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CONSTITUTIONAL RECOGNITION OF "BELIEFS" IN INDONESIA

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ABSTRACT

Constitutionally, Indonesia is a state "based on Almighty God," but the Constitution does not specify any religions or belief systems. This is left to statute, which establishes six official religions that the state supports and helps administer: Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. But Indonesia is home to a rich kaleidoscope of other beliefs (*kepercayaan*), ranging from indigenous practices predating the arrival of many of the official religions to new age spiritual movements. The constitutional status of these beliefs is contentious, and their followers have long complained of government discrimination, primarily in matters of civil registration services, education, and employment. This reinforces the view, propounded by some adherents to official religions, that beliefs are inferior to official religions. This view, in turn, perpetuates the socioeconomic and cultural marginalization of belief-holders. In 2017, Indonesia's Constitutional Court was asked to examine the constitutional status of these beliefs. Its decision appears to constitutionally recognize these beliefs; accordingly, it has been heralded as an advance for religious freedom in Indonesia. Indeed, it has spurred limited administrative reforms to remove discrimination in several parts of Indonesia. But the Court's decision is muddled and inconsistent. It does not clearly establish that beliefs enjoy the same level of constitutional protection as do religions—if they are, in fact, constitutionally protected at all. The likely result is continuing faith-based discrimination and marginalization in Indonesia.

KEYWORDS: Indonesia, indigenous beliefs, freedom of religion, constitutional law, Islam, Constitutional Court, discrimination

INTRODUCTION

Since declaring its independence in 1945, Indonesia has experimented with a variety of government systems—liberal democracy, "guided" democracy, and military-backed authoritarianism among them. One constant has survived these transitions: constitutionally, Indonesia has always been a religious state. All constitutions it has adopted have declared "Negara Berdasarkan Ketuhanan yang Maha Esa" (the State is based on Almighty God). This is the first principle of Indonesia's constitutionally enshrined national philosophy, Pancasila (literally, the Five Principles). The Constitution has several religion-related provisions, guaranteeing the freedoms to "have a religion," "embrace a religion," be "convinced of a belief," and "worship in accordance with one's religion and belief."[1]

1 Undang-Undang Dasar [UUD] [Constitution] 1945. Unless otherwise indicated, all translations of the Constitution and other state documents are mine.

While the choice made in 1945 to be a religious state is rarely questioned in Indonesia, precisely what being a religious state entails has always been contested. Some see the constitutional entrenchment of "belief in Almighty God" as a guarantee of religious plurality. On this view, because the Constitution does not specify a particular religion, the state must accord equal treatment and respect to the kaleidoscope of beliefs held and practiced in Indonesia. After all, the islands now comprising Indonesia may never have come together as a single nation back in 1945, and may even have split after the fall of Soeharto, but for this constitutional guarantee. However, others see "belief in Almighty God" as supporting the predominance of the religion followed by most Indonesians: Islam.

The religious basis of state was adopted after lively constitutional debates preceding the adoption of Indonesia's first constitution in 1945, and it was retained during constitutional amendment rounds in 1999–2002.[2] These debates mainly focused on the proper place of Islam within Indonesia's constitutional system, particularly vis-à-vis other major religions practiced in Indonesia. Islamist factions pushed for Indonesia to become an Islamic state or at least for Islam to be Indonesia's official religion.[3] They succeeded in having a constitutional obligation for Muslims to follow Islamic law—the "seven words"—included in the penultimate draft of the Constitution's preamble (called the Jakarta Charter or Piagam Jakarta).[4] This obligation was dropped after independence was proclaimed on August 17, 1945, but before the Constitution was proclaimed on August 18, 1945. The constitutional provisions produced from these debates do not accord superior status to any religion; indeed, they do not even mention any religion by name.

While this clearly indicates that the religious guarantees were intended to apply to religions other than Islam, precisely what belief systems fall within the definition of religion and hence enjoy constitutional protection has always been disputed. In practice, the 1965 Blasphemy Law's[5] list of "religions adhered to by Indonesians"—often referred to as Indonesia's "official religions"[6]—is the primary reference point. These are Islam, Christianity (Protestantism), Catholicism, Hinduism, Buddhism, and Confucianism.[7] These religions are recognized and supported by the government, both institutionally and financially. Indeed, their administration is the primary task of the Ministry of Religious Affairs.

Where does this framework leave other belief systems followed in Indonesia? The archipelago has always been heterogeneous, particularly in the spiritual practices to which its citizens adhere.

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2 For discussion of the 1945 Constitution and its amendments, as well as the 1949 and 1950 Constitutions, see Simon Butt, *Constitutions and Constitutionalism*, *in* ROUTLEDGE HANDBOOK OF INDONESIA (Robert Hefner ed., 2018). While discussion of the religious basis of state also took place during debates in the 1950s to prepare a new constitution, Indonesia's first president, Soekarno, brought these debates to an end and reinstated the 1945 Constitution by decree: ADNAN BUYUNG NASUTION, THE ASPIRATION FOR CONSTITUTIONAL GOVERNMENT IN INDONESIA: A SOCIO-LEGAL STUDY OF THE INDONESIAN KONSTITUANTE, 1956–1959 (1992).

3 See R. E. Elson, *Another Look at the Jakarta Charter Controversy of 1945*, 88 INDONESIA 105–30 (2009).

4 These seven words were "dengan kewajiban menjalankan syari'at Islam bagi pemeluk-pemeluknya," which I translate as "with the obligation to follow Islamic law for those who adhere to it."

5 Presidential Decree 1/PNPS/1965 on Prevention of Misuse and/or Dishonoring of Religion [hereinafter, Blasphemy Law].

6 Adnan Zirfirdaus, *Islamic Religion: Yes, Islamic Ideology: No! Islam and the State in Indonesia*, *in* THE STATE AND CIVIL SOCIETY IN INDONESIA 441–78 (Arief Budiman ed., 1990).

7 Blasphemy Law, *supra* note 5, General Elucidation of Article 1. According to Indonesia's 2010 census, 87 percent of the population follows Islam, 7 percent Protestantism, 3 percent Catholicism, 2.5 percent Hinduism or Buddhism, and 0.05 percent Confucianism. Badan Pusat Statistik, *Population by Region and Religion*, SENSUS PENDUDUK 2010, https://sp2010.bps.go.id/index.php/site/tabel?tid=321&wid=0.

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Some of these practices predate the reception into Indonesia of the officially recognized religions; others might be better categorized as "new age" spiritual movements.[8] Some are entirely unrelated to the "official" religions; others adopt some practices or variations on practices from them. These various practices are referred to in Indonesian as *kepercayaan* (literally, belief), *keyakinan* (literally, conviction), or *kebatinan* (mysticism) and in English as "beliefs" or "indigenous religions." According to the Ministry of Education and Culture, which is responsible for overseeing and administering these beliefs, over 12 million Indonesian citizens follow religious practices referred to collectively as "beliefs," spread across 187 groups in thirteen of Indonesia's thirty-four provinces.[9] If this estimate is correct,[10] then belief-followers comprise around 5 percent of the population.

Whether these beliefs are captured by the Constitution's religion-related provisions has long been controversial. The Blasphemy Law does not explicitly protect them. Indeed, the General Elucidation seems to discourage them, suggesting that the government should "attempt to channel them toward a healthy viewpoint and toward Almighty God."[11] This has left belief-followers in a particularly precarious legal position. Their fate has largely rested on changing political winds, which themselves have sometimes depended on whether the political authority of more conservative Muslim forces is waxing or waning.[12] These forces often portray beliefs as primitive, backward, and parochial,[13] claim that established religions are superior to them, and push for belief-followers to convert to an official religion. They are particularly condemnatory of beliefs that incorporate norms or practices that contradict or even offend those of the recognized religions and have sought their prosecution for blasphemy.[14]

Since independence, many belief-followers have fought for recognition as official religions—or at least for the same recognition and financial support from the state that the official religions

8 Zainal Abidin Bagir, *The Politics and Law of Religious Governance*, *in* ROUTLEDGE HANDBOOK OF INDONESIA 284–95 (Robert Hefner ed., 2017).

9 Moh Nadlir, *Ada 187 Kelompok Penghayat Kepercayaan yang Terdaftar di Pemerintah [There are 187 Groups of Belief Followers Registered with the Government]*, KOMPAS (November 9, 2017), https://kebudayaan.kemdikbud.go.id/ditkt/kliping-budaya-ada-187-kelompok-penghayat-kepercayaan-yang-terdaftar-di-pemerintah/; Voanews, *Penghayat Kepercayaan: Setelah Putusan MK dan Kolom KTP [Belief Followers after the Constitutional Court Decision and the Identity Card Column]*, VOANEWS (April 10, 2018), https://www.voaindonesia.com/a/penghayat-kepercayaan-setelah-putusan-mk-dan-kolom-ktp/4340417.html.

10 It is not known precisely how many belief-followers there are in Indonesia. Hefner puts the number of followers of indigenous religions and new religious movements at 200,000–300,000 each: Robert Hefner, *The Religious Field: Plural Legacies and Contemporary Contestations*, *in* ROUTLEDGE HANDBOOK OF INDONESIA 211–25 (Robert Hefner ed., 2017). Others put the number of native faith groups at 12,000: Devina Heriyanto, *Q&A: Indonesia's Native Faiths and Religions*, JAKARTA POST (November 14, 2017), http://www.thejakartapost.com/academia/2017/11/14/qa-indonesias-native-faiths-and-religions.html. Only 13 percent of citizens listed "other" as their religion in the 2010 census, which gave respondents a choice of the six recognized religions and the "other" category: Badan Pusat Statistik, *supra* note 7. This "other" category would appear to include people holding indigenous beliefs. However, the low figure is likely misleading, as some belief-followers self-associate with one of the established religions and prefer choosing this to "other": TIM LINDSEY, ISLAM, LAW AND THE STATE IN SOUTHEAST ASIA: INDONESIA 61 (2012).

11 Blasphemy Law, *supra* note 5, General Elucidation to Article 1.

12 Zirfirdaus, *supra* note 6, at 454.

13 MICHEL PICARD, INTRODUCTION: "AGAMA," "ADAT," AND PANCASILA, *in* THE POLITICS OF RELIGION IN INDONESIA: SYNCRETISM, ORTHODOXY, AND RELIGIOUS CONTENTION IN JAVA AND BALI 13 (Michel Picard & Rémy Madinier eds., 2011).

14 LINDSEY, *supra* note 10, at 60–61.

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receive.[15] At various times, the government has responded positively to these calls. It has even formally acknowledged, albeit temporarily, that beliefs are constitutionally protected, but not as "religions."[16] Overall, however, belief-followers have been treated as "second-class"[17] siblings of those who follow the established religions, facing marginalization and discrimination at the hands not just of religious groups but also the state. For example, some are unable to access government services and perform basic administrative tasks, such as obtaining marriage and birth certificates, and are even shut out of employment in the public service.[18]

The Blasphemy Law's demarcation of the "religions adhered to in Indonesia" to exclude these beliefs—and indeed, other world religions[19]—raises questions about the nature of Indonesia's religion-related constitutional guarantees and to what groups they extend. These and related questions are the focus of this article, as are Indonesian Constitutional Court decisions that have touched on them. The most significant of these decisions is the *Beliefs Case*, handed down in late 2017.[20] This case squarely raised the constitutional status of beliefs vis-à-vis the official religions, but not in the context of blasphemy. In it, several belief-followers challenged provisions of the Population Administration Law that required them to leave blank the religious column or entry in their state-issued family card and identity card. They argued that this violated the rule of law and was discriminatory. They, and many other belief-followers, experienced difficulties obtaining and using these cards, which were necessary to access government services. The Court unanimously upheld the challenge, deciding that the term *penghayat kepercayaan* (belief-follower) should appear in the religion column on the cards. The Court reached this conclusion even though other provisions in the statute clearly established that belief-followers are entitled to government services.

While the Court's conclusion is symbolically important for inclusivity and pluralism, this article argues that the reasoning the Court used to reach it was muddled and inconsistent. The result suggests that the Court decided that the Constitution recognizes beliefs as having constitutional status equivalent to that of the six recognized religions. Otherwise it would be difficult to conclude that the Population Administration Law discriminated against belief-followers. Yet the Court did not clearly identify the constitutional status of beliefs, or even define beliefs. Worse, the Court seemed to adopt mutually incompatible interpretations about the relative status of beliefs and religions. Far from ensuring the constitutional protection for beliefs, the Court has compounded uncertainties about that protection, which makes the decision difficult to apply to other areas where discrimination against beliefs is common.

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15 J. D. Howell, *Muslims, the New Age and Marginal Religions in Indonesia: Changing Meanings of Religious Pluralism*, 52 Sociology Compass 473–93 (2005).

16 Nadirsyah Hosen, *Promoting Democracy and Finding the Right Direction: A Review of Major Constitutional Developments in Indonesia*, *in* Constitutionalism in Asia in the Early Twenty-First Century 322, 338–40 (Albert H. Y. Chen ed., 2014).

17 Howell, *supra* note 15, at 475.

18 Bagir, *supra* note 8, at 286; Hosen, *supra* note 16, at 339.

19 The Blasphemy Law itself mentions other religions, including Judaism and Taoism, as "not prohibited" and constitutionally protected. But, in the words of the General Elucidation to Article 1 of the Law, they are to be "left to exist" (*dibiarkan*), implying that they are not to be accorded the same recognition and support as the official religions. An analysis of their legal and constitutional status is beyond the scope of this article. For the Blasphemy Law, *see supra* note 5.

20 Mahkamah Konstitusi Republik Indonesia [Constitutional Court of Indonesia] October 18, 2017, Decision 97/PUU-XIV/2016 (reviewing Law 23 of 2006 on Population Administration) [hereinafter, *Beliefs Case*]. Subsequent references to Constitutional Court decisions are abbreviated using "Constitutional Court Decision" and the decision identifier.

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I begin by outlining the constitutional provisions relating to religious freedom that fell for interpretation in the *Beliefs Case* and raise some alternative interpretations of the constitutional position of "beliefs," particularly vis-à-vis "religion," that emerge from the text of the Indonesian Constitution. Next, I introduce the Constitutional Court and some of its religion-related jurisprudence. I then examine the Court's decision in the *Beliefs Case* and critique its reasoning. I conclude with some observations about where the case leaves belief-followers, in constitutional and more practical terms, and some of the weaknesses of the Constitutional Court that the case exposes.

RELIGION-RELATED RIGHTS IN THE INDONESIAN CONSTITUTION

The main constitutional provisions concerning religion are as follows, in my translation (with key terms in brackets).[21]

- Article 28E(1): "Each person is free to embrace a religion [*memeluk agama*] and to worship in accordance with their religion."
- Article 28E(2): "Each person has the freedom to be convinced of their beliefs [*meyakini kepercayaan*], and to express their thoughts and attitudes, in accordance with their conscience."
- Article 28I(1): "The right to have a religion [*beragama*] . . . cannot be limited under any circumstances."
- Article 29(2): "The State guarantees to all persons the freedom to embrace their religion [*memeluk agamanya*] and to worship [*beribadat*] in accordance with their religion and beliefs [*kepercayaan*]."

Religion versus Beliefs

As mentioned, the main question before the Court was whether requiring belief-followers to leave the religion column blank on their identity and family cards violated the Constitution, including any of these religion-related rights. The precise meaning and scope of these constitutional provisions has been uncertain ever since they were enacted and thus the case presented an important opportunity to clarify them.

Before discussing the Constitutional Court and the *Beliefs Case*, it bears noting that, on my reading, the text of these provisions gives rise to three possible interpretations: (1) that religion and belief were different concepts; (2) that they were the same thing; and (3) that there was no constitutional recognition of indigenous beliefs. I discuss these three possibilities here not only to emphasize the interpretative difficulties this case presented, but also to demonstrate that these interpretations appear to be mutually exclusive. Yet the Court appeared to adopt at least two of them through the judgment. This interpretative irreconcilability is one of the main reasons why, in my view, the judgment has compounded uncertainty about constitutional protection for beliefs.

1. Religion and belief are different concepts. This interpretation holds that the term *religion* refers exclusively to religions recognized by the state and the term *beliefs* refers to the broad category of indigenous and new spiritual practices discussed above. This view is supported by Article 28E(1)'s regulation of religion but not beliefs; Article 28E(2)'s coverage of beliefs but not religion; and

21 Articles 28E and 28I fall under Chapter X, on Human Rights; whereas Article 29 falls under Chapter XI, on Religion.

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Article 29 referring to "religion" *and* "belief," which indicates that they are intended to be separate concepts. If religions and beliefs were the same concept, then there would be no need to regulate them in separate provisions, or to use *and*.

2. Religion and belief are the same thing. On this view, an indigenous belief is as much a religion as are any of the state-recognized religions. This interpretation has weaker support in the Constitution than the first alternative because only one provision—Article 29(2)—refers to both religions *and* beliefs; other provisions refer to them separately. Article 29(2)'s references to both the right to embrace a religion (but not expressly a belief) and the right to worship in accordance with "that religion and belief" (with *that* linking "religion and belief" with "religion"), could be taken to imply that religion really encompasses both "religion and belief." This interpretation is supported by Article 29's being the sole provision in Chapter XI, on Religion. If *belief* meant something different from *religion*, then one might not expect it to be mentioned in that chapter.
3. There is no constitutional recognition for indigenous beliefs. This interpretation is based on a linguistic argument that a belief is just what believers of a recognized religion hold —"Christian beliefs" or "Islamic beliefs," for example. Like the "same thing" interpretation, this interpretation relies on Article 29(2)'s reference to the right to worship in accordance with a religion *and* belief, but the opposite conclusion is reached. Rather than using Article 29 to argue that the term *religion* incorporates both established religions and spiritual beliefs, here Article 29(2) is read to mean that the state guarantees only the freedom to embrace a religion and to worship in accordance with that religion and the beliefs of that religion. To support this argument, one might ask why the drafters did not use a word other than *kepercayaan* (belief) if they wished to refer to indigenous or new beliefs rather than the beliefs of a religion. If the drafters had wanted to clearly refer to the former, they should have used *aliran kepercayaan* (literally, stream of belief) or *aliran kebatinan* (stream of mysticism), which are well known and more direct terms for beliefs other than those recognized by the state.

These three interpretations appear to be mutually exclusive. It is not possible, for example, for religions and indigenous beliefs to be separate concepts (with both getting constitutional recognition) *and* the same thing *and* an aspect of religious belief. However, it might be possible for "belief" to mean either an "indigenous religion" or a strain of belief or conviction within a single recognized religion for the purposes of the "different concept" interpretation. So, for example, Article 29(2) could be read to grant the right to embrace Islam and to worship in accordance with a particular school—that is, "belief"—within that religion; and Article 28E(2) could consolidate the right to follow the tenets of a particular school within the tenets of the broader "religion" referred to in Article 28E(1).[22]

22 It might also be read to extend to protect so-called deviant sects—offshoots of established religions that are rejected by believers of the orthodox version(s) of the religion. However, it is arguable that when a controversial school deviates too far from the orthodox views of a religion it ceases to be a school of belief in that religion and becomes its own "belief." This did not fall for consideration by the Court in this case because the applicants were members of indigenous religions that did not formally associate themselves with any of the established religions. Although this issue is beyond the scope of this article, protection for such sects has been a critically important issue in light of various sect members having been persecuted (including violently) and prosecuted for blasphemy. See STEWART FENWICK, BLASPHEMY, ISLAM AND THE STATE: PLURALISM AND LIBERALISM IN INDONESIA (2017); Melissa Crouch, *Asia Pacific: Ahmadiyah in Indonesia. A History of Religious Tolerance under Threat?*, 36 ALTERNATIVE LAW JOURNAL 56–57 (2011).

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Before discussing how the Court interpreted these provisions in the *Beliefs Case*, I briefly introduce the Court and some of the earlier cases in which it considered religion-related constitutional provisions.

THE CONSTITUTIONAL COURT AND ITS RELIGION-RELATED JURISPRUDENCE

The Indonesian Constitutional Court has nine judges, with the executive, the legislature, and the Supreme Court each responsible for filling three positions. The Constitutional Court is the only judicial institution in Indonesia with powers of constitutional review. These powers are limited: the Court can only review statutes enacted by the national legislature to ensure that they do not violate the Constitution, including its human rights guarantees.[23] While this provides an important check on legislative powers, the Court's authority should not be overstated. It cannot, for example, examine whether executive regulations, subnational laws, or even government action are constitutional.[24]

However, unlike most other Indonesian courts—which are widely considered to have questionable integrity, competence, and enthusiasm for judicial work, and whose decisions are sometimes ignored by parties and the government[25]—the Constitutional Court often attracts praise for professionalism,[26] and its decisions are usually followed as a matter of course.[27] Its judgments are generally considered to be authoritative in matters of constitutional law. Yet this praise should be seen in the context of the failures and general dysfunction of Indonesia's other courts. Two Constitutional Court judges have been convicted for receiving bribes to fix the outcome of cases;[28] decisions of the Court, although clearly better-reasoned than those of most other courts,[29] are often criticized for poor reasoning, particularly since the retirement of its second chief justice;[30] and the government has, in fact, deliberately circumvented its decisions,[31] albeit rarely. Like other

23 Constitution, article 24C(1); Article 10 of Law No 24 of 2003 on the Constitutional Court.

24 This is a major gap in the Court's jurisdiction, because the bulk of substantive Indonesian law is contained in these regulations rather than in statutes. Reviewing them falls within the jurisdiction of the Supreme Court, but the Supreme Court only has power to review them for compliance with statutes. This means that no judicial institution has formal jurisdiction to review laws 'below' statutes directly against the Constitution. See Simon Butt, *The Indonesian Constitutional Court: Reconfiguring Decentralization for Better or Worse?*, 14 Asian Journal of Comparative Law 147–74 (2019).

25 Sebastiaan Pompe, The Indonesian Supreme Court: A Study of Institutional Collapse (2005); Simon Butt & Tim Lindsey, *Judicial Mafia: The Courts and State Illegality in Indonesia*, *in* The State and Illegality in Indonesia (Edward Aspinall & Gerry van Klinken eds., 2010); Simon Butt, Corruption and Law in Indonesia (2012).

26 Stefanus Hendrianto, Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes (2018); Petra Stockmann, The New Indonesian Constitutional Court: A Study into Its Beginnings and First Years of Work (2007).

27 Simon Butt & Tim Lindsey, *Economic Reform When the Constitution Matters: Indonesia's Constitutional Court and Article 33*, 44 Bulletin of Indonesian Economic Studies 239–62 (2008).

28 Simon Butt, *The Rule of Law and Anti-corruption Reforms under Yudhoyono: The Rise of the KPK and the Constitutional Court*, *in* The Yudhoyono Presidency: Indonesia's Decade of Stability and Stagnation 175–95 (Edward Aspinall, Marcus Mietzner & Dirk Tomsa eds., 2015).

29 Simon Butt, *Judicial Reasoning and Review in the Indonesian Supreme Court*, 4 Asian Journal of Law and Society 67–97 (2015).

30 Simon Butt, The Constitutional Court and Democracy in Indonesia 4 (2015).

31 Butt and Lindsey, *supra* note 27.

Indonesian courts, its judges can issue dissenting opinions,[32] though the practice of dissent appears to be declining.[33]

Beliefs is certainly not the first case in which the Court has interpreted religion-related constitutional rights. It has, for example, been asked by conservative Muslim applicants to consider the constitutionality of restricting polygamy[34] and prohibiting Indonesia's religious courts from applying Islamic criminal and constitutional law.[35] Implicit in the arguments in both cases was that Islam requires Muslims to follow all tenets of Islamic law, and that the state was required to facilitate this as part of its constitutional responsibilities, including under Article 29, mentioned above. These challenges were unsuccessful, primarily for technical reasons; but in both cases, the Court emphasized that Islamic law did not have independent force of law in Indonesia and could become law only if its principles were adopted in national law.[36]

The Court has also made decisions that conservative Muslim groups have criticized for being inconsistent with Islamic principles or practices and hence the religion-related rights granted by the Constitution. In one case, for example, the Court held that "irreconcilable differences" was constitutionally valid as a ground for divorce, even for Muslims, despite objections that Islamic law provided no such ground for divorce.[37] In another, the Court decided that the biological father of a child born out of wedlock should have a civil legal relationship with that child.[38] Previously, under the Civil Code, a child born out of wedlock had a civil legal relationship with its mother only and could not, therefore, claim maintenance or an inheritance from its father. This decision drew stinging criticism from the Majelis Ulama Indonesia (Council of Islamic Scholars), which even issued a fatwa condemning it.[39] The council objected to at least two aspects of the decision that, in its view, violated Islamic law. First, the decision constituted an endorsement of *zina* (extramarital sexual relations), which is prohibited. Second, the decision implied that children born out of wedlock were to be considered descendants of their biological fathers. According to the fatwa, biological fathers should be held responsible for the children they father outside of marriage, but this should be in the form of a bequest rather than an inheritance.[40] Then chief justice Mahfud suggested that the Council had misunderstood the decision, which led to neither of these results. Rather, the decision was solely concerned with protecting children who should not suffer for their predicament.[41]

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32 Achmad Roestandi, *Mengapa saya mengajukan Dissenting Opinion*, *in* MENJAGA DENYUT KONSTITUSI: REFLEXI SATU TAHUN MAHKAMAH KONSTITUSI [KEEPING THE BEAT OF THE CONSTITUTION: REFLECTIONS ON ONE YEAR OF THE CONSTITUTIONAL COURT] (Jimly Asshiddiqie, Refly Harun, Zainal A.M. Husein & Bisariyadi eds., 2004); Simon Butt, *The Function of Judicial Dissent in Indonesia's Constitutional Court*, 4 CONSTITUTIONAL REVIEW 1–26 (2018).

33 Björn Dressel, *Prabowo Challenges Indonesia's Poll Result at Constitutional Court but Doubts Its Impartiality. New Research Confirms the Court's Fairness*, THE CONVERSATION, http://theconversation.com/prabowo-challenges-indonesias-poll-result-at-constitutional-court-but-doubts-its-impartiality-new-research-confirms-the-courts-fairness-113486 (last visited Sep 9, 2019).

34 Constitutional Court Decision 12/PUU-V/2007, decided October 3, 2007.

35 Constitutional Court Decision 19/PUU-VI/2008, decided August 12, 2008. For discussion of the religious courts, see CATE SUMNER & TIM LINDSEY, COURTING REFORM: INDONESIA'S ISLAMIC COURTS AND JUSTICE FOR THE POOR (2010).

36 Simon Butt, *Between Control and Appeasement: Religion in Five Constitutional Court Decisions*, *in* RELIGION, LAW AND INTOLERANCE IN INDONESIA 42–67 (Tim Lindsey & Helen Pausacker eds., 2016).

37 Constitutional Court Decision 38/PUU-IX/2011, decided March 12, 2012.

38 Constitutional Court Decision 46/PUU-VIII/2010, decided February 13, 2012.

39 Butt, *supra* note 36, at 59.

40 *Id.*

41 *Id.* at 60.

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Most controversial have been the constitutional challenges to the Blasphemy Law. As mentioned, this law defines the "official" religions—that is, "the religions practiced in Indonesia" in a limited fashion. It also prohibits any person or group from publicly advocating an interpretation of a religion that deviates from the tenets of a religion followed in Indonesia and authorizes the state to warn people and groups that do so. If the warning goes unheeded, the government can then disband the "deviant" religious organization and even imprison members for up to five years.[42]

Applicants have attacked this Law on various constitutional grounds, including that it violates religion-related rights. However, in those cases, the Court was called upon to consider not the constitutional status of "beliefs" but the scope of the rights relating to religion. In its first full decision concerning the Law, the Court held that these rights had both internal and external dimensions. The internal component—that is, one's personal conviction or belief—was absolute and the state could not interfere with it. But the external component (the outward manifestation of that belief) could be restricted, as the Blasphemy Law had done, to prevent animosity toward, or the misuse or dishonoring of, religions recognized in Indonesia.[43] Accordingly, the state could prohibit public discussion, advocacy, or attempts at attracting broader support for an interpretation of a religion practiced in Indonesia. It could also prohibit performing religious activities that resemble those performed by an official religion, but that in fact deviate from the teachings of that religion.[44] Religious activities include "calling one's stream a religion, using terminology used by official religions when carrying out or practicing the teachings of the religion, or worshiping, and the like."[45] For the Court, the main justification for limiting public manifestations of "deviant" interpretations and practices was preventing "a reaction that threatens security and public order" from adherents to the relevant recognized religion.[46] This case was widely criticized for implicitly endorsing the persecution of particular sects and supporting the views of more conservative Islamic groups. Indeed, the Court said that the state should consider the views of recognized religious organizations when determining whether an individual or group held deviating views. According to the Court, for Islam this organization was the Council of Islamic Scholars.[47]

THE BELIEFS CASE

The applicants in this case were a farmer, student, and two small business operators who followed indigenous beliefs rather than state-recognized religions. These beliefs were Marapu (East Sumba),[48] Parmalin (North Sumatra),[49] Ugamo Bangsa Batak (North Sumatra),[50] and Sapto

42 Blasphemy Law, *supra* note 5, articles 2, 3.

43 *Id*., article 4.

44 Mahkamah Konstitusi Republik Indonesia [Constitutional Court of Indonesia] Apr. 19, 2020, Decision 140/PUU-VII/2009, para 3.51 (citing Blasphemy Law, article 1) (reviewing Law 1/PNPS 1965 on the Prevention of Misuse and/or Dishonoring of Religion) [hereinafter, *Blasphemy Law Case*].

45 Blasphemy Law, *supra* note 5, General Elucidation to Article 1.

46 *Blasphemy Law Case*, *supra* note 44, para 3.52.

47 This view finds support in the Blasphemy Law itself, which refers to the "religious teachings considered as the fundamental teachings by the scholars [*ulama*] of the relevant religion."

48 See Jacqueline A. C. Vel, *Tribal Battle in a Remote Island: Crisis and Violence in Sumba (Eastern Indonesia)*, 72 Indonesia 141 (2001).

49 See Masashi Hirosue, *The Batak Millenarian Response to the Colonial Order*, 25 Journal of Southeast Asian Studies 331 (1994).

50 See Mei Leandha, *Kisah Penganut Agama Leluhur Batak yang Terasing di Negeri Sendiri* [*The Story of the Follower of Batak Indigenous Religion Alienated from His Own Country*], Kompas, May 24, 2016,

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Dharmo.[51] Represented by a group of eighteen lawyers, they commenced proceedings in the Constitutional Court in late September 2016, challenging the constitutionality of two provisions of the Population Administration Law.[52] The first was Article 61, the first paragraph of which lists the information that family cards contain, including the religion of the family. Article 61(2) stated that people who adhere to a "religion" that has not yet been "recognized by law as a religion," and people who adhere to a "belief" (*penghayat kepercayaan*), should have a blank religion column on their cards. However, Article 61(2) required that they nevertheless "still be given service" (*tetap dilayani*) and "be recorded" (*dicatat*) in the population database. The second provision the applicants challenged was Article 64, which deals with Identity Cards (*Katu Tanda Penduduk*). Its treatment of religions not recognized by law resembles the framework established for family cards under Article 61. Article 64(1) requires that a citizen's religion be noted on the card, along with other information; and Article 64(5) says that those who adhere to a religion not yet recognized by law or a belief are to leave the "religion" section on the card blank but can still receive services and be recorded in the database (Article 64(5)).[53]

The applicants had been unable to obtain the services to which they were entitled under Articles 61(2) and 64(2). Some had not been able to obtain an identity card at all; others had registered a religion they did not follow in order to obtain a card.[54] Those who were unable to obtain a card or who had a blank religion column had trouble registering marriages based on their beliefs and therefore could not obtain marriage certificates.[55] Similarly, some were unable to obtain birth certificates for their children. Others could not obtain employment, particularly in the public service; participate in government social security schemes; enroll their children in school; open bank accounts and access other financial services; or even organize burial in a public cemetery.[56] They argued that this treatment was unconstitutional, primarily because it violated Indonesia's version of the rule of law—the *negara hukum* (literally, law state)—established in Article 1(3) of the Constitution; was discriminatory, thereby violating Article 28I(2) of the Constitution; did not recognize the rights of belief-followers; and created legal uncertainty, violating Article 28D(1).

The national executive and legislature provided written responses to the application but neither of them contested the arguments the applicants put forward, accepting that citizens were sometimes compelled to list a religion they did not follow in order to obtain an identity card.[57] They did not even expressly request that the Court reject the application, as respondents usually do as a matter of

https://regional.kompas.com/read/2016/05/24/08191341/kisah.penganut.agama.leluhur.batak.yang.terasing.di.negeri.sendiri?page=all.

51 See ACHMAD ROSIDI, ed., PERKEMBANGAN PAHAM KEAGAMAAN LOKAL DI INDONESIA [THE DEVELOPMENT OF LOCAL RELIGIOUS UNDERSTANDINGS IN INDONESIA] (2011).

52 Law 23 of 2006 on Population Administration.

53 The 2006 Population Administration Law was amended by Law 24 of 2013. Article 64 was changed. The requirement that belief-followers leave the religion column blank on their identity cards was included in Article 64(5) of the 2006 law, but was moved to Article 64(2) in the 2013 amendments. The applicants and the Court occasionally referred to the pre-amendment Article 64(5) and the post-amendment Article 64(2) interchangeably.

54 *Beliefs Case*, *supra* note 20, at 132.

55 Even though this should have been possible under Government Regulation 37 of 2007, which allows marriages to be endorsed by an elder of an organization registered with a relevant ministry. *Ini Catatan Komnas HAM Terhadap Pemenuhan Hak Kelompok Minoritas* [*Notes from the National Human Rights Commission about the Fulfillment of Rights of Minority Groups*], HUKUM ONLINE, June 1, 2016, https://www.hukumonline.com/berita/baca/lt574e8e597571/ini-catatan-komnas-ham-terhadap-pemenuhan-hak-kelompok-minoritas/.

56 *Beliefs Case*, *supra* note 20, at 8–11, 133.

57 *Id.* at 107–08.

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course in judicial review cases. Rather, they simply asked the Court to be "as just as possible" in its decision.[58]

As mentioned, the Court unanimously agreed with the applicants. What follows is a summary of its decision.[59]

Religion and Beliefs

The Court began by emphasizing the fundamental nature of the right to embrace a religion (*memeluk agama*), which "encapsulated" (*mencakup*) the "right to adhere to a belief in Almighty God" ("hak untuk menganut kepercayaan terhadap Tuhan yang Maha Esa").[60] This was a natural right (*hak alamiah*) and the Court declared that one of the main reasons for the state's establishment was protecting this and other rights.[61] Because the right is provided in both Articles 28E and 29 of the Constitution, the Court said that including it among the non-derogable rights in Article 28I(1) was appropriate.[62]

The Court then considered whether Articles 28E and 29 distinguished between "religions" and "beliefs" or whether "religion" or "belief" were really just different words that mean the same thing. The Court began by saying that, textually, Articles 28E and 29(2) "positioned religion as always being connected to belief, where religion is belief itself." While this seemed to indicate that the Court saw the two concepts as being equivalent, perhaps even interchangeable, the Court then appeared to contradict itself, saying that Articles 28E(1) and 28E(2) seemed to treat them as distinct concepts. This was because Article 28E(1) refers only to religion and Article 28E(2) refers only to beliefs. Article 29(2) refers to the right to "worship in accordance with religion and belief," with the conjunction *and* appearing to indicate that they are separate concepts. As the Court pointed out, if beliefs were to be considered part of religion, then *and belief* would not have been included.[63] The Court then compared Article 29(2) of the Constitution with Article 18 of the Universal Declaration of Human Rights and Article 18(2) of the International Covenant on Civil and Political Rights, both of which cover freedom of religion *or* belief. This seemed to confirm the Court's view that Article 29(2) treated religion and beliefs as separate concepts, albeit "equivalent" (*disetarakan*).[64]

While, for the Court, this textual examination was a "starting point" to understand the relationship between religion and belief, in search of "further clarification," the Court then examined the "spirit behind" the formulation of the constitutional provisions.[65] For Article 29(2), this meant

58 *Id.* at 109.

59 I have attempted to produce a comprehensive account of the Court's judgment and to provide readers without Indonesian language skills with a snapshot of the Court's judicial reasoning. I acknowledge, however, that I have taken some liberties in the way I have presented the Court's judgment, changing the sequence of some of its discussion, to help the reader make better sense of the decision.

60 *Id.* at 138.

61 *Id.* The Constitution's preamble refers to the establishment of the government to "protect the people of Indonesia," which, for the Court, was protection not merely of body and mind, but also of "fundamental rights." *Id.* As the Court pointed out, the mandate is more firmly expressed in Article 28I(4), which gives the "state, mainly the government," responsibility for "protection, advancement, enforcement and fulfillment of human rights." *Id.*

62 It bears noting that Article 28I(1) does not include the right to embrace a religion and to worship as do Articles 28E and 29(2). Rather, Article 28I(1) only mentions the right to "have a religion" (*beragama*), which appears to be narrower than the rights to embrace or worship.

63 *Beliefs Case*, *supra* note 20, at 140.

64 *Id.* at 141.

65 *Id.*

revisiting the debates about Article 29 held in the lead-up to the independence declaration in 1945, which took place in the Investigatory Body for the Preparation of Indonesian Independence (Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia) and then in the Committee for the Preparation of Indonesian Independence (Panitia Persiapan Kemerdekaan Indonesia).[66] According to the Court, the initial draft seems to have come from Soepomo, perhaps Indonesia's most prominent lawyer at the time, who suggested that Article 29 consist of one provision and read simply that the "state guarantees freedom of every inhabitant to embrace any religion (*agama apapun*) and to worship in accordance with their respective religion (*agamanya masing-masing*)." Another committee member, Oto Ikandardinata, then suggested that Soepomo's draft provision be made Article 29(2), and Article 29(1) be added, reading, "The State is based on belief in God (*Ketuhanan*), with the obligation to follow Syariah for adherents." Another member, Wongsonagoro, then proposed that the words *and beliefs* (*dan kepercayaan*) be inserted between the words *agamanya* (their religion) and *masing-masing* (respective) in Article 29(2).[67] This was apparently included to allay concerns held by some non-Muslims in the Committee that Article 29(1) might affect the right to practice a religion or belief other than Islam.[68]

This draft[69] was then discussed during the August 18, 1945, session of the Panitia Persiapan Kemerdekaan Indonesia, when the requirement for Muslims to follow Syariah was removed and the Constitution was finalized. This left Article 29(1) thus: "The state is based on Almighty God." From this discussion the Court concluded that the 1945 Constitution never intended "religion" and "belief" to be separate. "Belief" referred to religions other than Islam, with Article 29(2) guaranteeing that adherents to those other religions could follow their "religion" (*agama*) in accordance with their beliefs (*kepercayaan*).[70]

The Court then discussed the drafting of Article 28E, which was included in the post-Soeharto constitutional amendments.[71] Commission A (Komisi A) of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat)—the body entrusted with drafting Article 28E—had initially suggested two alternatives for this provision. The first was that every person be free to embrace a religion and to worship according to the "beliefs of their respective religions" (*kepercayaan agamanya masing-masing*).[72] The second alternative was that every person be free to embrace their respective religion and to worship according to their "religion and their beliefs" (*agamanya dan kepercayaannya itu*).[73] Commission A chairperson, Harun Kamil, then suggested that religion and belief be regulated separately, in different paragraphs of Article 28E. Another member,

66 The Court did not provide a source from which it obtained the debates. There are several sources, including Muhammad Yamin, Naskah Persiapan Undang-Undang Dasar 1945 [Transcript on the Preparation of the Constitution of 1945] (1959); Ananda Kusuma, Lahirnya Undang-Undang Dasar 1945: Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha [The Birth of the 1945 Constitution: Including Copies of Authentic Documents of the Badan Oentoek Menyelidiki Oesaha Persiapan Kemerdekaan] (2004).

67 This suggests that, in Wongsonagoro's view at least, religion and belief were separate concepts; if they were the same, then there would have been no need to add the express reference to beliefs.

68 As per statements made by Soepomo during the Plenary Session of Investigatory Body for the Preparation of Indonesian Independence on July 15, 1945, cited by the Court in *Beliefs Case*, *supra* note 20, at 142.

69 With one minor grammatical change: the addition of *akan* (to) in front of *beribadah* (worship).

70 *Beliefs Case*, *supra* note 20, at 142.

71 Here the Court referred to its own published version of the debates. The Court has produced several volumes of them. Naskah Komprehensif [Comprehensive Transcript], https://mkri.id/index.php?page=web.Publikasi&id=5&pages=1.

72 *Beliefs Case*, *supra* note 20, at 143.

73 See debates between Lukman Hakim Saifuddin and Yusuf Muhammad on the significance of the word *itu*: Kusuma, *supra* note 66, at 611.

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Dawan Anwar, disagreed, arguing that "belief is religion" and that, therefore, that religion and belief were not separate.[74]

Other representatives seemed to prefer the first alternative, though with some variations. For example, one member suggested that "conviction" (*keyakinan*) replace "belief" (*kepercayaan*), so that Article 28E(1) would read "every person is free to embrace a religion and to worship in accordance with their respective religious convictions."[75] Other members simply supported the second alternative because it was consistent with Article 29(2).[76] Without really reconciling the different views expressed in the debates, the Court concluded that the debates and the provisions they generated indicated that the drafters intended that "religion" and "belief" be "positioned as two separate things."[77]

However, the conclusion that the drafters of Article 28E intended to treat religions and beliefs separately sat uncomfortably alongside the Court's conclusion that Article 29 treated them as being one and the same. Although the Court did not say so directly, it appears to have led itself to the conclusion that Article 28E was inconsistent with Article 29(2), at least in its treatment of beliefs. The Court's attempt to resolve this was as follows:

> [T]he context of Article 28E(1) and (2) of the Constitution [is] regulating human rights, and Article 29 [is] a state guarantee of the freedom to embrace a religion. What is being problematized [in this case] is the limitation of human rights relating to religion and beliefs. The more appropriate norms to refer to are Articles 28E(1) and (2), where religion and conviction (*keyakinan*) are separate.[78]

The separate regulation of religion and beliefs, the Court said, was reflected also in the Population Administration Law itself, which, in Article 58(2)(h), treated religion and convictions (*keyakinan*) as different but equal.[79]

Discrimination

The Court then turned to discrimination law. It noted that the state was required to provide public services, including in population administration, and that the 2009 Law on Public Service required the provision of these services without discrimination, including on the basis of religion.[80] The Court referred to a previous decision where it had explained that discrimination included

74 *Beliefs Case*, *supra* note 20, at 143 (citing MAHKAMAH KONSTITUSI, NASKAH KOMPREHENSIF PERUBAHAN UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA TAHUN 1945: LATAR BELAKANG, PROSES, DAN HASIL PEMBAHASAN, 1999–2002, BUKU VIII: HAK ASASI MANUSIA DAN AGAMA 311 [COMPREHENSIVE TRANSCRIPT OF AMENDMENTS TO THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA: BACKGROUND, PROCESS, AND DISCUSSION, 1999–2002, VOL. 8: HUMAN RIGHTS AND RELIGION] (Revised edition 2010)).

75 *Id.* at 144 (citing KONSTITUSI, *supra* note 74, at 332).

76 As Hobbes Sinaga pointed out, both Article 28E and 29 permitted religious freedom, but Article 28E applied to every "person," whereas Article 29 was directed to every "inhabitant" (*penduduk*). *Id.* The Court said that this view was strengthened by the view of Muhammad Ali (also from the Partai Demokrasi Indonesia Perjuangan faction), who said that the second alternative conflicted with the long-standing Article 29(2). *Id.* With respect, the Court's assertion that Ali's view strengthened Sinaga's appears to be erroneous, because they seem to contradict each other.

77 *Id.*

78 *Id.* at 145.

79 *Id.*

80 Article 4 of Law 25 of 2009 on Public Service.

any limitation based on religion that affected or removed human rights or fundamental freedoms.[81] The Court asserted that this definition was consistent with Article 2 of the International Covenant on Civil and Political Rights. It also mentioned two of its other decisions about discrimination. In the first, the Court held that discrimination occurred when one "thing" (*hal*) was treated differently to another, without there being a reasonable ground to make the distinction; or where different "things" were treated the same, leading to injustice.[82] In the second, it held that discrimination was also "treating the same thing differently," and that differential treatment of things that really were different was not discrimination.[83]

Addressing the Applicants' Arguments

Having completed its discussion of religion-related rights and discrimination law, the Court turned to consider the applicants' arguments, beginning with the claim that the impugned provisions violated the *negara hukum* (rule of law) principle in Article 1(3) of the Constitution.

Rule of Law

The applicants argued that Articles 61 and 64 of the Population Administration Law "did not reflect the guarantee of state protection" for the rights or freedoms of belief-followers.[84] For the Court, the main purpose of the impugned provisions was to "create order in population administration" through the establishment of a national population database, using data contained on identity and family cards, which the government could then use to plan and implement its programs.[85] These cards operated as "authentic evidence" (*alat bukti autentik*) of the correctness of the information contained on them, and affected whether citizens could avail themselves of their rights, including to religion and belief. Yet the Law directed citizens to leave out data (by leaving the religion column blank) or pushed them to listing a religion that they did not follow.[86] The Court appeared to view this unfavorably, emphasizing that the database needed to be both accurate and respect citizens' rights.

The Court then considered whether the word *religion* in Articles 61(1) and 64(1) of the Law encompassed beliefs in Almighty God. After applying several interpretative methods, it concluded that these provisions only extended to state-recognized religions.[87] As the Court said,

> the right or freedom of a citizen to adhere to a religion is restricted to religions recognized by law. By implication, the responsibility or constitutional obligation of the state to guarantee and protect the rights or freedoms of citizens to adhere to a religion, *which really also includes a belief in Almighty God*, are also

81 *Beliefs Case*, *supra* note 20, at 145–46 (referencing Constitutional Court Decision 24/PUU-II/2005 and article 1(3) of Law 39 of 1999 on Human Rights).

82 *Id.* at 146 (citing Constitutional Court Decision 070/PUU-II/2004).

83 *Id.* (citing Constitutional Court Decision 27/PUU-V/2007).

84 *Id.* at 147.

85 *Id.*

86 *Id.*

87 To reach this conclusion, the Court referred to and applied three contextual interpretative methods. *Id.* at 148. These were *nocitur a sociis* (a word or term must be tied to its context); *ejusdem generis* (a word or term is to be restricted in its group); and *expressio unius exclusio alterius* (if a concept is used for one thing, then it is not applicable for another thing). The Court's explanations of these maxims of interpretation was threadbare and the Court did not explain their source.

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> restricted to citizens who adhere to a religion recognized by law. This is not in line with the spirit of the 1945 Constitution, which clearly guarantees to every citizen the freedom to embrace a religion *and* belief and to worship in accordance with that religion *and* belief.[88] [my emphases]

The Court then briefly addressed whether the constitutional rights of belief-followers were protected in Articles 61(2) and 64(5), which, while directing them to leave the religion column blank, also declared that they were to receive government services and be included in the database. The Court's response was to characterize these provisions as being directed toward fulfilling the state's obligation to provide public services to citizens and not to protect the rights of adherents to beliefs.[89] The Court did not explain how it reached this conclusion, but, for the Court, the implications of it were clear: The provisions had constructed the right to embrace a religion as something granted by the state, but, as the Court had explained at the beginning of its judgment, it was in fact a "natural" right that attached to every person.[90]

Accordingly, Articles 61(2) and 64(5) violated the rule of law. In the words of the Court:

> A pre-requisite to the rule of law is the responsibility of the state to guarantee that the human rights of citizens are enjoyed in practice and in everyday reality—even more so if the rights are clearly included in the Constitution. If the right is a constitutional right, then the responsibility of the state to guarantee the enjoyment of that right becomes stronger because it is the constitutional obligation of the state to fulfil it, as a consequence of the recognition of the position of the Constitution as the supreme law.[91]

Legal Certainty, Recognition, Equality and Discrimination

The Court also concluded that Articles 61(1) and 64(1) of the Population Administration Law violated Article 28D(1) of the Constitution, which establishes the constitutional rights to legal certainty, guarantees, and recognition. The Court did not provide much explanation for this conclusion beyond saying that because the provisions applied only to religions recognized by law, followers of beliefs in Almighty God obtained no certainty or recognition.[92]

The Court also acknowledged that having a blank religion column limited or precluded fulfilment of other rights, including marriage and government services, which meant that adherents either did not enjoy certainty and equality before the law and government as did other citizens, or had to lie to obtain them. For the Court, this was an unacceptable "constitutional loss," resulting not because of the way the impugned provisions were implemented, but rather as the logical consequence of "religion" in the Law not including "beliefs."[93]

As for discrimination, which is prohibited under Article 28I(2) of the Constitution, the Court pointed again to its previous decisions on discrimination and concluded that differentiating between followers of religions and beliefs was unconstitutional. This was because doing so treated the same things differently: here, access to public services for followers of religions and adherents to beliefs.[94] This was not justifiable under Article 28J(2)—the constitutional provision that permits the

88 *Id.* at 149.
89 *Id.*
90 *Id.* at 149–50.
91 *Id.* at 150.
92 *Id.* at 150–51.
93 *Id.* at 151–52.
94 *Id.* at 152.

human rights of some to be overridden by the human rights of others in some circumstances, including to fulfil just demands for life in a democratic community; to the contrary, it led to unjust treatment for belief-followers.[95]

Final Holding

The Court decided that Articles 61(1) and 64(1) were unconstitutional to the extent that the word *religion* was not interpreted to include "beliefs." Articles 61(2) and 64(5), which had referred specifically to "beliefs," were thereby rendered superfluous because beliefs were captured by Articles 61(1) and 64(1), so the Court also struck them from the Law. However, this did not mean that belief-followers could choose what to write in the religion columns on their cards. The Court decided that, given the large variety of beliefs practiced in Indonesia, allowing belief-followers to include the actual name of their respective beliefs on family or identity cards would likely disrupt "orderly population administration."[96] The Court's solution was that they simply note *penghayat kepercayaan* (belief-follower) on these cards, without detailing the particular belief adhered to.[97]

Analysis

The Court's decision was a "conditional decision" (*putusan bersyarat*). In these decisions, which the Court has been issuing since its establishment in 2003, the Court declares a statutory provision to be unconstitutional unless interpreted in a way the Court specifies. Applied to this case, Articles 61(1) and 64(1) are now unconstitutional unless their references to "religion" are interpreted to be references to religions or beliefs. Conditional decisions have been criticized as veiled judicial law-making,[98] but their propriety is now rarely questioned in Indonesian legal circles.[99]

While the outcome of this case has been widely praised,[100] the reasoning the Court employed was unconvincing. Most fundamentally, the Court did not clearly and consistently specify whether "religion" and "belief" were separate concepts or meant the same thing. Several times, particularly near the end of its judgment, the Court said quite clearly that "religion actually includes beliefs in Almighty God." Yet in others, the Court appeared to establish that they were in fact separate. The Court even contradicted itself within short passages. For example, in the passage set out above where the Court concluded that beliefs were captured by the word "religion" in Articles 61(1)

95 *Id.* at 152–53. On Article 28J(2), see SIMON BUTT & TIM LINDSEY, THE CONSTITUTION OF INDONESIA: A CONTEXTUAL ANALYSIS 233–40 (2012).

96 *Beliefs Case*, *supra* note 20, at 153.

97 *Id.*

98 Simon Butt, *Conditional Constitutionality, Pragmatism and the Rule of Law*, HUKUMONLINE, May 2, 2008. The publication was not accessible on the Hukumonline website at the time of publication, but a version of the paper is available at https://ssrn.com/abstract=1400413.

99 The legislature has, in fact, attempted to stamp out 'conditional' decisions, but the Court has invalidated the statutory provisions intended to prohibit it from issuing them: Fritz Edward Siregar, Indonesian Constitutional Politics 2003–2013 (2016) (unpublished Ph.D. dissertation, University of New South Wales). It bears noting, however, that the Court can do very little, if anything, to ensure that these decisions are complied with: not only does it lack enforcement powers (as discussed below), it also cannot review government action (a power that would appear to be necessary to ensure that the government complies with its interpretation of the constitution): SIMON BUTT, *Conditional Constitutionality and Conditional Unconstitutionality in Indonesia*, *in* CONSTITUTIONAL REMEDIES IN ASIA 77–97 (Po Jen Yap ed., 2019).

100 Marguerite Afra Sapiie and Kharishar Kahfi, *Court Rules in Favor of Native Faiths*, JAKARTA POST, November 8, 2017, https://www.thejakartapost.com/news/2017/11/08/court-rules-favor-native-faiths.html.

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and 64(1) of the Population Administration Law,[101] the Court said, on the one hand, that religion "actually includes a belief," and, on the other hand, that the Constitution guarantees the right to embrace "a religion *and* belief." As argued above, religion and belief can hardly be *both* the same thing *and* different things.

I now turn to analyze other aspects of the decision.

Original Intent

The Court's use and discussion of constitutional debates preceding the enactment of Article 29 (in 1945) and Article 28E (in 2000) was problematic. The text of the provisions suggested that religion and belief were intended to be the same thing. For the Court, this conclusion was supported by the debates surrounding Article 28E, which resulted in religion and belief being covered in separate subsections of Article 28E. By contrast, the debates about Article 29 led the Court to conclude that "beliefs" were in fact "religions" other than Islam. In this context, "belief" was "religion."

The way the Court has interpreted these provisions has done very little, if anything, to clarify the constitutional status of indigenous beliefs. This is because the primary focus of the debates about Article 29 was about the place of Islam vis-à-vis the established religions. There is little to suggest that the founding fathers even contemplated indigenous religions, let alone debated their constitutional position. Surely the Court should have addressed this issue to support its conclusion, that religions encompassed beliefs in Almighty God. Instead, the Court appears to have conflated the way the word *belief* was used during the debates in 1945 (before the "seven words" were removed, to protect religions other than Islam) with the way it is used in Indonesia today (to refer to unofficial indigenous belief systems). Given the contrary meanings the Court appeared to give to the term, it is perhaps not surprising that the Court did not attempt to define *kepercayaan* when considering whether it was the same as religion.[102]

In this context, it bears noting that the Court has not persuasively explained how it seeks to determine the original intent of constitutional provisions. The main purpose appears to be ascertaining what the drafters of the Constitution intended constitutional provisions to mean, when the text of those provisions is unclear. Only rarely has resort to constitutional debates preceding enactment or amendment been questioned. This happened when former Constitutional Court judge Maria Farida, in a dissenting opinion, disapproved of using this interpretative method in an unrelated case, stating that it "was not everything" and pointing out, "initial ideas can completely change after being formulated as a norm, so in my view, original intent is not always appropriate to use in the interpretation of the norms of the constitution."[103] Some commentators have expressed concerns about the Court "cherry-picking" statements from debates to fit its preferred interpretations and conclusions.[104] Notably, the Court often refers to views expressed by individuals during debates, but does not seek to demonstrate that other members agreed to them. Without establishing this, the Court could well be representing views held by a single member or a minority of members as being the views of an entire drafting committee or meeting. This can be dangerous if those minority views contradict those of the majority, but the majority views were not captured either in the reporting of the debates or in the text of the Constitution.

101 *Beliefs Case*, *supra* note 20, at 149.

102 Adding to the confusion was that the Court used the word *keyakinan* instead of *kepercayaan* at one point in its judgment, without explaining the difference, if any, between the two terms.

103 Constitutional Court Decision 14/PUU-XI/2013, at 90 (Farida, J., dissenting).

104 Butt, *supra* note 30.

Worse, in *Beliefs*, the Court did not mention the debates about Article 29 that took place during the post-Soeharto amendment rounds and which are covered extensively in the Court's own publications.[105] Of course, Article 29 was retained, but there was much discussion about whether it should be retained and whether various amendments should be made (including to resurrect the "seven words"). It is unclear why the Court regarded the 1945 debates about Article 29 as having more authority than the more recent debates. Surely the 1999–2002 debates are a more appropriate aid for uncovering the more recent "intent" behind Article 29.

Even more fundamental—and relevant in the present case—is that the Court has not clearly explained why it resorts to original intent. In other cases, the Court has indicated that, when interpreting the Constitution, it should not limit itself to originalism—particularly if this will lead to the inoperability of constitutional provisions or will contradict the main ideas underlying the Constitution itself. But it can be used to "determine the spirit" of the Constitution "in order to create a democratic law state," which constitutes the "main thinking behind the Preamble to the Constitution."[106] However, important questions remain unanswered, among them whether the views of drafters are always relevant, or only when the constitutional text they produced is unclear. Here, the Court did not identify what was unclear about Articles 28E and 29 that necessitated consideration of these constitutional debates.

Ignoring Articles 61(2) and 64(2)?

The Court did not establish that dealing with religion and beliefs in different provisions of a statute was discriminatory. Of course, the discrimination argument was muddied by the Court's apparent reluctance to clearly specify whether beliefs and religions were the same or different concepts. If, on the one hand, "religion" and "beliefs" were distinct concepts, it might be legitimate to treat them differently—that is, to list a citizen's religion on these documents, but not beliefs. If, on the other hand, the term *religion* encompassed both "religions" (understood as recognized religions) and "beliefs," it would be unconstitutional for the impugned provisions to distinguish between religions (which were to be mentioned) and beliefs (which were not to be listed). On this reading, the Population Administration Law was discriminatory, because it treated "beliefs" differently than it did "religions," even though they were, in reality, one and the same, and should, therefore, be accorded the same status or recognition on these documents.

When discussing discrimination, the Court gave little weight to the entitlements that the statute granted to belief-followers, which were the same as those granted to religion-holders. Both had a right to public services and to have their data recorded in the database. Did it matter, then, if religion-holders could note their religion on their cards, but that belief-followers could not include their beliefs? The Court managed to avoid addressing this question by characterizing Articles 61(2) and 64(2) as being directed toward fulfilling the state's obligation to provide services to citizens in accordance with the data included in the database[107] rather than protecting the rights of adherents to beliefs.

The Court applied a similarly blinkered approach to conclude that Articles 61(1) and 64(1) did not provide to belief-followers the legal certainty, legal recognition, and equal treatment to which the applicants were entitled under Article 28D(1) of the Constitution, because they granted services

105 MAHKAMAH KONSTITUSI, *supra* note 74.

106 Constitutional Court Decision 005/PUU-IV/2006, at 179–80.

107 *Beliefs Case*, *supra* note 20, at 149.

only to religion-followers.[108] While it is true that these provisions did not apply to belief-followers, the Court seemed to ignore that Articles 61(2) and 64(2) provided that certainty and recognition by providing those very same services to belief holders.

This seems to suggest that the main constitutional problem was that belief-holders were unable to disclose their beliefs on their administration documents and therefore had nothing to do with the administrative services the impugned statute regulated. But the Court did not explain the constitutional significance of filling in the column or leaving it blank, focusing instead on the problems that belief-followers had in obtaining public services.

Separate but Equal?

The Court also seemed to ignore one of the constitutional consequences of religion and beliefs being separate concepts, which the Court appeared to declare earlier in its judgment. The Court suggested that, if they were separate, they were of the same status (*setara*), though it did not explain how it reached that conclusion. If this interpretation is correct, then a further question arises: do "religions" and "beliefs" have the same constitutional status as each other, such that neither can override the other in the event of conflict? Could the rights of Muslims, for example, override the rights of particular belief-followers? Or would they be required to accommodate each other's entitlements that flow from their constitutional rights, such as by allowing the building of places of worship to give effect to their right to worship in accordance with their religion?[109]

One answer is that, constitutionally, "religion" might prevail over "beliefs" if they are treated as separate concepts, because the right to have a religion (*beragama*), but not to have a belief, is specifically mentioned in Article 28I(1) as being a right that cannot be diminished under any circumstances. It might, therefore, override the Article 28E(2) right to be convinced of one's beliefs (*meyakini kepercayaan*) and any protections to beliefs accorded by Article 29(2). If correct, this interpretation would leave any constitutional reference to "beliefs" bereft of almost all legal meaning.

Avoiding Articles 28E and 29

Given the extensive discussion of the meaning of religion and belief in the judgement, it is perhaps surprising that the Court did not directly rely on either Article 28E or Article 29 to decide the case. Rather, as mentioned, it invoked: the general *negara hukum* concept; the prohibition on discrimination; and rights to legal recognition and legal certainty. The Court did not explain why, after discussing Articles 28E and 29 so extensively, it did not simply decide that the impugned provisions, which referred to "religions recognized by law," were invalid because they contradicted the constitutional meaning of *religion*, which included religions that had not yet been legally recognized, such as beliefs.

There are several potential explanations. One is that neither the applicants nor the respondents mentioned either Article 28E or Article 29 as bases for their arguments in their written submissions. Like the Court, the applicants maintained that the impugned provisions violated the rule of law, were discriminatory, did not provide legal recognition to "beliefs," and created legal uncertainty. This was not an oversight: the applicants' lawyers deliberately avoided resorting to Article 28E and 29. According to one member of the applicants' legal team, they anticipated that the judges

108 *Id.* at 149–51.

109 On this issue, see Melissa Crouch, *Implementing the Regulation on Places of Worship in Indonesia: New Problems, Local Politics and Court Action*, 34 Asian Studies Review 403 (2010).

might not respond positively to arguments based on freedom of religion, given their conservative decisions in various Blasphemy Law cases,[110] some of which were discussed above. Indeed, they feared that the judges might have ultimately defined freedom of religion as applying only to state-recognized religions as defined by the Blasphemy Law.[111] The legal team therefore pursued arguments that did not "problematize the religion side," but rather focused on discrimination and the right to equal basic services.[112] Ultimately, the Court raised Articles 28E and 29 on its own initiative. In the end, the lawyers' fears were not realized. As discussed, the Court's decision was unclear, but at least it did not expressly diminish the constitutional position of beliefs.

Of course, lawyers and their clients pursue legal strategies they think will help them win cases. However, the approach of the team of lawyers in this case seems to reflect a trend in Indonesia where lawyers, in some cases, avoid basing their applications on constitutional rights that appear directly related to their claims. Instead, they seem to prefer what they see as a safer course: using rights with which the Court has become familiar through its decisions in other cases. Recent doctoral research has revealed this play-it-safe approach in some environment-related cases that have come before Indonesia's Constitutional Court. Murharjanti has demonstrated that lawyers have avoided using the right to a healthy environment in constitutional cases about exploitation of natural resources, much of which has disastrous environmental effects.[113] Anticipating that judges would not fully comprehend this relatively new right, lawyers based their arguments on provisions that have become staples in the Court's decision making, such as Article 33 (which requires the state to control natural resources for the greatest prosperity of the people) and Article 28H(3) (which requires the state to recognize the rights of customary communities).[114] In this way, cases that are really about environmental management and sustainability have been dealt with using more general and widely used rights, simply because parties know that the Court has been receptive to them in past cases. The Court has, therefore, not been pushed to consider what the right to a healthy environment means or to what it entitles citizens.

In this context it bears noting that the relatively generic right to "legal certainty" has for many years been among the most successful bases for constitutional claims. It has been used to win challenges against legislation covering a wide range of issues, from natural resources,[115] supervision of the legal profession,[116] banning controversial history books,[117] and the term of office of the attorney general,[118] to electoral advertising,[119] and electoral systems,[120] to name but a few.[121] It has also been used to invalidate statutes that employ unclear terms.[122] One can therefore understand

110 WhatsApp correspondence with member of legal team (August 26, 2019).

111 *Id.*

112 *Id.*

113 Prayekti Murharjanti, The Effectiveness of the Constitutionalisation of Environmental Rights in Indonesia: Judicial Application and Government Compliance (2019) (unpublished Ph.D. dissertation, University of Sydney).

114 Simon Butt & Fritz Edward Siregar, *State Control over Natural Resources in Indonesia: Implication of the Oil and Natural Gas Law Case of 2012*, 31 JOURNAL OF ENERGY AND NATURAL RESOURCES LAW 107 (2013); Simon Butt, *Traditional Land Rights before the Indonesian Constitutional Court*, 10 LAW, ENVIRONMENT AND DEVELOPMENT JOURNAL 57 (2014).

115 See, for example, Constitutional Court Decision 3/PUU-VIII/2010.

116 See, for example, Constitutional Court Decision 067/PUU-II/2004.

117 See, for example, Constitutional Court Decision 6-13-20/PUU-VIII/2010.

118 See, for example, Constitutional Court Decision 49/PUU-VIII/2010.

119 See, for example, Constitutional Court Decision 32/PUU-VI/2008; Constitutional Court Decision 99/PUU-VII/2009.

120 See, for example, Constitutional Court Decision 110-111-112-113/PUU-VII/2009.

121 BUTT and LINDSEY, *supra* note 95, at 130–38.

122 BUTT, *supra* note 30, at 135.

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why the lawyers in *Beliefs* relied on the legal certainty ground: not only did they use it to argue that the scope of the word *religion* in Articles 61(1) and 64(1) of the Law was uncertain; they also used it to argue that the provisions left belief-followers uncertain about their ability to enjoy the public services to which they were entitled.

Norm versus Implementation

The Court's use of the legal certainty ground in this case, and other cases, is legally controversial. This is because legal uncertainty is often the result of the application of a statute rather than the terms of that statute. In *Beliefs*, the legal uncertainty was arguably not due to the religion column's being left blank, but rather to the *consequences* of having a blank religion column—that is, having difficulties obtaining public services. If this is correct, the text of the statute was not to blame for the applicants' loss; rather, the application of the statute was the cause.

The Constitutional Court has, for many years, maintained that it can review the constitutionality of the text of statutes, but not their practical effect, implementation, or application.[123] This type of enquiry, the Court has held, more properly falls within the purview of other courts. (Following this, the court with primary responsibility to ensure that belief-followers receive their statutory entitlement to services should be Indonesia's Supreme Court (Mahkamah Agung), and the administrative and general courts it oversees. The administrative court in particular appears to be the most appropriate forum in which to challenge the withholding of a government service, because their main purpose is allowing citizens to challenge government decisions or failures to make decisions.[124]) The Court attempted to distinguish *Beliefs* from these earlier decisions, holding that the applicants' problems in accessing public services and the like were not related to the implementation of a norm, but rather were the "logical consequence" of the understanding of *religion* in the law.[125] This explanation is unconvincing, because it ignores the provisions of the law that expressly provided services for adherents to beliefs. By examining the application of the statute, the Court may have overreached its jurisdiction.

CONCLUSION

As mentioned, this case has been heralded as an advance for freedom of religion in Indonesia—particularly for adherents to beliefs. It is most certainly symbolically important, and has been used as a basis to push for further recognition of the rights of belief holders. But the extent of the advance this case really represents is far from clear. From a constitutional law perspective, the decision resolved very little about the constitutional status of "beliefs." In fact, the numerous inconsistencies and flaws in the decision have created significant uncertainty.

123 Although the Court has not been able to maintain this distinction in all decisions, and has taken into account the practical effect of statutes when examining the constitutionality of those statutes in a relatively small number of cases. See, for example, Constitutional Court Decision 110-111-112-113/PUU-VII/2009; Constitutional Court Decision 85/PUU-XI/2013.

124 Adriaan Bedner, *"Shopping Forums": Indonesia's Administrative Courts*, *in* New Courts in Asia (Andrew Harding & Penelope Nicholson eds., 2010); Stewart Fenwick, *Administrative Law and Judicial Review in Indonesia: The Search for Accountability*, *in* Administrative Law and Governance in Asia: Comparative Perspectives 329–358 (Tom Ginsburg & Albert H. Y. Chen eds., 2009).

125 *Beliefs Case*, *supra* note 20, at 152.

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Even if the decision is interpreted to provide constitutional recognition of beliefs, that recognition is limited. The Court was very careful to confine the application of its decision to beliefs in *Ketuhanan Yang Maha Esa* (Almighty God), which is currently taken to imply monotheism.[126] This is not particularly controversial in constitutional terms, given that, as mentioned, both Pancasila and Article 29(1) of the Constitution declare that Indonesia is a state based on this principle.[127] But it means that polytheistic or other religions are unlikely to fall within the definition of *beliefs* for the purposes of constitutional protection. Followers of those beliefs may continue to face the same problems as had the applicants, unless they can somehow reconstruct their beliefs to fit within accepted parameters.[128] The decision also does not appear to protect any of the religious sects whose activities are captured by the Blasphemy Law.[129] It does not, for example, assist Indonesia's Ahmadis, many of whom have encountered problems obtaining an identity card and public services,[130] quite apart from other discrimination and violence.[131]

Another limitation of the decision relates to the Court's solution: allowing adherents to list *penghayat kepercayaan* (belief-follower), instead of the specific name of their belief. While the Court's concern about overcomplicating population administration by requiring that belief-followers be able to include their belief by name is understandable, full constitutional recognition appears to require citizens to be able to list their specific beliefs. The Court's solution is equivalent to allowing adherents to recognized religions to list the word *agama* (religion) in their religion column, rather than to name their specific religion, whether that be Islam or Christianity, for example. No doubt the established religions would reject this.

From a more practical perspective, at time of writing the government's response to the decision has been slow and incomplete and maybe even noncompliant, perhaps under the influence of the Council of Islamic Scholars. Soon after the decision was handed down, the Council condemned it for treating religions and beliefs as having the same status.[132] Consistent with this view, the council called for belief-followers to have separate identity cards without a religion column. In June 2018, the Ministry of Home Affairs issued regulations about new types of family cards needed to implement the Court's decision.[133] Instead of a "religion" column, these cards have a "beliefs"

126 *See* Robert W. Hefner, *The Study of Religious Freedom in Indonesia*, 11 REVIEW OF FAITH & INTERNATIONAL AFFAIRS 18–27 (2013).

127 While the Court did not highlight this point in its decision, this monotheistic-only approach brings into question the Court's claim that Indonesian law and international human rights law concerning religious freedoms were broadly similar. Of course, the main human rights conventions contain no such limitations on recognition.

128 Buddhists and Hindus have been forced to do this: Bagir, *supra* note 8, at 287.

129 *See* Melissa Crouch, *Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law*, 7 ASIAN JOURNAL OF COMPARATIVE LAW 1 (2012).

130 Gayatri Suroyo, *Indonesian Islamic Sect Say They're "Denied State IDs" over Their Beliefs*, REUTERS, June 21, 2017, https://www.reuters.com/article/us-indonesia-religion/indonesian-islamic-sect-say-theyre-denied-state-ids-over-their-beliefs-idUSKBN19C1GJ.

131 Melissa Crouch, *Indonesia, Militant Islam and Ahmadiyah: Origins and Implications* (ARC Federation Fellowship, Islam, Syari'ah and Governance Background Paper, 2009).

132 Indeed, soon after the decision was handed down, the Minister of Religious Affairs expressed the same view and that he would be meeting with the Court for further clarification: Muh Iqbal Marsyaf, *Kemenag: Putusan MK Tak Berarti Agama dan Kepercayaan Sama* [*Ministry of Religious Affairs: The Constitutional Court Decision Does Not Mean That Religions and Beliefs Are the Same*], SINDONEWS, November 8, 2017, https://nasional.sindonews.com/read/1255665/15/kemenag-putusan-mk-tak-berarti-agama-dan-kepercayaan-sama-1510138543. The minister pointed to MPR Decision IV/MPR/1978 on Broad Outlines of State Policy, in which it is said that "aliran kepercayaan terhadap Tuhan Yang Maha Esa" (streams of belief in Almighty God) are not religions. *Id.*

133 Minister of Home Affairs Regulation 118 of 2017 on Family Card Forms and Circular Letter 471.14/10666/DUKCAPIL.

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column in which "Belief in Almighty God" appears, not "belief-follower," as the Court required. While some subnational administrative offices have made these new cards available, many have not.[134] Some local administrations appear to continue to require belief-holders to be associated with a belief organization registered with the Ministry of Home Affairs' Directorate General of National Unity and Politics, and have rejected applicants that are not. The Court's decision, and these regulations, have not, therefore, been implemented uniformly across the archipelago.

Of course, being able to indicate "belief" on these documents, rather than leaving them blank, may do little to end the discrimination, in practice, that not listing one of the recognized religions may continue to have.[135] Before the Court's decision, people with blank religion columns were presumed to follow a "belief" rather than a "religion" anyway; having this specified on their identity and family cards merely makes this explicit. There remain many aspects of life in Indonesia where not following a recognized religion—particularly Islam—is a disadvantage, regardless of what one's identity card says. Discrimination will likely continue in the workplace—particularly in the public sector—and perhaps in politics. Children might still find progressing in school difficult if religious education is mandatory, but their belief is not taught, forcing them to study one of the official religions.

The Constitutional Court can do nothing about this, because of its lack of enforcement powers and limited review jurisdiction. It cannot pursue government officials who refuse to comply with its decisions, or to invalidate regulations that are inconsistent with its decisions. The Ministry of Home Affairs itself appears to have disregarded the Court's decision in this case by requiring belief-followers to put "Belief in Almighty God" instead of "belief-follower" in their religion column, as mentioned. The ministry's choice to issue separate cards for religion-holders and belief-followers might also contradict the "spirit" of the Court's decision, which emphasized the importance of treating like "things" (including religions and beliefs) the same. Indeed, one could hypothesize that, if the Population Administration Law provisions had initially required separate cards, instead of blank columns, a constitutional challenge to those provisions might be successful, if the Constitutional Court followed its reasoning in the *Beliefs Case*. Although the Court's decision was, on the whole, ambiguous and left many issues unresolved, one thing was clear: the Court's rejection of the narrow definition of religion (that does not encompass beliefs) and differential

134 *Kolom Penghayat Kepercayaan Terganjal Aplikasi* [*Belief Followers' Column Blocked by the Application*], Jawa Pos: Radar Solo, October 18, 2018, https://radarsolo.jawapos.com/read/2018/10/18/99241/kolom-penghayat-kepercayaan-terganjal-aplikasi; *Layanan E-KTP bagi Penghayat Kepercayaan Mulai Tersedia di Yogyakarta* [*Electronic Identity Card Service for Belief Followers Becomes Available in Yogyakarta*], Liputan6, August 11, 2018, https://www.liputan6.com/regional/read/3615471/layanan-e-ktp-bagi-penghayat-kepercayaan-mulai-tersedia-di-yogyakarta; Anwar Siswadi, *Pemerintah Bandung Terbitkan KTP Pertama untuk Penghayat* [*Bandung Government Issues First Electronic Identity Card for Belief Follower*], Tempo, February 21, 2019, https://nasional.tempo.co/read/1178219/pemerintah-bandung-terbitkan-ktp-pertama-untuk-penghayat; Rasyid Ridho, *4.462 Warga Baduy Miliki E-KTP dengan Kolom Kepercayaan TME* [*4,462 Baduy Citizens Have Electronic Identity Cards with Religion Columns*], Sindonews, February 26, 2019, https://daerah.sindonews.com/read/1382179/174/4462-warga-baduy-miliki-e-ktp-dengan-kolom-kepercayaan-tme-1551177450; Akrom Hazami, *MK Effect, Penghayat Kini Bisa Gelar Pernikahan Sesuai Keyakinannya* [*The Constitutional Court Effect: Belief Followers Can Now Hold Weddings in Accordance with Their Beliefs*], Detik News, April 28, 2019, https://news.detik.com/berita/d-4527790/mk-effect-penghayat-kini-bisa-gelar-pernikahan-sesuai-keyakinannya; Joe Cochrane, *In Indonesia, Feeling Like Outcasts over Ancient Beliefs*, AP News, April 20, 2018, https://apnews.com/e10f71afe5764b75925348856325652b.

135 Anna Amalia, *Perihal Pernikahan Penghayat Pasca-Putusan MK 2017* [*Concerning Weddings for Belief Followers after the Constitutional Court Decision*], CRCS UGM, September 6, 2019, https://crcs.ugm.ac.id/pernikahan-penghayat-pasca-putusan-mk-2017/.

treatment of the same "things" (religions and beliefs). The minister's solution of separate identity cards seems to reflect precisely what the Court rejected.

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