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## The Challenges and Opportunities of the Constitutional Court Decision Implementation on Recognition of the Indigenous Religions in Indonesia

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### Abstract

The Constitutional Court of Indonesia has held the followers of the indigenous religion (the Penghayat) can have their own religious identity on their identity card (ID) in 2016. The 1945 Constitution of Indonesia mentions a non-discriminatory principle which has been applied by the Constitutional Court to this case. However, the implementation of the Constitutional Court decision will face challenges and opportunities on the field. The author has used of both normative and empirical methodology by providing related legal information and the result of the interview with the local leader of the indigenous religion as sources of analysing the issues. As the result of the research shows the following challenges for the implementation of the Constitutional Court decision ; a. unification of the laws, b. lack of affirmative action for the followers of the indigenous religions, c. Lack of the updated and integrated administrative data base of the citizens with the Constitutional Court decision, d. religiously and ethnically based politics effecting the decision of public officials to accommodate public services for the followers of the indigenous religions while the following opportunities of the implementation of the Constitution Court decision are the constitutional recognition and protection of the indigenous community, the existence of the National Ombudsman Commission, the rule law principle in the 1945 Constitution, final and legally binding status of the Constitutional Court decision.

**Keywords:** The Indigenous Religion; the Constitutional Court of Indonesia; Public Services; The 1945 Constitution of Indonesia.

### Introduction

The Constitutional Court of Indonesia has held the followers of the indigenous religions in Indonesia can mention their own local religions on their ID (The Constitutional Court of Indonesia 2016). On one hand, the Constitutional Court decision is an achievement of fulfilling civil, and political rights of the indigenous religion groups. But on the other hand, the implementation of the Constitutional

Court decision will have the challenges and opportunities on the field. Directorate General for Civil Registration under The Ministry of Interior Affair has recognized modifying the Constitutional Court decision by changing the indigenous religion is part of the religion on ID with making a special column for the indigenous religion on ID.<sup>1</sup> Also, Directorate General for Civil Registration under the Ministry of Interior Affair has issued a letter number 471.14/10666/Dukcapil on the requirements of the followers of the indigenous religion to be recorded in a civil registration where the followers of the indigenous religion should waiver as the follower of one of the official religions.

The Directorate General for Civil Registration who requires the followers of the indigenous religions to waiver as the followers of the previous religion will make a new discrimination against the followers of the indigenous religions in public services. The followers of the indigenous religions has been targeting for discriminatory in public services. The National Commission On Anti-Violence And Discrimination Against Women (the *Komnas Perempuan*) in 2016 has issued a report on the discriminatory practices in public services against the followers of the indigenous religions.<sup>2</sup> The following Table 1 is on the list of the discriminatory practices against the followers of the indigenous religions in Indonesia;

| Number | The Type of The Civil Registration Case | Amount |
|--------|---|--------|
| 1      | Divorce Registration                    | 1      |
| 2      | Birth certificate                       | 11     |
| 3      | Marriage Registration                   | 13     |
| 4      | Identity Card                           | 8      |
| 5      | Death Registration                      | 1      |

According to the Komnas Perempuan's Annual Report the followers of the indigenous religions have lack of access to administrative public services such as marriage registration and birth certificate, but also there are lack of administrative public

<sup>1</sup> Ilham Safutra, 'Kepercayaan Mulai Masuk Kolom E-KTP' *Jawa Post* (Jakarta, 17 April 2021) <<https://www.jawapos.com/nasional/27/02/2019/kepercayaan-mulai-masuk-kolom-e-ktp/>>.

<sup>2</sup> The Komnas Perempuan, *Sovereignty of Belief, Beleiving In Pluralism* (Komnas Perempuan 2016).[46].

services on ID, divorce registration, and death registration. The religious identity of the indigenous religion followers in public services is still being challenged by the public officials, though the Constitutional Court has recognized the religious identity of the indigenous religion followers.

The Author uses of both normative and empirical legal research to do this paper. The author seeks to obtain empirical information by interviewing the local leaders of the indigenous religions in Indonesia particularly those who have an issue on the public services of the indigenous religion followers in Indonesia. The result of the interviews will be used to analyse the existing issue on the implementation of the Constitutional Court decision. Also, the author uses of normative legal research to obtain the laws/regulations, and the Constitutional Court decisions (not only the existing the Constitutional decision, but also other Constitutional Decisions) in relating to the issue of the public services for the indigenous religion followers in Indonesia. The laws/regulations will be explored, and analysed by the author to seek “the loop hole” and how the existing laws/regulations are compatible with the Constitutional Court decision. Moreover, the author will elaborate the challenges and opportunities of the implementation of the Constitutional Court decision. Eventually the author will seek alternative solution to mitigate the challenges and maximize the opportunities.

### **The Effective and Meaningful Implementation of the Constitutional Court Decision And A Constitutional Question Mechanism**

Multi-interpretation on the implementation of the Constitutional Court decision has made an issue for the followers of the indigenous religions in Indonesia. The author takes an example for the issue of the Constitutional Court decision in Bandung where there is a community of the *Budi Daya* which is a local religion in West Java province of Indonesia. The author has interviewed Engkus Ruswana who is a local leader of the *Budi Daya* Community in Bandung. According to Engkus Ruswana the followers of the *Budi Daya* in Bandung recognizes the local civil registration office and Ministry of Home Affair provide a special column on ID

which is different from the Constitutional Court decision. Also, these governmental policies make the divided indigenous religion acceptance on the implementation of the Constitutional Court decision where some of the indigenous communities accepts but there are some of the indigenous communities not to accept as well according to the result of interview with Engkus Ruswana.

The *Budi Daya* Community has been existing in West Java Province which is part of the *Sunda Wiwitan* (the biggest indigenous religion in West Java Province) since the Age of *Galuli* or before the Hinduism in Indonesia.<sup>3</sup> The vagueness of the Constitutional Court decision implementation is an issue of law and politics that why the author is interested in exploring this issue. Mahfud MD argues that law and politics are legal policy on the application of the law or not to apply the law for a certain reason,<sup>4</sup> Furthermore, Mahfud MD proposes that in order to analyse a matter of law and politics we should know the political configuration triggering the issues to apply the law or not to apply the law in the society.<sup>5</sup>

To explore the political configuration of law and politics we should know the political context in the past. Niel Mulders argues that the fast emergence of the indigenous religions in Indonesia in 1960s leads to the interests of the government to control the emergence of the followers of the indigenous religions. At that time, the followers of the indigenous religion were on the peak. According to Ministry of Religion Affair there were 360 new indigenous religions in Indonesia in 1953 so that the government needed a special body in order to control the emergence of the indigenous religions.<sup>6</sup> Also, the Ministry of Religion Affair developed the elements of the religion definition as follows; to have a prophet, a holy book, international recognition.<sup>7</sup> Accordingly the existing elements of the religion definition has excluded the existence of the indigenous religions in Indonesia. Moreover, after

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<sup>3</sup> The interviews with Engkus Ruswana in May 2019.

<sup>4</sup> Mahfud MD, *Law and Politic* (LP3ES 2006).

<sup>5</sup> *ibid.*

<sup>6</sup> Niels Mulders, *The Beliefs And Daily Life of The Javanese People: Sustainability and Cultural Change* (Gramedia 1193).[6].

<sup>7</sup> *ibid.*

the birth of the elements of the religion definition the government has developed a special body under Attorney General Office (AGO) in order to control the followers of the indigenous religions.<sup>8</sup>

Also, the Anti-Religious Defamation Law has adopted the elements of the religion definition by recognizing the six official religions (Islam, Protestant, Catholic, Hindu, Buddhist and Confucius) in 1965.<sup>9</sup> The Anti-Religious Defamation Law has excluded the indigenous religions in Indonesia. In 2010 the Constitutional Court has held the Anti-Religious Defamation Law constitutional, though the Constitutional Court interpreted the Anti-Religious Defamation Law not to limit the recognition other religions other than six official religions.<sup>10</sup> On the issue of the indigenous religions, in 2010 the Constitutional Court considered the indigenous religions are part of six official religions or at least the followers of the indigenous religions should choose one of the six official religions in Indonesia in order to keep the principle of believing in one god.<sup>11</sup>

The state ideology is the *Pancasila* which means five principles where the first principle is to believe in one god. There are multi-interpretations on the principles of believing in one god; on one hand, the citizens should be in one god, but on the other hand the scholars say to believe in one god means spiritualism and culturalism-based religions.<sup>12</sup> Obviously the principle of believing in one god is also appeared and recognized by Article 29 paragraph 1 of the 1945 Constitution. Article 29 paragraph 1 of the 1945 Constitution is vague because there is also a word of the belief (the *kepercayaan*) in Article 29 paragraph 1 of the 1945 Constitution where the scholars have multi-interpretation on the meaning of the belief.<sup>13</sup> Some of the scholars say the meaning of the belief is separated from the religion, but also

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<sup>8</sup> Uli Parulian Sihombing, *Challenging A State Body For Monitoring Indigenous Religion In Indonesia: Legal Research* (ILRC 2008).[26-43].

<sup>9</sup> Soelistyowati Irianto, *Not A Middle Way: Public Examination On The Decision Of The Constitutional Court Of The Religious Defamation* (ILRC 2008).[145]

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

other scholars say the meaning of the belief is part of one of the religions itself.<sup>14</sup> The Constitutional Court in 2016 has held the meaning of the belief in Article 29 paragraph 1 of the 1945 Constitution is part of one of six official religions but after the second amendment of the 1945 Constitution the word of the belief is separated from the religions so that the belief is equal to the religions according to the Constitutional Court decision in 2016. If we see the composition of the second amendment of the 1945 Constitution, the word of the belief is put in Article 28 E paragraph 2 of the 1945 Constitution while the word of the religion is put in Article 28 E paragraph 1 of the 1945 Constitution.

The existence of the indigenous communities in Indonesia including their religion, language etc has been paid attention before the independence of Indonesia where the Constitution was supposed to recognize their existence and protect their rights (Huma 2010, p.8-9).<sup>15</sup> Muhammad Yamin who is one of the founding fathers of Indonesia argues that the indigenous community in Indonesia has been existing before the colonialization and even other civilizations in the country that why their existence should be recognized and protected by the Constitution.<sup>16</sup> Moreover, the founding fathers recognise and identify the existing indigenous communities in Indonesia where there are 250 indigenous groups in Indonesia before the independence of Indonesia in 1945.<sup>17</sup>

The protection and recognition of the indigenous community did not appear in the 1945 Constitution, but the recognition and protection of the indigenous community are recognized and protected after the second amendment of the 1945. After the reformation era in 1998, the issue of the indigenous community protection and recognition has been raised by the civil society organisations, the academicians, the indigenous people groups asking to amend the 1945 Constitution not only to accommodate the human rights provision in the Constitution but also to have a

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<sup>14</sup> *ibid.*

<sup>15</sup> Soetandyo Wigjosoebroto, *Law, Paradigm, Method & Problematic Dillema* (HUMA 2004). [8-9].

<sup>16</sup> *ibid.*

<sup>17</sup> *ibid.*

clause/provision on the protection and recognition of the indigenous community. As the result of the freedom struggle the indigenous community has been protected and recognized by the second amendment of the 1945 Constitution.

The negotiation process of embracing the protection and recognition of the indigenous community in the Indonesian Constitution has been discussed before the independence of Indonesia. Mohammad Yamin proposed the Constitution could recognize and protect the indigenous community in Indonesia where the Constitution should also protect and recognize their properties, land, etc.<sup>18</sup> Soepomo who is also one of the founding fathers of Indonesia proposed the Constitution should recognize and protect the customary laws in Indonesia.<sup>19</sup> But after the independence of Indonesia, the Constitution did not recognize and protect the indigenous community yet. The author views few constitutional drafters and the founding fathers proposing the recognition and protection of the indigenous community, at the same time the unification of laws becoming the national law was raised before the independence of Indonesia. The unification of the laws was a mainstream idea before the independence that why the 1945 Constitution before the independence of Indonesia accepted more unification law idea than recognizing the customary laws.<sup>20</sup>

The unification and codification of the laws has become an issue for the recognition and protection of the indigenous community particularly on the issue of legal pluralism. The issue of legal pluralism because of unification and codification has appeared both in the colonisation era and after the independence. Soetandyo Wigjosoebroto argues the legal pluralism issue appeared in the colonisation era because of legal transplants where the laws in the colonizing state is also applied in the colonized state conflicting with the customary laws (cultural conflict/gaps) like in Indonesia.<sup>21</sup> Also, after the independence of Indonesia the unification of the

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<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*

<sup>21</sup> Soetandyo Wigjosoebroto, *The Problems Of Pluralism In Thought And National Legal Policies: The Indonesian Experience* (Huma 2011).[44-45].

laws including the customary law becoming the national law based on the unitary politics and government tends to exclude the customary laws in Indonesia.<sup>22</sup>

The author also identifies the unification of laws becoming the national law is another challenge on the implementation of the Constitutional Court on the religious identity of the indigenous religion in public services that why the Ministry of Home Affair and the Civil Registration office has issued a guidance letter/decreed not to follow or comply with the Constitutional Court decision. The law and politics should also embrace the values of democratic values such as public participation, the protection and recognition of the vulnerable groups including the indigenous community.<sup>23</sup> Democratic values is also part of the rule of law principle where the Constitution is a supreme law in the country<sup>24</sup> that why the protection and recognition of the indigenous community as mentioned in the second amendment of the Constitution should be respected in line with the rule of law principles. The 1945 Constitution including its amendments applies to all branches of the government including the Ministry of Home Affair and its subsidiary offices at local levels. The policies of the Ministry of Home Affair and the Civil Registration office do not follow the Constitutional Court decision is not in line with the protection and recognition of the indigenous community in the second amendment of the 1945 Constitution. The author views the protection and recognition of the indigenous community provision in the 1945 Constitution is an opportunity to keep the existence of the indigenous community including its customary laws and religions in Indonesia.

The Constitutional Court decision shall be applied to all branches of the government because the Constitutional Court decision is final and legally binding, and has the principle of the *Erga Omnes*.<sup>25</sup> The principle of the *Erga Omnes* means the Constitutional Court decision has vertical and horizontal effects where the

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<sup>22</sup> *ibid.*

<sup>23</sup> Safa'at Rachmad, *Law And Politics & The Rights Of The Indigenous Communities Accessing To Natural Resources* (Surya Pena Gemilang 2015).[11].

<sup>24</sup> Jimly Asshiddiqie, *The Cultural Constitution* (Sinar Grafika 2016).[11-12].

<sup>25</sup> *ibid.*

application of the Constitution Court decision shall be applied to the vertical branch of the government from central government including its supporting agencies like the Ministry of Home Affairs to the local governments while the horizontal effects of the Constitutional Court shall be applied to horizontal level of the power division such as the House of Representatives and the Supreme Court (Jimly Asshiddiqie 2016c).<sup>26</sup> The Constitutional Court decision shall be applied to the branches of the power vertically and horizontally so that the Constitutional Court decision is more broader than an ordinary court decision. An ordinary court decision shall be applied to the parties on the disputed case merely.

Based on the principle of the *Erga Omnes*, the Constitutional Court decision on the recognition of the indigenous religions in public services shall be applied to the supporting agencies of the government such as Ministry of Home Affairs and the Civil Registration Office vertically. Therefore, the Ministry of Home Affairs and the Civil Registration Office should follow the Constitutional Court decision by providing public services to the followers of the indigenous religions.

Actually according to the Kompas Daily in 2020, 22,01 % of the all Constitutional Court decisions from 2003 to 2018 has not been followed by the public officials only (The Kompas Daily 2020).<sup>27</sup> This means majority of the Constitutional Court decisions have been followed and respected by the public official, house of representative, the Supreme Court and other state institutions.

The National Ombudsman Commission of Indonesia which is an independent state body has the following jurisdiction; to monitor and supervise the public service practices by the government officials, the state-owned corporations, the law enforcement officials etc. Recently the National Ombudsman Commission in 2019 has issued a report on the observation of the public services for the marginalised groups including the followers of the indigenous religions in Indonesia.

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<sup>26</sup> *ibid.*

<sup>27</sup> Dian Erika Nugraheny, 'Banyak Putusan MK Tak Dipatuhi, Anwar Usman: Pembangkangan Konstitusi' *Kompas.com* (Jakarta, 28 January 2020) <<https://nasional.kompas.com/read/2020/01/28/12490461/banyak-putusan-mk-tak-dipatuhi-anwar-usman-pembangkangan-konstitusi?page=all>>.

According to the report the National Ombudsman Commission of Indonesia has categorized four types of the marginalized groups in public services as follows; a. the marginalised groups are based on geographic areas where the marginalized group cannot have sufficient access to public services such as education, health etc., b. the marginalized groups are based on economic condition where they cannot afford basic needs such education, health etc., c. the marginalized groups are based on cultural/customary background where these groups include the followers of the indigenous groups who have difficulties to access public services.,d.the marginalized groups are based on special needs such as people with disability etc (the National Ombudsman Commission of Indonesia 2019,p.200-201).<sup>28</sup>

The National Ombudsman Commission has placed and categorized the followers of the indigenous groups as one of the marginalized groups having difficulties to access public services. As the result of the National Ombudsman Commission of Indonesia observation on the public services of the marginalized groups in Indonesia has showed the followers of the indigenous religions cannot access to public services sufficiently.<sup>29</sup> Moreover, the National Ombudsman Commission of Indonesia argues the existing minimum public services standard tends to trigger discriminatory practices in public services because the marginalized groups cannot receive equal public services, and the most important thing is no affirmative action for the marginalized group including the followers of the indigenous religion in public services.<sup>30</sup>

Also, as the result of the interview with Engkus Ruswana who is a local leader of the indigenous community in Bandung West Java recognizes there is no affirmative action for the followers of the indigenous religions in public services. Specifically for the implementation of the Constitutional Court decision is still weak because the existing administrative database of the citizens for example in

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<sup>28</sup> The National Ombudsman Commission, *The Annual Report Of 2019* (The National Ombudsman Commission 2019).[200-201].

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

financial sector is not changed and updated in accordance with the Constitutional Court decision that why the financial institutions cannot recognized the followers of the indigenous religions because the financial institutions have the previous administrative databases of the citizens where there are only six official religions in Indonesia.

Moreover, although the Ministry of Education has issued a decree on the recognition of the religious education for the followers of the indigenous religion in a public school, but there is a lack of the availability of the religious teacher for the students from the indigenous religions. According to Engkus Ruswana the indigenous religion groups should provide the religious teachers for the students from the indigenous religious in a public school because there is difficulty to have the teachers for the students from the indigenous religions.

Ethnically and religiously based political communities are one of the obstacles to make democracy in Indonesia meaningful for example ethically and religiously based political references have been used by the politicians in the local elections.<sup>31</sup> Will Kymlicka also mentions the politics of the otherness contributing to an obstacle of “civic nation” where there must be equality between the majority and minority groups, and equality within the groups as well.<sup>32</sup> The author views ethnically and religiously based political communities are also one of the challenges for the implementation of the Constitutional Court decision in public services. The public sentiments depend on the religious and ethnicity references effecting to the public officials in a decision making process. The followers of the indigenous religions tends to prevent the public sentiments based on the religious and ethnicity references because they are vulnerable to be the victim of religiously and ethnically based politics and considered as unofficial religions. After the reformation era, religiously and ethically based politics are often to be used by the politicians in order to gain the substantial voters both in the local and national politics. A part of recognition of the indigenous religions in public services apparently the indigenous religion

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<sup>31</sup> Samadhi Willy Purwa et all, *Building-Democracy On The Sand* (Demos 2013).[82].

<sup>32</sup> Will Kymlicka, *Multicultural Citizenship* (LP3ES 2002).[294-295].

groups have lack of food sovereignty recognition by the government as well at the same time the indigenous communities have their own food sovereignty system.<sup>33</sup> As above-mentioned, a legal policy which is the part of law and politics is related to the indigenous religions in public services should be made by democratic manners such as full public participation in a decision making process and respecting the rule of law principle. In this sense, the legal policy of the Ministry of Home Affairs and the Civil Registration Office not to follow the Constitutional decision is not in line with the democratic manners and the rule of law principle.

Obviously the civil society organisations, the indigenous community groups, and the public officials are supposed to maximize the existing opportunities in order to mitigate the existing challenges in public service for the followers of the indigenous religions in Indonesia. The National Ombudsman Commission of Indonesia has a jurisdiction to supervise and receive a complaint on the violation of public service practices such as maladministration etc. Also, the National Ombudsman can issue a recommendation to make the public officials complying with the Constitution.

Furthermore, in order to make the Constitutionality of the law in accordance the 1945 Constitution and its amendments there shall be a constitutional question mechanism. According to Muchamad Ali Safa'at etc constitutional question is a review mechanism where a judge who is on the trial can apply a constitutional question motion to the Constitutional Court because there is an issue of the constitutionality of the law which is being used and applied to the concrete case in the court.<sup>34</sup> Constitutional question is also part of constitutional review meaning in order to protect the citizen's constitutional rights where there is a critique against the concept of the abstract constitutional review not to make substantial protection for the constitutional rights of the citizens particularly in a concrete case such as in the court.<sup>35</sup> Tom Ginsburg provides a clear explanation on the objectives of the

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<sup>33</sup> Safa'at Rachmad (n 23).

<sup>34</sup> Muchammad Ali Safa'at et al, *Constitutional Question : A New Alternative Of Constitutional Justice* (UB Press 2010).[55].

<sup>35</sup> Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Court in Asian Countries* (Cambridge University Press 2003).[21].

constitutional review in order to protect the constitutional rights of the citizens and to make judicial remedy through a constitutional question mechanism available for those who are violated in a concrete case.

Hans Kelsen argues that the Constitutional Court has both concrete and abstract of constitutional court:

“Examination and abolition of a law because of its unconstitutionality may take place according to several methods. There are two important types of procedure in which an unconstitutional law can be tried and abolished. The organ has that has to apply the law in a concret case can be authorized to examine it as to its unconstitutionality and to refuse to apply it in the concret case if it is found unconstitutional. If the power to examine the constitutionality laws in confered upon courts we speak of judicial review of legislation”.<sup>36</sup>

Both Hans Kelsen and Tom Ginsburg provides a clear explanation in favour of effective and efficient constitutional review so that the function of the constitutional court can be maximized by protecting the constitutional rights of the citizens where a constitutional question mechanism can prevent arbitrary application of potential unconstitutional law during the court proceedings.

Mahfud MD argues that constitutional question is raised during the court proceedings once the judge in an ordinary court views/doubt a constitutionality of the law, and can be referred to the Constitutional Court.<sup>37</sup> I Dewa Gde Palguna argues that constitutional question has particular and general meanings where constitutional question in a general meaning is to refer a term of the matters against the.<sup>38</sup> Constitutional question in a particular meaning where the judge in an ordinary court is/doubts the constitutionality of the law against the Constitution, and shall refer it to the Constitutional Court.<sup>39</sup> In this sense, to make the Constitutional Court decision on the recognition of the indigenous religions as effective as possible in particular to prevent of the followers of the indigenous religion a target of criminal

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<sup>36</sup> Kelsen Hans, *General Theory of Law and State* (Harvard Press University 1949).

<sup>37</sup> Mahfud MD, ‘The Signs of Limitationa And Extention Of The Constitutional Court Jurisdiction’ (2019) 4 Law Journal.[459-460].

<sup>38</sup> I Dewa Gde Palguna, ‘Constitutional Question : Background And Practice In Other Countries : The Possibilities of Its Application In Indonesia’ (2010) 17 Law Journal.[2].

<sup>39</sup> *ibid.*

defamation in the court where the civil society organisations will use of this constitutional question in the future.

### **Conclusion**

Based on the above-mentioned explanation the implementation of the Constitutional Court decision on the recognition of the indigenous religion in public services has the following challenges; a. unification of the laws becoming a national law has effected to exclude the customary laws including in public services for the followers of the indigenous religions such as the decree of the Ministry of Home Affair not to follow the Constitutional Court decision, b. lack of affirmative action for the followers of the indigenous religion in public services does not make the Constitutional Court decision work properly, c. Lack of the updated and integrated administrative data base of the citizens with Constitutional Court decision makes inefficient public services, d. religiously and ethnically based politics effecting the decision of public officials to accommodate public services for the followers of the indigenous religions.

But on the other hand there are still the following opportunities for the implementation of the Constitutional Court decision; a. the second amendment of the 1945 Constitution recognises and protects the indigenous religions, b. the National Ombudsman Commission of Indonesia recommendations in public services mention there must be an affirmative action for the marginalized groups including the followers of the indigenous religion in accessing and receiving public services, c. the Constitutional Court decision is final and legally binding according to the second amendment of the 1945 Constitution where there is also a principle of Erga Omnes requiring vertical and horizontal effects of the Constitutional Court decision including the executive body should follow and comply with the Constitutional Court decision, d. the 1945 Constitution also recognizes the rule of law principle where the Constitution is a supreme law of the land that why the Constitutional Court decision as a guardian and official interpreter of the Constitution should be respected and followed by all branches of the government. The author recommends

the Constitutional Court Law shall provide a constitutional question to ensure the constitutionality of the laws under the Constitution before the judge in the ordinary courts applies such law in the concrete cases.

Finally in the future, the civil society organisations can use constitutional question mechanism to the Constitutional Court in order to prevent criminalisation of the followers of the indigenous religions and maladministration practices in the ordinary courts under the Supreme Court. Also, a constitutional question is to provide a constitutional protection for the followers of the indigenous religions in Indonesia.

### **Bibliography**

Dian Erika Nugraheny, 'Banyak Putusan MK Tak Dipatuhi, Anwar Usman: Pembangkangan Konstitusi' *Kompas.com* (Jakarta, 28 January 2020) <<https://nasional.kompas.com/read/2020/01/28/12490461/banyak-putusan-mk-tak-dipatuhi-anwar-usman-pembangkangan-konstitusi?page=all>>.

I Dewa Gde Palguna, 'Constitutional Question : Background And Practice In Other Countries : The Possibilities of Its Application In Indonesia' (2010) 17 *Law Journal*.

Ilham Safutra, 'Kepercayaan Mulai Masuk Kolom E-KTP' *Jawa Post* (Jakarta, 17 April 2021) <<https://www.jawapos.com/nasional/27/02/2019/kepercayaan-mulai-masuk-kolom-e-ktp/>>.

Jimly Asshiddiqie, *The Cultural Constitution* (Sinar Grafika 2016).

Kelsen Hans, *General Theory of Law and State* (Harvard Press University 1949).

Mahfud MD, *Law and Politic* (LP3ES 2006).

——, 'The Signs of Limitationa And Extention Of The Constitutional Court Jurisdiction' (2019) 4 *Law Journal*.

Muchammad Ali Safa'at et al, *Constitutional Question : A New Alternative Of Constitutional Justice* (UB Press 2010).

Niels Mulders, *The Beliefs And Daily Life of The Javanese People : Sustainability and Cultural Change* (Gramedia 1193).

Safa'at Rachmad, *Law And Politics & The Rights Of The Indigenous Communities Accessing To Natural Resources* (Surya Pena Gemilang 2015).

Samadhi Willy Purwa et all, *Building-Democracy On The Sand* (Demos 2013).

Soelistyowati Irianto, *Not A Middle Way : Public Examination On The Decision Of The Constitutional Court Of The Religious Defamation* (ILRC 2008).

Soetandyo Wigjosoebroto., *Law, Paradigm, Method & Problematic Dillema* (HUMA 2004).

Soetandyo Wigjosoebroto, *The Problems Of Pluralism In Thought And National Legal Policies : The Indonesian Experience* (Huma 2011).

The Komnas Perempuan, *Sovereignty of Belief, Beleiving In Pluralism* (Komnas Perempuan 2016).

The National Ombudsman Commission, *The Annual Report Of 2019* (The National Ombudsman Commission 2019).

Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Court in Asian Countries* (Cambridge University Press 2003).

Uli Parulian Sihombing, *Challenging A State Body For Monitoring Indigenous Religion In Indonesia : Legal Reseach* (ILRC 2008).

Will Kymlika, *Multicultural Citizenship* (LP3ES 2002).

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