

Legal Protection for Baha'i Adherent in Indonesia

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Abstract— Indonesia is a state of law that guarantees the fulfillment of the human rights of citizens. One of the rights is freedom of religion and belief. However, the term official religion and unofficial religion often become problems for the guarantee of these human rights in Indonesia. One of the religions that existed in Indonesia which is considered as an unofficial religion is Baha'i religion. In general people in Indonesia do not know about the existence of the Baha'i religion in Indonesia. This research conducted with a normative legal research aims to know the existence of the Baha'i religion in Indonesia. This includes the history of the existence of the Baha'i religion in Indonesia, their core faith, their spreading in Indonesia. It also examines the State policy about legal protection for Baha'i adherents, special for their administration residency, and how to fulfill their civil and political rights in Indonesia.

Keywords—Freedom of Religion, Constitution, Baha'i

I. INTRODUCTION

In the very long life of the community, state and religion were the two institutions already inherent. All of human civilization is inseparable from the two institutions. Therefore there is a very strong relationship between religion and the state. There are two typologies of countries with respect to religion. *First*, the State religion, where the identity of the State with religion integrated into one inseparable unity. *Second*, the secular State, where the identity of the State and religion apart from each other. Nevertheless, State religion and the secular State remain to warrant the exercise of religion of its citizens as part of the guarantee of human rights in accordance with the International convention. Forms and guarantee of religious rights are ensured has the uniqueness of each appropriate context and the pattern of a nation.

Indonesia is a country not belongs to one religion. Indonesia is a country which respects diversity. Pancasila as the fundamental norm can unite the diversity in many things. One of them is a diversity of religion. Most people in Indonesia are Islam. Even the largest Muslim population in this world is Indonesia, the founding fathers decided that Indonesia not as a Muslim country. They were committed that Indonesia based on Pancasila. Therefore, in the constitutions of Indonesia, freedom of religion is guaranteed seriously.

The Constitution of Indonesia provides for freedom of religion, and the government respected this right in practice, particularly since the amendment to Indonesia's constitution

in 2000. The early constitution of Indonesia already guarantees the religious freedom. Freedom of religion is a mandate of Indonesia's constitution (the 1945 Constitution), of which article 29(2) declares that "the State guarantees the freedom of every citizen to embrace their religion and to worship according to their religion and belief". Guarantee of freedom of religion is affirmed again through an amendment of the Constitution on article 28 E of paragraph 1 which States that everyone has the right to embrace religion and worship according to his religion, choosing education and teaching, choosing a job, choose citizenship, choose to live in the country and left it, as well as to return. In paragraph (2) is mentioned: everyone is guaranteed to freedom of belief, States are convinced of the thoughts and attitudes in accordance with his conscience. Whereas in Article 28I paragraph (2) is mentioned: everyone free from discrimination on the basis of any kind and is entitled to protection against discriminatory treatment of it.

In addition to the constitutional provision above, Indonesia ratified Declaration of Human Rights by Law Number 39/1999 on Human Rights states in article 22(1) that "every person is free to profess their religion and to worship in accordance with their religion and conviction", and also based on article 22(2), the freedom to profess one's religion and to practice one's convictions and beliefs are guaranteed by the state. Religious freedom can be considered one of the most fundamental human rights because this right is one of the manifestations of personal liberty which comes from the most inner part of humans. In this way, interference with the freedom of religion and belief will often be experienced as grave violations. Thus, everyone must have the freedom to observe and to practice his/her faith without fear of or interference from others.

The general idea of preserving the rights of religious freedom lies in the history of protecting religious minorities, and, even though the right to religious freedom is considered the foundation of Western human rights ideology, it is universally accepted as one of the foundations of a democratic society. In a Muslim majority country, such as Indonesia, ideally freedom of religion is considered to mean that the government allows religious practices of religious minorities or other sects besides the state religion, and does not persecute believers in other faiths.[1] The rights of citizens who profess a religion which small number in spreading in Indonesia still remains guaranteed for the exercise of their rights to express their faith according to their religion and their belief. Theoretically, Indonesia has

been strong enough to guarantee the fulfillment of religious freedom by the constitution.

One religion that needs legal protection for its existence in Indonesia is the Baha'i religion. Based on the facts of the Baha'i religion is one religion that grows and expands internationally, in addition to Christianity, Islam, Hinduism, Buddhism, Confucianism, Judaism, Shinto, and Zoroaster. In contrast to the international world, a study of the existence of the Baha'i religion in Indonesia has not been done by many scholars. All this has not found scientific publications about it. A little of them that can be expressed here, for example, studies conducted by IGM Nurdjana. In his book *Law and Beliefs Diverged in Indonesia* disclosed that Baha'i doctrine was first getting into Indonesia in 1885 via Sulawesi brought by a merchant named Jamal Effendi and Mustafa Rumi. Although its development in Indonesia is not too obtained responses from society a number of people interested then became his followers.[2]

Since the Baha'i religion has not yet to be matched with six other religions in Indonesia, then, of course, the civil rights adherents of the Baha'i religion has not fulfilled yet. We haven't found the Baha'i religion that lists the name of religion in the ID Cards (KTP) as adherents of other faiths in Indonesia six. In the service of civil rights against religions Baha'i adherents, Indonesia has not managed to obtain the operations although the legislation has set the service to the devotee's religion is outside of the six religions in Indonesia until now. Other services that have not been given yet by Government for the Baha'i adherents are in administrative law for recording or register of the population and to enjoy the education. During this time I have never heard of a Baha'i religious education in schools for pupils whose religion is Baha'i.

On August 15/1962, President Soekarno issued Presidential Decree No. 264/year 1962 concerning the prohibition of seven organizations, including the Baha'i. In the letter, it is said to be banned because of Baha'i "incompatible with Indonesia's personality and hampered the completion of the revolution, or is contrary to the ideals of socialism Indonesia". However, at the end of 1990, this group began to show its activities. This led to unrest in some Muslim Indonesia. As an organization based in Israel, the group allegedly has linkages with the Zionist Jews. To warn Muslim Nahdlatul Ulama Bandung, a region touted as one of the lands where the activities of the Baha'i community, declared his rejection of the Baha'i groups deemed to have strayed from the teachings of Islam.[2]

Presidential Decree No. 264/year 1962, during President Abdurrahman Wahid, has been revoked by the Presidential Decree No. 69/ year 2000 concerning prohibition of the existence of the Baha'i Organization. As for the reasoning: (a) that the establishment of civic and Religious social organization is the human rights of every citizen of Indonesia, (b) that the prohibition of organizations as stipulated in Presidential Decree No. 264 of the year 1962, viewed already incompatible

with democratic principles. [3] The legal consequences of this presidential decree are guarantees the Baha'i adherents to enjoy particular rights the civil rights as a citizen in Indonesia.

II. RESEARCH METHODS

This type of research conducted in this study is a normative legal research or normative. Normative juridical research refers to the legal norms contained in legislation and judicial decisions and legal norms that exist in society. Research normative or normative legal research will be doing by researching library materials which are also known as secondary data and legal research library (library research). This research is a descriptive analysis, which revealed the legislation relating to the legal theories that the object of research. Descriptive analysis, a method that is used to describe a condition or circumstance that is happening or underway that aim to provide the data as accurately as possible about the object of study so as to dig into things that are ideal, then analyzed based on the theory of law or legislation that apply.[3]

III. RESULTS AND DISCUSSION

A. *Legal Protection for Religious Freedom in Indonesia*

The guarantee of human rights is one of the requirements for a state to form the law (rights).[4] Philip argue that human rights is typically defined as the basic rights or the rights of the principal who brought humans from birth, as a gift or a gift of God the Almighty, like the right to life, the right to survive, the right to freedom and equality in nature should not be violated by anyone.[5] Constitution guaranteed human rights as one of the substantive content of the constitution indicates two meanings of protection. *first*, meaning the state authorities is that in carrying out its power, the rights of citizens is limited by the ruling; *second*, meaning for citizens, there is no guarantee strong protection in the basic law of the state (the constitution), so that citizens can make the constitution as an instrument to remind the authorities that do not violate human rights as stated in the constitution in running power.[6] Thus, the constitution pointing out the urgency of setting human rights in the articles of the constitution of a country is intended to ensure the protection of human rights.

Historically in civilization, religious freedom was regarded as one of the first recognized human rights, whose general idea lies in the history of protecting religious minorities.[7] Therefore, religious freedom is a vital human right and an essential component of democracy. There is no objection to protect it seriously. In this context, a state which denial to protect of religious freedom not only construe an individual and personal tragedy but also creates conditions of social and political unrest, sowing the seeds of violence and conflict within and between societies and nations.[8] The importance of safeguarding human integrity, freedom and equality to ensure that there is some remedy available to a persecuted person was recognized by The United Nations.[9] Even though the right to freedom of thought, conscience and religion is considered the foundation of western human rights ideology, it is one of the

foundations of a democratic society in this world. In a country with an official state religion, freedom of religion is generally considered to mean that the government allows religious practices of religious minorities or other sects besides the state religion, and does not persecute believers in other faiths.[1]. Indonesia as a democratic country ensures the human rights guarantee arrangements in constitution and laws as a derivate of the constitution.

Indonesia was ratified the Universal Declaration of Human Rights 1948 with Law Number 39 year 1999, as evidence of earnestness in guaranteeing the human rights. Religious freedom has been recognized and enshrined in a number of international legal documents. For example, article 18 of the Universal Declaration of Human Rights 1948 (UDHR) states that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. This law warrants Baha'i adherents strongly to practice or exercise their civil rights.

International Covenant on Civil and Political Rights (ICCPR) in article 18 adopted this provision, which makes state parties are obliged to guarantee the religious freedom of their citizens to embrace and practice the religion or belief of their choice. This provision (both in the UDHR and the ICCPR) are the key to protect religious freedom in many countries in this whole world. The freedoms of thought and conscience or to have or to adopt a religion or belief of one's choice are protected unconditionally. Indonesia has also ratified the ICCPR is with the inception of the Law Number 12 year 2015. Through the rules asserted that Baha'i adherents have the freedom of thought, belief and religion is included in the change of religion and belief as well as expressing religious beliefs and beliefs either alone or group.

B. The Existence of Baha'i Adherents In Indonesia

Most people in Indonesia including government were thought that the official religions of Indonesia only six (6) religion. This thought is contrary to our constitution as the foundation of legal protection of freedom of religion in Indonesia. The state does not have the capacity to recognize or prohibit religions thriving in Indonesia. Article 29 paragraph (2) States: the State guarantees the independence of each population to embrace his religion and to worship according to his religion and beliefs were. This statement was reaffirmed in the explanation of article 1 of Law No. 1/PNPS/1965 states that 6 religions adopted by the citizens of Indonesia, namely Islam, Christian Protestant, Roman Catholicism, Hinduism, Buddhism and Confucianism. These six religions get assurance, assistance and protection in accordance with article 29 and paragraph (2). It does not mean, other religions, for example, Zoroastrian, Jewish, Shinto, Taoism banned in Indonesia. They get the full warranty as long as they not breaking the law.

Actually, this regulation had been judicial reviewed requested by some communities and NGOs in Indonesia. The request was filed considering that

regulation deemed discriminatory because it only recognizes 6 religions as mentioned above. To answer that request, the Constitutional Court stated the recognition of six religions is not correct, because that law did not limit the recognition or protection only against the six religions, but acknowledges all religions embraced by the people of Indonesia. It means Baha'i also recognized even though they still in small number in Indonesia and as long as Baha'i adherents not breaking the law, they should guarantee as constitution command it.

The Baha'i religion is a religion that is universal, independent and not a sect of other religions. The Baha'i Religion bearer of revelation is the Baha'ullah, which announced that the purpose of religion is to bring about a spiritual transformation in human life and renew institutions of the community based on the principles of the unity of God, unity of religions, and the unity of the whole human race. Bahauallah came to perfect different religions into one religion. The people of the Baha'i belief that religion should be a source of peace and harmony, both within the family, community, nation or the world. The Baha'i people known as the friend of all adherents of all religions in exercising these beliefs are active. Baha'i adherents believe in God Almighty. They take the name of God in accordance with the name understood by the local people. Therefore the name of the Lord can be called with God (Arabic), God (United Kingdom), Tai Kamama (Mentawai), Gusti Allah (Java). God is the creator of all beings. All religions are true because of the source of the one God. All human beings are one big family, as created by God Almighty.[2]

The holy book called Al-Aqdas, Al-Iqon, Loh Loh, a hidden Sentence, the seven valleys and the four Valleys, the Ahdi, Tablets Tablets to the Kings and Rulers of the Earth, the tablets on the son of the Wolf, and many more other Scriptures. In addition to the books, there is another book or the tablets written by Abdul Baha ' and Shoggi Effendi. They believe in life after death. The spirits of people who had died were still alive in the nature of God to the other. Religion exists for life after this nature. If someone is getting closer to God will enter paradise if the farther from God packed will go to hell. Heaven is a State of enjoyment, while hell is a State of nothingness/remoteness. The Baha'i religion also believed in the existence of angels. God just create goodness, God did not create evil. Angels are the creation of God which is always good. God just create goodness, God did not create evil. Crime is a condition of weakness. God created light, the darkness is conditions without light. All the good energy is controlled by the Angel, while all the evil energies controlled by Satan or the devil. The Baha'i Religion followers are not allowed to join political parties and they are required to obey any Government forms his Government.

The teachings of the Baha'i Religion is the belief in the oneness of God, the freedom of religion, unity in diversity, as well as running a pure and Holy life. In addition, the Baha'i Religion also teaches an increase in spiritual life, economic, social and cultural; requires that education for all children; demonstrate loyalty to the Government; as well as

using the deliberations as the basis in decision making. These teachings are aimed at the unity of the human race for the creation of world peace. Bahauallah was promised by The Holy Chapter as a Messenger of God by his followers regarded as Imam Mahdi. The Baha'i religion is born in a State of the community are in hostility, disagreement, then he developed the teachings with suggested principles to invite peace and unity, by implementing the tenets of Baha'i. The bearer of the Baha'i religious teachings is the Baha'ullah, later succeeded by his eldest son named Abdul Baha ' followed by Shoghi Effendi, Abdul Baha ' grandson who was appointed as the guardian of religion. The Baha'i religion was born in Iran in 1844. [3]

Baha'i adherents in Indonesia already scattered in several areas in Indonesia even though in small number. Religion Ministry Affairs through research and development department conclude that Baha'i religion is one of the religions which existed and embraced by some people in Indonesia. Baha'i has been entered to Indonesia since 1878 and spread in several parts of Indonesia such as Klaten, Bojonegoro, Ponorogo, South Sulawesi, Malang, Meulaboh, Sigi and Jakarta.

Amanah Nurish, Researcher at the Indonesian Consortium for Religious Studies (ICRS), Gadjah Mada University (UGM), Yogyakarta, once wrote in the daily newspaper The Jakarta Post about welcoming the Baha'i religion as the official religions in Indonesia. She mentioned that the Religious Affairs Ministry has added the Baha'i faith to the list of official religions in Indonesia.[10] This statement is contradicted with the statement of Lukman Hakim as Minister of religious affairs. He stated that to date the Government has yet to determine the direction to formalize or legalize the Baha'i as a religion. However, he confirmed that Baha'i is not a new religion in Indonesia. He refused the circulating news that he as Minister of religious affairs inaugurated the Baha'I as a religion.

C. Legal protection for Baha'i adherents in Indonesia

One of the challenges of fulfilling the civil rights is the right understanding of the people as well as among the apparatus, especially in the field of the administration of the settlement; that there are 6 religion is understood as the "official religion" in Indonesia. They are Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism. Unless that religions, it will be declared as an unrecognized religion/ unofficial religion.

Actually, until now, Government still has not had a clear mechanism in the process of giving the status of a recognized religion and unrecognized religion. However, as mentioned before there are only 6 (six) religions recognized its presence in Indonesia. Unrecognized religion in Indonesia for the first time found in Article 61, paragraph 2 of law No. 24/2006 concerning Administration of Population Affairs which States that the description of the column of religion on ID Cards (KTP) for Its population has not been recognized as a religion in accordance with the provisions of the regulations or for the belief adherents was not charged, but still served and recorded in the database on population. It is also reiterated in Article 64 paragraph 5 in

Law No. 24/2013 as a change from the previous regulation concerning Administration of Population Affairs.

According to Colbran, the condition that the religion of someone is listed on his or her identity card should be evaluated from a human rights perspective. An individual may not be forced to reveal his or her adherence and thoughts to a religion or belief. [11]The Baha'i religion has not yet matched with six other religions in Indonesia. That is why the civil rights adherents of the Baha'i religion not fulfilled yet. We haven't found the Baha'i religion that lists the name of religion in the ID Cards (KTP) as adherents of other faiths in Indonesia six. It is a part of discrimination which contrary to the international convention in protecting human rights.

However, the thing that can limit the exercise of these rights is also regulated in the Constitution itself. Article 28 J (1), says that every person shall have the duty to respect the human rights of others in the orderly life the community, nation and state. This means that when citizens exercising their rights, they should respect other people rights. Then, article J (2), says that in exercising his/her duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society. This article is a justified reason to restrict the exercise of freedom of religion in Indonesia. If it does not contradict with this section, the implementation of religious freedom in Indonesia should be guaranteed. The existence of this article also supposed to demonstrate the guarantee of the implementation of the rights of the Baha'i adherents when accessing public services in Indonesia. Public service administration, which is given by the Government for the Baha'i religion, which is related to the ID Cards (KTP), birth certificate, Marriage Certificate, and Religion Education.

The service of civil rights for the Baha'i adherents is still far indeed from the expectations. This happens because as a religion, the Baha'i have not incorporated or recognized as a religion/official religion that must be served. It is become a challenge for Baha'i adherents because of the absence of regulation as a derivate of the constitution to guarantee their rights. Civil Registry Department and Religion Department still discriminate against them when they want to exercise their civil rights. For example, the column of religion in ID Cards (KTP) for Baha'i adherents is still being emptied/labeled with the sign "-". It could not be written with the Baha'i religion because of the status of Baha'i adherents is an unofficial religion. For the importance of the civil register, Baha'i is registered as belief adherents. In practice, the civil registry officers often give the identity of the Baha'i religions as Christian or Buddhist religions as he/she pleases. [2]

The action of the State apparatus as mentioned above is the deprivation of the rights of Baha'i adherents in administration for the settlement. Based on Indonesia's Constitution Article 28 J, Baha'i adherents constitutional rights will be guaranteed as long as they did not disturb or attack the human rights of other people, breaking the public order, religion, norms and common interests. That is why

Baha'i adherents are eligible to be listed in ID Cards (KTP). In contrast to the beliefs of adherents which wins the lawsuit at the Constitutional Court in order to be listed in the ID Cards (KTP), Baha'i adherents, until now had never tried a lawsuit to the Constitutional Court about the unfairness in the administration of the settlement. Until right now, Bahai adherents forced to choose one religion is considered official in for their identity in ID Cards (KTP).

In addition, the marriage of Baha'i adherents has not been legalized by the civil registry. Baha'i marriage is only done in religion and endorsed by the Local Spiritual Assembly. The reason of the Civil Registry Department not legalized the marriage, since there has been no hint from the Central Government, about the existence and regulations related to Baha'i adherents. The impact of that policy, the marriage does not register in the civil registry. The parents status of the children in the birth certificate is based solely on the child's mother, minus dad. It becomes a hard challenge for the children when they growing up. They will be the judge as an illegitimate child. The things that plagued the Baha'i adherents on civil registration is proving that Indonesia still has a weakness in the guarantee of exercising of human rights especially in freedom of religion.

Based on previous research, there are several areas in Indonesia who had served civil rights and adherents of the Bahai. for example, in West Sumatra, in Koto Tengah Padang city has lists of religious Baha'i in ID Cards and Families Cards on behalf of Karsiman (year 2004), Sri Sunarni (year 2007), Arif Rahman Kurniawan (2008) and Helen Sribudianti (2008). In reality, mostly Baha'i adherents got difficulties to exercise their civil rights.

The inclusion of the Baha'i religion in the birth certificate: Arif Rahman the son of Karsiman and Sri Sunarni (year 2000) got the birth certificate issued by Sub Koto Tengah Padang city Sik Asik Ruhyi Karmelita children from married couples Arif and Diah Sribudianti which are issued in 2001. the Office of Civil Records residence and Jakarta has issued a birth certificate in the name of Jamal Arjuna Dwi Ridwansyah, children from Arif Rahman and Diah Sribudianti year 2006. In addition, the Office of civil registration and Residency Kutai Kertanegara has issued birth certificate citations on behalf of Haikal Kusumanegara Fatria, son of Purbadi Nugroho and the Mustikasari, the Baha'i religion. The certificate issued on the basis of marriage licenses issued by the spiritual assembly of Starch.

The inclusion of the Baha'i religion in marriage certificate: head of the Paniai District registry office issuing Marriage Certificate No.,028/74.2 PKW-PN/2006 on behalf of Jaenuri and Teresia Juarningsih. Department of residence city of Padang has issued Marriage Certificate No. 30/2004 on behalf of Ahmad Even and Sepmiwati. Then the head of the registry office the city of Padang has issued Marriage certificate No. 03/2001 in the name Arif Rahman and Helen Sribudianti. Makassar City registry office has

issued Marriage Certificate No. 11/foreign/CS/2000 on behalf of Jimmy KhoYak Khere and Dr. Rahmi Alfiah Nuralam based on marriage licenses issued by the spiritual assembly of the Baha'i Religion. Registry Office Padang Pariaman has issued a deed of Marriage No. 09/1994 in the name of Agnes and Sugiman upon the spiritual assembly of the Religious marriage certificate of the Baha'i. The Head Office of the population and the civil registry Districts Mentawai Islands has issued a Marriage Certificate No. 23/AK/VIII-2006 on behalf of Toegimin.

In addition the Government in order to provide the service of civil rights on education, it is regulated by Law No. 20/2003 of the National Education System. article 2 states that: "that the student is given a religion subject in accordance with the religion and their belief". According to this regulation, Baha'i adherents should learn their faith in school.

Indonesia in this matter needs to evaluate and review how to fulfill human rights and civil rights of the Baha'i adherents in Indonesia. The Government should make regulations specifically freedom of religious life in Indonesia. These rules should not be contrary to the Constitution which is the reference point or source of law which ordered to guarantee religious and belief in Indonesia. As long as not breaking the norms that exist in society, religions that exist, and does not disturb public order, then the Baha'i adherents and other worshippers should be guaranteed to enjoy their human rights and civil rights in Indonesia. Therefore the law of settlement the Administration also needs to be revised to ensure the fulfillment of the rights of the Baha'i adherents.

IV. CONCLUSION

Constitution of Indonesia has been strong enough to guarantee the fulfillment of religious freedom. In reality, it cannot be denied that there are many problems in practicing the fulfillment of religious freedom rights in Indonesia. One of religion which discriminates in practice is Baha'i adherents. The Baha'i religion is a religion that existed in Indonesia proved by their adherents spreading in some areas in Indonesia. During the old government regime and new government regime, Baha'i adherents got very serious obstacles due to restrictions from the Government through the Presidential Decree No. 264 of the year 1962 by Soekarno. But, at the time reformation era, prohibition for Baha'i adherents was repealed through the Presidential Decree no. 69 Year 2000 by Gusdur. With the lifting of the ban, it appears expectations from the Baha'i Religion adherents will receive protection and service from the Government mainly deals with the problem of their civil rights.

There is a research already done by researchers which conducted by Religion Minister Affairs that conclude that Baha'i adherents are different from others religion in Indonesia. Based on the results of their research, in the year 2014, Minister of Religious Affairs stated that the Baha'i religion is a religion rooted part of Indonesia society and they are entitled to be served. In reality, the expectations to

guarantee the fulfillment of Baha'i adherents civil rights could not be achieved because most areas in Indonesia still ignored their rights. For example in the inclusion of the Baha'i Religion in ID Cards (KTP), Families Cards (KK), birth certificate, Marriage Certificate, and religious education in schools. The Government of Indonesia should review the old regulations and revise them or make a new regulation concerning religious freedom in Indonesia. The new regulations should be detailed and complete to set up the freedom of religion in practical life. One of the important things that should be regulated is about the authority to justify religions and the conditions to be official religion and unofficial religion. Special for Baha'i adherents, the government should follow up the research about their existence in Indonesia. The same policy which has given to belief adherents by Constitutional Court recommendation, Baha'i adherents should be given also to add their religion in ID Cards (KTP).

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