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377. Green Tea Suppresses Serum TNF- α and TGF- β 1 Levels In Mice Model of Systemic Lupus Erythematosus 2488
Herin Mawarti , Jusak Nugraha, Djoko Agus Purwanto, Joewono Soeroso
378. Knowledge and Attitude Towards HIV Patients among Dental Students 2495
Gayathri. P. S, Krithika.C, Rajkumar P, Rehana Bee, Preetha D, Vinod Kumar A.C
379. Awareness about Management of Pain and Anxiety during Dental Treatments among Dental Students 2502
Gayathri. P. S, Krithika.C, Arun Kumar T.M, Selvarathi K, Christy Jospeh Samuel. K, Manju.J
380. Environmental Factors and Protective Effects of Epigallocatechin-3-Gallate to Systemic Lupus Erythematosus: A Review Study 2509
Herin Mawarti , Jusak Nugraha, Djoko Agus Purwanto, and Joewono Soeroso
381. A Prediction Model of Mortality in Patients Hospitalized with Diabetic Ketoacidosis in a Tertiary Referral Hospital in Surabaya, Indonesia 2519
Hermina Novida, Fajar Setiyawan, Soebagijo Adi Soelistijo
382. In-Vitro Differentiation Adipose-Derived Mesenchymal Stem Cells into Pancreatic Progenitor Cells 2527
Hermina Novida, Agung Pranoto, Askandar Tjokroprawiro, Sony Wibisono, Purwati
383. Estimation of Lepitin, Melatonin , and Adropin Hormones in Gestational Diabetes Mellitus (GDM) in Tikrit City 2533
Hiba Hazim Salih, Rasha Shamil hussin, Wasan Sarhan Oubeid
384. Study of Laparoscopic Cholecystectomy in case of Complicated Cholecystitis 2539
Honeypalsinh Maharaul, Param shah, Ohang Chaudhary
385. Immunohistochemical Expression of Myeloid Differentiation Adaptor Protein-88(MYD-88)and Toll like Receptor (TLR-4) in Human Leiomyomas 2542
Huda Saddon Jassim, Ali Yhea Salman, Sajid saad mohanned
386. Autopsy Death Profile Due to Railway Injury in Mangalore, A Coastal City of South Karnataka- A Retrospective Analysis 2551
Ibrahim Jibril, B Suresh Kumar Shetty, Pavanchand Shetty 3, Jagadish Rao Padubidri, Haneil Larson D'souza, Eshetu Sileshi, Miressa Belay
387. Access Rights to Health Services for Tolotang Believers as Minority Group, Sidrap District, Indonesia 2558
Iin Karita Sakharina, Aidir Amin Daud, Hamzah Halim, Muh. Hasrul, Wahyudi Pratama Sukri Palutturi4, Anif Laila Sahir
388. Cardiac Fibrosis Attenuation by Chlorogenic Acid and Epigallocatechin-Gallate Mediated by Suppression of Galectin-3 Gene Expression and Collagen Deposition in Rat Metabolic Syndrome Model 2567
Indah Nur Chomsy, M. Saifur Rohman, Mifetika Lukitasari, Dwi Adi Nugroho, Husnul Khotimah

Access Rights to Health Services for Tolotang Believers as Minority Group, Sidrap District, Indonesia

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Abstract

The purpose of this paper was to analyze the forms of protection and fulfillment of human rights by local governments against the followers of the Tolotang faith in accessing their right to health service as minority group in Sidenreng Rappang District, South Sulawesi Province. The type of research used was normative legal research using a statutory approach. The results showed that The followers of the Tolotang faith have been recognized by the state, and were given space to worship based on their beliefs. Also Tolotang faith have recognize by the local government as part of the community in Sidenreng Rappang who have the same access in order to get health service from any medical stuff, doctor, clinic , hospital whenever they need it. The findings of this article can provide insights into the forms of protection and fulfillment of human rights by local governments against the followers of the Tolotang faith inin in accessing their right to health service as minority group in Sidenreng Rappang District, South Sulawesi Province. The followers of the Tolotang faith have been recognized by the state, and were given space to worship based on their beliefs. Also Tolotang faith have recognize by the local government as part of the community in Sidenreng Rappang who have the same access in order to get health service from any medical stuff, doctor, clinic , hospital whenever they need it.

Keywords: Freedom of religion, ICCPR, Right to health, Tolotang faith, Policy

Introduction

Human rights are the basic rights that humans have since they were born¹⁻⁵. Human rights can be defined as rights that are inherent in our nature as human beings. If there is no such right, it is impossible for us to live as humans. This right is owned by humans solely because he is human, not because of gifts from society or gifts from the state. Therefore, human rights do not depend on the recognition of other human beings, other communities, or other countries. Human rights are obtained by humans from their Creator, namely God Almighty and are rights that cannot be ignored⁶⁻⁹. The right to freedom of religion and belief has been guaranteed by international law¹⁰⁻¹⁶ and national law. Therefore, the state through the central and regional governments has an obligation and responsibility to respect, protect, and fulfill the rights of every individual

as a citizen in embracing their respective religions and beliefs¹⁷⁻²¹. The state may not limit freedom of religion and belief in the forum internum which is non-derogable rights. The state can only limit freedom of religion and belief at the external forum level, and even then it must meet a number of requirements and the restrictions are made in the rule of law.

The Law of the Republic of Indonesia Number 7 of 2012 on Social Conflict Management also pays attention to the possibility of issues related to religion. This law views religious issues as one of the potential conflicts through both inter-religious and/or inter-religious conflicts. However, this law emphasizes that handling conflicts, including those originating from religious issues, must reflect the principles of human rights. The followers of Tolotang faith in Sidenreng Rappang District live side by side with the Muslim

community in the local area because the belief religion has not yet got an equal place with other official religions in Indonesia, so the followers of the Tolotang faith were forced to use Hinduism as their religious identity so that they can still enjoy their rights as citizens. Even though they are ritually performing the worship performed by followers of Tolotang faith. It is very different from those of Hindus in general. This needs to be taken into account by the state, because basically the state cannot limit freedom of religion and belief in the forum internum which is *non-derogable rights*.

Based on 2015 data from the Statistics Indonesia for Hindus, the total of Tolotang people in Sidrap was 40,082. This makes Sidrap District as the area with the largest number of Hindus in South Sulawesi. Based on this, the authors were encouraged to study further the implementation of constitutional rights protection for followers of the Tolotang faith by the government based on the International Covenant on Civil and Political Rights.

Indonesia itself has ratified the International Covenant on Civil and Political Rights through the Law of the Republic of Indonesia Number 12 of 2005. Therefore, Indonesia as a state party was obliged to maximize respect and protection of the civil and political rights of its citizens including the right to freedom of religion while the research on the implementation of constitutional rights protection for followers of the Tolotang faith by the government based on the International Covenant on Civil and Political Rights is very important to be conducted. Therefore, referring to the ICCPR which was ratified in 2005, this paper needs to discuss further about the form of protection and fulfillment of human rights by local governments for the followers of Tolotang faith in Sidenreng Rappang District.

Indonesia has also ratified International Covenant on Economic, Social and Culture Rights through the Law Number 11 year 2005, under the article 25 mentioned about the Right to health the article 12 paragraph (1) ICESCR namely, that States parties to the Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Also under article 25 on the covenant clearly stated that States Parties recognize the right of a child who has been

assigned by the competent authorities for the purpose of care, protection or treatment of his physical or mental health or of periodic review of the care given to the child and all other circumstances relevant to his placement.

Of course this applies to all Indonesian citizens, including Local Beliefs, Tolotang, because as part of Indonesian citizens they also have the same rights including the right to access health²²⁻²⁵.

Materials and Method

The type of this research was legal study²⁶⁻³⁰ by examining policies and rules of national and international law, legal theories and legal materials related to the issues to be discussed, then supplemented with empirical data, namely seeing the implementation of these policies and regulations in society³¹⁻³³. The collected data and legal materials were analyzed qualitatively, then they were described to answer the problems in this study.

Results and Discussion

The Complexity of Adherents to Ancestral Religions in Indonesia

Since Indonesia's independence, several groups of citizens have categorized themselves as followers of the ancestral religion, or not adhering to one of the six (6) "official religions" (recognized) of the state. They are a group of citizens who demand state recognition and services for civil rights based on their diversity which throughout Indonesian history has been ignored and violated. Throughout history, they have been sued (or forced) for example self-identification, marry, give oaths and so on based on the official religion and belief of the state that they do not follow it³⁴⁻³⁷. This still happens a lot until now, while this Country is almost 75 years old, followers of ancestral religions can be categorized as a very vulnerable group as victims of persecution in society.

Religion, in religious politics, is defined exclusively based on the perspective of the dominant religion, which only accommodates (claimed by most) groups of citizens, but is used as a citizenship identity for all. Religion, as a policy, is defined to determine groups of citizens who are "religious" and "non-religious". Groups that are considered politically significant, and whose religion has been successfully adapted to this exclusive

definition, are considered citizens, and their religion is made by the official state religion. Hundreds of groups whose religion cannot, to be precise, are refused to be adjusted are considered not/are not yet religious, including mainly followers of ancestral religions. Their citizenship status is not legal to be recognized, protected or served by the state. In the name of religious politics, they are controlled and subdued³⁴. Indeed, the issue of religion is a problem in itself in Indonesia because of its sensitive nature, and even many conflicts have occurred with the trigger of being a matter of religion or belief.

Adherents to ancestral religions are a group of citizens whose "religion/belief" is interpreted, understood and treated differently from time to time. Their religion is claimed to be animist (primitive, pseudo-religion) so that it needs to be modernized. Ancestral religion is treated as a "culture" which on the one hand needs to be developed, but on the other hand its adherents are considered communists, and are required to convert to the official religion. At certain times, ancestral religions are allowed to develop, and are even considered equivalent to religion. Until now, the meaning of ancestral religion continues to develop in the context of religious politics^{37,38}. Motto "Bhinneka Tunggal Ika"³⁹⁻⁴¹ inherent in the eagle symbol, not just writing without meaning. The motto represents the soul and body of the Indonesian people in every area of life. "Different but still one thing" also reflects diversity religion and belief in Indonesia.

Indonesia officially recognizes six religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism^{34,42-45}. The majority of Indonesia's population adheres to Islam as much as 87.2% or equivalent to approximately 207 million people, while the rest are followers of five other religions.

Tolotang Believers

Religious rights and beliefs in Indonesia are recognized through the first principle of Pancasila, "God Almighty". Then it is described in the body of the 1945 Constitution of the Republic of Indonesia in article 29 paragraph 2 which reads, "The state guarantees the freedom of every citizen to embrace their respective religions and to worship for that religion and belief". If we examine more deeply, it will be found that in Indonesia there are not only religions, but also beliefs that are older

than the six religions recognized in Indonesia today.

These beliefs are spread in almost all corners of Indonesia, one of which is the Tolotang belief. The Tolotang belief existed long before the six recognized religions existed today. Tolotang trust is spread across two sub-districts in Sidenreng Rappang District, which are in Watang Sidenreng District, Kanyuara and Amparita Villages.

Statistics Indonesia⁴⁶ in 2015 revealed that out of 11 sub-districts in Sidenreng Rappang District, the majority of the people adhere to Islam, which was as many as 310,461 people. Most Tolotang Believers are in Watang Sidenreng District, to be precise in Kanyuara Village.

Demographically, believers of the Tolotang faith can also be found in other sub-districts, such as Tellu Limpo, to be precise in Amparita Lama Village. It is also spread partially in a limited number in almost all sub-districts in Sidenreng Rappang District. The daily lives of the followers of the Tolotang faith are quite peaceful, if connected with local people who do not adhere to this belief. Generally, they are reunited at a large event in the form of traditional rituals to commemorate their ancestors. Generally held every January, but the implementation still refers to the results of deliberations conducted by the *uwawa* or *uwatta* Tolotang.

Sidenreng Rappang District Government Policy

The Indonesian state only formally recognizes six religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. Thus, only these religions have representation in the Ministry of Religion at both the central and regional levels. Recognized religions have room to express teachings through religious practices such as worship and celebrations. These religions have a complete organizational structure that supports the continued implementation and dissemination of teachings. With an organizational structure like this, these religions will be spoiled with facilities to support their existence in the future.

This fact is a strong evidence of the state's fulfillment of the right to religion in Indonesia, which is regulated under the auspices of the ministry of religion. Nevertheless, along with the times, it is necessary to

absorb the aspirations and fulfill the rights of some people who are said to be adherents of local religions other than the official religions recognized by the state to date. Apart from the Ministry of Religion, the existence of several religious organizations such as the Indonesian Ulama Council (MUI), the Association of Indonesian Churches (PGI), the Indonesian Church Guardian Conference (KWGI), Parisada Hindu Dharma Indonesia (PHDI), WALUBI, and the Confucian Religious Council Indonesia (MATAKIN) also proves the partisanship of the state towards certain religions, especially the six religions. These organizations reflect the state's recognition of the religion represented by each organization. In fact, the existence of such a supporting forum is still limited to the community, especially for those who adhere to the belief.

Indonesia, which formally only recognizes or legalizes six religions, turns out to make an empty space for not getting the fulfillment of its legal recognition rights which have the value of legal certainty. The six religions are spread throughout the archipelago, competing with each other to maintain their existence in a heterogeneous society. This emerges the majority and minority religions. If it is conceived that religion has the meaning of belief in it, then many beliefs that are considered in accordance with the first principle of Pancasila begin to be isolated and have minimal fulfillment.

Six religions that exist and are legal in Indonesia, always get the right of protection and fulfillment by the state. However, this is minor for beliefs that predate the six religions. Even the nature of its protection and fulfillment seems too late, so it makes believers surrender to the situation. This also happened to Tolotang's belief in Sidenreng Rappang District, South Sulawesi.

The regional government exercises the widest possible autonomy, except for governmental affairs which are determined by law as the affairs of the Central Government. Local governments have the right to stipulate regional regulations and other regulations to implement autonomy and co-administration. The structure and procedures for the implementation of regional government are regulated in law. The implementation of regional autonomy is decided through a systematics of certain regulations involving

various stakeholders, such as DPRD. Included in this is policy making by local governments, particularly by the Regional Government of Sidenreng Rappang District.

One of the representatives of Tolotang traditional leaders, namely Samang, SH., emphasized that because of this background, he was required to choose one of the six existing religions. Through a long process, Tolotang finally chose to join the Hindu religion, with the Decree of the Director General of Hindu Balinese/ Buddhist Community Guidance No. 6 of 1966 which stipulates that Tolotang is one of the sects of Hinduism. This decision was taken by Tolotang leaders on the grounds that Hinduism was more receptive to all Tolotang doctrinal entities without the slightest need to be degraded.

Tolotang's joining to Hinduism is referred to by Tolotang leaders as affiliation, that is, Tolotang's joining to Hinduism is only from the point of view of mentioning his religion in order to retain the right to protection and fulfillment. Meanwhile, the teaching entity has not changed and adapted to Hinduism. Argumentum per analogy. This indicates that Tolotang is like a minor country that joins a major state in order to be recognized and protected in the midst of the world community.

If viewed from the constitutional worldview, the district head's decision prohibiting the presence of the Tolotang belief contradicts Article 29 paragraph 2 of the 1945 NRI Constitution, namely "The state guarantees the independence of every citizen to embrace their respective religions and to worship according to their religion and belief". The absolute interpretation of this article is that the state does not only grants protection and fulfillment rights to religion, but includes beliefs as long as they are in accordance with Pancasila. Although it is understandable because at that time the Indonesian constitution had not been amended as is the result of the current amendments. However, empirically, followers of the Tolotang faith are still worried about the existence of the regent's decision, whether it has been abolished or it still exists today. Even though it is de facto, it seems that the district head's decision is no longer valid.

There are two classifications of rights in the ICCPR, namely Non-Derogable Rights and Derogable Rights. Non-Derogable Rights are rights that are absolute in nature which cannot be reduced by state parties under any circumstances. The rights that fall into this type

are: rights to life, *rights to be free from torture, right to be free from slavery*, Right to be free from detention for failing to fulfill debt covenants, the right to be free from retroactive punishment, rights as legal subjects, and the right to freedom of thought, belief and religion.

The second classification is Derogable Rights, which are rights that can be reduced or limited by the fulfillment of certain conditions. The scope of this type of right is: freedom right of peaceful assembly, and freedom right of association; including forming and becoming a member of a trade union, and

The right to freedom of expression or expression; including the freedom to seek, receive and provide information and all kinds of ideas without regard to boundaries (either through orally or writing).

De facto (field facts), after the issuance of the Constitutional Court decision Number 97/PUU-XIV/2016 which finally provided the fulfillment of religious and belief rights to believers, the regional government of Sidenreng Rappang District recognized and legitimized the existence of believers of faith, especially Tolotang. This is proved by the inclusion of representatives of Tolotang traditional leaders in the Religious Communication Forum (FKUB) in Sidenreng Rappang District. This information was obtained validly through the narrative of representatives of the Tolotang traditional leaders themselves.

In relation to the implementation of Article 18 of the International Covenant on Civil and Political Rights in Indonesia, it is interesting to note three important points related to the strengthening of the pro-contra discourse related to the making of public policies, both at the national and local levels written by Eni Puji Utami, et al⁴⁷:

First, as a democracy with the majority of the population upholding religious identity, contestation to encourage the role of religion in the public sphere is inevitable. However, public expressions of religion in the form of violence and violations of the principle of citizenship should be avoided or prevented. Our research shows that most acts of violence and persecution against certain religious groups are repetitions of previous similar acts, some even taking place at the same place or with the same target group, and, as far as our research,

have never occurred spontaneously. This shows that in fact such conflicts can be avoided and at the same time also indicates a weak diversity management capacity in terms of prevention strategies and responses to the risk of religious conflict.

Second, the level of ability of society and the state in managing diversity varies from place to place. In many places, communities with different identities are found but are able to live side by side (coexistent) for a long period of time. Unfortunately, however, there is not enough effort to explain, publicize and transfer the ability of one society to manage diversity to another so that the potential for violence in vulnerable areas can be overcome. On the other hand, not a few peaceful situations in one society are damaged by external factors including information with nuances of conflict originating from other places.

Third, the capacity of society and the state in managing diversity is often weakened by a lack of synergy between elements. Different perspectives, approaches and misunderstandings often create situations of mutual blame between the actors who should work together to create harmony. Worryingly, responses to diversity issues are often based on opinion, suspicion or misunderstanding rather than accurate research-based knowledge. As a result, it is not uncommon for the potential for violence not only to be prevented, but even the efforts to deal with religious conflicts actually perpetuate the problem.

The Right of Health Access of Tolotang Believer as a Marginal Group in Society

Based on the facts, Indonesia has its own legal instruments that guarantee and protect human rights. Therefore, the right to work, the right to health⁴⁸⁻⁵⁰, the right to social security, along with all its services, the right to live in prosperity (the right to a decent life), the right to self-development are regulated and guaranteed in the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, Law Number 11 of 2005 concerning Ratification of the Covenant on Economic, Social and Cultural Rights. In Article 58 paragraph (2) letter h of the Population Administration Law, it has been stated that "religion/belief" is a part of individual data that must be recorded in a population database.

Whereas Article 58 paragraph (4) letter a of the Population Administration Law also explains⁵¹:

“Population data as referred to in paragraph (1), paragraph (2), and paragraph (3) used for all purposes is Population Data from the Ministry responsible for domestic government affairs, including for the use of: a. public service;.....; Further explained in the explanation:

Point a: “What is meant by” utilization of public services “, among others, for the issuance of driving licenses, business licenses, taxpayer services, banking services, land certificate issuance services, insurance, public health insurance, and / or social security for workers. “ From the explanation of the article above, it is increasingly clear that the existence of electronic identity cards (KTP) and family cards (KK) is the main entrance to be able to experience their use of access to public services such as the issuance of SIM, business permits, bank loans and also to fully access health rights which requires personal data / identity of each community. This is the basis for the position of believers in demanding access to health. Then referring to the International Covenant on Civil and Political Rights (ICCPR) which Indonesia ratified in 2005, Article 27 clearly states that; In countries that have minority groups based on ethnicity, religion or language, people belonging to that minority group must not be denied the right in society, together with other members of their group, to enjoy their own culture, or use their language.

As well as the International Covenant on Economic, Social and Cultural Rights, it reinforces again in Article 12, that the countries participating in this treaty recognize the right of everyone - in this case including minority groups who are members of society in a country- to enjoy the highest standard. that can be achieved for physical and spiritual health⁵². Therefore, regarding the right of the Tolotang community to get access to health services as a minority group in one of the regions in South Sulawesi, basically there is no special treatment for minority groups⁵³⁻⁵⁶.

Conclusion

The Indonesian state only formally recognizes six religions, which are Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. Thus, only these religions have representation in the

Ministry of Religion at both the central and regional levels. Recognized religions have room to express teachings through religious practices such as worship and celebrations. These religions have a complete organizational structure that supports the continued implementation and dissemination of teachings. With an organizational structure like this, these religions will be spoiled with facilities to support their existence in the future. Even though Indonesia formally only recognizes or legalizes six religions, it turns out that it leaves an empty space where it does not get the fulfillment of its legal right to recognition which has the value of legal certainty.

Six religions that exist and are legal in Indonesia, always get the right of protection and fulfillment by the state. However, this is minor in the beliefs that predated the six religions. Even the nature of its protection and fulfillment seems too late, so it makes believers surrender to the situation. This also happened to Tolotang’s belief in Sidenreng Rappang District, South Sulawesi. The Tolotang belief existed long before the six recognized religions existed today. Tolotang faith is spread across two sub-districts in Sidenreng Rappang District, namely in Watang Sidenreng Sub-district, Kanyuara and Amparita Villages. Therefore, the shape Government policy Sidenreng Rappang in the fulfillment and protection of the rights Tolotang faith is to provide privileges on Tolotang society; that at least two head of sub-villagein Watang Sidenreng Sub-district must belong to the Tolotang community and facilitate administrative licensing related to the implementation of various religious activities of the Tolotang faith.

Implication of the Study

The implications are in the form of the effect of Constitutional Court’s decision on adherents of belief, especially Tolotang, as well as the implementation of Article 18 of the covenant on civil and political rights with the Constitutional Court decision. For the Tolotang community is that there is space for freedom and guarantees for the fulfillment of their rights to enjoy and implement their beliefs and duet o their faith, they also have the same right to access any other rights that provide and guarantee by the government, included the right to health services.

Limitations and Study Forward

The weakness of this research is that this research is normative since it only covers legal aspects so that more in-depth research is required to ensure the application of the freedom rights of religion and adherents of belief at the individual level also regarding their access to get the right of health as a member of society even as marginal group. Social studies through quantitative research approach can reach these applications at all levels for adherents of the Tolotang faith. Comparison of similar belief groups in Indonesia needs to be made in relation to the fulfillment of the freedom right of believers.

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