

# ALIGNING PANCASILA VALUES IN THE REGULATION FOR WORSHIP HOUSE CONSTRUCTION IN INDONESIA

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## Abstract

Indonesia regulates the establishment of places of worship because its people adhere to different religions and beliefs, so it greatly influences the construction of the establishment of places of worship. The regulations for the construction of places of worship written in the Peraturan Bersama Menteri Agama dan Menteri Dalam Negeri (PBM) Nomor 9 and 8 Tahun 2006 are considered policies that discriminate against minorities. This research is a normative research with a juridical approach that uses the library research method to obtain valid sources as written references. The purpose of this research is that the regulations for the establishment of places of worship can be reviewed by synergizing Pancasila values in them to avoid religious conflicts and for the sake of creating religious harmony. The conclusion of this study is that there are many cases of the construction of places of worship due to conditions that are considered discriminatory by minorities. So that this regulation needs to be reviewed by aligning the indicators of Pancasila values based on the Badan Pembinaan Ideologi Pancasila Nomor 4 Tahun 2022 concerning Pancasila Indicators. Upholding Pancasila as grundnorm and staatsfundamentalnorn means that all laws and policies must refer to Pancasila.

**Keywords:** Pancasila; Regulation; Worship House.

## A. Introduction

The state has the authority to enter the private sphere by regulating religious life which is the primary issue in discussing the relationship between religion and the state. Since the beginning, the founders of the nation agreed that Indonesia is not a secular country, nor is it a country that unites religion and politics into one unit, but that Indonesia is a country based on Pancasila. (Latif, 2011, 95).

Even though laws have been written that discuss the basic rights of citizens, the Indonesian state has systematically issued laws that have the potential to discriminate against minority groups. Therefore, to protect the rights of citizens or certain groups, the attention of the public, academics, and civil society is needed to oversee the implementation of this law

which aims to encourage the state to pay more serious attention to and protect the rights and freedom of religion for every Indonesian citizen.

The constitution guarantees the freedom to embrace religion and belief, but the facts that occur in society are still not able to protect this freedom. It even seems that the government in seeing diversity in religion seems discriminatory. Some legal products are considered unfair to minorities so that until now there are still frequent religious conflicts such as violence, destruction of places of worship and so on which violate the rights of other diverse people. In law number 39 of 1999 concerning Human Rights which is used as a reference that religion and belief are the inviolable rights of every citizen. Article 22 states that:

- 1) Everyone is free to embrace their own religion and to worship according to their religion and belief;
- 2) The state guarantees the freedom of every person to embrace their own religion and to worship according to their religion and belief.

In addition, Article 8 also states that:

"Protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government".

The dynamics of the birth of a policy can be seen starting from the birth of Indonesia until now. There are very complex problems in religion that demand the formation of policies as a way to solve these problems without creating new problems. However, the fact is that a policy can be influenced by various factors, such as the regime in power, political interests, the influence of the majority group and other factors.

Indonesia regulates the construction of houses of worship because the Indonesian people are plural in religion and belief, which influences the construction of houses of worship. The construction of houses of worship is often a problem in the community. The Joint Regulation of the Minister of Religion and the Minister of Home Affairs (PBM) No. 9 and 8 of 2006 is considered a discriminatory policy against minorities. Therefore, the author will discuss the Ministerial Joint Decree on the construction of houses of worship that are detrimental to minorities. This paper aims that PBM No. 8/2006 and 9/2006 can be reviewed by synergizing Pancasila values in them to avoid conflicts over the construction of houses of worship that have occurred so far and for the sake of creating religious harmony.

Requirements in establishing a house of worship should make it easy for adherents of religions to be able to build their house of worship. However, the fact remains that conflicts often occur, including in 2021 the sealing of the Ahmadiyah mosques in Depok and Sintang,

in 2019 the sealing of the GPDI Efata Church in Indragiri Hilir and the revocation of the IMB permit for GPDI Immanuel in the Bantul area, in 2018 the GMI Kanaan church was sealed. GSJA and HKI in Jambi, as well as many cases related to the rejection and sealing of other houses of worship in Indonesia (Suryawati & Syaputri, 2022, 435).

In view of the above background, the purpose of this research is to review the regulations for the construction of houses of worship to avoid conflicts that often occur in the community regarding the construction of houses of worship, because these regulations are considered discriminatory regulations. Thus the author raises two issues discussed in this paper, namely:

1. How is the implementation of regulations for the establishment of houses of worship in Indonesia?
2. How to Strengthen Pancasila values in the regulations for building houses of worship?

## B. Literature Study

There are several articles that discuss regulations on the establishment of houses of worship, including:

1. Sukandi, article entitled Development of House of Worship Regulations in the Context of the Nation State (NKRI) Perspective of Maqashid Al-Syari'ah. This paper discusses the views of maqasid shari'ah on the regulations for the establishment of houses of worship which are categorized into three groups, namely: dharuriyat, hajiyat, and tahsiniyat.
2. Nugroho, article entitled Policies and Conflicts in the Establishment of Houses of Worship in Indonesia. This paper discusses the difficulties faced by adherents of minority religions in building their houses of worship because of the conditions stated in government regulations. The government must exercise strict supervision in implementing

regulations on the establishment of houses of worship.

3. Berty Theresia et al, article with the title Spatial Regulations in Granting Building Permits to Houses of Worship. This paper discusses the role of local government as a party that must minimize internal and external conflicts in the establishment of potential houses of worship in implementing PBM no 8 and 9 of 2006.

Seeing some of the research above, the authors are interested in discussing the alignment of Pancasila values in the construction of houses of worship that have not been studied by previous researchers.

### C. Research Method

The research method in this paper is a qualitative research method that focuses on regulations for the construction of houses of worship. The author describes how PBM No. 8/2006 and 9/2006 implemented in the community related to the conflict over the construction of a house of worship. This paper is a normative legal research that is conceptualized as what is written in laws and regulations or rules, norms as a standard of human behavior (Amirudin & Asikin, 2003, 29) using a juridical approach that refers to the legal principles that apply with include legal sources related to PBM No. 8/2006 and 9/2006. The author uses the library research method in collecting data, namely by collecting library data from various sources such as regulations or laws, journals, books, articles, and other written sources to obtain valid sources that are used as writing references.

### D. Results and Discussion

#### 1. Implementation of Worship House Construction Permit in Indonesia

One of the sources of conflict in Indonesia is due to religious differences which cannot be treated with tolerance. Religious conflict that occurs in our society is a problem related to the construction of houses of worship, even this problem can lead to burning and destruction of houses of

worship (Suaedy, 2007, 247). This conflict over the establishment of a house of worship has many motives from actions in the name of adherents of a particular religion. Minority religions often find it difficult to build their houses of worship, because often the majority religion opposes the construction of houses of worship in their environment.

As written in Law no. 1 PNPS 1965 that the religions recognized in Indonesia are Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism. All religions have houses of worship which they use to carry out their worship activities. However, the fact that occurs in the field is that the process of building houses of worship often creates conflicts that can divide religious communities (Bayani & Aslamiyah, 2022, 62).

There was opposition to the construction of a church in Meolaboh, Aceh in 1967. At that time, the Muslim community believed that the area's majority were Muslim, so they did not want a church. However, on the other hand, Christians say that the establishment of houses of worship is an illustration of religious freedom that the state must protect. Thus, the government deems it necessary to make a regulation regarding the establishment of houses of worship (Cholil, 31 January 2009).

This problem became even more complicated when other parties saw that the construction of the house of worship was not in accordance with the needs, but rather to broadcast religion to members of other religions. The existence of a conflict related to the destruction of houses of worship was a factor underlying the issuance of the SKB Minister of Religion and Minister of Home Affairs Number: 1 of 1969 which was later amended and replaced by the Joint Regulation of the Minister of Religion and Minister of Home Affairs, Number: 9 of 2006 / Number: 8 of 2006, March 21 2006 (Daully, 2020, 14).

As we know that houses of worship are a basic need for religious people to

receive special attention from the government by deliberating with religious leaders to make regulations regarding houses of worship. It was on this basis that a Joint Decree was formed between the Minister of Religion and the Minister of Home Affairs no. 01/BER/mdn-mag/1969, regarding the implementation of the duties of government officials in ensuring order and smooth implementation of religious development and worship by its adherents.

Nur Ichwan is of the opinion that the purpose of forming the Joint Ministerial Joint Decree is to stop conflicts over places of worship. Apart from that, the other goal is to respond to the Christianization that is happening in society. Some Muslims are worried about this movement. Therefore, the issuance of Joint Ministerial Regulation No. 1/BER/mdn-mag/1969 during the New Order government. Nur Ichwan also stated that the issuance of the Joint Ministerial Decree for the Two Ministers was intended to gain sympathy from the public, especially the sympathy of the majority group, namely Muslims. Sympathy and support from Muslims was very important at that time to support national development projects. (Nur, 2011). However, at present these regulations have actually caused polarization between religious communities in society. This happened because minority groups felt that they were often discriminated against in the process of building houses of worship.

The issuance of SKB Two Ministers No. 1/BER/mdn-mag/1969 aims to regulate the issue of building houses of worship, but the articles governing the construction of houses of worship are only in articles 4 and 5. The existence of Articles 4 and 5 in the Joint Decree of Two Ministers No. 1/BER/mdn-mag/1969, of course, narrows down the requirements for the establishment of houses of worship, where the permits for houses of worship only rely on regional heads in each region.

Furthermore, in 2006 a revision of the Decree of the Two Ministers No. 1/BER/mdn-mag/1969. This policy was

formed with the aim of completing the SKB Two Ministers No. 1/BER/mdn-mag/1969. As well as the establishment of a Joint Regulation of the Minister of Religion and the Minister of Home Affairs No. 8/2006 and 9/2006 are the answers to the many demands from the community that require a revision of the previous regulations (Sukandi, 2020, 263). However, even though the regulation has been revised, disturbances to places of worship still occur frequently because Article 14 paragraph 2 is considered to be burdensome for minorities.

One of the administrative actions in building a house of worship is to ask permission from local residents in the form of a signature. Ridwan HR in his book *State Administrative Law* writes that the permit process functions as an instrument used by the government to control society so that it is in accordance with the stated goals (Ridwan, 2006, 112-113). The many cases of inhibition of the construction of houses of worship due to administrative problems indicate that simplification of the requirements for the construction of houses of worship is needed. Based on PBM No. 8/2006 and 9/2006 stipulate that building a house of worship requires approval of a minimum quota from local residents. The requirements in these regulations can actually lead to polarization and intolerance in society.

SETARA Institute writes that there were 26 cases that occurred, including the refusal to establish Islamic boarding schools, the refusal to build houses of worship, and the destruction of houses of worship. These cases are a category of discrimination perpetrated by the state through discriminatory policies. In addition, this case also falls into the category of intolerance by the community (SETARA Institute, 2020).

Frequent disputes over houses of worship relate to violations of religious freedom. Groups that often become victims of these disputes and often get persecution are minority groups that are among the

majority groups in an area. Inter-religious conflicts often occur, this is because there is a legalistic understanding of religion and a superior attitude which causes people to think that their religious group is the most correct, making it difficult to accept the presence of other religious groups. This condition is followed by an understanding of religion that emphasizes institutions, symbols, and practical truths, not universal truths. Such conditions can add to the occurrence of religious polarization, one of which is in the form of refusing to build houses of worship (Irfan, Kustiawan, & Nazaki, 2021, 214).

Houses of worship are buildings that have certain characteristics that are used as places of worship for adherents of their respective religions, not included in family places of worship. Islamic places of worship are called mosques, prayer rooms, langgar, or surau, Christian and Catholic places of worship are called Churches, Buddhist places of worship are called Viharas, Hindu places of worship are called Viharas, Confucian houses of worship are called Kelenteng. The purpose of this synagogue is as a means to carry out religious activities (Jamaludin, 2015, 168).

Several disturbances to the construction of houses of worship were carried out by the government. On this issue, the government stopped the construction of houses of worship unilaterally, while its passive action was to allow the long-winded administrative process to build houses of worship. In addition, the government through its policies issued a letter of termination in the construction of houses of worship and stipulated conditions for the construction of houses of worship which were discriminatory in nature. Not only that, the government tends to be unskillful in processing people who act anarchically towards buildings of worship (Sigit & Hasani, 2021, 43).

Administrative reasons are the main factor causing the rejection of houses of worship. However, if we look at the events

that have occurred, there is an imbalance in relations built between adherents of religions. Then it was legalized by the state to become a regulation that must be obeyed. The rejection of mosque proceedings in Papua, prison sentences against residents who complained of chanting the call to prayer and incidents of the forced closure of a number of churches, all of these events were initiated by pressure from a group of people which caused government officials to take action in the name of "maintaining a conducive situation in society". in the end it can raise questions and debate the values of tolerance in society in the midst of religious diversity (Kusniyanto, 2018, 33).

The majority have concerns about the shift in existence of the establishment of a new house of worship in their environment, therefore they reject the establishment of another house of worship in their environment. This rejection had a long impact on society. Various things were done to resolve the conflict that occurred. As it has been written above that there are several conflicts which were initially the interests of the basic needs of religion then strengthened into religious issues and conflicts.

## **2. Aligning Pancasila Values in the Regulation for Worship House Construction**

Democratic politics can be seen from the legal products produced if the ideal legal political approach is implemented in its formation. The ideal political law is the formation of law in accordance with the ideals of law (recthsidee) and the goals of the state (Tardiono, 2016, 61). The Indonesian state has legal ideals, namely Pancasila and the goals of the state which are contained in the fourth paragraph of the Preamble.

Based on this, the national policy in law reform must refer to the values of Pancasila and the goals of the state, both national in nature, such as laws and other regulations (Dahoklory & Wardhani, 2020). The foundation of the state is the

basic norm of administering the state which is the source of all sources and is the ideal of law. Legal ideals direct legal products to the ideals of the Indonesian people which show the same goal and interest. Thus, Pancasila must be the basis for updating legal products in Indonesia (Sidi, Basri, Akbar, Irhamuddin, & Sinaga, 2021, 511).

The issuance of PBM No. 8/2006 and 9/2006 are forms of government intervention to create inter-religious harmony by providing technical guidelines for regional heads to maintain religious harmony. In general, these regulations aim to increase religious harmony. This regulation may not conflict with statutory regulations, including conflicting with the constitution and human rights. However, the existence of regulations regarding the construction of houses of worship can still lead to conflict in society.

The government has a great influence in carrying out its duties and functions in social welfare, health care and providing infrastructure financially and personally. The meaning of this action is that the government plays a role in being involved in the preparation and implementation of policies including in creating regulations in the licensing system including permits that contain obligations and prohibitions (Simanullang, Tobing, & Helmi, 2021, 44).

The establishment of houses of worship in a pluralistic country like Indonesia with a diversity of religions embraced by its people is a dilemma. On the one hand, the construction of houses of worship is a right for every citizen as a form of implementing religious teachings, but in reality, on the other hand, the construction of houses of worship often creates inter-religious conflict in society, even though the government has issued regulations through joint ministerial regulations. In this regard, the government must act decisively by revising discriminatory regulations in society. In addition to eliminating discriminatory actions, efforts to strengthen understanding of multiculturalism and Pancasila values are needed.

Management of PBM policies is very difficult to implement, because the issuance of permits does not only depend on the government but also on the community. The implementation of this policy has created new problems because there are some people who understand that agreeing to the construction of places of worship of other religions is tantamount to acknowledging the truth of the teachings of that religion. This understanding will make it difficult for minority religions to build their places of worship. So even though the requirements have been set, namely a religious community with 90 adult members, if it does not meet the requirements for the construction of a house of worship by obtaining 60 signatures from the local community, the house of worship will never get a permit to be built (Hutabarat, 2017, 23).

The guarantee of the right to religion is written in the 1945 Constitution of the Republic of Indonesia in articles 28E and 29. Article 29 states that the state is constitutionally responsible for protecting the rights of its citizens to choose a religion and practice their religion based on their respective beliefs. This is in line with article 28E which states that the State is obliged to guarantee freedom of religion. In article 28I paragraph (4) that the protection, promotion, enforcement and fulfillment of human rights must be fulfilled by the state and government. This includes protecting houses of worship and giving them the right to be able to build houses of worship.

The Road Map for Strengthening Religious Moderation prepared by the Ministry of Religion which is a follow-up to Presidential Decree Number 18 of 2020 concerning the 2020-2024 RPJMN was established as one of the policy directions for building moderate human resource character, oriented towards creating benefits and upholding national commitments. Therefore strengthening religious harmony and religious rights must be protected. Based on this policy direction, it is necessary to review policies which in

their implementation still lead to religious conflict.

Religious moderation can be measured using four indicators, namely tolerance, non-violence, national commitment, as well as the existence of accommodative religious understanding and behavior or those who are multicultural and multi-religious. These four indicators must be maintained and implemented in daily life to create harmony between religious communities. (Habibah, Setyowati, & Fatmawati, 2020, 131). To implement these four indicators is by applying them in a policy.

A legal product often raises pros and cons, therefore in drafting a regulation it is necessary to look at the needs that exist in society. This can also be done by revising regulations that are considered inappropriate with the conditions that occur in society so that the resulting regulations can be implemented properly without any discriminatory articles. In forming regulations, it is necessary to be based on Pancasila values so that these regulations can protect all groups according to Appendix 1 of Law 12 of 2011.

Pancasila must also be reflected in the formulation of policies in the form of a code of ethics and a code of conduct. The code of ethics based on Pancasila is explained in MPR Decree No. VI/MPR/2001 concerning the Ethics of National Life. The cultivation of the values of Pancasila and the 1945 Constitution is concretely manifested in our daily lives. Civilization is not only in the form of 'rules of law' but also in the 'rules of ethics'. Policies regarding this matter can be formulated in the form of a code of ethics and a code of conduct along with the institutionalization of enforcement institutions within the state offices, government, mass organizations, NGOs and business entities (Asshiddiqie, 1 June, 2011).

Pancasila as *grundnorm* and *staatsfundamentalnorm* has a very vital role in the formation of laws or policies in Indonesia. Hans Kelsen stated that

*grundnorm* is the formal reason for the validity of legal norms. According to Kelsen, legal norms are very plural. So we need a reason that can unify the norms in the legal system. Kelsen calls it a *grundnorm* or basic norm (Kelsen, Pure Theory of Law, 1967, 193). This concept is reinforced by Nawiasky with the term *staatsfundamentalnorm*. Nawiasky emphasized that *staatsfundamentalnorm* is the highest norm which is the reference for the legal norms below it. Nawiasky also believes that *staatsfundamentalnorm* is the basis for forming a constitution or regulations. (Kelsen, 2014, 61). So the consequence of this is that Pancasila must be lowered into the Constitution, laws and other regulations (Kaelan, 2007).

Pancasila is used as a tool for legal renewal due to several factors, including: Pancasila is a legal ideology, Pancasila contains the values of all laws in Indonesia, Pancasila contains guiding principles in the preparation of laws in Indonesia, Pancasila as a statement of the values of the spirit of law in Indonesia. Indonesia (Saleh, 1979, 49).

Based on the explanation above, if Pancasila is associated with regulations for the establishment of houses of worship, then this is related to the first precept. The first precept "Belief in the One and Only God" relates to inherent moral legitimacy. Even though law in Indonesia is not based on religious legitimacy, morally the nation and state refer to the values of divinity which are reflected in religious teachings. Thus the attitude of tolerance, mutual respect, respect and compassion between religious communities is highly valued in Indonesia (Redyanto & DKK, 2021, 508-509). Although in practice there are still frequent inter-religious conflicts.

Seeing that there are still many inter-religious conflicts that occur in society, the regulations for establishing houses of worship that apply need to be reviewed based on Pancasila values so that they are in line with the purpose of establishing these regulations, namely to maintain

religious harmony. The effort that must be made is to evaluate the implementation of regulations or policies. Pancasila as grundnorm and staatsfundamentalnorn can criticize the regulations for the establishment of houses of worship that are not appropriate based on Pancasila values. In an effort to ensure that laws and regulations are drawn up and enforced with the values of Pancasila, a measuring instrument is needed to assess them.

Regulation of the Republic of Indonesia's Pancasila Ideology Development Agency Number 4 of 2022 concerning Pancasila Indicators, in article 2 explains that indicators of Pancasila values are used as guidelines for the formation of policies and laws and regulations. In the Bandage it is written that each precept has an indicator that is explained and has a relationship between one precept and another.

Seeing that the Pancasila value indicator as a guideline for policy formation has been compiled, the authors are of the opinion that regulations on the construction of houses of worship need to be reviewed by the relevant ministries so that these regulations are not considered discriminatory by some members of other religions.

## E. Conclusion

The conclusions from the discussion of the two problem formulations in this paper are:

1. The occurrence of conflicts over the construction of houses of worship in the community is a form of violation of freedom of religion. Groups that are often the victims of this conflict and often get persecuted are the minority groups who live in the neighborhood. Many cases of inhibition of the construction of houses of worship are due to administrative requirements that are considered difficult for the religious minorities in the neighborhood. This problem

shows that simplification of the requirements for building houses of worship is needed.

2. The issuance of regulations on the construction of houses of worship is a form of government intervention in building religious harmony. However, in practice these regulations are considered discriminatory against minorities. So that this regulation needs to be reviewed by aligning the indicators of Pancasila values based on the Regulation of the Pancasila Ideology Development Agency of the Republic of Indonesia Number 4 of 2022 concerning Pancasila Indicators. Upholding Pancasila as grundnorm and staatsfundamentalnorn means that all laws and policies must refer to Pancasila.

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