [http://pakem.kejatidki.go.id/depan/list\\_aliran/2](http://pakem.kejatidki.go.id/depan/list_aliran/2) (accessed 14 May 2019).

Suryani Chaniago, defended her colleague's policy by saying that the monitoring application was greatly needed to keep the nation whole and intact.<sup>58</sup>

Representatives of orthodox and modernist Islamic groups and political parties equally responded to the Constitutional Court's Decision. Fahri Hamzah, the deputy chairman of the parliament and affiliated with the orthodox Prosperous Justice Party (PKS) hailed the inclusion of *Aliran Kepercayaan* on the Resident Identity Card in the population administration in Indonesia.<sup>59</sup>

Muhammadiyah, a representation of modernist Islam, was ambigious about Constitutional Court's Decision. Muhammadiyah Secretary General Abdul Mu'ti stated that the Decision was very strategic for followers of *Aliran Kepercayaan*. In his opinion, the decision would have a broad impact on the legal steps to be taken by the state to provide assurance and legal certainty for followers of *Aliran Kepercayaan* in Indonesia.<sup>60</sup> However, the Secretary General's opinion was contrary to the opinion of the Chairman of Muhammadiyah, Haedar Nashir. Nashir questioned the Decision on grounds that the exercise of the Constitutional Court's authority had gone beyond God's authority.<sup>61</sup>

A more solid stance was shown by the traditionalist Muslim group, Nahdlatul Ulama. While believing that religion and *Aliran Kepercayaan* are two different entities, some of the Nahdlatul Ulama officials were positive their media statements about the Decision. According to the Chairman of the Nahdlatul Ulama, Said Aqil Siradj, the inclusion of the *Aliran Kepercayaan* identity on the Resident Identity Card is a matter of protecting the constitutional rights of all citizens.<sup>62</sup>

Majelis Ulama Indonesia (the Indonesian Ulema Council) also issued a statement of expressing their disappointment with the Decision. The Council argued that the Constitutional Court's ruling had equated the rank of religion to that of the *Aliran*

<sup>58</sup> Jawapos.com (2018) "Urusan Aplikasi PAKEM, Nasional Demokrat Pilih Berseberangan dengan Partai Solidaritas Indonesia", <https://www.jawapos.com/nasional/politik/27/11/2018/urusan-aplikasi-pakem-nasdem-pilih-berseberangan-dengan-psi/> (accessed 14 May 2019).

<sup>59</sup> Republika.co.id (2017) "Fahri: Putusan Mahkamah Konstitusi Positif dalam Administrasi Kependudukan", <https://www.republika.co.id/berita/nasional/politik/17/11/08/oz3o9w354-fahri-putusan-mk-positif-dalam-administrasi-kependudukan> (accessed 14 May 2019).

<sup>60</sup> Republika.co.id (2017) "Muhammadiyah Dukung Putusan Mahkamah Konstitusi Terkait Kolom Agama di KTP-Elektronik", <https://nasional.republika.co.id/berita/nasional/umum/17/11/07/xe1sq354-muhammadiyah-dukung-putusan-mk-terkait-kolom-agama-di-ktp> (accessed 14 May 2019).

<sup>61</sup> Universitas Muhammadiyah Malang (2017) "Soal Putusan Mahkamah Konstitusi tentang Aliran Kepercayaan, Ketum: Otoritas Mahkamah Konstitusi melebihi Otoritas Tuhan", <http://www.umm.ac.id/id/muhammadiyah/12564.html> (accessed 14 May 2019).

<sup>62</sup> Detik.com (2017) "Penghayat Masuk Kolom KTP, PBNU: Harus Akui Eksistensi Mereka", <http://news.detik.com/berita/d-3725331/penghayat-masuk-kolom-ktp-pbnu-harus-akui-eksistensi-mereka> (accessed 14 May 2019).



*Kepercayaan* beliefs. Despite their disappointment, the Council accepted the final and binding effect of the Decision.<sup>63</sup>

These mixed reactions amongst Islamic believers were a sign of the possible decline in political resistance of religious groups against *Aliran Kepercayaan* in the field of population administration. Some leaders from the modernist Islamic group began to show a positive stance towards the existence of *Aliran Kepercayaan*. The traditional Islamic group even showed a more lenient attitude in accepting the existence of these indigenous beliefs, even if it was only limited to the constitutional rights in the field of population administration.

## 5. EVALUATION: DECREASING OPPRESSION IN THE POWER RELATIONS BETWEEN THE MAJORITY AND THE MINORITY

Looking at the history of intolerance and discrimination against indigenous beliefs, the state's normative recognition in the field of population administration of the identity *Aliran Kepercayaan* adherents is intimately linked with the weakening of the *Aliran Kepercayaan*'s political influence – despite their significant number of adherents<sup>64</sup> – and the declining resistance of other religious groups. Contrary to the era from the 1950s until 1960s, the group is no longer the basis of a certain political group – the communist group that had political influence until 1965. In the post-Soekarno era too, the heterogenous *Aliran Kepercayaan* group, does not show particular affiliations to certain political groups in Indonesia.

In general, religious groups did no longer consider the field of population administration a political battlefield for state recognition compared to the New Order era when religious groups were concerned about the dominance of Javanese syncretism in Indonesian politics.<sup>65</sup> In such context of power relations between the majority and the minority, political oppression of the *Aliran Kepercayaan* group has gradually declined.

Beside the changing political context, the Constitutional Court has been the new forum where minority groups can end intolerance and discriminatory policies by the government – at least within the realm of. While the government had given legal recognition to *Aliran Kepercayaan* in the realm of population administration, intolerance rooted in the laws and regulations against the adherents of these indigenous beliefs remained unresolved.

<sup>63</sup> Hairi (2017), pp. 1–4.

<sup>64</sup> Based on a Pew Research Center study, the number is only 750,000, but according to the Ministry of Education and Culture (2017) and U.S. State Department Religious Freedom Report (2016) the number of the adherents reaches 12 million and 20 million. See Marshall (2018), pp. 85–96.

<sup>65</sup> Weatherbee (1985), p. 189.

In this regard, the government has left Law No. 1/PNPS/1965 which started a series of discriminatory events under the Soekarno era untouched. Against the background, the two Constitutional Court decisions on the judicial review of Law No. 1/PNPS/1965, it is unlikely that the Court would take a progressive decision – as expected by civil organizations in Indonesia – if petition for a judicial review would be filed. On the other hand, due to its configuration, the parliament in Indonesia fully depends on the political will of the nationalist parties to repeal Law No. 1/PNPS/1965 and create a new law to supersede it.

Yet, among the secular nationalist parties, there are conflicting opinions on Law No. 1/PNPS/1965. Different approaches that reigned between the National Democratic Party (NasDem) and the Indonesian Solidarity Party (PSI) regarding the online application created by the Jakarta High Prosecutor's Office to monitor *Aliran Kepercayaan*, also extend within the within the Indonesian Democratic Party of Struggle (PDI-P) – one of the secular nationalist parties in Indonesia that was established during the New Order era and which merged the Indonesian National Party, the Indonesian Christian Party, the Catholic Party and the Murba (Proletarian) Party into the PDI-P. While some in the PDI-P held the view to repeal Law No. 1/PNPS/1965, other nationalist – conservative – politicians still consider Law No. 1/PNPS/1965 necessary for the time being.<sup>66</sup>

There is a contradiction between the more favourable socio-political context against the *Aliran Kepercayaan* and the absence of progressive initiatives from secular nationalist groups seeking to protect the *Aliran Kepercayaan* adherents' rights? According to Lukito, the Indonesian government – including the parliament – seems to prefer to maintain the status quo in respect of the relationship between the state and religion. On the one hand, they want the country to be secular, but on the other hand they also want it to apply the principles of a religious state, which tends to lean towards majoritarianism. As a result, according to Lukito, a conflict of views arises between the secular nationalist groups and the religious groups in interpreting the role of the state in protecting the rights of minority groups, especially the *Aliran Kepercayaan* group which is assigned a lower position by the religious groups. Since the conflict between the two political groups – nationalist and religious alike – is managed on the basis of an equal balance of power, the government tends to develop double standards in dealing with matters of relationship between religion and the *Aliran Kepercayaan*.<sup>67</sup>

<sup>66</sup> Tirta.id (2017) "Beda Suara PDI-P soal Penghapusan Pasal Penodaan Agama", <https://tirta.id/beda-suara-pdi-p-soal-penghapusan-pasal-penodaan-agama-cpiX> (accessed 11 May 2019).

<sup>67</sup> Lukito (2018).

If Indonesia wants to take progressive steps with respect to *Aliran Kepercayaan*, the government needs to take a number of steps to end intolerance and discrimination arising out of application of its current laws and policies. Since the government has already recognised the basic rights of the adherents of *Aliran Kepercayaan* in the realm of population administration, it can further use its powers to ensure legal protection of these basic rights that should not be limited to the population administration alone. Vulnerable groups have already walked on the constitutional path to defend their basic rights before the law. But, the government must also adopt policies to ensure legal certainty as adherents of the *Aliran Kepercayaan* exercise their basic rights and to protect them against acts of persecution carried out by intolerant groups at the operational level.

## 6. CONCLUSION

The decades-long governmental politics of discriminatory and intolerant laws towards adherents of *Aliran Kepercayaan*, followed by the restoration of their rights in the realm of population administration, warrant reflection. First, government issued these laws and policies resulting from political battles and compromises involving competing power interests. Second, the government's initiation of intolerance and discrimination has been reproduced within Indonesian society vis-à-vis minority groups. Third, the outcome of the Constitutional Court's Decision No. 97/PUU-XIV/2016 shows the proof of the importance of judicial avenues to challenge intolerant and discriminatory laws and policies which led to the restoration of rights of adherents of *Aliran Kepercayaan* in the realm of population administration. However, this judicial outcome must also be seen against a background of decreasing intensity of political conflicts involving the adherents of *Aliran Kepercayaan*.

Nevertheless, Law No. 1/PNPS/1965 which marks the beginning of the politics of law of intolerance towards adherents of *Aliran Kepercayaan* still applies today. The dichotomy of religion and *Aliran Kepercayaan* is also still used as a mindframe in treating the *Aliran Kepercayaan* adherents's identity. In addition, Prosecutor's institution still monitors the *Aliran Kepercayaan* group until today. These two unresolved issues are not dependent on the socio-political context alone. The lack of consensus concerning the relations between the state and religion also affects these issues which deserves further study.



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