

Norm Formulation of Special Requirements for the Establishment of Houses of Worship in Indonesia (Analysis of Natural Law Theory and the concept of Local Wisdom)

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Abstract

Since 2006, a Joint Decree of 2 (two) Ministers has been enacted to regulate the establishment of houses of worship in Indonesia, where one of the articles regulates the special requirements for the establishment of houses of worship, but the formulation of special requirements for the establishment of worship has caused various prolonged horizontal conflicts in the midst of society so as to damage inter-religious harmony that has been well maintained. The purpose of this study is to examine the formulation of rules on special requirements for the establishment of houses of worship associated with aspects of human rights and aspects of local wisdom. The research method used is juridical-empirical research using socio-legal research approach, legislative approach, case approach and theoretical approach, after analysis using the theory of natural law and the concept of local wisdom, the research results show that the formulation of norms on special requirements for the establishment of houses of worship is contrary to the basic principles of human rights and contrary to the laws and regulations in Indonesia, the formulation of special requirements is also contrary to the concept of local wisdom of the Indonesian people as a reflection of the living law.

I. Introduction

Constitution of the Republic of Indonesia regarding the guarantee of the State to provide freedom to the population to choose the religion they believe. Indonesia is a country of pluralism in religious life because in Indonesia there is not only one religion embraced by the population but there are several religions that exist in the population. One of the important elements for religious adherents in carrying out their worship is a house of worship, most religious adherents perform their religious routines in houses of worship in accordance with what is ordered by each religion, the consequence is that to be able to carry out the routine.

Seeing these conditions the government needs to take constructive steps to avoid the occurrence of inter-religious conflicts in Indonesia, including the establishment of houses of worship, according to Afif Muhammad in his book Religion and social conflict Studies of Indonesian Experience, the steps taken by the government are “the first, organizing dialogues and deliberations between religious communities, and the second to establish various regulations in the form of decrees” (Afif Muhammad, 2013). For this reason, the government in 2006 issued a Joint Decree of the Minister of Religion and the Minister of Home Affairs Number 9 and 8. In the consideration of the issuance of SKB 2 (two) Ministers of Religious Affairs and the Minister of Home Affairs Number 9 and 8 concerning Guidelines for the Implementation of the Tasks of Regional Heads / Deputy Regional Heads in the Maintenance of Religious Harmony, Empowerment of Religious Harmony Forums, and the Establishment of Houses of Worship, the Government is obliged to protect every effort of the population to carry out religious teachings and worship of its adherents, More specifically in Article 14 of the SKB, it is regulated in Paragraph (1) that the establishment of houses of worship must meet administrative requirements and technical requirements of building buildings, in Paragraph (2) it is regulated

that in addition to fulfilling these requirements, the establishment of houses of worship must meet special requirements, namely a list of names and ID cards of users of houses of worship of at least 90 people authorized by local officials, local community support of at least 60 people authorized by the village head / village head, and written recommendations from the FKUB district / city.

The formulation of rules on the special requirements for the establishment of houses of worship that aims to maintain inter-religious harmony in Indonesia has actually caused various upheavals in the midst of society, which shows the disruption of the ecosystem of inter-religious harmony after the enactment of SKB 2 Minister, some examples of cases include:

- a. In 2008 there was a ban on the establishment of the Indonesian Christian Church (GKI) Taman Yasmin by the Bogor City Government, even the Bogor City Government did not heed the decision of the Supreme Court (MA) RI Number 127/PK/TUN/2009 which confirmed the validity of the Building Permit (IMB) of Taman Yasmin Church;
- b. In 2010 there was a rejection of residents against the construction of a mosque in the village of Nahornop Marsada Tarutung North Tapanuli;
- c. In 2018 there was a prohibition by the congregation of the Elpaputih Maluku Protestant Church against the construction of the Bethel Indonesia Church (GBI) Siloam Epaputih Maluku Congregation.

Rescoe Pond states that law is a tool of community engineering, aiming to bring society towards the goals desired by the law on condition that it can protect public interests, community interests and individual interests. The three interests must go hand in hand, not only individual interests are protected but public and community interests must also be protected and well implemented, thus the implementation of human rights in a country is also limited by legislation and

security and order considerations, but these restrictions must be based on law and not discriminatory. Bambang W. Soeharto stated that: "restrictions can be applied only for the purposes as regulated and must be directly related and in accordance with the specific needs that have been determined. Restrictions should not be applied for discriminatory purposes or applied in a discriminatory manner" (Bambang Soeharto, 2013), because Indonesia as a pluralist country in the field of religion is deemed necessary to regulate technically about the requirements of the establishment of houses of worship in Indonesia because if there are no technical rules it is feared that there will be sealing, demolition and prohibition of the establishment of houses of worship unilaterally by certain groups.

Special requirements for the establishment of houses of worship that trigger the fragility of religious harmony in Indonesia is the formulation of SKB 2 ministers do not meet the requirements of a public policy in a democratic country like Indonesia, the formulation reflects more on the formulation of discriminatory, improper formulation will lead to conflicts of religious harmony (Debataraja, L and Ardiansah, 2022), the requirements for the establishment of houses of worship should be able to suppress the occurrence of intolerant actions, suppress the occurrence of horizontal conflicts between communities, but what happens is the opposite, the requirements for the establishment of houses of worship that should be able to suppress intolerant actions in reality lead to intolerant actions based on the SKB 2 Minister.

Religious discrimination is unfair treatment or prejudice against individuals or groups based on their religious beliefs or faith. It can take many forms, including discrimination in the prohibition of worship (Hakim, N, 2023). The impact of this religious discrimination is social tension, lack of tolerance, and violation of human rights. With the pretext of not being able to establish houses of worship in the midst

of other religious communities, there is a ban on the establishment of houses of worship of certain religions by certain community/religious groups, the establishment of houses of worship that require recommendations from FKUB (Religious Harmony Forum) is considered to inhibit the freedom of citizens to worship according to their respective beliefs, of course this is contrary to the principle of human rights, namely the right to embrace and practice worship according to their respective beliefs. The reason for harmony inhibits the rights of citizens to worship and build houses of worship, so it appears that constitutional rights that provide guarantees for freedom of religion, worship and establish houses of worship are not fulfilled (Suryawati, N and Syaputri, M. D, 2022).

The National Commission on Human Rights (Komnas HAM) in 2020 has conducted a study of the Joint Regulation of the Minister of Religion and the Minister of Home Affairs Number 9 and Number 9 of 2006, in its recommendations it is stated that the regulation of houses of worship can be regulated in a Presidential Regulation, as long as there is a legal basis that delegates or is formed in the framework of carrying out government duties with the substance of the content material is regulatory, not restrictive. According to Austin, "law, properly so called" comprises commands, (Banović and Damir, 2021), whereas the establishment of houses of worship is part of human rights while the value of religious harmony in Indonesia is part of the local wisdom of the Indonesian nation. Here, there is a debate of thought and it is necessary to find the right legal reasoning in assessing the norms in the SKB 2 ministers.

Based on some of the conditions and views above, it is necessary to answer the question of whether the norm of Article 14 of the SKB 2 Ministers which regulates the special requirements for the establishment of houses of worship is contrary to the basic principles of Human Rights and Legislation in Indonesia, it will be studied and

analyzed using the theory of natural law and the concept of local wisdom.

2. Research Method

The type of research used in this research is juridical-normative research using a statute of law approach, statute approach and law theory approach, the problems that occur are studied in an exploratory descriptive manner and then analyzed using relevant legal theories so as to produce a deductive conclusion and the latest legal recommendations.

3. Results and Discussion

Human rights are universal rights which means that human rights are owned by every human being without exception, rights that must be respected by everyone which means crossing the boundaries of religion, age, ethnicity, race and class, universal also means crossing the boundaries of time which means it applies now and in the future, human rights are also not limited by the territory of a State which means that human rights apply anywhere. Sutoyo states "Human rights are universal, meaning that they apply anywhere and anytime and to anyone and cannot be taken away by anyone" (Sutoyo, 2011), because human rights are universal, they must be known, implemented and respected by everyone without exception, including in this case is the right to religion. The United Nations on December 10, 1948 issued a worldwide statement on Human Rights contained in The United Nation Universal Declaration of Human Rights, one of the important things in the statement is contained in Title 18,

From the world statement on human rights, it is stated that humans are given the freedom to carry out their respective religious affairs, from the issue of choosing a religion, changing religions, worshiping, declaring religion as an absolute right owned by every human being, the form of this absoluteness is that a person is given the full right to practice his religion and beliefs on the other hand everyone must be

able to respect and appreciate the beliefs held by someone without interfering in the process of worship, development and education carried out by adherents of his religion and even tolerance must be developed between religious communities. Freedom of religion is also something that is very principle in human beings because awareness of these rights grows in human conscience by nature, Freedom of religion is the most basic human right in national and international political instruments, the most basic human right because religious affairs have entered the recesses of the human heart (conscience) since birth, the most basic right because religious rights are rights that have been given by God to all mankind, instinctively humans have a consciousness to seek God, the desire to be close to God and the desire to worship which can be done through religion. In the "People's Agreement" (England) dated October 28, 1647, it was stated "that the matter of religion, and the ways of worshipping God, is in no way given to us by any human power, and therefore we cannot deprive or add even a speck to what our little hearts consider to be the thoughts of God, without sinning".

The important point in this issue is that freedom of religion is the most basic human right that already exists before the emergence of civil and political rights, the problem of religion and ways of worshipping God is not the authority of humans so there is no human authority to revoke or add anything about the right to religion and worship. The right to religion is a right that cannot be reduced at all by anyone because the right to religion is a universal right, Todung Mulya Lubis in his foreword to the book Human Rights in World Society, Issues and Actions states: "Among others included in this category of 'non-derogable' human rights are the right to life, freedom from persecution and cruel treatment or punishment, freedom from slavery and forced labor, freedom from imprisonment for debt, freedom from ex post facto laws, freedom of thought and freedom of religion." (A. Setiawan Abadi, 1993). The right to religion is called a right that cannot be limited (non-derogable) by anyone because this right is a universal right that is owned by every human being

who crosses the territorial boundaries of the state, because of its universality, the state must be the institution that most upholds the right without discrimination. As a consequence, respecting everyone to carry out their religious obligations, not distinguishing between one religion and another without discrimination. The principle of anti-discrimination is very important to put forward because anti-discrimination actions not only have respected human rights but also have maintained the integrity, security and order in the life of the nation and state. The statement of anti-discrimination is clearly stated in article (26) of the Covenant on Civil and Political Rights. In addition, the Universal Islamic Declaration of Human Rights states the basic principles of the Islamic worldview on freedom of religion,

Based on title 10 and 13 of the Islamic universal statement on human rights, it contains the principle that there is no coercion in religion including to determine the right to religion for minorities, in a Muslim country religious minorities have the choice to respect personal matters under the protection of Islamic law or their own laws, everyone based on their conscience has the freedom to worship according to their respective religions and beliefs. About the freedom to establish houses of worship is something that cannot be separated from freedom of religion because one form of religious worship is carried out in houses of worship. It is necessary to listen to Subhi Mahmassani's statement in his book *Basic Concepts of Human Rights Comparative Study of Islamic Sharia and modern legislation* translated by Hasanuddin states: "as a consequence of freedom of religion is to respect all places of worship without distinguishing between one religion and another" (Subhi Mahmassani, 1993). It is stated that the State of Indonesia is a country that highly respects the basic principles of human rights and has a strong desire to protect and implement religious rights as evidenced by the clause of religious rights set forth in the state constitution, namely Article 28E Paragraph (1) UUD RI 1945, Article 28I

Paragraph (2) of the 1945 Constitution Article 29 Paragraph (2) of the 1945 Constitution and see Article 22 of Law Number 39 of 1999 concerning Human Rights too.

There are 3 (three) important things in the articles about the provision of freedom of religion, namely:

1. Freedom to embrace religion and worship according to their respective religions.
2. Free from discriminatory treatment on any basis and entitled to protection against such discriminatory treatment.
3. The state guarantees the freedom of the population to embrace religion and worship according to their religion and belief.

If linked between Article 28I Paragraph (2) of the 1945 Constitution and Article 22 of Law Number 39 Year 1999, it explicitly states that discrimination on any basis is not allowed, including in religious matters, and the state has the duty to guarantee the freedom of everyone to worship according to their respective religions.

Article 14 Paragraph 2 of the Joint Decree stipulates that the establishment of houses of worship must meet special requirements including a list of names and identity cards of users of houses of worship of at least 90 (ninety) people authorized by local officials in accordance with the level of territorial boundaries as referred to in Article 13 Paragraph (3). local community support of at least 60 (sixty) people authorized by the village head, written recommendation of the head of the district/city religion department office; and written recommendation of the district/city FKUB.

The basic principle of Natural of Law Theory is that humans have innate rights and moral obligations inherent in human nature and character as a form of natural endowment, these rights are not granted by the government or society, human law must be in line with and not contradict the principles of morality and

justice derived from natural law, Natural law is a form of reflection of eternal law that comes from God, natural law is universal / global regardless of the boundaries of the State, group, tribe, nation, religion, skin color and so on, as a universal law it cannot be revoked, reduced and transferred to others, must be upheld and obeyed by everyone. Some figures who adhere to the theory of Natural Law include Aristotle, Augustinus, Thomas Aquinas and Grotius.

Carrying out worship according to their respective religions is a basic right inherent in every human being, the desire to worship is not just carrying out God's commands but becomes a basic human need so that it is not only limited to carrying out obligations under God's orders but has become a moral obligation of every human being, in nature and consciousness arises from the desire of each individual. Therefore, it is no exception that this basic right must be respected by everyone, including in this case, state institutions, in which case the government should not be discriminatory. Scott Davidson in his book *Human Rights, History, Theory, and practice in international relations* translated by A. Hadyana Pudjaatmaja States " " it can be seen as a rule of law concept that requires that rights must be protected by law, and that when revoking or reducing individual rights, the government is obliged to comply with constitutional legal requirements. This concept also requires that the Government Act in accordance with the law, and that the law on which the government acts is based it is not oppressive, arbitrary, or discriminatory". (Scott Davidson, 1994). This implies that government action must be based on the law, not oppressive, arbitrary or discriminatory, as a form of implementation of the principle of the rule of law. The government is obliged to protect every effort of the population to carry out the religious teachings and worship of its adherents, as long as it does not contradict the laws and regulations, does not abuse or desecrate religion, and does not disturb public order and order.

The existence of norms on special requirements in the establishment of houses of worship stipulated in the Decree 2 of the minister is seen that the government is too far to regulate something that is universal, in this case the government simply regulates the level of legislation as evidence of support and state recognition of religious rights, the inclusion of norms must have special requirements, namely a list of names and ID cards of users of houses of worship of at least 90 people authorized by local officials, the support of the local community of at least 60 people authorized by the lurah/village head, and a written recommendation from the district/city FKUB, this norm causes discrimination and becomes an obstacle for citizens to set up houses of worship, whatever religion if it will set up houses of worship in other religious majority areas it will be difficult to obtain permission to set up houses of worship and empirically proven the existence of various community rejection of the establishment of houses of worship in certain areas and this can trigger social insecurity and divisions between religious communities in Indonesia.

Interreligious harmony is an interreligious relationship based on tolerance, mutual understanding and mutual respect in the practice of religious teachings and cooperation in society (Tanjung, et al 2024). The practice of freedom of religion and belief as part of the construction of religious and state relations in Indonesia still leaves many problems. State institutions are the most numerous violations of freedom of religion and belief,(Fidiyani and Rini, 2013) with the decree of the two ministers is essentially a violation committed by the state against religious freedom in Indonesia. Regulation of the Minister'S Decree 2 on the establishment of houses of worship raises the pros and cons of several groups. Data in the field, especially in Central Java, shows some of the church's problems with this regulation even partially damaged. The regulation of this regulation causes some churches to

experience problems of injustice in worship and development (Aliyanto, Deky Nofa, 2021).

Komnas HAM recorded at least 41 cases of complaints related to acts of intolerance in the period 2017 to 2019, most of them were cases related to the establishment of houses of worship, (Komnas HAM, 2020) the establishment of inter-religious houses of worship is also one of the triggers for House of worship conflicts over the abuse of House of worship establishment permits. "The presence of a house of worship often disrupts interreligious relations, or even triggers conflicts because its location is in the middle of a community that mostly adheres to other religions.(Arifinsyah and Fitriani, 2019). Cosmic religious environmental law, is a law that refers to religious values, morals, and local wisdom based on the principles of balance, harmony, respect, and wisdom, where this law can be used as an effective regulatory basis in overcoming environmental problems because this law not only regulates human relations with the environment but also builds harmonious relationships between humans, nature, and God.

The existence of administrative and technical rules and special conditions for the establishment of houses of worship shows that there is so much government interference in the establishment of houses of worship even this rule gives the impression of restrictions imposed by the State on citizens to perform worship in houses of worship, the provision of local community support for at least 60 (sixty) , including written recommendations from the Ministry of religion and FKUB Regency / city. Whether if these conditions are not met resulting in people will lose their right to worship in their respective Houses of worship when worship in houses of worship is a command of every religion.

According to Fuller, the law should be general, open, prospective, clear, without contradictions and relatively stable.(Nishigai and Konatsu, 2022). Selection

Of Lon L. Fuller should be used to address the various associations of the work of the people elected to choose an open nature, fighting for the future, not in contradiction with human rights and local wisdom. In this context the order to address the issue of human rights in the field of religious freedom in Indonesia and improve local wisdom of religious harmony in Indonesia because if it is not based on studies that experience the urgency of the issuance of a rule will cause the rule can provide conflict between religious people in Indonesia, the authorities should think more moderate in this matter. Moderation confesses to a more inclusive, open, and tolerant attitude toward confessing and others, as well as avoiding fanaticism or religious extremism. (Pahlepi, et al, 2023).

However, not all things that must be considered in order to create religious harmony as a whole are very important, without action from the government such efforts are difficult to implement, but not all things must be considered, there is no need to consider things that are principles and fundamentals have basic and noble values are the domain of human rights and local wisdom, at the most general level, at the most general level, at the most general level, at the most general level, at the most general level, at the most basic level, at the most basic level, at the most basic level, at the most basic level, at the most basic level, analytical or conceptual jurisprudence is a theoretical investigation that deals with the explanation of the fundamental characteristics of law and legal concepts (Fabra-Zamora and Jorge Luis, 2021) analytical jurisprudence began as an attempt to express in a clear way the formal concepts used by judges and lawyers in legal reasoning (Singer, Joseph William, 1982), therefore the decree on the establishment of houses of worship basically does not worship must be carried out in a government setting (PP) it does not need to be carried out by the government. actually, by using the natural law theory approach

(Natural of Law) can solve various problems that occur including problems in religious harmony, cosmic religion environmental law is a law that refers to religious values, morals, and local wisdom based on the principles of balance, harmony, mutual respect, and wisdom, where this law can be used as a basic rule in addressing environmental problems because, but it also establishes a harmonious relationship between man, nature and God.(Pt), Mella Ismelina).

One implementation of the teachings of natural law is the concept of local wisdom or traditional wisdom or local knowledge system (indigenous knowledge system) is a distinctive knowledge belonging to a particular society or culture that has developed long as a result of the process of mutual relations between humans and their environment, local wisdom that not only applies locally to a particular culture or ethnicity, but can be said to be cross-cultural or cross-ethnic so as to form a national cultural value. Manihuruk, et al, 2024). Local wisdom is not necessarily applied within local context or ethnic, but cross-cultural or cross-ethnic natures as well, in hope of establishing national cultural values.(Albantani, et al, 2018). There are unique aspects that exist in religious harmony, including aspects of diversity, aspects of tolerance, aspects of dialogue and interaction, aspects of collaboration and cooperation, and finally aspects of respecting local wisdom (Pratama and Arga Putra, 2024). Local wisdom in the issue of religious harmony is actually very rooted in the Indonesian nation, this can be shown from a variety of empirical evidence that can be used as a model of preserving the value of inter-religious harmony in Indonesia, below the researcher can prove that the values of inter-religious harmony has been rooted and live in the midst of the lives of Indonesian people. These local wisdoms have functioned well for many years, perhaps even hundreds of years, within the scope of their traditional communities. Maybe some of the local wisdom will survive and continue to function properly, but we also see that some of the local

wisdom was also unable to survive.(Muhdina and Darwis, 2015). Local wisdom is a conceptual idea that lives in society, grows and develops continuously...continuously in the consciousness of society, it functions in regulating the life of society which is related to the sacred to the profane. (Sartini, 2004).

Religious differences are not an obstacle for them to carry out various social activities. Whenever there is mutual assistance in the community, whether at the village, district or provincial level, they are able to work well together without compromising mutual respect and respect for each other. (I Gusti Ayu Aditi, 2023). In Indonesia religious differences do not make people divided even they are able to live in harmony and peace, where the principle of harmony that they build is not to participate in the worship of other religions, do not interfere with the procession of worship of other religions because it is returned to their respective beliefs, they are united in a variety of social, repairing broken bridges and so on, they show True Harmony.

Living in harmony between religious communities for the indigenous people of Manokwari (Arfak and Doreri Tribes) has been a culture since time immemorial. Religion for them is "not a problem", as long as individuals in interacting respect each other. This is a manifestation of the local wisdom of the indigenous people of Manokwari.(Mustafa and Muhammad Sadli, 2019). Even religious harmony can be practiced by the people of Manokwari who are considered a traditional and marginal society, they are able to show how to actually practice true religious harmony without the need for various theories and rules. Furthermore, in other areas of religious harmony can be seen from the tradition of alms the implementation of village alms can foster an attitude of togetherness and kinship that has a positive impact on growing attitudes of harmony and harmony.(Pahlevi, et al, 2023). In the village Alms is not seen the religious background of the

community but all blend into one event.

Local wisdom is a value that has been living and rooted in a society, where with full awareness of the community is able to do the value of local wisdom well without any interference or pressure from the government, religious harmony in Indonesia is actually a religious value that has been living and applied by the Indonesian nation before the Indonesian state was formed, religious harmony that has been established and well maintained in Indonesia needs to be revived in the spirit of unity by all components of society, if there is a group of people who destroy religious harmony, it can be considered that the group does not respect the noble values, namely the local wisdom of the Indonesian people, harmony can be maintained properly if each does not interfere or mix up the affairs of other religious worship, while in social life it can do all kinds of activities for the benefit of all together.

Based on legal reasoning, it can be understood that the formulation of norms governing the special conditions for the establishment of houses of worship in Indonesia is contrary to the basic principles of Human Rights and legislation in Indonesia and is not in line with the concept of local wisdom as the Living Law that has been lived and adhered to with full awareness by the Indonesian people. Therefore, this rule at least needs to be revised even if it needs to be revoked. Values that already live in society do not always have to be regulated in a rule, with the existence of these rules it has the potential to cause chaos and problems, as a value that is universal in the study of human rights, the government is sufficient to ensure the maintenance of a conducive atmosphere for citizens to practice their respective religions, as a value of local wisdom that the government simply encourages that the value of local wisdom can be maintained and treated properly.

4. Conclusion

Based on legal reasoning through analysis using the approach of legislation and legal theory, it can be concluded that the formulation of norms governing the special conditions for the establishment of houses of worship in Indonesia is contrary to the basic principles of Human Rights and legislation in Indonesia and is not in line with the concept of local wisdom as the Living Law that has been lived and adhered to consciously by the Indonesian people. Therefore, this rule at least needs to be revised even if it needs to be revoked.

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