

The history and legal position of Confucianism in post-independence Indonesia

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Summary (by editors)

The article traces the mixed fortunes of Confucianism in post-Independence Indonesia. The main problem lay in the question whether Confucianism should be regarded as “a religion” or not, and in this regard higher and lower laws conflicted. Faced with these difficulties, many Chinese declared themselves to be Buddhists, for the Buddhist religion was unambiguously recognised. Details are provided of an interesting case in which the registration of an apparently valid Confucian marriage was refused. However, it is argued, the constitution provides for freedom of religion, and this is the higher law. The fundamental legal position is therefore not problematic in itself, but the application of the law leaves much to be desired. (This paper is one of several which were presented at the regional IAHR conference in Indonesia -Yogyakarta and Semarang - in September/October 2004, but which were not published in the selected proceedings.)

Pre-independence historical background

The Chinese are believed to have landed on Indonesian soil, the then Nusantara archipelago, as early as the third century BC. As is the case with almost all groups of immigrants in the world, they brought along with them, in the course of the centuries, their culture, beliefs, values, and a sense of affinity with the motherland. The idea that Confucianism started taking root in Indonesia long ago may have arisen on this basis. However, in earlier times it was in the form of loose individual belief and practice, and in the code of conduct, rather than as a well-organized community religion, belief, way of life, or social movement. It was not until the early 1900's that efforts to make Confucianism a well-organized social movement began taking shape. The year 1900 saw the founding of “Tiong Hoa Hwee Koan” (THHK) in Batavia (the present Jakarta). The island of Jawa (or Java in English), that is, the main island of Indonesia and the island where Batavia was located, was then a Dutch colony, as were most parts of today's Indonesia. These territories, taken altogether, were called the Dutch East Indies and governed by a Dutch Governor-General stationed at Batavia. Chiefly aiming at promoting and rejuvenating Confucianism within the Chinese community in the Dutch East Indies, the foundation of the THHK was approved and officially validated by the Governor-General on June 3, 1900. In 1942, the Dutch were forced to leave. That year witnessed the

beginning of the Japanese occupation over the Dutch East Indies which lasted through the next three years.

Confucianism in post-independence Indonesia

The atomic bombs dropped over Hiroshima and Nagasaki in August 1945 marked the defeat of Japan in World War II. The leaders of the fighters for Indonesian independence seized this moment to proclaim independence on August 17, 1945. A constitution, named the 1945 Constitution, was passed precisely one day after. The Constitution's article concerning religious freedom will be further elaborated in the appropriate paragraphs below.

With the passage of time, following several events affecting the existence of the THHK, a similar organization was founded in 1955. This organization owed certain features of its history to the THHK, but was named "Perserikatan Khung Chiao Hui Indonesia" (PKCHI). In 1961, the sixth national convention of the PKCHI declared Confucianism to be a religion and Confucius to be the Prophet of the religion.

In 1965, President Soekarno, the first Indonesian president since independence, issued Presidential Decree No. 1/Pn.Ps/1965 on the Prevention of Blasphemy and Abuse of Religions. This Decree provided, among other things, that there be six religions embraced by the Indonesian people, namely Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. This marked the beginning of the endless debates over state-recognized and non-state-recognized religions in the years that followed.

In 1967, Mr. Soekarno was succeeded by General Soeharto who was to be the President of Indonesia for the next 31 years. For very debatable reasons, he and his regime practiced an anti-Chinese policy. Upon assuming the presidency, he lost no time in issuing Presidential Instruction No. 14/1967, which laid down provisions practically banning the practice of Chinese culture, expression of Chinese traditional belief, Chinese celebrations and festivities; in short, all things Chinese-affiliated. This certainly took its toll on Confucianism in Indonesia, as it evidently was a Chinese faith. A chain of other regulations by governmental institutions along the lines of the Instruction followed later.

Nevertheless, President Soeharto gave a written opening address at the 1967 national convention of the PKCHI, which had at that time been renamed "Gabungan Perhimpunan Agama Khonghucu se-Indonesia" (the Indonesian Federation of Confucian Religion) or GAPAKSI for short, held on August 23-27, 1967. In this address, he was quoted as saying, inter alia, "The Confucian *religion (agama Khonghucu)* deserves a decent place in this country." Note the word "religion" (*agama*) used by Mr. Soeharto in referring to

Confucianism in that speech.

In 1969, Statute No. 5/1969 was passed. As far as state-recognized religions were concerned, it spoke in the tone of the aforementioned 1965 Presidential Decree, i.e. it provided that there be six religions in Indonesia: Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism.

A Statute on Marriage, Statute No. 1/1974, was enacted in 1974. Article 2 of this Statute stated that it is mandatory that a marriage be conducted under the proceedings of the couple's religion and *faith*. But following this, a ministerial directive, i.e. Minister of Home Affairs Directive No. 477/74054/BA.01.2/4683/95 issued on November 18, 1978, stated that there were five religions in Indonesia, namely Islam, Protestantism, Catholicism, Hinduism, and Buddhism. It is noteworthy that at the time this Directive was issued, Statute No. 5/1969 and Presidential Decree No. 1/Pn.Ps/1965 had not been lifted. Indeed they have not been lifted to date.

On January 27, 1979, a cabinet meeting, in the sense of a formal meeting between the president and the members of his cabinet, firmly decided, "Confucianism is NOT a religion." Another directive by the Minister of Home Affairs, numbered 77/2535/POUD, was dispatched on July 25, 1990, again to confirm that there were five religions in Indonesia: Islam, Protestantism, Catholicism, Hinduism, and Buddhism. On November 28, 1995, the Head of the East Jawa Provincial Office of the Department of Religious Affairs dispatched his Directive No. 683/95. This stated that there were (only) five religions under the Office's supervision: Islam, Protestantism, Catholicism, Hinduism, and Buddhism.

Hence the status of Confucianism during these decades was never clear. *De jure*, there were conflicting laws, with higher laws recognizing the existence of the Confucian religion and lower laws not. *De facto*, Confucianism as a religion and its followers were persecuted and not recognized by the government. Many Confucians, if not most, were forced to become Buddhists, or at least to declare themselves Buddhists.

For many years therefore, if, when applying for a Residential Identification Card, one entered "Confucianism" at the position specifying "Religion" on the application form, it would usually appear as "Buddhism" on the Card. The same was true for all matters pertaining to other state administration forms and documents. When a couple wanted to register their marriage as a Confucian marriage, in most cases they would be confronted with the "advice" to regard and register it as a Buddhist marriage or to choose one out of the other four religions. In Civics Education, from primary school to university level, students were taught that there were five religions in Indonesia. The writer can still recall with vivid memory that

the first time he received this idea of “five state-recognized religions in Indonesia” was when he was in Primary 1, attending his Civics Education class. The question “Name the five religions in Indonesia” or suchlike would invariably appear in Civics Education examinations. Statute No. 5/1969 and Presidential Decree No. 1/Pn.Ps/1965 were unknown to school students, even to university students, because the Statute and the Decree were completely absent from Civics Education textbooks.

Such were the forms of persecution, among others, which the Confucians faced in those times.

Interestingly however, in spite of the laws reported above, and even amid the anti-Chinese atmosphere, there were a few interesting phenomena and events which were telltale signs of resistance on the part of society, and of “tolerance” on the part of the government.

First, the High Council of Confucian *Religion* in Indonesia (“Majelis Tinggi Agama Khonghucu Indonesia” or MATAKIN for short, as it was renamed from GAPAKSI since 1967), while it purposely maintained the word “religion” (*agama*) in its name, i.e. referring to “Confucian Religion” (*agama Khonghucu*) rather than “Confucianism”, managed to survive throughout the 31 years of Soeharto’s reign. It was never banned, nor has it changed its name to any other that did not bear the word “religion”. However, it did suffer from “dying back” in those days. It simply could not “move”. Other than performing some simple rituals and celebrations on certain occasions, carrying out charitable activities, and publishing some internal publications and circulars, the organization showed relatively little sign of existence. Membership was dismal in terms of numbers. The Confucians were a minority within a minority, that is, a Confucian minority within the Chinese minority. They accounted for approximately 0.7% (about 1,365,000 persons) of the Indonesian population. In addition to the High Council, there were also Local Councils in a few main cities in Indonesia.

Secondly, Confucian temples did manage to survive and maintain their practices, but with adjustments and compromise where necessary, primarily by “disguising” themselves as Buddhist temples. Earlier, before Soeharto’s Administration Confucian temples had been named “kelenteng”, and Buddhist temples “vihara”. Later, “kelentengs” became “viharas”, where in addition to effigies of Confucius there would also be effigies of the Buddha and other Buddhist divinities.

Thirdly, there was “Sam Kauw Hwee” (SKH), also known as “Majelis Tri Dharma Indonesia”, an organization officially declaring itself a Buddhist sect aiming at practicing the “three teachings” (*sam kauw*) at once: Buddhism, Confucianism, and Taoism. The Federation of Indonesian Buddhists (“Perwalian Umat Buddha Indonesia” or Walubi for short) was then a government-backed federation of Buddhist organizations of various sects all over Indonesia.

Its members were three Sangha councils and seven Buddhist organizations. One of them was the SKH. This accounted for its being accepted and regarded as a Buddhist sect.

Fourth, a few universities never ceased to offer a Confucian Religion course to their students. In Indonesia, a Religion course is a compulsory subject (accounting for 2-4 credit hours) for every undergraduate student of any field of study. This applies to all universities all over the country. Each student must choose one religion (supposed, or at least assumed, to be his or her own religion) out of those offered. While most universities offered only five religions, a few offered six; the sixth being, of course, Confucianism. One such university was Gadjah Mada University (Universitas Gadjah Mada), attended by the writer. Interestingly, it is the country's oldest and largest state university.

Fifth, in 1995 the case of Budi Wijaya-Lany Guito sparked headlines in the media. A Confucian couple, Mr. Wijaya and Ms. Guito, had held their marriage ceremony under Confucian proceedings at Boen Bio - a more than one-hundred-year-old Confucian temple in Surabaya, the capital of East Jawa Province - on July 23 1995 and proceeded to the Civil Registration Office on August 1, 1995 to have the marriage registered. The Office is a government agency that registers birth, child adoption, marriage, divorce, and death. It turned out that the Office refused to register the Wijaya-Guito marriage on the grounds that Confucianism was not recognized as a religion. It advised that they choose from among the five religions in lieu. The couple turned down this option, and were resolutely of the opinion that the marriage had been carried out in compliance with Statute No.1/1974 and that the Office therefore had no choice but to duly register it. (Later, in a book published only months after the fall of Soeharto's regime the couple revealed that in fact they had known of many other Confucian couples who had successfully registered their marriages as Confucian marriages by spending some "extra funds".) As the two parties failed to see eye to eye, the Wijayas sued the Civil Registration Office at the Surabaya State-Administration Court. But the couple lost the legal battle. The Court's ruling on September 3, 1996 came down in favour of the Office, confirming that by rejecting the registration of the Wijaya-Guito marriage the Office had been executing its duty in full compliance with Minister of Home Affairs Directive No. 477/74054/BA.01.2/4683/95 and Minister of Home Affairs Directive No. 77/2535/POUD. The determined couple decided to go on by appealing to the East Jawa High State-Administration Court, unfortunately only to give the the Civil Registration Office another victory: the High Court ruled that it affirmed the ruling of the Surabaya State-Administration Court in this case. Note that both rulings were rendered in the same year, i.e. 1996, when Soeharto and his regime still had a full grip on power.

Resolving not to give up with their struggle, on May 19, 1997, the Wijayas embarked on a third legal battle by appealing to the Supreme Court in Jakarta. Eventually, the Supreme

Court rendered a ruling in the Confucian couple's favour: it ordered the Office to duly register their marriage as a Confucian marriage. However, it is important to note that this Supreme Court ruling was made in 2000, i.e. in the post-Soeharto era, four years after the fall of Soeharto's regime. One cannot help but wonder if the Supreme Court could have made its way into history with such a ruling had the regime still remained in power.

It is interesting to note that through these years it was some prominent Muslim leaders who were at the forefront of advocacy for the recognition of Confucianism and the rights of the Confucians, while on the part of prominent and influential Confucians and Chinese such an endeavor was, unfortunately, by and large feeble. Among such Muslim leaders was Mr. Abdurrahman Wahid, the icon of democracy. Mr. Wahid was of the opinion that the state should not be in the position of recognizing and not recognizing religions. According to him, the idea of state-recognized and non-state-recognized religions was a fallacy. Confronted with the question "How then can we determine 'something' a religion or not a religion?", he answered, "That is a very easy question. 'Something' is a religion if according to its followers it is a religion."

With the fall of Soeharto in 1998, Mr. Wahid was elected president in 1999. His presidential term, short though it was, was marked among others by his lifting of Presidential Instruction No. 14/1967 and Minister of Home Affairs Directive No. 477/74054/BA.01.2/4683/95. In doing this, he meant to send a message that there were to be no more state-recognized and non-state-recognized religions since then; in other words, no more state recognition over religions. The Confucians and the non-Confucian Chinese have since then enjoyed a heavenly air of freedom of expression. The High Council of Confucian Religion in Indonesia (MATAKIN) enjoyed a quick revival, returned to full existence, and in a relatively short time managed to make get itself on to an equal footing with its other five "counterparts".

The Constitution and a legal analysis

What does the Constitution say? Religious freedom is enshrined in the 1945 Constitution. Article 29 of the Constitution (hereinafter "Article 29") unequivocally grants "... every single citizen freedom to embrace a religion and freedom of religious expression". It is noteworthy that this Constitution - passed on August 18, 1945 - predated the Universal Declaration of Human Rights.

Along with Pancasila, the Indonesian state ideology, Article 29 establishes the framework of the state's stance with regard to the relationship between the state and religions, i.e. that Indonesia is neither a religion-based country (there is no state religion) nor a secular country, but a "religious country" and a "based-on-a-single-God country", which translates into the

absolute obligation of each and every single citizen to embrace a religion - any religion - and to believe in a single God.

In the light of the universal legal dictum “lex superiori derogat legi inferiori” (literally: “superior laws derogate inferior laws”), a law shall not conflict with any other law higher than itself, or, in other words, a superior law. In the event that this happens, the lower law, the inferior law, shall be of itself null and void. This dictum is enshrined in the People’s Consultative Assembly (PCA) Statute No. 20/MPRS/1966 on the Hierarchy of the Laws of the Republic of Indonesia. It provides, inter alia, “Any law that goes against another law superior to itself shall be null and void.” In the light of this, since the 1945 Constitution is the highest law in Indonesian hierarchy of law, any single law, any single provision, that goes against it must be of itself null and void. Hence as Article 29 of the Constitution has explicitly upheld religious freedom, any law that established the idea of recognizing certain religions, be it five religions or be it six religions, but thereby not recognizing the others, should have been null and void. The same applies to the law which placed a circumscription upon the practice and expression of Chinese traditional belief. Such laws should never have been able to take effect.

Even if one is in favour of the idea of state-recognized religions, still the aforesaid legal dictum applies and conspicuously serves to provide the ground for the recognition of Confucianism. This is because Statutes come third highest after the Constitution and PCA Statutes. While the recognition of Confucianism as a religion was established by a Statute, its non-recognition, so to speak, was grounded on sheer directives (and a mere cabinet meeting decision), which were evidently inferior to Statutes. Obviously, these directives should have been null and void.

As regards the case of the Wijaya-Guito marriage registration, in view of the legal construction elaborated in the previous two paragraphs one cannot help but wonder how and upon what legal basis the judges of the Surabaya State-Administration Court and the East Jawa High State-Administration Court could arrive at their decisions. It stands to reason that those rulings were grounded not only on a poor but on a non-existent legal basis. Thus, the present writer, for one, cannot help but question the qualification of the judges.

Conclusion

Obviously, the problem with the legal position of Confucianism in Indonesia is not one of the law itself, but rather one of the practice of the law. The law has invariably been prone to being abused and violated for the sake of vested interest; a case in point is when it amounts to a source of “extortion by the state”, as the Wijayas disclosed in the book mentioned above.

Even the president himself would so openly and frontally violate the Constitution, not to mention Statues, when his political or other vested interests were concerned, and everyone ranging from cabinet ministers to civil servants and to court judges would simply acquiesce and duly follow suit, regardless of the law.

Legal analyses of problems concerning the existence of Confucianism in Indonesia cannot help but serve as a case in point for the wider picture of the commonplace tendency in Indonesia as far as law enforcement is concerned: how the law is invariably subject to and subordinate to the will of the powers that be.