

The Settlement of Law Problem on Establishment of Worship Houses in Indonesia

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Abstract: Although over a decade, the implementation of Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs Number 9 and 8 of 2006 about the establishment of worship houses, but the establishment of worship houses is still problematic because there are buildings that violate the rules resulting in conflicts among religious adherents. This study was the kind of normative law research. The approach used in this study were statute and conceptual. The results of the study indicates that this regulation has specifically regulated the local government authority to maintain religious harmony, to explain the mechanisms for building license of worship houses, and to resolve conflicts. However, this regulation is still being violated by certain religious adherents at the construction process of worship houses. In fact, this regulation has anticipated the problem of worship houses building through forum and court. However, the settlement has not been effectively dealing with the illegal building of worship houses. This is because this regulation is only regulated by the minister level, so it is not strong to pressure administrators of worship houses to obey the law and it becomes the weakness of law enforcement aspects in this regulation. To solve this problem, it is necessary to have higher regulation such as law to maintain religious harmony in Indonesia.

Keywords: the minister regulation, worship houses, religious adherents

1. Introduction

Every Indonesian citizen has the right and freedom of religion and belief, including the right /to practice of religion. The government is obliged to protect every religious adherent who wants to pray and religious teachings. Therefore the country has the right to impose restrictions on the freedom of every citizen in practicing his religion. The restriction is Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs Number 9 and 8 of 2006 on Guidelines for Implementation of Duties of Heads of Region/Deputy Head of Region in Maintaining Religious Harmony, Empowerment of Religious Harmony Forum, and Establishment of Worship house. The issue of the regulation does not mean the completion of the problem of building worship houses because the regulation of worship houses is not an independent issue. On the contrary, it is related to other issues, such as the issue of religious broadcasting and foreign aid. The government issued the regulation in an attempt to minimize the conflict on the construction of worship houses.

The Wahid Institute noted that during 2008 there were 21 cases of conflicts concerning the construction of worship houses. The Wahid Institute also released the Moderate Muslim Society noted that in 2010 there were 63 cases of conflicts in construction of houses of worship. Center for Religious and Cross Cultural Studies noted that during the year of 2008, there were 14 cases of conflicts in the construction of worship houses. While Halili and Naipospos noted that from 2007 to 2014 there were 375 cases of conflicts concerning the construction of houses of worship. Some case reports explained that christians had difficulties to build a worship house in the surrounding of moslem majority. On the other hand, moslems got difficulties in the surrounding christian majority, such as East Southeast Nusa and Papua. Then moslem and christians got difficult to establish in surrounding minority hindu, such as in Bali. The whole case affects all worship houses for Muslims and non-Muslims. Although the government has issued a regulation on the establishment of a worship house that aims to avoid conflicts over the construction of worship houses, conflict has persisted in recent years.



2. Methodology

This research included as the type of normative law research. Normative legal research is a law research that is conducted by examining the literature. In the research of normative law, library material is the basic data in scientific research classified as secondary data. The normative law research is conducted to produce deep law analysis based on doctrine and norms that have been established in the law system, both available as law material or as study materials to solve the problem of factual law. The approach in this research uses the statute approach which conducts all legislation and regulations related to the legal issues handling and the conceptual approach, which is to study the views and doctrines in the science of law and the concept of relevant law base concept.

3. Findings

3.1 *The Regulation of Establishment of Worship Houses*

The government creates harmony of religious communities based on the demands of society in their era which has their strengths and weaknesses. In the Old Order era, the government tried to create national harmony, including religious harmony. In the New Order era, the government tried to maintain the unity of the nation and the harmony of the religious community by maintaining Pancasila as the original. In the reformation era, the government tried to maintain the unity of the nation and the harmony of the faithful religious adherents by maintaining Pancasila based on its original. The 1945 Constitution of the State of the Republic of Indonesia was amended to respond the era development. At this time, religious guidance policy remained centralized.

The Government applied a Joint Decree of the Minister of Home Affairs and Minister of Religious Affairs Number 1 of 1969 on the Implementation of the Duty of the Government Apparatus in Ensuring disciplines and fluency of Implementation of Development and Religious Worship by its Adherents and Decree of the Minister of Religious Affairs Number 70 of 1978 on Religious Broadcasting Guidelines that has purpose to manage the life of religious people in Indonesia. The Regional Government shall be obliged to guide, direct, supervises and resolves disputes that may arise in a fair and impartial manner. This policy regulates the practice of religious life in the whole Indonesia. The Joint Decree of the Minister of Home Affairs and Minister of Religious Affairs encountered various obstacles.

In its development/progress, the government issued a new policy of Regulation of the Minister of Religious Affairs and Minister of Home Affairs Number of 2006 and 8 of 2006 on Guidelines Implementation of Duties of Regional office/Deputy Head of Region in Maintaining Religious Harmony, Forum of Worship Houses Harmony and Establishment of Worship houses. This regulation replaces the Decree of the Minister of Home Affairs and the Minister of Religious Affairs Number 1 of 1969. This regulation aims to respond various complaints that felt by the public about the establishment of places of worship that conducted by adherents of minorities in the majority religion adherents.

The Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs regulates two points. First, making religious harmony accustomed through the establishment of Forum religious adherent. Second, the procedure of building houses of worship. The Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs established the authority to maintain the harmony of religious communities, the mechanism of licensing worship houses, and the solution of conflicts. The amendment of the regulation illustrated the paradigm change of government in making the regulation of religious harmony.

3.2 *The Problem of Establishment of Worship Houses*

Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs Number 9 and 8 of 2006 provided restrictions on license to build houses of worship. The reason for the restriction is because religious believers cannot directly build a house of worship without the

permission from the local government, even though the inhabitants who want to build a house of worship. The regulation of the Minister of Religious Affairs and Minister of Home Affairs is administrative. If this regulation is obeyed then there will be no conflict. Therefore, this regulation is run based on the principle of human rights.

Restrictions on the construction of worship houses are not contrary to the principle of religious freedom. Seen in the context of religious freedom in the external forum, the state may limit the implementation of the construction of worship houses. This can be seen in Article 18 paragraph (3) of the International Covenant on Civil and Political Rights, Article 9 paragraph (2) of the European Convention on Human Rights, and Article 12 paragraph (3) of the American Convention on Human Rights). Article 70 of Law Number 39 Year 1999 about Human Rights has legitimized the restrictions. The establishment of a house of worship included a form of freedom of worship which may be contrary to other human rights, among others, on public rules.

Restrictions on religious freedom are permitted under Article 19 paragraph (3) of the International Covenant on Civil and Political Rights stipulating that the freedom to manifest religion or belief may be restricted only by law and is only necessary to protect the public, interest, health, or moral security, or other fundamental rights. Restrictions can be made for the protection of public security, public order, public health, moral protection maintenance, and the fundamental rights and freedoms of others. Manfred Nowak & Tanja Vospernik explained that the state may limit the freedom to manifest religion or belief only if it is determined by law and only if for one of the following five reasons: public safety, discipline, morals, the protection of the rights and freedoms of others, and if such restriction is necessary. As a general regulation, so the regulation must be non-discriminatory.

Article 13, Article 14, Article 15 of the Regulation of the Minister of Religious Affairs and Minister of Home Affairs organize restrictions on the construction of worship houses. Although it appears to be contradictory to Article 24 paragraph (1) and paragraph (2) of Law Number 24 of 1992 concerning Spatial Planning, the substance of the problems contained in the Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs is not contrary to the Constitution of Indonesia.

In general, the problems that often arise around the construction of worship houses including: there is no recommendation from the office of the Ministry of Religious Affairs of the Regency/City, the society complain because the residence is used as a place of worship, the establishment of worship houses that is done without a recommendation from the Forum religious believers, people complains about the difficulty of establishment places of worship for minority religions, minority arrogance to establish places of worship, data manipulation and signatures as requirements or support of worship houses, inaccurate public administration, denial of worship houses by the society, revocation of building license by local governments, riots, and public order, and so on.

Various issues concerning the construction of worship house are still commonly found in some areas although the intensity has decreased since the enactment of Joint Regulation of Minister of Religious Affairs and Minister of Home Affairs Number 9 and 8 of 2006. The first result Year was evaluation of the implementation of Ministerial Regulation showed that the condition of religious life in Indonesia more conducive, one of which is influenced by the regulation of the house of worship. This is based on the results of research that conducted by Research Center for Religious Life Ministry of Religion Republic of Indonesia in 2007. The Minister Joint Regulation stipulated the establishment of worship houses must meet the requirements, namely (1) List of names and Identity Cards, 90 people proposed houses of worship authorized by officials in accordance with local boundaries, (2) local citizenship cards 60 citizens authorized by the Head Village or leader, (3) Written recommendation from local government office or municipality, (4) Recommendation from Forum local religious community. Recommendations should be based on consensus and it cannot be done by voting.

Maintaining religious harmony is as responsibility between the government and religious people. The government is represented by the governor or regent / mayor, while religious aspirations are represented by religious leaders who are members of the Forum of religious community. The Joint Ministerial Regulation stipulated the establishment of worship houses must meet the requirements, namely (1) List of names and Identity Cards, 90 people proposed houses of worship authorized by officials in accordance with local boundaries, (2) local citizenship cards 60 citizens authorized by the Head Village or leader, (3) Written recommendation from local government office or municipality, (4) Recommendation from Forum local religious community. Recommendations should be based on consensus and it cannot be done by voting.

If the support requirements of the surrounding societies are not fulfilled, then the government must find a new location. Other buildings that used as tentative houses of worship firstly, it must obtain permission from the district or city government. Permission may be issued if the office of the Ministry of Religious Affairs and Forum of Religious Harmony has issued a letter of recommendation. License to build as temporary house of worship is valid for only two years. When examined overall substance of Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs No. 9 of 2006, so we can see from administrative rules, the regulation has given a justice. Although administrative rules have been fulfilled, it does not mean that believers can easily carry out building houses of worship.

3.3 The Settlement of Law Problem on Establishment Worship Houses

Implementation of the Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs Number 9 of 2006 did not mean the end of the problem, because at the level of implementation still encountered various problems. The Wahid Institute reported that conflicts around places of worship emerged; in 2008 it was recorded 21 cases, 12 of which were denial of the construction of worship houses. CRCS UGM reported that in the same year, recorded 14 cases of conflict of worship houses, 8 of which were rejection and prohibition of establishment until the demolition of worship houses. Halili and Naipospos recorded 375 cases of conflicts related to worship houses, 307 cases were cases of disruption to houses and places of worship, while 68 cases were violations of the establishment of worship houses. Although the government has stated regulations to suppress the conflict, the reality is that the conflict continues.

The Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs Number 9 and 8 of 2006 provided for the solution of disputes concerning the worship houses. Article 21 paragraph (1) states that Disputes resulting from the construction of worship houses are settled by deliberation by the local community. Article 21 paragraph (2) stipulates that in the case of deliberation as referred to in section (1), no dispute resolution shall be made by the regent/mayor assisted by the head of the district/city religious ministry office through a fair and impartial consultation taking into consideration the opinion or suggestions of the Forum Religious Harmony district/city. Furthermore, Article 21 paragraph (3) states that in the event that the settlement of disputes as referred to in section (2) is not reached, dispute settlement shall be conducted through the local Courts.

Various issues is about concerning the construction of worship house are still occur in some areas, although the intensity has decreased since the enactment of the regulation. Unfortunately, regulations on religious harmony are set at the level of ministerial regulations. The regulation is still felt not strong due to weak aspects of law enforcement. However, the issue of building a worship house is a sensitive issue. The government should not take lightly of this issue. The government needs to find a way to solve this problem because it has the potential to disturb harmony between adherents of religion and can divide the unity of the nation. If the government does not take serious steps to find a way of settlement, then it is feared there will be conflict in the future. Therefore, the government needs to increase the level of rules of the worship house setting into law. The government needs to enact a law related to the establishment of a worship house that must be obeyed by all adherents of religion.

Actually, the problem concerning the establishment of worship houses emerged because the adherents of a particular religion misinterpreted the meaning of religious freedom guaranteed in the 1945 Constitution. This is understandable because the 1945 Constitution does not explain in detail the designation of religious freedom. Therefore, it is not appropriate if a particular religious believer justifies his act of building a worship house for religious freedom reasons. There are no laws that restrict religious freedom, but there are regulations that restrict the freedom of building worship houses for the purpose of practicing religion. Anyone is free to practice his religion, but he is not free to build a worship house because it is limited by the regulation. There are no laws that limit freedom of religion, but there are regulations that restrict the freedom to build houses of worship.

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4. Conclusion

When the regulation is examined as a whole, it is seen from the aspect of administrative regulations whose regulations have provided justice. Joint Regulation of the Minister also regulate problem solving through deliberations and courts. If disputes concerning worship houses cannot be resolved through deliberations, then disputes concerning the construction of worship houses may be done through the courts.

Implementation of Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs Number 9 and 8 of 2006 does not mean the completion of the problem of building worship house, because the regulation of worship houses is not an independent issue, but related to other issues, such as the issue of religious broadcasting and foreign aid.

Various cases of conflicts about the construction of worship houses have been directed towards completion through deliberations and courts. However, conflicts about the establishment of worship houses are still continuing. If two sides have not been able to finish the conflict on the establishment of worship houses, the government needs to increase the level of regulations on the establishment of worship houses became law. This alternative solution needs to be done to finish the conflict of establishment of worship houses to realize the harmony of religious people in Indonesia.

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