



Religious Freedom and House of Worship Licensing on Private Land

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Abstract

Introduction: This article analyzes the legal protection of religious freedom regarding the licensing of houses of worship built on private land. While the Indonesian Constitution strictly guarantees the right to worship, administrative barriers often hinder this fundamental freedom. This study specifically addresses the practical challenges and discriminatory requirements faced by minority religious groups in navigating restrictive local regulations.

Purposes of the Research: The purpose of this article is to evaluate the legal alignment between constitutional rights and administrative regulations regarding the establishment of places of worship. Examine the interaction between individual land ownership rights (Property Certificate) and licensing requirements. Furthermore, this study explores a more sensitive legal protection model to ensure legal certainty for minority groups in Indonesia.

Methods of the Research: This study uses a normative legal method by examining legal norms, principles, and doctrines related to religious freedom. The study uses legislative, conceptual, and case approaches, focusing on Gereja Kasih Karunia Indonesia (GEKARI) in Jakarta. Data analysis is carried out qualitatively through systematic and constitutional interpretation of primary and secondary legal materials.

Findings of the Research: The findings prove that restrictive administrative requirements, such as local community support, create a "social veto" that undermines constitutional religious freedom. This research offers a novel perspective by integrating agrarian law's social function with administrative law to protect worship on private property. It concludes that shifting from a social-approval model to objective administrative verification is essential for legal certainty.

Keywords: Religious Freedom; House of Worship Licensing; Private Land; Rule of Law; Human Rights.

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INTRODUCTION

Freedom of religion and worship is a fundamental human right and constitutes a non-derogable right that cannot be diminished under any circumstances. Constitutionally, Article 28E paragraphs (1) and (2) and Article 29 of the 1945 Constitution of the Republic of Indonesia guarantee that every citizen is free to embrace a religion and worship according to their beliefs. This guarantee aligns with Article 18 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Indonesia, which emphasizes that restrictions may only be imposed strictly through law to protect public safety and order.¹ Within the framework of a rule of law (Rechtsstaat), protecting religious freedom is an integral part of the state's obligation to uphold constitutional rights. The concept of the rule of law mandates that all government actions be predicated on prevailing laws and respect for fundamental individual rights. Consequently, administrative policies regarding religious practices should be formulated proportionally to ensure they do not impede the exercise of such rights.

¹ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl: N.P. Engel Publishers, 2005).

However, at the implementation level, these constitutional guarantees often clash with restrictive administrative regulations. The Joint Ministerial Decree Number 9 and Number 8 of 2006 establishes rigorous requirements for establishing houses of worship, including the necessity of support from at least 90 congregants and 60 local residents. Although intended to maintain inter-religious harmony, its implementation across various regions has frequently catalyzed new social and legal dilemmas.² Previous research indicates that regulations concerning houses of worship in Indonesia often trigger social conflict, particularly in regions with imbalanced religious compositions.

Furthermore, studies suggest that administrative requirements, such as local community support, can function as informal mechanisms that restrict the religious practices of minority groups.³ From a human rights law perspective, any limitation on religious freedom must satisfy the principles of legality, necessity, and proportionality.⁴ Additionally, scholarly reviews of religious freedom in Indonesia highlight the state's critical role in protecting citizens' constitutional rights amidst pluralistic social dynamics.⁵ Thus, administrative regulations should consider not only social order but also the protection of fundamental rights. While various studies have examined the regulation of houses of worship and religious freedom in Indonesia, most have focused on social conflict or the general implementation of the 2006 Regulation of the Minister. Research specifically linking these issues to individual land ownership rights from an administrative law perspective remains relatively limited. In Indonesian agrarian law, land ownership with Freehold Title (Property Certificate) grants the owner robust authority to utilize their land in accordance with its social function. In practice, however, using private land as a place of worship often encounters administrative hurdles despite the land ownership being legally valid. This situation raises questions regarding the nexus between land ownership rights, administrative regulations for houses of worship, and the protection of religious freedom within a rule-of-law framework.

This study offers a distinct perspective by focusing on the analysis of the relationship between licensing policies for houses of worship and individual land ownership rights through the lenses of administrative law and human rights. By examining the case of the Gereja Kasih Karunia Indonesia (GEKARI) Kasih Agape Congregation in Jakarta, this research seeks to demonstrate how administrative policies interact with constitutional rights and valid land titles. Ultimately, this study aims not only to discuss social conflicts surrounding houses of worship but also to evaluate the effectiveness of state legal protection for religious practices conducted on privately owned land.

LITERATURE REVIEW

A. The Rule of Law (*Rechtstaat*) and Constitutional Protection

The concept of the rule of law (*Rechtstaat*) is a fundamental principle in modern constitutional systems, establishing law as the basis for the legitimacy of all governmental actions. In legal theory, Hans Kelsen posits that the legal system is organized into a hierarchy of norms (Stufenbau theory), where lower-level norms must derive their authority

² Melissa Crouch. "Implementing the Regulation on Places of Worship In Indonesia: New Problems, Local Politics And Court Action". *Asian Studies Review* 34, no. 3 (2010), 403–419. <https://doi.org/10.1080/10357823.2010.527921>

³ Sebastian Schäfer, "Religious Freedom and the Regulation of Places of Worship in Indonesia," *Indonesia and the Malay World* 47, no. 138 (2019): 150–168.

⁴ Henry J. Steiner, Philip Alston, & Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Oxford University Press, 2008).

⁵ Tim Lindsey & Simon Butt, *The Indonesian Constitution: A Contextual Analysis* (Oxford: Hart Publishing, 2018).

from higher-level norms, ultimately reaching the basic norm (*grundnorm*). Within this framework, the constitution serves as the supreme norm, providing the foundation for the formulation of all subordinate laws and regulations.⁶ This principle has evolved into the concept of constitutionalism, which emphasizes the limitation of state power through a constitution to safeguard the fundamental rights of citizens. In a democratic state, the constitution functions not only as a formal legal document but also as an instrument for protecting constitutional rights, ensuring individual liberties against potential abuses of state power. In the Indonesian context, the rule of law is adapted into the Pancasila Rule of Law, which emphasizes a balance between individual rights and social interests. Jimly Asshiddiqie explains that the Indonesian rule of law requires not only legal supremacy but also the integration of social justice, democracy, and human rights within the administration of government.⁷ Under this framework, the state bears a constitutional obligation to guarantee the fundamental rights of citizens, including the freedom of religion as enshrined in Articles 28E and 29 of the 1945 Constitution. Consequently, every administrative policy issued by the government must align with constitutional norms and must not contravene the human rights guaranteed therein.

However, several studies suggest that the implementation of the rule of law in administrative policy is not always consistent. In Indonesian governance, administrative regulations frequently impose restrictions on constitutional rights when they are not formulated proportionally or grounded in the principles of human rights protection.⁸

B. Religious Freedom from a Human Rights Perspective

Religious freedom is a universally recognized human right under international law. This right is articulated in various international legal instruments, including Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which asserts that everyone has the freedom to adopt a religion or belief and to express that belief individually or collectively, in both public and private spheres.

In human rights scholarship, religious freedom is generally categorized into two dimensions: *forum internum* and *forum externum*. The *forum internum* refers to an individual's internal freedom to hold a specific belief or religion; this right is absolute and cannot be restricted under any circumstances. Conversely, the *forum externum* pertains to the manifestation of beliefs through religious practices, which may, under specific conditions, be restricted by law to maintain public order and protect the rights of others.

Nevertheless, restrictions on the *forum externum* cannot be applied arbitrarily. From a human rights law perspective, such limitations are only permissible if they satisfy the principles of legality, necessity, and proportionality.⁹ Some scholars highlight that state regulation of religious practices often creates a paradox in the protection of religious freedom. Sullivan argues that state efforts to govern religious practices through administrative regulation often establish new barriers to the very freedom they purport to regulate.¹⁰ Therefore, the state must exercise caution in formulating policies related to religious practice to avoid undermining the essence of the right itself.

⁶ Hans Kelsen. *General Theory of Law and State*. (Boston: Harvard University Press, 1945).

⁷ Jimly Asshiddiqie. *Pengantar Ilmu Hukum Tata Negara*. (Jakarta: Rajawali Pers, 2015).

⁸ Simon Butt, and Tim Lindsey. *The Indonesian Constitution: A Contextual Analysis*. (Oxford: Hart Publishing, 2018).

⁹ Henry J Steiner, Philip Alston, and Ryan Goodman. *International Human Rights in Context: Law, Politics, Morals: Text and Materials*. (Oxford: Oxford University Press, 2008).

¹⁰ Winnifred Fallers Sullivan. *The Impossibility of Religious Freedom: New Edition*. (Trenton: Princeton University Press, 2018).

C. Regulation of the Establishment of Houses of Worship in Indonesia

In Indonesia, the establishment of houses of worship is governed by the Joint Ministerial Decree of the Minister of Religious Affairs and the Minister of Home Affairs Nos. 9 and 8 of 2006. This regulation sets forth several administrative requirements, including evidence of local community support and a minimum number of congregants.

Normatively, the primary objective of this regulation is to maintain inter-religious harmony and prevent potential social conflicts. However, research indicates that the implementation of these rules often generates new practical challenges. Crouch found that the implementation of these regulations is heavily influenced by local political dynamics and majority-minority relations, leading to inconsistent application across different regions.¹¹ In some instances, local governments tend to make decisions based on social pressure rather than the principles of constitutional protection.

Schäfer similarly argues that administrative procedures for establishing houses of worship are frequently utilized as informal instruments to restrict the religious practices of minority groups.¹² In certain cases, the requirement for community support evolves into a veto mechanism by the majority against the existence of specific houses of worship. This condition illustrates the tension between the regulatory goal of maintaining social harmony and the principle of protecting citizens' constitutional rights.

D. Land Ownership Rights and Social Function in Agrarian Law

In the Indonesian agrarian legal system, Freehold Title (*Hak Milik*) represents the strongest and most complete right an individual can hold over land. According to Boedi Harsono, freehold title empowers the owner to utilize their land in accordance with their interests, provided such use does not violate statutory regulations and respects the social function of the land.¹³

The principle of the social function of land rights asserts that land utilization is intended not only for the owner's private benefit but must also consider the broader interests of society. However, this principle does not grant the state the authority to restrict land use arbitrarily without a clear legal basis.

In administrative practice, using land for religious purposes often requires additional permits from local governments, creating potential conflict between individual property rights and the state's regulatory authority. Mahfud MD emphasizes that within Indonesia's legal policy (*politik hukum*) framework, administrative policies should be designed to protect constitutional rights rather than create new discriminatory barriers.¹⁴ Integrating business law, property rights, and administrative law is key to identifying a protection model for institutions such as the GEKARI Kasih Agape Congregation.

METHODS OF THE RESEARCH

This study employs a normative legal research method (*doctrinal legal research*), focusing on the examination of legal norms, principles, and doctrines related to religious freedom and the licensing of houses of worship. Normative legal research is utilized to

¹¹ Melissa Crouch, *Op. Cit.*

¹² S Schäfer. "Religious Freedom and The Regulation of Places of Worship in Indonesia". *Indonesia and the Malay World* 47, no. 138 (2019), 150-168.

¹³ Budi Harsono. *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya*. (Jakarta: Djambatan, 2008).

¹⁴ Mahfud MD. *Politik Hukum di Indonesia*. (Jakarta: Rajawali Pers, 2010).

analyze the alignment between administrative regulations and constitutional norms, as well as human rights principles within the Indonesian legal system. The nature of this research is both prescriptive and analytical. It goes beyond merely describing prevailing positive law by providing legal arguments regarding the ideal protection of religious freedom within the practice of house-of-worship licensing. Through this approach, the study aims to evaluate whether current administrative policies conform to the principles of the rule of law and the protection of citizens' constitutional rights. To achieve these objectives, this study adopts the following legal research approaches: 1) Statute Approach: Used to examine various legislative instruments concerning religious freedom and the establishment of houses of worship, ranging from the 1945 Constitution of the Republic of Indonesia to technical regulations such as the Joint Ministerial Decree of the Minister of Religious Affairs and the Minister of Home Affairs Number 9 and 8 of 2006; 2) Conceptual Approach: Employed to analyze legal concepts developed within legal doctrine, particularly the concepts of the rule of law (*Rechtsstaat*), religious freedom, and the protection of human rights; 3) Case Approach: Utilized to analyze the application of regulations in a concrete case – specifically that of the Gereja Kasih Karunia Indonesia (GEKARI) Kasih Agape Congregation in Jakarta – serving as an empirical illustration of how administrative policies are implemented in practice. The legal materials used in this study consist of: 1) Primary Legal Materials: Binding legal sources, including the 1945 Constitution, the International Covenant on Civil and Political Rights (ICCPR), and Joint Ministerial Decree Number 9 and 8 of 2006 concerning the establishment of houses of worship; 2) Secondary Legal Materials: Legal literature, scholarly books, and academic journal articles discussing the rule of law, religious freedom, and the regulation of houses of worship in Indonesia; 3) Tertiary Legal Materials: Supporting materials such as legal dictionaries, encyclopedias, and other reference sources relevant to the research. Legal materials were collected through library research, involving the systematic tracing and reviewing of various legal sources and academic literature pertinent to the research topic. The technique for analyzing legal materials is qualitative, utilizing legal reasoning through methods of legal interpretation. These include systematic interpretation, constitutional interpretation, and teleological interpretation, aimed at assessing the harmony between administrative regulations, constitutional norms, and human rights principles. While this study is normative and not bound to a specific geographic location, the scope of analysis is focused on the Indonesian legal jurisdiction, particularly regarding the effectiveness of local government policies in implementing regulations for the establishment of houses of worship in the case of the GEKARI Kasih Agape Congregation.

RESULTS AND DISCUSSION

A. Conflict of the Hierarchy of Norms: The 2006 Regulation of the Minister Versus Constitutional Guarantees of Religious Freedom

In a modern legal system, the validity of a legal norm is inseparable from its regulatory hierarchy. Hans Kelsen's *Stufenbau* theory posits that legal norms are structured hierarchically; lower-level norms must derive their authority from, and remain consistent with, superior norms. In the Indonesian legal context, the Constitution occupies the apex of this hierarchy, necessitating that all subordinate legislation, including administrative regulations, aligns with constitutional provisions.

The 1945 Constitution of the Republic of Indonesia explicitly guarantees the freedom of religion and worship under Article 28E paragraphs (1) and (2), and Article 29 paragraph (2).

These articles affirm that every citizen possesses the liberty to embrace a religion and practice worship according to their beliefs. This constitutional guarantee establishes religious freedom as a fundamental human right that the state is obligated to protect.

However, in practice, administrative regulations governing the establishment of houses of worship—specifically the Joint Ministerial Decree (PBM) Nos. 9 and 8 of 2006—often impede the exercise of this right. By establishing rigorous administrative prerequisites, such as local community support and minimum congregant thresholds, these regulations create a potential misalignment with higher constitutional norms. From a hierarchical perspective, a ministerial decree should not impose excessive restrictions on constitutional rights guaranteed by the supreme law of the land.

The requirement for local community support frequently serves as a primary bottleneck. In practice, this provision provides a mechanism for majority groups to veto the establishment of minority houses of worship. Consequently, an administrative tool originally intended to maintain social harmony can inadvertently restrict religious practice, highlighting a tension between administrative governance and the principle of constitutional protection within a *Rechtsstaat*.

B. Restrictions on Religious Freedom from a Human Rights Perspective

Under international human rights law, specifically Article 18 of the ICCPR, religious freedom includes the liberty to manifest one's belief through worship, observance, practice, and teaching. Human rights jurisprudence distinguishes between the *forum internum* (absolute internal belief) and the *forum externum* (manifestation of belief). While the *forum externum* may be restricted to preserve public order or protect the rights of others, such limitations must adhere to the principles of legality, necessity, and proportionality.

In Indonesia, the requirement for community support often challenges these principles. While formally intended to ensure harmony, it can function as a social instrument for *de facto* discrimination. When administrative regulations cease to be neutral and instead bow to local political dynamics or majority-minority tensions, the state fails its obligation to ensure that restrictions are not disproportionate or discriminatory.

C. The Conflict Between Land Ownership Rights and Administrative Regulation

Beyond religious freedom, this issue intersects with land use rights. In Indonesian agrarian law, Freehold Title (*Hak Milik*) is the most robust right an individual can hold. Owners are empowered to use their land provided they comply with statutory regulations and respect the social function of land.

The social function principle does not, however, grant the state the authority to restrict land use arbitrarily. When a house of worship is established on private land held under a valid Freehold Certificate (SHM), a tension arises between individual property rights and the local government's regulatory authority over spatial planning and public order. Any restriction on using one's own land for worship must have a clear legal basis and must not override the owner's fundamental constitutional protections.

D. Analysis of the GEKARI Kasih Agape Case

The case of the Gereja Kasih Karunia Indonesia (GEKARI) Kasih Agape in North Jakarta serves as a poignant illustration of these complexities. The congregation has conducted services since 1998 on privately owned land secured by an SHM. While this title provides a strong legal basis for land use, the formal licensing process has been stalled by

administrative hurdles, primarily the difficulty of obtaining community support as mandated by the 2006 PBM.

This situation reflects a failure in the preventive legal protection mechanisms within the state administration. Local governments, caught between their role as mediators and the social pressure from surrounding residents, often leave licensing processes in a state of prolonged uncertainty. This lack of legal certainty prevents congregants from exercising their constitutional right to worship legally, even on land they rightfully own.

E. Implications for the Reform of House of Worship Licensing Policies

These findings suggest that Indonesia's regulatory framework requires a shift from a "community approval" model to an objective administrative verification model. Under such a model, local governments would focus on technical and spatial planning requirements rather than social approval, thereby closing the door on pressure-based discrimination.

Furthermore, the state must strengthen the role of local governments as mediators. By prioritizing dialogue and social mediation, the state can foster inter-communal trust and prevent horizontal conflict. Reforming these policies is essential not only for legal certainty but also to ensure that the principles of the rule of law and human rights are consistently upheld in administrative practice.

CONCLUSION

There is a clear misalignment between the administrative regulations stipulated in the Joint Ministerial Decree of the Minister of Religious Affairs and the Minister of Home Affairs Number 9 and 8 of 2006 and the constitutional guarantees of religious freedom under Articles 28E and 29 of the 1945 Constitution of the Republic of Indonesia. In practice, the administrative requirement for local community support often functions as a social veto mechanism employed by majority groups against the establishment of minority houses of worship. This reflects a dysfunction of legal norms, where a lower-level administrative regulation effectively restricts the exercise of a citizen's fundamental constitutional rights. The case of the Gereja Kasih Karunia Indonesia (GEKARI) Kasih Agape in Jakarta demonstrates that the preventive legal protection mechanisms within the state administrative system have not operated effectively. Despite the house of worship being situated on land secured by a valid Freehold Title (SHM), the licensing process remains hindered by administrative bottlenecks and prolonged social pressure. This case highlights a critical conflict between land ownership rights, the administrative authority of local governments, and the protection of religious freedom. Such conditions indicate that the implementation of licensing policies for houses of worship is not yet fully aligned with the principles of the rule of law (*Rechtsstaat*) and international human rights standards. To address these systemic issues, this study proposes a multi-level reform of the current regulatory framework. The Central Government should prioritize a comprehensive evaluation and revision of the 2006 Joint Ministerial Decree to ensure its harmony with the hierarchy of laws and human rights principles, specifically by shifting from a community-approval framework toward an objective administrative notification model that relies on technical verification rather than social consensus. Simultaneously, local governments must adopt a more proactive stance as mediators and facilitators; in instances where religious institutions possess valid legal land titles and a long-standing historical presence, officials should exercise administrative discretion to provide legal certainty and safeguard minority rights against horizontal social pressure. Finally, future legal scholars are encouraged to

further investigate the nexus between the social function of land in agrarian law and religious regulations to develop a balanced model that harmonizes individual property rights, public interest, and religious pluralism.

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