

## RECOGNITION AND PROTECTION OF RELIGIOUS SECTS IN INDONESIA

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One form of Indonesian diversity is the religious sects which is acculturated with religious teachings. This study aims to analyze the recognition and protection of the religious sects in Indonesia. This research is juridical normative with statute approach. The result of this research is that the flow of trust has not been fully recognized and protected by the State. Prohibition and dissolution of the flow of trust is often done by the state apparatus with the community by reason of disturbing the public order. Freedom to believe in the flow of belief does not have to be interpreted as unlimited freedom. Freedom is still regarded as limited freedom; and that limit is the freedom of others. The freedom is also limited by law, at least unwritten law. The resulting recommendation is the existence of the inclusion of freedom of belief in the personal data of citizens must be regulated by law.

**Keywords:** Religious Sects, Human Rights, State Protection, Restriction, Law and Freedom of Others.

### I. INTRODUCTION

Indonesia is a country whose style is diverse, spread throughout the country. The diversity is reflected in the diversity of ethnic, religious, racial, and origin, cultural, customs, and so on; each of which has different principles, traditions, patterns of behavior. If it is managed well, this diversity will become ethnic wealth and become a valuable assets of the nation. However, if this diversity is not handled properly, it will potentially trigger horizontal conflicts between citizens threatening national disunity.

One of the heritages of ethnic diversity of Indonesian ancestors is a religious sects embraced by the people of Indonesia to this day. The religious sects were initially embraced by a traditional society (primitive) who are away from modern civilization. However, in its development, it was followed by many people who have adapted to the development of the era, even the intellectuals from various professions and social classes in Indonesia.

Etymologically, the term of religious sects, consisting of 2 (two) words, namely "religious" and "sects". The word religious according to M. As'at El Hafidy, is a branch of the ideology that derives from one of Religion (Schools, Order, sect and others) (Permadi, 1995). The religious sects is a dogmatic idea, intertwined with customs, life of various ethnic groups that are still underdeveloped (Permadi, 1995).

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While the word *sects* in semantics, has several meanings, namely: a) faith in religion; B) the assumption (belief) that there really exists, for example to the Gods and the fine people; C). Be considered truthful and honest, such as a believer; D) agree to the discretion of the order or the administrator (Permadi, 1995). According to Kamil Kartapraja, the religious sects is “belief and faith of the people of Indonesia outside of religion, and does not belong to any one religion” Kamil Kartapraja further states that there are 2 (two) kinds of beliefs, namely:

1. Traditional and animistic beliefs, no philosophy and no mystical lessons, such as the beliefs of Perlamin and Pelebegu people in Tapanuli.

Group of beliefs whose teachings contains a philosophy, accompanied by mysticism. This group is called or call themselves by group of *Kebatinan*. This *kebatinan* group in its development finally called itself as the Group of Beliefs to Belief in the One Supreme God. (Permadi, 1995)

In the general dictionary of Indonesian language, the religious sects are defined as follows: “belief has 2 (two) senses, that is: a). Assumption or belief that it is true (existed, real); B). Something that is believed (assumed to be true) (Permadi, 1995). The traditional beliefs is closely related to one’s belief in what is considered the most correct, which is to be a guide or a guide to life for its adherents. Although not a religion, but as one of the ancestral heritage of Indonesia, the religious sects was born and originated from religion. All beliefs basically teach the good as well as the existing religions, only different in methods or ways of practice.

Goals achieved through worship rituals for religious sects adherents are similar to goals achieved through rituals for religious believers. If there is a difference only about the method used, without touching the substance of the goal to be achieved. The purpose of worship for religious sects adherents and believers is directed at the service or surrender to the Almighty.

However, in its development, many beliefs are disagreeable with the prevalence and norms prevailing in society. Many schools are born from Islam, but the teachings are not in accordance with the teachings and syareat of Islam such as the Ingkar Sunah who do not believe the Hadith of the Prophet, the Ahmaddiyah who do not acknowledge the Prophet Mohammed as a prophet of Islam, Fajar Nusantara Movement (Gafatar), whose teachings is deviated from Islam. According to Gafatar, the adherents of Islam and non-Muslims are pagans, they follow the rules of the Koran, but are also required to follow their Amirs(leaders) or priests that are not infrequently deviated from the teachings of Islam.

In Buddhism there is also a heretical sect known as Budha-Budhi which unites the teachings of Islam with Buddhism. While in Christianity there is a heresy known as the sect of Salamullah which was founded and led by someone who converted her as reincarnation of Mother Mary, and her son as the reincarnation of Isa.(htt2). These distorted religious sects then produced repressive actions from the public as well as the government apparatus, by means of forced dissolution and expulsion

of its adherents, as it was considered troubling society. Dissolution and expulsion of adherents of trust flow is often done without considering the sense of humanity. Meanwhile, believers have no ability to resist and seek safeguards against the act of expulsion and dissolution. The prohibition of certain religious beliefs suggests discrimination among citizens in embracing religion and embracing belief in Indonesia. This is certainly not in accordance with the principles of the Indonesian legal state, which must guarantee for every citizen to have equal rights in religion and to embrace the belief.

Recognition of equal treatment for every citizen to embrace his religion and belief, and worship according to their religion and belief, set forth in Article 29 paragraph (2) of the 1945 Constitution, which is formulated as follows:

- (1) The state is based on the One Supreme Godhead.
- (2) The State guarantees the freedom of every citizen to embrace their own religion and to worship according to their religion and belief.

State recognition of the freedom of embracing religion and belief in Article 29 Paragraph (2) of the 1945 Constitution, as well as showing that adhering to religion and beliefs is a fundamental right of citizens, as a consequence of the principle of the legal state by Indonesia (Article 1:3 UUD 1945), which must guarantee the human rights of its citizens in the state constitution . In relation to the necessity of guarantee of human rights in the rule of law, Sri Sumantri states that the legal state must contain elements such as: “The government in carrying out its duties and obligations must be based on laws or regulations and the guarantee of the protection of human rights ... 10. In relation to the legal state of Indonesia, Mukti Arto stated that, elements of the Indonesian legal state built on the basis of Pancasila and the 1945 Constitution, namely “the recognition and guarantee of human rights of citizens. (Soemantri, 992)

A International Commission of Jurist, also argued that in the conception of the state law must contain elements, such as “the existence of constitutional protection against human rights”. (Soepiadhy, 2006). In addition, the principle of “equality before the law”, can also be used as a reference for the necessity of equal treatment of adherents and believers of religious sect in Indonesia. Accordingly, there should be no discrimination against citizens to embrace the flow of trust, and worship according to its belief. Embracing a belief is the right of persons who can not be imposed or blocked by anyone including the state, as long as it does not violate any other laws and norms applicable in society.

The recognition and protection of freedom of belief, must also consider the existence of such rights as universal rights. The universality of this right is reflected in the Universal Declaration of Human Rights of December 10, 1948. The declaration states that: “Everyone shall have the right to freedom of thought, conscience and religion. This is the way to go to the religion or belief in his or her

religion, to manifest his religion or belief in worship, observance, practice and teaching”. (Article 18 International Covenant on Civil and Political Rights (ICCPR)). The freedom of every person to embrace the flow of trust in the declaration, is evidence of the international community’s desire to place freedom of belief as a right that must be guaranteed of its fulfillment and protection by the state.

Declaration of Human Rights December 10, 1948, does not have legally binding force because the declaration was only soft law and not a hard law like an international treaty. However, the declaration lays the moral foundations for states as members of the international community to recognize and respect the human rights of its citizens. Therefore, countries are expected to be motivated to ratify or validate the contents of declarations within their country, including the recognition and protection of freedom of embracing the religious sect.

The seriousness of Indonesia in appreciating the Declaration of Human Rights of December 10, 1948, and its seriousness in providing assurance of the fulfillment and protection of human rights is shown by the establishment and enactment of Law no. 39 Th. 1999 on Human Rights. In the consideration of the letter d, it is formulated: “The Indonesian nation as a member of the United Nations shall have the moral and legal responsibility to uphold and implement the Declaration of Human Rights December 10, 1948, adopted by the United Nations, as well as the various instruments which have been accepted by the State Republic of Indonesia”.

Through Law no. 39 Th 1999 on Human Rights, it is affirmed that, human rights are viewed as a gift of God Almighty, and are regarded as a basic right that is inherently human, universal and lasting. It must therefore be protected, respected, retained, and should not be ignored, diminished, or deprived by anyone. In this regard, the state is obliged to provide recognition, fulfillment, and legal protection of the human rights of its citizens, including the freedom of trust. The state remains obliged to regulate the use of freedom of trust flow, to prevent and counter the possibility of horizontal conflicts between religious sect believers and believers in Indonesia.

The regulation of the exercise of the rights and freedoms of the religious sect should be done by laws containing the use and limitation of freedom of embracing the religious sect. Since the contents concerning restrictions on the rights and obligations of the people, so it must involve the representatives of the people in parliament. In a state of law, there is no unlimited freedom, and the limits of one’s freedom are the freedom of another. The regulation of the exercise of the rights and freedoms of the religious sect, and its restrictions is inseparable from the consequences of the rule of law of Indonesia, which requires that everything in this country is always based on law. (Jazim Hamidi dan Budiman NPD Sinaga, 2005). Laws are required as a basis for the legality of the use of freedom of religious sect and the legality of the ruling act against the possibility of deviations in the

exercise of the rights and freedoms of the religious sect, and government action in order to guarantee the protection of freedom of embracing the religious sect in Indonesia.

## **II. PROBLEM**

Based on the above description of the background, then the issue raised is: how is the recognition and protection of the religious sect in Indonesia?

## **III. RESEARCH METHOD**

This research is juridical normative with statute approach.

## **IV. DISCUSSION**

### **4.1. The Existence of Religious Sect in Indonesia**

Historically, the religious sect in Indonesia has existed before religions such as Islam, Christianity, Catholic, Hinduism and Buddhism became the official religion of the state. The ancestors of the Indonesian nation have long known and adhered to beliefs such as animism and dynamism, by making sacred objects such as stones, wood, springs, and others as their sacrifices. The belief is based on the belief that sacred objects have supernatural powers, which can affect life and human life. For that reason the sacred objects are worshiped, and respected for centuries.

After the religions began to enter Indonesia, such as Islam through the Sheikh and Gujarat as merchant of the Middle East, Hinduism, Buddhism, and Christianity, the teachings in the religious belief then became a tradition in Indonesia. Even the acculturation of sect beliefs and religions, Christianity, Hinduism and Buddhism, is still common today in certain groups of people in Indonesia. In addition, it can also be found in various custom rituals performed by certain tribes throughout the archipelago, each of which has a peculiarity and uniqueness.

As a relic of the ancestors, the religious sects appear in various variance and names according to their respective regions. In Bali, it is known as Balinese Religion called Hindu Bali or Hindu Dharma, Aluk Tadalo in Tana Toraja-Sumatra, Javanese Sunda Religion in West Java, Wetu Telu in Lombok, Budi Luhur, Sapto Darmo in East Java, Kejawen in Central Java and further developed into Christian Kejawen, Kejawen Buddha, Hindu Kejawen, and also Islam Kejawen and the belief of Sunda Wiwitan in Sunda West Java. In addition there are also other names that can not be found one by one considering the amount that is too many which up to now until 600 kinds approximately.

The religious sects in Indonesia in their development not only teach the relationship between man and creator, but also teach the values of good life. Kejawen's beliefs, for example, in addition to teaching the relationship between man and God, also teach Javanese art, culture, traditions, rituals, attitudes and

philosophy. The essence of Kejawen's teaching is to unite soul and body with their God, or in Javanese called "*manunggaling kawulo dumateng gusti*" or "*nyawiji ing gusti*".

The religious sects still exist in Indonesia up to now because the state recognizes and does not prohibit their existences as long as they do not disturb public order and peace. State recognition amid religious diversity, and the religious sects, are seen by giving the opportunity to keep worshiping for each of their adherents. In Indonesia the majority of Muslims (Muslims), but the tolerance of fellow believers and the religious sects adherents with each other is very high. Horizontal conflicts between believers and among the religious sects adherents are very rare, unless there are deviations in the teachings that disturb the public order and peace.

As a note that regardless of whether or not the relationship between the state's recognition of God Almighty and the religious sects, the majority of the population in Indonesia who are Muslims as the majority and embracing a belief, yet Indonesia is not a religious state (secular), but rather as a unitary state Which places the supremacy of the law within the state and upholds democracy. Until now the religious sects still exist and even continue to grow and further increase the ethnic diversity of Indonesian culture.

#### **4.2. Religious sects as human rights in indonesia**

The choice of a unitary state (Article 1:1 UUD 1945) putting Pancasila as the foundation of the establishment of the Unitary State of the Republic of Indonesia (NKRI) is considered very appropriate. Pancasila is a unifying tool of the nation, which lays the values of unity. The choice of a unitary state also mirrors the ethnic diversity of the Indonesian nation, as well as a representation of the founding fathers of different countries, ethnic groups, religions, races, and origins...<sup>16</sup>. But the choice of a unitary state alone is not enough, there must be a willingness to overcome all the differences. For that the state must provide assurance for every citizen to live the freedom in the differences it has. States shall ensure for every citizen to exercise his or her life without being impeded by anyone, including the state, to the extent consistent with applicable norms.

One of the obligations of the state to maintain that distinction is to guarantee every citizen to enjoy his right and freedom to embrace a religion and to embrace the beliefs. The state's obligations are based on the reason that, the freedom of embracing a belief is a fundamental right of every person guaranteed by the constitution. Worship according to his belief is a manifestation of the relationship between human beings as creatures and their creators, thus prohibiting or preventing a person from embracing a belief and worship according to its belief, forcing a person to follow a sect that is not its belief or forcing a person to disobey its freedom is the violation of human rights.

Freedom to embrace a religious sect as a human right in Indonesia can be understood through the provisions of Article 2 paragraph (2) of the 1945 Constitution, so it must be respected, and protected by the state. The recognition of freedom of religious sects as a human right is also confirmed in Chapter XA of the 1945 Constitution, entitled "Human Rights" chapter. Consequently, the 1945 Constitution also provides a guarantee of adequate protection from the state for their adherents. The guarantee of protection is realized through the provisions of Article 28G of the 1945 Constitution (1), which is formulated: "Everyone has the right to personal, family, honor, dignity and property protection under his control, and is entitled to a sense of security and protection from threat fear of doing something that is a human right.

According to Leah Levin, human rights mean: "meaning moral claims which are inalienable and inherent in all human individual by virtue of their humanity alone" (Levin, 1998). Human rights are an inherent right of everyone, whose human rights have the dignity of God's noble creation on earth. Human rights are also the right that gives life to everyone. Furthermore, Leah Levin says that: "Those rights which are inherent in our natural and without which we can not live as human being". (Levin, 1998). The existence of human rights can not be separated from human existence itself, as long as the human being is alive, the human rights remain.

#### **4.3. Recognition of religious sects di Indonesia**

The recognition of the religious sects in this section is intended to recognize the freedom of belief by the state in positive law in Indonesia. As stated earlier, that the religious sects are ancestral heritage of the Indonesian nation that have existed for a long time. Constitutionally, through Article 29 paragraph (2) of the 1945 Constitution, religious sects are recognized by the state as a human right. State recognition of freedom of religious sects is not sufficient to be limited to the 1945 Constitution, since the 1945 Constitution is only a written law (gronds norm), which only regulates the subjects of the life of the nation and the state.

In relation to the nature of the 1945 Constitution, the implementation shall be further elaborated in the law as a regulation of its implementation. Such an obligation is based on the principle of a law state, namely equality before the law, that everyone has the same status in law, regardless of race, religion, race, origin, gender, social status, and so on. In a legal state that recognizes the existence of God, the state must give freedom to its citizens to embrace religion and to hold beliefs without distinction of treatment. Related to the guarantee of equality of every citizen in enjoying his fundamental freedom, John Locke stated:

" The State of nature has a law of nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, healthy, liberty or possessions. (Levin, 1998).

Those rights are life, freedom and possessions. Human rights are the rights that human beings possess naturally, which are inherent at the time of their birth and human rights can not be inviolable by anyone, and can not be obtained or revoked by the state, except with the consent of the owner. (Scott Davidson, *Hak Asasi Manusia*, 1994) Unequal treatment (discrimination) against religious sects adherents with believers can create injustice, potentially triggering conflict between citizens, and lead to the threat of national unity. For this reason, the state must provide fair protection through its law enforcement.

In relation to legal protection for every citizen, the state not only exercises formal powers but also must take concrete steps to act in accordance with its authority to fulfill its citizens' basic obligations. That obligation is a representation of the theory of covenant society, proposed by Thomas Hobbs to put an end to the very chaotic nature of human society, fighting all against (*homo hominilupus, bellum justum contra omnes*).

The state's obligation through the government to ensure its citizens to embrace religious sects in Indonesia is not in line with the basic theories and concepts of human rights. Because there is still discrimination against adherents, compared with believers of religion that are equally recognized as a human right in the state constitution. In this regard, there may be examples of arrangements relating to the recognition and legal protection of religious sects in Indonesia as described in the explanation below.

Discrimination against the flow of trust occurred since the era of *Orde Lama*, namely during the reign of President Soekarno, by issuing Law No.1 / PNPS / 1965 on Prevention of Abuse and / or Blasphemy, hereinafter referred to, only recognize the existence of 6 (six) religions in Indonesia namely Islam, Christianity, Catholic, Hinduism, Buddhism, and Kong Hucu. The recognition of 6 (six) religions in Law No.1 / PNPS / 1965 reflected in its explanation with the words "public advance" is meant what is commonly defined by those words in the Criminal Code. The religions embraced by the population in Indonesia are Islam, Christianity, Catholic, Hinduism, Buddhism and Confucianism. This can be proved in the history of the development of Religions in Indonesia..

Under Law No. 1 / PNPS / 1965 it is also explained that: "Since 6 (six) kinds of religions are religions embraced by almost all Indonesians, unless they are guaranteed as provided by Article 29 paragraph (2) Of the Constitution, they also receive the assistance and protection as provided for in this article ". Law No.1 / PNPS / 1965 does not prohibit the existence of any other religion outside the six recognized religions, and the religious sects, but the religion and the religious sects do not obtain legal protection from the state as well as the six recognized religions. Furthermore, in the explanation it is also explained: "This does not mean that other religions, for example: Jews, Zarasustrian, Shinto, Taoism are banned in Indonesia. They are fully guaranteed as provided by Article 29 paragraph (2), and



they are allowed to exist, provided they do not violate the provisions contained in this rule or other laws and regulations “.

In the New Order era, the Government of Indonesia only 5 (five) kinds of religions, namely Islam, Christianity, Catholic, Hinduism and Buddhism. In the reform era, the government lifted the ban on Chinese religion, beliefs and customs based on Presidential Decree No. 6 of 2000. The Presidential Decree was issued by President Abdurrahman Wahid, and later reinforced by Minister of Religious Affairs Decree No. MA / 12/2006, which Stated that: “The government recognizes the existence of Confucianism in Indonesia”. This Presidential Decree, although only concerning the recognition of Confucianism as the ancestral belief of Chinese society, can be regarded as a symbolic statement for the official recognition of the flow of trust in Indonesia.

In 1999, Law no. 39 Th. 1999 on Human Rights, but in this law does not recognize the beliefs held by some people of Indonesia. This law only recognizes the existence of religion only, this is reflected in the provisions of Article 4, formulated: “The right to life, the right not to be tortured, the right of personal freedom, thought and conscience, the right to religion, the right not to be enslaved, recognized as a person and equality before the law, and the right not to be prosecuted on the basis of retroactive law is a human right which can not be reduced under any circumstances and by any person “.

Law no. 39 Th. 1999 on Human Rights, it can be said that it is not in line with the provision of Article 29 Paragraph (2) of the 1945 Constitution as its basic provision, in the matter in consideration considering Law no. 39 Th. 1999 concerning the Human Rights stipulates the provisions of Article 29 of the 1945 Constitution. As it is known that the consideration is the legal consideration underlying the making of a law, which functions as a basic rule and simultaneously as a test stone against the legitimacy of the law. Accordingly, the law established shall be in accordance with its basic rules, and shall not be contradictory to it. Thus, if the law is made not in accordance with the basic rules, then the law is juridical is not or less valid. UU no. 39 Th. 1999 on Human Rights should include “a flow of trust” in Article 4 as well as other rights recognized as human rights by the 1945 Constitution.

In Article 1 number 3 of Law no. 39 Th. 1999 on Human Rights, related to the notion of discrimination, nor mention of “belief”. In Article 1 point 3 it is formulated that: “Discrimination refers to any restriction, harassment or excommunication which is directly or indirectly based on human distinctions based on religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender , Language, political beliefs, resulting in the reduction, deviation or abolition of the recognition, exercise or use of human rights and fundamental freedoms in individual and collective life in the political, economic, legal, social, cultural and other aspects of life”. Thus, in Law no. 39 Th. 1999 on Human Rights, not at all about the religious sects.

In the field of education, the law on the provision of education actually indicates the existence of unfair treatment or discrimination against religious sects adherents. This can be seen from Law no. 20 Th. 2003 on the National Education System and the Regulation of the Minister of Education and Culture No. 53 of 2015 on the Student Assessment Guide, in this Ministerial Regulation the educational opportunities for religious sects adherents are absent. In Article 12 paragraph (1) of Law no. 20 Th. 2003 on National Education System, formulated: "Each learner in each educational unit shall have the right: a. Get religious education in accordance with the religion that is adhered to and taught by educators who are religious ". The law only mentions "religious education", namely Islam, Christianity, Catholic, Hinduism, Buddhism, and does not include religious sects as a school subject.

The provision of article 12 paragraph (1) is reinforced in Article 37 paragraph (1), which is formulated: "The curriculum of primary and secondary education shall contain: a. religious education; B. civic education; C. language; D. mathematics; E. natural Sciences; F. social Sciences; G. Art and culture; H. Physical education and sports; I. Skills / vocational; and J. local content. (2) Higher education curriculum shall contain: a. religious education; B. civic education; And c. language". Likewise, in the appraisal columns students are only listed religious columns and do not include columns of belief in God Almighty. In practice, such discrimination is evident, in relation to the presence of students in one school in Indonesia as a religious sects adherents who failed. (2016)

The reason that the school used because the students refused to follow the lesson of Islam, the student is a religious sects adherents, and in school there is no subject of the religious sects, so that in the assessment column of religious subjects is empty (no value). The school side of the regulation is related to the religious sects not yet / unclear. This fact should be of concern to the government, since the religious sects has been recognized as part of the fundamental freedoms of citizens guaranteed by the constitution.

The provisions of Article 12 paragraph (1) and Article 37 paragraph (1) clearly not in accordance with the provisions of Article 4 (1) of Law no. 20 Th. 2003 on National Education System, formulated: "Education is conducted in a democratic and fair and non-discriminatory manner by upholding human rights, religious values, cultural values, and national pluralism". In addition, it is also not in accordance with the provisions of Article 5 (1) of Law no. 20 Th. 2003 on the National Education System, formulated: "Every citizen has the same right to obtain quality education". These last two provisions clearly do not want discrimination in the implementation of education in Indonesia, on the basis of ethnicity, religion, race, and origin, and of course belief. But in reality the education law has not been able to accommodate the religious sects.

Similar facts are also found in various personal data of citizens, such as Identity Card (KTP), which only lists religious columns, date of birth, sex, address,

occupation, marital status, and occupation, and civic status. Whereas the inclusion of the religious sects and beliefs on the ancestors in the religious column on the Identity Card has been regulated in Law No.1 / PNPS / 1965. In addition, many other personal data concerning the identity of a person does not include a belief column. In general, personal data only includes religious columns, which can be filled with Islam, Christianity, Catholic, Hinduism, Buddhism, and Confucianism. The unavailability of the column of belief in Almighty God in personal data is certainly not in accordance with the principle of equality before the law as a consequence of the adoption of the rule of law by the state of Indonesia as stated in Article 1 Paragraph (3) of the 1945 Constitution.

The law that gives a strict confession to the existence of the religious sects, is the Law No.1 Th. 1974 About Marriage. In Article 2 Paragraph (1) is formulated: "Marriage is lawful, if done according to the law of each religion and its belief". The provision of this article is only an affirmation that the validity of marriage in Indonesia if exercised by a married couple has the same religion or belief. This means that if the marriage is done by a married couple who is not the same religion or not the same belief, then the marriage does not meet the requirements set forth in the marriage law.

In accordance with the principle of a state law which promotes the recognition and respect for human rights, the status of the religious sects adherents as the teachings of the ancestors should be contained in the identity of every citizen, such as the Identity Card (KTP), Passport, and so forth. Thus the ancestor beliefs gained equal recognition and protection within the state. The necessity to include the identity of the confidence flow in the personal data is in line with the policy of President Jokowi, the familiar name of Joko Widodo, through the Minister of Home Affairs Tjahjo Kumolo who grants the right of ownership of KTP to every religious sects and ancestor adherent.

The absence of religious sects in various laws relating to the citizen's personal identity, suggests an injustice of treatment of religious sects adherents by the state organizers and the legislators. In a historical perspective, there is certainly no reason to marginalize the religious sects and beliefs of the Indonesian ancestors, regardless of race and ethnicity and their origins. Since in struggling for independence, many of their ancestors also participated in achieving independence. The absence of the religious sects, can also be said as an act of castration of citizens' rights enshrined by the 1945 Constitution.

#### **4.4. Protection of Religious Sects in Indonesia**

In the Preamble of the 1945 Constitution stated that: "the state protects the whole nation and the entire people of Indonesia, promotes the general welfare, etc. The obligation to guarantee the protection of all its citizens includes the protection of anyone, and from any acts without exception, by the authorities or persons or

groups, including the protection of the human rights of the citizens. In this connection H. W. R. Wade, states that : “...*the need to protect the citizen against arbitrary government*”. (Wade, 1986) In line with that opinion, Thomas Hobbs states that:

When the people appoint the sovereign, they do not simply established a de facto power able to dominate them through superior might. Rather, they authorise him to act as he sees fit so that he act by right of the people, who are de jure obligated to obey him. The social contract does not merely create the sovereign de facto, it creates a moral-juridical relationship between sovereign and people in which the people acknowledge the sovereign’s acts as their own and are obligated to obey his commands because he commands as of right. (Gauthier, 1969)

The above opinion further strengthens the obligation of the state that has the authority to provide protection against the religious sects. In addition, it is also a logical consequence of the principle of a state of law that upholds human rights. As known, that freedom of belief has been guaranteed in Article 29 paragraph (2) of the 1945 Constitution, as the highest legal norm in Indonesia, which should be guided. In practice the protection of freedom of belief is not done consequently. Government as a representation of the state often do trust. The prohibition and dissolution of religious sects, especially those reduced from Islamic teachings such as Shia in Madura by a group of Madurese East Java, Ahmadiyah, and so on, is evidence of the absence of guaranteed protection against religious sects adherents in Indonesia.

The prohibition and dissolution of several religious sects in Indonesia often use irresponsible reasons, such as disturbing the public interest, religious misdirection, and so on. Repressive action does not reflect the freedom for every citizen to embrace a belief that is believed to be true. Even the repercussions are often followed by the imposition of criminal sanctions imprisonment against the character of the flow of trust with the allegation of religious blasphemy. In other words, the state through its apparatus tends to be more subjective to the constraints that are interpreted in accordance with the circumstances, as well as for certain interests rather than respecting the constitution. In other words, the legal protection for the religious sects in Indonesia has not been comparable with the state’s recognition of the religious sects through Article 29 Paragraph (2) of the 1945 Constitution as the constitution of the state.

Such repressive action is quite rational, for fundamental freedoms, including freedom of embracing religious sects, should not be interpreted as unlimited freedom, but the freedom remains in the corridors of the rule of law, that all actions are limited by law, at least by the unwritten law. Restrictions on fundamental freedoms in Indonesia are constitutionally reflected in the provisions of Article 28J paragraph (2) of the second amendment of the 1945 Constitution, which is formulated:

In exercising their rights and freedoms, each person shall be subject to the restrictions laid down by law with the sole intent of ensuring the recognition and respect of the rights and freedoms of others and to satisfy fair demands in accordance with moral judgments, religious values, security and public order in a democratic society

The essence of limitation of basic rights and freedoms in Article 28J Paragraph (2) of the 1945 Constitution is solely to respect the rights and freedoms of others. In other words, the limits of the use of rights and fundamental freedoms are actually the rights and freedoms of others, so any use of excessive rights and freedoms will violate the rights and freedoms of others. The provisions of Article 28J of the 1945 Constitution also require that restrictions on human rights should be set forth in the law, so that the standard limiting parameters are clear and do not cause multiple interpretations that may be harmful.

In addition to basing on Article 28J paragraph (2), restrictions on the rights and fundamental freedoms are also reflected in the provisions of Article 23 paragraph (2) of Law no. 39 Th 1999 on Human Rights, formulated: “freedom of expression, thinking, belief and religion can be limited by other considerations established by law, including morality, religious values, security and public order in a democratic society”. These other consideration phrases are then interpreted unilaterally by the government with reference to particular interests, including by linking with certain religious values. While in The International Covenant on Civil and Political Rights (ICCPR), which is part of the Universal Declaration of Human Rights 1948 (UDHR), as has been acknowledged by Indonesia, does not relate religious values as an instrument of limiting the use of basic rights and freedoms including the embracing of the religious sects.

The use of public interest as an instrument of restriction of freedom of belief has been interpreted by the Constitutional Court with its statement as follows: “To prohibit the dissemination of a different understanding of officially recognized religions in Indonesia is a precautionary measure of the possibility of” horizontal conflict “or” social disintegration “In society. The reasons for horizontal conflicts and social divisions are obviously subjective and difficult to determine the parameters clearly. Interpretation of the presence or absence of potential horizontal conflicts and social cleavages is often used by the authorities to ban the spread of belief.

The use of religious values as stated in Article 28J paragraph (2) of the 1945 Constitution and Article 23 paragraph (2) of Law no. 39 Th 1999 on Human Rights as a restriction on the rights and fundamental freedoms of citizens is upheld by the Constitutional Court through its 2010 decision on the results of the judicial review of Law Number 1 / PNPS / 1965. In the verdict stated that: “The limitation of human rights on the basis of consideration of” religious values “as regulated in Article 28J paragraph (2) of the 1945 Constitution is one of the considerations to restrict the implementation of human rights.

Restrictions on human rights on the basis of consideration of “religious values” as regulated in Article 28J paragraph (2) of the 1945 Constitution, as well as regulated in Article 23 paragraph (2) of Law no. 39 Th. 1999 on Human Rights is not in line with International Human Rights standards, especially the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified. Since in this ICCPR does not include the parameters of religious values in the limitation of one’s basic rights and freedom. Basic considerations of the use of religious values in the limitation of the use of rights and freedoms to adhere to the flow of trust and worship according to his belief, possibly based on the consideration of the majority of the Indonesian nation is Muslim.

## V. CONCLUSION AND SUGGESTION

### 5.1. Conclusion

Acknowledgment of freedom to embrace religious sect guaranteed in the 1945 Constitution as the constitution (basic law) of the state has not been done completely. Given that many laws relating to the existence of freedom of embracing the religious sect do not include trust. Likewise, the protection of freedom of belief has not been done well, because the government often does a repressive action by banning and dissolving the religious sect. Even the existence of such beliefs is limited by religious values, and public interests are interpreted subjectively by law enforcement officials in accordance with the circumstances affected.

### 5.2. Suggestion

The state should include religious sect in any law relating to the personal data of citizens, as a form of acknowledgment of the freedom to embrace to the religious sect guaranteed by Article 29 paragraph (2) of the 1945 Constitution as the state constitution. The State shall provide assurance of the protection of the existence of a religious sect as long as it does not interfere with the public interest, and within reasonable limits. In addition, restrictions on the use of rights and trust flows should be set forth in laws with clear parameters.

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