

Equal Rights in the Construction of Places of Worship for Followers of Religious Beliefs



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ABSTRACT: The legal construction of the Indonesian nation through Article 20 paragraph (1), Article 20A paragraph (1), (3) Article 21, Article 28E paragraph (1), Article 28E paragraph (2), Article 28I paragraph (1), Article 28I paragraph (2), Article 29 paragraph (1), and Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. has provided a guarantee of recognition of religion and other believers. Cultural diversity in the realm of religion is a special characteristic of Indonesian society. Various cultures, races, tribes and religions have become an inseparable part of the identity of the Indonesian people since before this country was founded. However, violations of religious freedom still often occur in Indonesia. Various conflicts regarding permits for places of worship are prohibited by the majority. This has violated human rights which are stated in the 1945 Constitution. Joint Ministerial Regulation (PBM) Number 8 and Number 9 of 2000 should be the basis for protection and equality for the construction of places of worship. However, this regulation has not been able to fully accommodate the rights of believers because the provisions of Article 14 of the Joint Ministerial Regulation are still discriminatory. The Draft Law on the Protection of Religious Communities needs special attention to unravel the problems of building houses of worship and as a form of concrete legal protection for religious communities and believers.

KEYWORDS: Equality, Worship Places, Believers.

I. INTRODUCTION

Indonesia is a pluralistic country with a diversity of customs, tribes and cultures. The founding fathers of the nation recognized this form of diversity through the motto *Bhinneka Tunggal Ika*. This motto is an embodiment of the spirit of the diversity of Indonesian society. The embodiment of diversity is reflected in the recognition of the various religions and beliefs that are recognized. The belief in God Almighty is defined as the statement and implementation of a personal relationship with God Almighty based on belief which is manifested by the behavior of devotion and worship towards God Almighty as well as the practice of nobility whose teachings originate from the local wisdom of the Indonesian people (Hernandi, 2014).

At the philosophical level, recognition of religion and belief is regulated in Article 20 paragraph (1), Article 20A paragraph (1), 3) Article 21, Article 28E paragraph (1), Article 28E paragraph (2), Article 28I paragraph (1), Article 28I paragraph (2), Article 29 paragraph (1), and Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. However, empirically there are still frequent horizontal conflicts between people's religion in terms of building houses of worship. The guarantee of recognition of philosophical beliefs is basically guaranteed by the 1945 Constitution of the Republic of Indonesia in Article 28E paragraph (2) of the 1945 Constitution which is a constitutional guarantee for adherents of the belief. This article contains: *"Everyone has the right to freedom of belief, expression of thoughts and attitudes, in accordance with his conscience."* The existence of Article 28E paragraph 2 strengthens the guarantee contained in Article 29 of the 1945 Constitution. Article 29 Paragraphs 1 and 2. In paragraph (1) it is stated that, "The State is based on the belief in One Almighty God" then paragraph (2) states that, "The State guarantees the freedom of every citizen to embrace his religion and to worship according to that religion and belief." In terms of administration, believers have been recognized based on the Constitutional Court decision Number 97/PUU-XIV/2016.

Constitutional Court Decision Number 97/PUU-XIV/2016 has granted administrative equality to believers. Believers are a group of adherents of a spiritual belief or belief system. Beliefs are locality-based religious realities (*indigenous religion*) whose existence is recognized and regulated in Law no. 23 of 2006 (Farihah, 2020). In the Constitutional Court Decision Number 97/PUU-XIV/2016 the judge was of the opinion that the state's responsibility to guarantee and protect the right or freedom to adhere to a religion which is only limited to the rights of adherents of religions recognized in accordance with statutory regulations is not in line with the spirit

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of the 1945 Constitution This means that the right to adhere to a religion is not only limited to adherents of religions recognized by statutory regulations, but also to other religions and believers (Sukirno, 2019).

The equality contained in the Constitutional Court's decision is that the constitutional rights of adherents of religious beliefs are granted in the expression of diversity, especially in terms of writing religious identity on population documents. Important elements contained in the Constitutional Court's decision include: a) The word "religion" does not have conditional legal force if it does not include "belief" as part of "religion". b) The provisions above are contrary to the 1945 Constitution of the Republic of Indonesia so they no longer have permanent legal force (Jufri, 2020).

In the context of human rights, the state is obliged to guarantee the right to freedom of religion and belief, including the right to practice worship for its adherents, whether carried out in a certain place or location, either privately or openly. Thus, the context of a house of worship is interpreted broadly, namely as a means of worship for followers of a religion or belief. Although there are new developments regarding the definition of a place of worship which has a more complex meaning compared to the definition of a place of worship as currently understood, including in regulations in Indonesia. Places of worship can also be understood functionally as houses of worship, namely buildings or facilities that can be used as a means of worship at any time, either by religious communities or family worship. Thus, the context of place also includes indigenous peoples' claims to property or land that are closely related to their access to holy and sacred places at that location (Amor, 1998).

Houses of worship are important religious facilities for religious believers in a place. Apart from being a symbol of the "existence" of religious followers, houses of worship are also places for broadcasting religion and places of worship. This means that the function of a house of worship, in addition to being a place of worship, is expected to provide strong and focused encouragement for its congregation, so that the religious spiritual life of the adherents of that religion will be better (Asnawati, 2004). Conflicts or disputes between religious communities are generally not purely due to religious factors, but political, economic or other factors which are then linked to religion.

Problems with religion and beliefs are generally triggered by three things, namely the issue of establishing places of worship, broadcasting religion and blasphemy or desecration of religion. The issue of establishing places of worship is the factor that most influences the occurrence of disputes or conflicts. Rejection of the construction of places of worship is not only for believers but also for recognized religions. There are at least five forms of protest, rejection, dispute or conflict between religious communities related to the issue of places of worship

1. First, protests or rejection of the establishment of places of worship established by religious groups (minorities) but without permits.
2. Second, protest or rejection of the Regent/Mayor's permit for the establishment of a place of worship that does not fulfill all the requirements set out in the regulations.
3. Third, protest or rejection of the establishment of a place of worship whose proposal uses manipulated documents.
4. Fourth, protest or rejection of places of worship that do not have permits but were established before the regulations were implemented.
5. Fifth, the residents' rejection and the regional government's reluctance to grant permission for proposals to build places of worship that actually meet the requirements.

Various dynamics and conditions regarding religious freedom, especially in the aspect of places of worship, continue to occur in Indonesia. Setara Institute in its report "Leading the Promotion of Tolerance: Conditions of Freedom of Religion/Belief and Religious Minorities in Indonesia 2017" released data on cases of religious freedom in Indonesia totaling 155 (one hundred and fifty five) incidents, one of which was influenced by the establishment of places of worship (Institute, 2018). In terms of the number of disturbances to places of worship, significant progress can actually be seen in 2016 with the number of disturbances only 15 (fifteen) cases and in 2017 it was quite stable at 17 (seventeen) incidents. Compared to the previous research period which was always above 20 (twenty), for example in 2015, there were 30 (thirty) times and in 2014 there were 26 (twenty six) events. In fact, the figure in 2013 reached 65 (sixty five) disruptions to the establishment of places of worship. This data shows that there are still many conflicts that occur after the publication of the Joint Ministerial Regulation in 2006.

Recognition of religious beliefs in legal construction in Indonesia should be clear in order to provide equal rights between adherents of beliefs and recognized religions. But in reality, believers are currently still prohibited from building places of worship. This discrimination is carried out by people who adhere to the majority religion who do not want the construction of places of worship for believers. To solve this problem, there needs to be an idea so that believers have equal rights in building places of worship. Therefore, the problem formulation for this article is how to promote equality in the construction of places of worship for believers.

II. METHOD

This research uses a type of Normative legal research, namely a type of research that focuses on the legal framework constructed in a statutory regulation. The analytical method in this research uses a descriptive-analytic method, namely by describing all legal

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rules related to the research theme being studied. Materials used in this article include the 1945 Constitution of the Republic of Indonesia, Constitutional Court Decision Number 97/PUU-XIV/2016, Joint Regulations of the Minister of Religion and the Minister of Home Affairs Number 9 and Number 8 of 2006 regarding the Establishment of Houses of Worship, Draft Law on the Protection of the Ummah Religious.

III. RESULTS AND DISCUSSION

A. Polemic on the Construction of Houses of Worship for Believers

Indonesia is a pluralistic country with a diversity of customs, tribes and cultures. The founding fathers of the nation recognized this form of diversity through the motto *Bhinneka Tunggal Ika*. This motto is an embodiment of the spirit of the diversity of Indonesian society. In line with this motto, the 1945 Constitution through Article 28 E paragraph (2) and Article 29 paragraphs (1) and (2) has provided guarantees for the recognition of believers. This guarantee was confirmed by the issuance of Constitutional Court Decision No. 97/PUU-XIV/2016 (Nurhidayah, 2022).

Rejection of the construction of places of worship is not only for believers but also for recognized religions. There are at least five forms of protest, rejection, dispute or conflict between religious communities related to the issue of places of worship. Conflicts or disputes between religious communities are generally not purely due to religious factors, but political, economic or other factors which are then linked to religion. Religious issues are generally triggered by three things, namely the issue of establishing places of worship and broadcasting religion as well as blasphemy or desecration of religion (Saptomo, 2019).

First, protest or rejection of the establishment of a place of worship established by a religious group (minority) but not accompanied by a permit. *Second*, protest or rejection of the Regent/Mayor's permit for the establishment of a place of worship that does not fulfill all the requirements set out in the regulations. *Third*, protest or rejection of the establishment of a place of worship whose proposal uses manipulated documents. *Fourth*, protest or rejection of places of worship that do not have a permit but were established before the regulations existed. *Fifth*, the rejection of residents and the reluctance of the Regional Government to grant permission for proposals to establish places of worship which actually meet the requirements.

The issue of violations of freedom of religion/belief (KBB) has occurred in such a way in the last few years, statistical data from The Wahid Institute (2014) recorded 158 KBB incidents throughout 2014 with 187 actions. Compared to 2013, incidents of KBB violations in 2014 decreased by 42%. In 2013, the number of violations was 245 incidents. This number also decreased by 12% compared to 2012. In 2015, the SETARA Institute recorded 196 incidents of KBB violations with 236 forms of action spread throughout Indonesia. Compared to last year, this figure shows a quite significant increase. In 2014, the number of violations that occurred was "only" 134, while the number of violations was "only" 177 (Halili, 2015). This data shows that problems related to places of worship are still a serious problem.

Joint Ministerial Regulations (PBM) Number 8 and Number 9 of 2000 should be the basis for protection and equality for the construction of places of worship. However, this regulation cannot fully accommodate the rights of believers because the provisions of Article 14 of the PBM are considered still discriminatory. Article 14 of the PMB states the following:

- 1) The establishment of a house of worship must meet the administrative requirements and technical requirements of the building.
- 2) Apart from fulfilling the requirements as intended in paragraph (1), the establishment of a place of worship must meet special requirements including:
 - a. a list of names and Identity Cards of users of places of worship of at least 90 (ninety) people approved by local officials in accordance with the regional boundary level as intended in Article 13 paragraph (3);
 - b. local community support of at least 60 (sixty) people authorized by the village head/head;
 - c. written recommendation from the head of the district/city religious department office; and d. written recommendations from the district/city Religious Harmony Forum.
- 3) In the event that the requirements as intended in paragraph (2) letter a are met while the requirements in letter b have not been fulfilled, the regional government is obliged to facilitate the availability of a location for the construction of a house of worship (Peraturan Menteri Bersama No 9 No 8 Tahun 2006, 2006).

Article 14 of the PBM requires four things in establishing a place of worship, namely a minimum of 90 congregations, there must be support from 60 local residents, recommendations from the Religious Harmony Forum, and recommendations from the Office of the Ministry of Religion (Kemenag) in each region. The provisions of the Joint Ministerial Regulation at the implementation level give rise to discriminatory legal politics against followers of minority religions residing in a certain area, this is because the procedures for obtaining permission to build a place of worship always favor the interests of adherents of the majority religion in an area because the conditions are the same between religions. one religion with another (Nugraha & Wicaksana, 2021).

The formal requirements for establishing a place of worship as regulated in Article 14 paragraph (2) of the Joint Ministerial Regulation give rise to problems if local community support is minimal or even nil, this is in line with the findings of the Political Research Center of the Institute of Sciences as quoted by the SETARA Institute which stated that in 2018 As many as 52% of respondents did not agree with the existence of houses of worship of other religions near where they lived (Institute, 2019). Apart

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from these administrative requirements that must be fulfilled by believers, another problem that makes it difficult to build places of worship is pressure from the majority religious group. This has caused a decrease in adherents of religious beliefs from previously 138,000 in 2018 to 117,412 by the end of 2022, this data was obtained from the Ministry of Home Affairs (Kemendagri) (DataIndonesia.id, 2023).

The Joint Ministerial Regulation regulates the resolution of conflicts over the construction of places of worship. Considering the dynamic nature of religion and which must be developed, religious plurality often becomes a vulnerable point that is exploited, thereby triggering conflict (Firdaus, 2014). The institutions that play a role in handling conflicts over the establishment of places of worship consist of the regional government, the Religious Harmony Forum (hereinafter referred to as the Religious Harmony Forum) and the local district court, as regulated in Article 21, the initial handling of conflicts over the establishment of places of worship is carried out by deliberation.

Deliberation at the first level must be carried out by the local community, if a consensus cannot be reached then the district/city government as the second level will hold another deliberation to resolve the conflict fairly and impartially by considering suggestions from the Regency/City Religious Harmony Forum, but if a consensus is still not reached then the disputing parties can take legal action in the local court. However, the government's efforts to crack down on intolerant attitudes are still not optimal, one of which is based on the membership composition of the Religious Harmony Forum as regulated in Article 10 paragraph (3) of the Joint Ministerial Regulation which states that membership is determined based on the number of local religious adherents with a minimum of one person representing from every religion in the province and district/city (Nugraha & Wicaksana, 2021).

The composition of representation of the Religious Harmony Forum uses a system of representation of the majority religious community in a region. This representative system ensures that the majority religious community has a greater number of representatives in the Religious Harmony Forum, so that it does not create proportional justice for followers of minority religions in a region. This is because there is the potential for eroding the right to establish places of worship for religious minorities through formal and material requirements in licensing. The composition of the management of the Religious Harmony Forum using a representative system where management is dominated by one religion can influence how the organization decides on a problem considering the role of the Community Harmony Forum. Religions in issuing recommendations regarding the licensing process for establishing places of worship are very decisive, this is because the regional government will not issue permits if there is no written recommendation letter from the Religious Harmony Forum so this will make the process of establishing a place of worship difficult.

One of the reasons for the decline in the number of adherents of this belief is the difficulty in building places of worship. Efforts that can be taken in the matter of building places of worship administratively are making changes to Joint Ministerial Regulations (PBM) Number 8 and Number 9 of 2006 concerning Guidelines for Implementing the Duties of Regional Heads/Deputy Regional Heads in Maintaining Religious Harmony, Empowering Religious Harmony Forums, and the Establishment of a House of Worship. These changes can be made by simplifying licensing in article 14 by giving the local Ministry of Religion the authority to issue building permits for the establishment of places of worship.

The juridical construction of equalization can be based on Article 28 E paragraph (2) and Article 29 paragraphs (1) and (2) of the 1945 Constitution and Constitutional Court Decision No. 97/PUU-XIV/2016. This equalization of religious beliefs does not mean that all religious beliefs will be equal, but must be limited to beliefs that have been registered with the government and recorded as recognized religious beliefs. Recognition of this belief system by the government will directly provide legality to the belief system and make it easier for adherents of the belief to establish places of worship.

The purpose of registration is justified insofar as the Registration must be of a nature *voluntary*. Registration should not be a prerequisite for whether a person can practice religion or not, but only to recognize a person's legal status and other related benefits; Registration procedures should be easy and fast, not subject to extensive formal requirements in terms of the number of members or the time a particular religious group emerged or was founded; Registration does not depend on government review of the substance of beliefs, structures, religious figures, etc. Religious groups may not be given the authority to decide on the registration of other religious groups (United Nations, 2023).

Apart from that, efforts that can be made by the Government are by ratifying the Draft Law on the Protection of Religious People by providing equal status to religious beliefs as recognized religions in Indonesia. The definition of religion contained in the Draft Law on the Protection of Religious People is quite broad but accommodating to the reality of religion and belief in Indonesia. This understanding is quite ideal. However, the thing that must be remembered is that as a legal state and not a religious state, the state cannot use it as a legal standard. Definitions are only needed to portray sociological reality. The question of whether it is a religion or not must be returned to its adherents (HAM, 2009).

B. Legal Protection of Religious People on the Development of Houses of Worship

The protection of religious communities for the construction of places of worship has indeed been regulated through a joint regulation of the Minister of Religion and the Minister of Home Affairs number: 9 of 2006 number: 8 of 2006. This PBM is deemed inadequate to be adopted as part of the regulation of places of worship in the Bill. This joint ministerial regulation shows discriminatory treatment. The history of the birth of PBM contains flaws. The claim that this PBM is a common consensus among all religions is a denial of history and critical notes put forward by several religious assemblies. Even though this PBM was formally

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ratified, ignoring the objections from the religious councils caused the PBM to suffer substantive problems. To answer various problems that arise related to the construction of places of worship, there is actually a Draft Law on the Protection of Religious Community. This bill contains answers to problems that occur regarding the implementation of PBM.

The formulation of the Draft Law on the Protection of Religious People is a form of representation of the enforcement of Human Rights in the concept of freedom of religion/belief. Freedom of religion/belief is an individual right whose fulfillment cannot be postponed (*non derogable rights*). Therefore, freedom of religion/belief for individuals and groups is a fundamental human right that must be guaranteed by the State (Davis, 2002). Principle *non-derogable rights* confirms rights that are absolute/absolute and therefore cannot be suspended or postponed under any circumstances. The rights contained in this principle include: The right to life (not to be killed), the right to personal integrity (not to be tortured, kidnapped, abused, raped), the right not to be enslaved, the right to freedom of religion, thought and belief, the right to be treated equally before the law, the right not to be imprisoned for failure to fulfill contractual obligations, as well as the right not to be punished under retroactive laws. Thus, all types of actions that can result in the loss of the right of a person or group of people to be free of religion - as one type of right that falls under the category of non-derogable rights - can be classified as a human rights violation (Institute, 2011).

Freedom of religion/belief must be limited only when there is a reasonable suspicion that failure to do so will destroy public order which must be upheld by the government. This allegation must be based on evidence and a way of thinking accepted by all. Conjectures must be supported by ordinary observation and ways of thinking (including uncontroversial methods of rational scientific inquiry) that are generally recognized as true. In essence, restrictions on freedom are permitted only when it is necessary for freedom itself, to prevent even worse violations of freedom (Rawls, 2011). In the basic human rights instrument that regulates guarantees of freedom of religion/belief is Law no. 12/2005 concerning Ratification of the International Covenant on Civil and Political Rights, especially article 18 which includes:

- 1) Freedom to adhere to or choose a religion of belief of one's own choice and freedom, either alone or together with others, whether in public or private places, to manifest one's religion or belief in worship, observance, practice and teaching;
- 2) without coercion so that it interferes with their freedom to adhere to or choose their religion or belief according to their choice;
- 3) the freedom to manifest one's religion or beliefs can only be limited by provisions under law, and only if necessary to protect public security, order, health or morals, or the fundamental rights and freedoms of others;
- 4) States parties to this covenant undertake to respect the freedom of parents, and where recognized, legal guardians, to ensure that the religion and morals of their children are in accordance with their own beliefs.

The aim of the Religious Protection Bill is to eliminate religious discrimination based on the principles of pluralism, equality, non-discrimination, justice, freedom and universal human values. Therefore, to provide pressure or a deterrent effect against individuals who commit religious discrimination, this bill contains criminal regulations with the following provisions, Punishment of perpetrators of discriminatory acts based on religion/belief adopts the provisions of the Criminal Law (or the ongoing Revision of the Criminal Code). You can also refer to the Law on the Elimination of Racial and Ethnic Discrimination, a maximum prison term of 5 years or a maximum fine of 500 million rupiah, depending on the type of discriminatory act committed by the perpetrator. In the event that criminal acts of discrimination are carried out in an organized manner, the punishment is carried out against the corporation/body and/or its management.

In the Draft Law on the Protection of Religious People, there is also a compensation mechanism and a lawsuit mechanism, namely that victims of religious/belief discrimination are entitled to compensation for the losses they have suffered. Compensation can take the form of rehabilitation, compensation and restitution. Each victim, individually or collectively, has the right to file a lawsuit for compensation for acts of religious/belief discrimination that harm him/her. The lawsuit mechanism can be carried out through several simulations at once:

- 1) Administrative lawsuit through the State Administrative Court.
- 2) Through a civil lawsuit to the District Court after a criminal court decision is final and binding.
- 3) Integrated into criminal and civil charges simultaneously filed by the Public Prosecutor in cases of violations of religious freedom or acts of religious discrimination in one trial at the District Court.

CONCLUSIONS

Believers always face discrimination when building a place of worship. This discrimination comes from the majority religious group which syncretism and stigmatizes beliefs that are considered heretical. Beliefs have actually been recognized in Indonesia through the instruments Article 28 E paragraph (2) and Article 29 paragraphs (1) and (2) of the 1945 Constitution and Constitutional Court Decision No. 97/PUU-XIV/2016. The government needs to make efforts that can provide solutions to equal rights between religious communities. One effort that can be made in relation to the construction of places of worship is to simplify the requirements in Article 14 of the PMB by giving authority to the local regional ministry of religion to issue permits and make equalization in the Draft Law on the Protection of Religious Congregations for religious beliefs with recognized religions. This equalization of status

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can provide space for believers to practice their beliefs on a par with recognized religions. The existence of this equality can provide a solution to the discriminatory actions experienced by believers so far.

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