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Legal Reconstruction of the Establishment of Places of Worship in Indonesia: A Legal-Political Analysis within the Framework of Land Use and Spatial Planning Law

Suhadi Suhadi [a]✉, Dani Muhtada [a], Andi Gazly Satrya Amal [b]

[a] Faculty of Law, Universitas Negeri Semarang, Indonesia
[b] College of Liberal Arts, Northern Illinois University, DeKalb, Illinois, United States

✉ Corresponding email: *suhadi@mail.unnes.ac.id*

Abstract

The establishment of places of worship in Indonesia is a critical issue that intersects with legal and political concerns, yet the regulatory framework governing such establishments remains insufficiently codified. Currently, the guidelines for the establishment of places of worship are outlined in the Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs Number 9 and Number 8 of 2006 (PBM 2006). However, these regulations are not formal laws and fail to provide adequate legal guarantees and protection for all citizens to practice their religion freely. This study uses a normative juridical approach, employing legal, historical, and conceptual methods to argue that the regulations surrounding the construction of places of worship require a comprehensive legal reconstruction. The research analyzes the issue from a

legal-political and land law perspective. From a political-legal viewpoint, it is clear that the PBM 2006 does not align with Indonesia's legal ideals. The regulation contains discriminatory provisions that contradict the principles of a unified state, social justice, democracy, and religious freedom. Places of worship are not only a necessity but also a fundamental expression of belief, guaranteed by the Indonesian Constitution. Therefore, regulations governing the construction of places of worship should be enacted as laws, rather than as ministerial regulations. The study concludes that a formal legal framework for the establishment of places of worship, in the form of a law, is urgently needed. Such a law would ensure equal protection for all citizens and foster social justice, thereby protecting the rights of Indonesia's diverse population to worship in accordance with their beliefs.

KEYWORDS *Legal Reconstruction, Politics of Law, Place of Worship, Legal Ideal*

Introduction

Places of worship in Indonesia are a necessity for religious believers in Indonesia.[1] Data from Indonesia's Ministry of Religious Affairs indicates a continual expansion in the number of places of worship, reflecting human capacity for growth and adaptation.[2] In the 2019-2021 period, the number of places of worship in Indonesia increased from 361,970, 370,620 to 385,839.[3] However, the increase in the number of worship places is not directly related to the growth of religious life. The more the number of worship places does not automatically make religious life more harmonious and peaceful.

The issue of freedom of religion remains crucial and strategically significant in Indonesia, given its status as a nation governed by law, democracy,

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1 Baiq El Badriati et al., "The Work Ethics of Muslim Woman Songket Weavers in Increasing Family Income: Sukarare Tourism Village, Indonesia," *Heliyon* 8, no. 11 (2022): 2, https://doi.org/10.1016/j.heliyon.2022.e11604.

2 Yudhi Kawangung, "Religious Moderation Discourse in Plurality of Social Harmony in Indonesia," *International Journal of Social Sciences and Humanities* 3, no. 1 (2019): 164, https://doi.org/10.29332/ijssh.v3n1.277.

3 Anonymous, "Jumlah Rumah Ibadah," https://satudata.kemenag.go.id/, 2021, Accesed form https://satudata.kemenag.go.id/dataset/detail/jumlah-rumah ibadah. <10 October 2023>

and a foundation rooted in belief in the One and Only God.[4] As a state of law, The governance of the country and the daily affairs of its people are guided by laws created by authorized institutions. Authorized institutions are institutions that gain legitimacy as well as representation of the people because they are formed through democratic mechanisms.[5] Freedom of religion is guaranteed by the Constitution (UUD NRI 1945). Unfortunately, such a freedom in Indonesia still shows problems The Wahid Institute reported that in 2015 there were 190 violations against freedom of religion, higher than the number of such a violation in 2014, which reached 158 cases. The National Commission on Human Right stated that the number of complaints on violations against freedom of religion in 2016 was 97 cases, which is higher than the number of the case in 2015 (87 cases). It was also stated that the number of reported complaints did not reflect the actual number of violations against freedom of religion because the number of reported cases was smaller than the actual number of the cases. The 2018 Mid-Year Report on the Condition of Religious Freedom and Religious Minorities by the Setara Institute also showed 109 incidents of violations against freedom of religion spread across 20 provinces in Indonesia.[6] Until the middle of 2018, the number of the violations was higher than in the same period in 2017, which reached 80 incidents. This fact shows that the state protection on the freedom of religion as regulated by Article 29 paragraph (2) of the Constitution has not been optimal. The Wahid Institute even stated the issue of freedom of religion and intolerance seem to be "*an inheritance debt that never pays off*".

Based on the report by the Indonesian Human Rights Commission (Komnas HAM), it is also known that some problems of freedom of religion are related to places of worship, in the forms of restrictions, prohibitions, and destruction of worship places as the most cases (44 cases) and subsequently related to cases of restrictions/prohibitions on worship or religious activities (19 cases). Complaints on the establishment of mosques or mushallas as many as 24 complaints, occurred in the central part of Indonesia and the eastern parts of

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[4] David M. Bourchier, "Two Decades of Ideological Contestation in Indonesia: From Democratic Cosmopolitanism to Religious Nationalism," *Journal of Contemporary Asia* 49, no. 5 (2019): 721, https://doi.org/10.1080/00472336.2019.1590620.

[5] I Nyoman Budiana, "Legitimacy of the Dissolution of Beliefs by Community Organizations," *International Journal of Research in Community Services* 3, no. 1 (2022): 35–45, https://doi.org/10.46336/ijrcs.v3i1.182.

[6] Anggun Putri Indah Sari, "The Challenges of Religious Harmony and Tolerance in Developing Countries," *Contemporary Issues on Interfaith Law and Society* 1, no. 2 (2022): 183–202, https://doi.org/10.15294/ciils.v1i2.59060.

Indonesia (including Denpasar, Bali, Bitung and Manado, North Sulawesi, Manokwari, West Papua. Complaints on the establishment of churches (17 complaints) occurred in the western parts of Indonesia, including in Aceh, West Java, and DKI Jakarta. In 2019, there were still many complaints about places of worship, with 21 cases related to conflicts over the establishment of places of worship. The Wahid Institute reported several incidents where various religious communities faced violations of freedom of worship, such as cases involving Mushalla Assyafiiyah in Denpasar (Bali), Taman Yasmin church in Bogor (West Java), church closure in Aceh Singkil (Aceh), and HKBP Filadelfia church in Bekasi (West Java). These incidents show that the issue of establishing places of worship has the potential to disrupt inter-religious harmony and threaten national unity. Therefore, guaranteeing freedom of religion, especially related to the establishment of places of worship, is still an urgent issue that needs to be addressed.

Some reports[7] also provide recommendations to the Government and or House of Representatives (DPR) to revise laws and regulations, including the 2006 Ministerial Joint Regulation (PBM 2006) since it is considered to be one of the sources of various conflicts related to the establishment of places of worship. Research by Komnas HAM RI (2020) concluded that there are two main reasons why the PBM 2006 needs a revision: human rights perspective and legal perspective. From the human rights perspective, the PBM 2006 contains restrictions on the right to freedom of religion and belief due to subjective requirements in the establishment of places of worship.[8] From the legal perspective, the PBM 2006 has not fulfilled the rules on the formation of laws and regulations from both formal and substantial aspects.

Although there have been many recommendations to revise the PBM 2006, unfortunately the PBM 2006 has not been changed, replaced or revoked, so it is still effective.[9] This fact shows that on the one hand the laws and

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[7] The Wahid Institute, "*Laporan Tahunan Kemerdekaan Beragama /Berkeyakinan (KBB) Di Indonesia*" (Jakarta, 2015); Komnas Ham, "*Ringkasan Eksekutif Laporan Kebebasan Beragama Dan Berkeyakinan*" (Jakarta, 2016), 18; SETARA Institute, "*Laporan Tengah Tahun Kondisi Kebebasan Beragama/Berkeyakinan Dan Minoritas Keagamaan Di Indonesia*" (Jakarta, 2018), 6.

[8] I. Gusti Ayu Ketut Rachmi Handayani et al., "The Politics Settlement of Land Tenure Conflicts During Jokowi'S Presidency," *Journal of Indonesian Legal Studies* 7, no. 2 (2022): 518, https://doi.org/10.15294/jils.v7i2.57539.

[9] Idrus Ruslan, Mawardi Mawardi, and Ahmad Afnan Anshori, "Deconstruction of the Policy for the Establishment of Houses of Worship in Indonesia," *Religious: Jurnal Studi Agama-Agama Dan Lintas Budaya* 6, no. 2 (2022): 261–70, https://doi.org/10.15575/rjsalb.v6i2.21396.

regulations governing the establishment of places of worship are necessary. Yet, on the other hand, the current regulations are seen as not meeting the needs of the law and the community related to the establishment of places of worship. The implication of this reality is the need for regulations on the establishment of worship places that meet the legal needs as well as the needs of the Indonesian people. In the perspective of legal politics, the existence of regulations that are not in accordance with the purpose of living together can be changed or replaced. The re-establishment of laws and regulations that are considered incompatible with the legal needs and legal ideals of the community must be carried out, so that the law can truly achieve the goals of common life in the society.[10] In this context, one important thing that needs to be considered is the politics of law on the establishment of worship places in Indonesia and the basis or principle that should be used in the formation of the regulations for the establishment of places of worship so that the laws and regulations formed can truly meet the legal needs and needs of this plural Indonesian society.

This paper argues that the legal framework governing the establishment of places of worship in Indonesia is rooted in the constitutional provisions of Article 29 paragraphs (1) and (2) of the 1945 Constitution, the Building Law, and the Joint Decree of the Minister of Religious Affairs and the Minister of Home Affairs Number 01/BER/mdn.mag/1969 on the Responsibility of the Government in Ensuring Order and Smoothness in the Implementation of Religious Development and Worship. These regulations have been updated by Joint Regulations Number 9 and Number 8 of 2006, which provide guidelines for Regional Heads in promoting religious harmony and supervising the establishment of places of worship. Establishing a formal law regarding the establishment of places of worship is considered important and urgent.

An important basis for reconstructing the regulation on the establishment of worship places in Indonesia is the ideal of Indonesian law, namely the main points of the Preamble of the 1945 Constitution. The formation of laws based on the legal ideal is important, because the legal ideal serves as a guiding star (*leitstern*) for the achievement of community ideals. It is meta juridical but inspires the existing law, and it becomes the moral foundation of law as well as a benchmark for a positive legal system. In order to provide a comprehensive explanation, this article discusses (1) Legal Ideals: Their Position and Function in the Formation of Laws and Regulations, (2) The State Based on the One and Only God: A Choice of State and Religion Relations. Second, (3) House of

[10] Agus Moh Najib, "Reestablishing Indonesian Madhhab 'Urf and the Contribution of Intellectualism1," *Al-Jami'ah* 58, no. 1 (2020): 179, https://doi.org/10.14421/ajis.2020.581.171-208.

Worship: Expression of *Externum Forum* that can be limited by law, and (4) Establishment of Regulations for the Establishment of Places of worship in the Light of Indonesian Law. In this study, using a normative juridical approach encompasses a multidimensional examination of legal matters, employing legal, historical, and conceptual methodologies for analysis.[11] Legally speaking, this approach prioritizes the application of established legal standards sourced from statutes, regulations, and judicial precedents.[12] Concurrently, a historical perspective delves into the progression of legal doctrines associated with the issue, offering invaluable insights into its evolutionary trajectory and potential impact on present-day interpretations. Furthermore, the conceptual dimension of this approach delves into the fundamental legal concepts underpinning the matter, encompassing elucidations of definitions, intents, and interconnected values. This conceptual understanding enhances the interpretation and implementation of the law, anchored in a robust conceptual framework.[13] In summation, the normative juridical approach provides an inclusive analytical framework, integrating legal, historical, and conceptual dimensions to facilitate a more profound comprehension and evaluation of legal concerns within the realm of humanities.

The Legal Politics of Places of Worship Establishment in the 1945 Constitution

The Legal Political basis for the establishment of places of worship has been expressly stipulated in the 1945 Constitution.[14] The Article 29 paragraph (1) affirms that the State is based on the One and Only Godhead, and in paragraph (2) it is affirmed that the State guarantees the freedom of each citizen to profess his own religion and worship according to his religion and belief.[15]

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[11] Irwansyah Irwansyah, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus, Cetakan 4 (Yogyakarta: Mirra Buana Media, 2021), 57.

[12] Irwansyah.

[13] Irwansyah.

[14] Nurfaika Ishak and Romalina Ranaivo Mikea Manitra, "Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia," *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022): 199, https://doi.org/10.53955/jhcls.v2i1.24.

[15] Jeremy Zefanya Yaka Arvante, Maulana Fuad Nugraha, and Andrew Sergei Rostislav, "A Comparative Study of Religious Freedom Between Indonesia-Russia and Its Limitations," *Jurnal Scientia Indonesia* 8, no. 2 (2022): 199, https://doi.org/10.15294/jsi.v8i2.36203.

The Article 29 paragraph (1) also confirms the choice of state and religious relations in Indonesia.

In the practice of national and state life, the relationship between religion and the state can be grouped into three forms: integration (merging religion and the state), intersection (intersecting relationship between religion and the state), and secularism (separation between religion and the state). Examples of integration between religion and the state can be seen in countries such as Saudi Arabia and Iran that base their legal and governance systems on religious principles.[16] A state that integrate religion and the state view religion, especially Islam, not only as a theological system but also as a guide to life that regulates moral ethical standards and norms in the life of society and the nation. Islam does not make a clear separation between the sacred and the profane, so the concept of separation of religion and state is not accepted.[17]

However, in countries that adopt the religious state system, there is also a limited process of secularization, such as the legalization of certain operational rules derived from secular Western countries, such as international trade law, immigration, democratic systems, and the protection of human rights. However, the adoption of these secular systems is usually accompanied by giving religion legitimacy through ijtihad and certain adjustments. The second form of the relationship between religion and the state is intersectional, where there is an intersection between religion and the state.

This means that there is neither complete merger nor total separation between the two. In this kind of relationship, there are aspects of religion that enter into the realm of the state and vice versa, there are also aspects of the state that require legitimization from religion.[18] The country that uses this intersectional form is Indonesia, with the title Indonesia is neither a religious state nor a secular state. The Indonesian state is a state that is institutionally

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[16] Ric Neo, "Religious Securitisation and Institutionalised Sectarianism in Saudi Arabia," *Critical Studies on Security* 8, no. 3 (2020): 209, https://doi.org/10.1080/21624887.2020.1795479.

[17] Ahmet Kuru, "Islam, Catholicism, and Religion-State Separation: An Essential or Historical Difference?," *International Journal of Religion* 1, no. 1 (2020): 91–104, https://doi.org/10.33182/ijor.v1i1.982.

[18] Rashmi Nair and Johanna Ray Vollhardt, "Intersectionality and Relations between Oppressed Groups: Intergroup Implications of Beliefs about Intersectional Differences and Commonalities," *Journal of Social Issues* 76, no. 4 (2020): 1004, https://doi.org/10.1111/josi.12409.

secular but philosophically recognizes the existence of religion in state life.[19] Even Article 29 paragraph (1) of the 1945 Constitution states "The State is based on the One and Only God". The third form of state and religion relations is secularistic (separation between religion and state). Secularism is widely applied in Western countries. In Western countries, the relationship between religion and the state is considered resolved by embracing the principle of secularism or the separation between religion and the state.[20]

The process is often referred to as secularization, which in Peter L. Berger's terminology is "the process by which sectors of life in society and culture are freed from the domination of religious institutions and symbols". Berger explains that secularism in practice can be divided into strict and non-strict secularism. Strict secularism is seen in countries such as France and the United States, while less strict secularism is found in other European countries, including Britain, Greece, and Scandinavian countries such as Norway, Denmark, Finland, and Sweden. In the context of less strict secularism, state involvement in religious affairs is still quite significant in several ways, such as declaring religious holidays as national holidays, providing religious education in schools, providing public funding for religious affairs, recognizing the existence of faith-based political parties, as well as church taxes, and so on. In fact, in countries such as England, Greece, and Scandinavian countries, the institution of the church (established church) is still officially recognized in state affairs.[21]

In almost identical expressions,[22] three possible relationships between state and religion can be identified. First, a state based on religion, where there is unity between state authority and a particular religion. In this model, state authority is exercised on the basis of specific religious values, as stated by Asy'ari with the concept of "Waliyul Amri Kalifatullah Sayyidin Panatagama" or Emperor Papism. In such a state, citizens may be required to embrace an official religion recognized by the state, but there is also another possibility where

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[19] Robert W. Hefner, "Islam and Covenantal Pluralism in Indonesia: A Critical Juncture Analysis," *Review of Faith and International Affairs* 18, no. 2 (2020): 1–17, https://doi.org/10.1080/15570274.2020.1753946.

[20] Andi Melantik Rompegading and Fadilla Jamila, "Comparison of Regulations on Religious Freedom between Indonesia and Canada," *Scholars International Journal of Law, Crime and Justice* 6, no. 08 (2023): 455, https://doi.org/10.36348/sijlcj.2023.v06i08.009.

[21] Jacob Aasland Ravndal, "Right-Wing Terrorism and Militancy in the Nordic Countries: A Comparative Case Study," *Terrorism and Political Violence* 30, no. 5 (2018): 785, https://doi.org/10.1080/09546553.2018.1445888.

[22] Hasyim Asy'ari, "Relasi Negara Dan Agama Di Indonesia," *Jurnal Rechtsvindings Online Media Badan Pembinaan Hukum Nasional.*, 2021.

citizens are given the freedom to choose a religion according to their own beliefs.[23] In the context of the relationship between state and religion, three models can be identified. First, in the religion-based state model, state authority is united with a particular religion in the regulation and administration of the state, often by requiring citizens to follow the official state religion. Second, in the concept of religion as the spirit of the state, although the state does not officially adhere to a particular religion, religious values are at the core of state governance and policy, with the state guaranteeing freedom of religion for its citizens. Third, a secular state implies a strict separation between state affairs and religion, where religion has no role in state regulation or public policy. Indonesia, in Abdillah and Asy'ari's view, is more likely to adopt the second model, with religion as the spirit of the state based on the principle of Belief in One God. The state recognizes the importance of religious values in social life but does not officially adhere to one particular religion, while ensuring freedom of religion for all citizens, while prohibiting sects that reject the principle of God Almighty such as atheism and communism.[24]

Before Indonesia's independence, the founders of the Indonesian state had laid a very valuable foundation for the life of the nation and state.[25] This valuable basis is to put the recognition of the establishment of the Indonesian state as the gift of God Almighty. All struggles for freedom in order to realize a free, united, sovereign, just and prosperous life, are placed as human efforts that should be undertaken, but above all these efforts and endeavors, it is God's will that determines.[26] The Preamble to the Indonesian Constitution (UUD NRI 1945), paragraph III, states that "*By the grace of Allah the Almighty and motivated by a noble desire for a free national life, the Indonesian people hereby declare their independence*". The recognition of the Indonesian nation for independence as

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[23] Suud Sarim Karimullah, "Religion and State in the Islamic Political Paradigm in Indonesia Perspective of Prof. Kamsi," *Analisis: Jurnal Studi Keislaman* 22, no. 1 (2022): 70–92, https://doi.org/http://dx.doi.org/10.24042/ajsk.v22i1.12648.

[24] Arief Hidayat, "Negara Hukum Pancasila: (Suatu Model Ideal Penyelenggaraan Negara Hukum)," in *Prosiding Konggres Pancasila IV: Strategi Pelembagaan Nilai Nilai Pancasila Dalam Menegakkan Konstitusionalitas, 31 Mei-1 Juni 2012.* (Yogyakarta, Indonesia: PSP UGM, 2012), 60.

[25] Neha Tripathi and Anubhav Kumar, "The Constitutional Struggle for Religious Freedom: A Comparative Study of India and Indonesia," *Constitutional Review* 8, no. 1 (2022): 1–36, https://doi.org/10.31078/consrev811.

[26] Ahmad Zaini, Mohammad Zainor Ridho, and Entol Zaenal Mutaqqin, "The Exsistence of Human Rights In Indonesia: The Future of Human Rights On Democratic State," *Al-Qisthas* 11, no. 2 (2020): 71, https://doi.org/10.1093/acprof:oso/9780195690439.001.0001.

the mercy of God Almighty, was placed in paragraph III of the Preamble of the 1945 Constitution in, right after paragraph II, which in essence affirmed that the nation's independence was the fruit of the struggle for Indonesian independence movements carried out by all nations throughout the country.

The awareness and recognition that the independent Indonesian state is the mercy of God Almighty shows that in the heartstrings of the Indonesian nation has woven beautifully human relations with God.[27] Therefore, an important basis for an independent Indonesia is as written in paragraph IV of the Preamble to the 1945 Constitution, which states *"... the sovereign state of the Republic of Indonesia based on the One and Only God..."*. The formulation confirms that the existence of the Indonesian state which was proclaimed August 17, 1945, by the Indonesian people is believed to be God's grace. In terms of the theory of the origin of the state, the establishment of the Indonesian state is in line with the Theocratic Theory, namely that the formation of the Indonesian State is the will of God Almighty.[28] Therefore, it is very logical that in the Preamble of the 1945 Constitution, as a detailed declaration of independence, it is affirmed that the state is based on the One and Only God.

As recorded in Indonesian history, the Preamble of the 1945 Constitution is not a document that was born instantly. It has gone through a long process and is made of many thoughts as well as struggles of the founding fathers. The long process and the founding fathers' thoughts of the Indonesian state, among others, can be seen from the process of formulating the country's policy and the formation of the 1945 Constitution. In the process, religion became one of the important issues discussed during the formulation of the Indonesian constitution.[29] The thoughts of the founding fathers were a response to a question from the Chairman of the Investigating Board for Preparatory Efforts for Independence (BPUPKI), Dr. KRT Radjiman Wedyodiningrat. He asked the participants of the BPUPKI's meeting to propose the foundation of independent Indonesia, or *philosofische grondslag* of the independent

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[27] Subaidi, "Strengthening Character Education in Indonesia: Implementing Values from Moderate Islam and the Pancasila," *Journal of Social Studies Education Research* 11, no. 2 (2020): 120, https://doi.org/https://www.learntechlib.org/p/217576/.

[28] Priyo Handoko and Anis Farida, "In the State Administration System of Indonesia: No Space for Khilafah!," *HTS Teologiese Studies / Theological Studies* 77, no. 4 (2021): 1–9, https://doi.org/10.4102/hts.v77i4.6510.

[29] Khudzaifah Dimyati et al., "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (2021): e07865, https://doi.org/10.1016/j.heliyon.2021.e07865.

Indonesia.[30] Although this question did not specifically concern on religion, but in the opinions and views expressed therein, it included religious issues. To this question, several participants including from Mr. Muhammad Yamin, Ki Bagoes Hadikoesoemo, Prof. Mr. Soepomo and Ir. Soekarno expressed their opinions.

Mr. Muhammad Yamin on May 29, 1945, in relation to religion, said that *"... so first we once again convinced, that the Indonesian nation who will have an independent state is a nation with a noble civilization, and this civilization has God Almighty. Therefore, we naturally believe that the Welfare State of an independent Indonesia will be divine. God will protect the Free State of Indonesia*".[31] Ki Bagoes Hadikoesoemo's thoughts were conveyed on May 31, 1945. He said, "*Therefore, gentlemen, I as a indigenous Indonesian..., I hope for the establishment of this Indonesian state based on Islam. Because, that is what corresponds to the state of the soul of most people*".[32] Prof. Mr. Soepomo on May 31, 1945 basically proposed an opinion about a unified national state with a separation between religious and state affairs. He stated that:

> "Therefore, I advocate and I agree with opinion of those who want to establish a national state that is united in the sense of totalitarian as I have described, that is, a state that will not unite itself with the largest group, but which will include all groups and will heed and respect the privileges of all groups, both large and small. By itself, in a unified national state, religious affairs will be separate from state affairs, and naturally, in a unified national state, religious affairs will be handed over to the religious groups. And naturally, in such a country, a person will be free to embrace whatever religion he likes. Both the largest religious group, and the smallest group, will certainly feel united with the state (in foreign language *'zal zich thuis voelen'* in their country".[33]

Mr. Soepomo's opinion that the state and religion are separate actually refers to the opinion of Moh Hatta, who said that the unitary state of Indonesia

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[30] Saafroedin Bahar and Hudawati Nannie, *Risalah Sidang Badan Penyelidik Usaha Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) Panitia Persiapan Kemerdekaan Indonesia (PPKI) 28 Mei 1945-22 Agustus 1945.* (Jakarta: Sekretariat Negara Republik Indonesia, 1998), 84.

[31] Bahar and Nannie.

[32] Bahar and Nannie.

[33] Bahar and Nannie.

should separate state affairs from religious affairs.[34] Soekarno, in his speech on June 1, 1945, expressed his opinion on the Principle of Free Indonesia by fearing God Almighty.

> "The Principle of God! Not only the Indonesian nation has God, but each Indonesian should have God. His own God. Christians worship God according to the instructions of Isa al Masih, Muslims worship God according to the instructions of the Prophet Muhammad. Buddhists practice their worship according to their book. But let us all worship God. The State of Indonesia should be a country where everyone can worship their God freely. All people should be culturally divine, -- that is, with no 'religious egoism'. And let the State of Indonesia be a country with God! Let us practice, practice religion, both Islam and Christianity, in a civilized way. What is the civilized way? It is respect for one another.

Prophet Muhammad has given sufficient evidence about *verdraagzaamheid*, about respecting other religions. Jesus also showed the *verdraagzaamheid*. Let us in this Free Indonesia that we compile, accordingly, declare: that the fifth principle of our State is a civilized Godhead (*Ketuhanan yang Berkebudayaan*), a Godhead with noble ethics, a Godhead with respect for one another. My heart will feast, if you agree that Indonesia becomes an independent state based on the One and Only God! It is here, in recognition of this fifth principle, that brothers, all religions in Indonesia today will have the best place. And our country will believe in God too". [35]

Based on the above opinion, it appears that some thoughts on the relationship between state and religion in BPUPKI sessions can be classified into three groups, namely (1) those who view that Islam should be a state religion while guaranteeing freedom of religions for the other believers, (2) those who view that Indonesia should separate between religion and state, and (3) those who wants Indonesia use the basis of the One and Only God.[36] The views of the founding fathers of the country that developed during the drafting of this constitution on the one hand show that, at that time, the relationship between

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[34] Bahar and Nannie.

[35] Bahar and Nannie.

[36] Agus Supratikno, "Reinforcing Indonesian National Identity Based on Inclusiveness of Pancasila as a Way to Deal with the Identity Politics in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 9, no. 6 (2022): 407, https://doi.org/http://dx.doi.org/10.18415/ijmmu.v9i6.3809.

state and religion had become a very important subject of thought among the founding fathers. On the other hand, their views, however, are influenced by the views and reality of state and religion relations that have been practiced by many previous independent states.[37] Although in the process of discussion the three views developed, after the 1945 Constitution was ratified by the PPKI, the founding fathers decided that the new Indonesia should be based on the Almighty God as affirmed in the Preamble to Paragraph IV and in Article 29 paragraph (1) of the 1945 Constitution which was placed in Chapter XI on Religion, explained that the formulation of the first Almighty Precept Godhead Pancasila was a joint work. The formulation of the precepts of the Almighty Godhead is a three-stage process, the initial formulation of Sukarno's speech on June 1, 1945, the second formulation of the work of the Committee of Nine, and the third formulation of the formulation on August 18, 1945 at the PPKI session. In the Explanation of Article 29 of the 1945 Constitution, it is stated that this verse expresses the belief of the Indonesian people in God Almighty. With this principle, the Indonesian state recognizes God Almighty, as well as its citizens also believe in God Almighty according to their respective religions and beliefs. The principle of the State based on the Supreme God is supported by the principle of the State which guarantee the freedom of citizens to believe in religion and worship according to their beliefs. [38]

Establishment of Places of Worship as an Expression of External Forum: May Be Limited by Law

The principle of the state based on the belief in one God as contained in Article 29 paragraph (1) of the 1945 Constitution, Indonesia also acknowledges the principle of freedom of religion and practicing religion.[39] Freedom of religion in Indonesia is guaranteed by Article 29 paragraph (2) of the 1945

[37] Sweekriti Nakhat, "The Right to Freedom of Religion," *IJARnD (Intenational Journal of Advance Research and Development)* 3, no. 2 (2018): 29–43, https://doi.org/10.15633/acan.628.

[38] Rodiyah Rodiyah, Siti Hafsyah Idris, and Robert Brian Smith, "Mainstreaming Justice in the Establishment of Laws and Regulations Process: Comparing Case in Indonesia, Malaysia, and Australia," *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 333–378, https://doi.org/10.15294/jils.v7i2.60096.

[39] Mohammad Naefi, "Future Challenge of the Freedom of Religion Act: Comparing Indonesia and Malaysia," *Semarang State University Undergraduate Law and Society Review* 1, no. 2 (2021): 129, https://doi.org/10.15294/lsr.v1i2.50551.

Constitution which states that "the state guarantees the freedom of each resident to embrace their respective religions and to worship according to their religion and beliefs". Law No. 39/1999 also regulates this, with Article 22 paragraph (1) stating that "Every person is free to embrace his or her own religion and to worship according to his or her religion and belief", as well as paragraph (2) confirming that "The State guarantees the freedom of each resident to embrace his or her own religion and to worship according to his or her religion and belief". This means that every individual has the protected right to choose and practice religion or belief according to their own beliefs, without coercion from any party.[40] Thus, it can be stated that freedom or freedom of religion is a human right that has been constitutionally protected through laws and regulations in Indonesia. Even Article 28I of the 1945 Constitution and Article 4 of Law 39 of 1999 affirm that religious rights are one of the human rights that cannot be reduced under any circumstances.[41]

In the context of religious freedom, Lindholm Durham and Tahzib-Lie identify two important areas of freedom. First, internal freedom (*forum internum*) includes the individual's right to believe, embrace, and convert to a religion or belief, as well as the right to maintain the belief that has been chosen. Second, external freedom (*forum externum*) encompasses the individual and collective right to express religion or belief in both public and private settings. This includes teaching, the practice of worship, the use of religious symbols, the celebration of religious holidays, the election of religious leaders, religious teaching, religious education for children, and the establishment and management of religious organizations.

These external freedoms protect the right of individuals to practice and propagate their religious teachings without interference or discrimination from other parties or the state.[42] The fundamental difference between forum internum and forum externum lies in the restrictions that can be applied. Forum internum refers to religious freedoms that cannot be infringed or diminished under any circumstances, meaning that these rights are considered

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[40] A. A. A. Nanda Saraswati et al., "Restrictions of the Rights of Freedom of Religions: Comparison of Law Between Indonesia and Germany," *Indonesia Law Review* 8, no. 3 (2018): 271, https://doi.org/10.15742/ilrev.v8n3.510.

[41] Akhmad Khalimy et al., "The Intersection of the Progressive Law Theory and the Self-Declaration Concept of MSEs Halal Certification," *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 159–98, https://doi.org/10.15294/jils.v8i1.66087.

[42] Jeremy Zefanya Yaka Arvante, Maulana Fuad Nugraha, and Ridwan Arifin, "A Pseudo Freedom for Faith: A Discourse of Religious Freedom in Russia and Indonesia," *Contemporary Issues on Interfaith Law and Society* 1, no. 2 (2022): 217, https://doi.org/10.15294/ciils.v1i2.59062.

to be unrestrictable by other parties or the state. This includes an individual's right to believe, profess, and convert to a religion or belief, as well as the right to maintain a chosen faith. On the other hand, forum externum is religious freedom that can be restricted, which means that these rights can be subject to certain restrictions or regulations by the government or other institutions. This includes the right of individuals to express their religion or belief in the form of teaching, practice of worship, use of religious symbols, celebration of religious holidays, as well as the right to establish and manage religious organizations. These restrictions may be necessary to maintain public order, national security, or other individual rights protected by law.[43]

In the context of establishing a house of worship, forum internum and forum externum makes it clear that establishing a house of worship is the realm of external forum, religious freedom is a manifestation or expression of freedom to practice worship. Since it is the domain of external forums, the establishment of places of worship can be limited.[44] In the context of Indonesian law, restrictions on freedom of religion are regulated by Article 28J of the 1945 Constitution, Article 70 of Law Number 39 of 2009, and Article 18 paragraph (3) of the Covenant on Civil and Political Rights. Such restrictions must be established through legislation, with a view to respecting the rights and freedoms of other individuals as well as to meet the demands of morals, security, and public order in a democratic society.

However, in practice, the establishment of places of worship in Indonesia is regulated by the 2006 Joint Ministerial Regulation (PBM 2006), not through laws made by the people's representative institutions. This is not in accordance with the provisions of Article 28J of the 1945 Constitution and Article 70 of Law No. 39/2009, which requires regulations to be in the form of laws made democratically with the approval of the DPR and the President. Furthermore, PBM 2006 regulates six requirements for the establishment of places of worship that are considered to complicate the implementation of religious freedom, so that it can be a source of conflict or violation of religious rights.[45] The

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[43] Herlindah Herlindah, Indah Dwi Qurbani, and Dorra Prisilia, "The Existence of Pancasila in Resolving Conflicts of Differing Views on Religious Rights in Indonesia," *Diponegoro Law Review* 7, no. 2 (2022): 218, https://doi.org/10.14710/dilrev.7.2.2022.212-229.

[44] Emma Tomalin, Jörg Haustein, and Shabaana Kidy, "Religion and the Sustainable Development Goals," *Review of Faith and International Affairs* 17, no. 2 (2019): 103, https://doi.org/10.1080/15570274.2019.1608664.

[45] M. Syifa Afandi, Zulkifli Zulkifli, and A'ang Subiyakto, "The Polemic of Worship Houses Construction in Indonesia: An Islamic and Positive Law Perspective," *In Proceedings of the 4th International Colloquium on Interdisciplinary Islamic Studies in Conjunction with the*

establishment of places of worship in Indonesia is regulated by the 2006 Joint Ministerial Regulation (PBM 2006) which sets out six requirements. These include administrative requirements such as land status and building permits, technical requirements related to building codes, as well as social requirements such as minimum support from local residents and recommendations from authorities, including the Department of Religious Affairs Office and the local Religious Harmony Forum (FKUB). This stipulation has been the focus of debate as it is considered to limit or even violate freedom of religion, given that not all of these requirements can be met easily by religious communities wishing to establish places of worship.

Regulating Places of Worship in Indonesian Law: In the Framework of Land Use and Spatial Planning

Legal development towards the realization of a national legal system based on Pancasila and the 1945 Constitution still faces various challenges, both related to legal material as a component of substance, institutions as a component of structure, and legal awareness of the community as a component of culture.[46] In order to realize the national legal system based on Pancasila and the 1945 Constitution, legal development includes three sectors, namely: (1) development of legal materials, (2) development of legal apparatus, and (3) construction of legal facilities and infrastructure. Thus, legal development involves very broad aspects and dimensions, namely (1) law making process, (2) law enforcement, and (3) legal awareness.[47] If national law is seen as a reflection or expression of the reality of Indonesian consciousness, the establishment and renewal of national law based on Pancasila and the 1945 Constitution becomes an urgent matter. The legal establishment and reform is a juridical task to create a legal order and rule in accordance with the position of an independent Indonesian state, namely a legal system that is not colonialist and discriminatory.

1st International Conference on Education, Science, Technology, Indonesian and Islamic Studies, ICIIS and ICESTIIS 2021, 20-21 October 2021, Ja, 2022, 4, https://doi.org/10.4108/eai.20-10-2021.2316312.

[46] Junaedi Junaedi, "The Axiology of Pancasila in the Reconstruction of Legal Culture in Indonesia," *UNIFIKASI : Jurnal Ilmu Hukum* 6, no. 1 (2019): 7, https://doi.org/10.25134/unifikasi.v6i1.1815.

[47] Jimly Asshiddiqie, *Pengantar Hukum Tata Negara* (Jakarta: Konstitusi Press, 1998), 29.

In the context of law formation, politics of law is an important and useful perspective to use. *First*, politics of law is a basic policy that determines the direction, form, and content of the law to be formed. Politics of law is related to legal policy, which will be implemented and executed nationally by a particular country's government. *Second*, through politics of law, a state can have better choices to reach state goals. *Third*, through politics of law, legal policy can be better enforced, both by making new laws and by replacing old laws, in order to achieve state goals. Based on these three things, it can be stated that through politics of law, policy makers or legislators are able to identify ideal common goals (common interests) and, at the same time, understand the process of achieving the goals through the legal formation.

The Article 1 paragraph (3) of the 1945 Constitution confirms that the Indonesian state is a state of law. This provision means that various aspects of life in society, nationality, statehood, and government must be based on laws in accordance with the national legal system based on Pancasila and the 1945 Constitution. The realization of the national legal system is carried out through legal development, which includes the formation of new laws and regulations as well as the replacement of old laws and regulations. In this context, the mind of the law is an important thing to note.

The ideal of the law (*cita hukum*) is the basis of existing law in achieving its goals. In Rudolf Stammler's view, the ideal of law is a construction of thought that directs the law to the society's goals. The ideal of the law is a guiding star for the achievement of the ideals of society.[48] In Gustav Radbruch's view, the legal mind not only functions as a regulatory benchmark, namely as a touchstone of a positive law fair or not, but also at the same time has a function as a constitutional basis, which determines that without a legal mind, the law will lose its meaning as law.[49] The legal mind is a translation of *rechtsidee*, which is ideas, feelings, creation, and thoughts. The law that exists in reality actually aims to realize the ideal of law.[50] The ideal of law is the general consciousness that resembles the *grundnorm*. It is is meta-juridical, but must guide the existing

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[48] Arinto Nurcahyono, M. Husni Syam, and Eka An Aqimuddin, "Reconstructing Clean Water Policy Based on the Perspective of Idea Law of Pancasila the Indonesia' Principles," *Advances in Social Science, Education and Humanities Research* 307, no. 1 (2019): 143, https://doi.org/10.2991/sores-18.2019.33.

[49] Hamid. S Attamimi, *Pancasila Cita Hukum Dalam Kehidupan Hukum Bangsa Indonesia" Pancasila Sebagai Ideologi Dalam Berbagai Bidang Kehidupan Bermasyarakat, Berbangsa Dan Bernegara.*, ed. Oetojo Oesman dan Alfian (Jakarta: BP7 Pusat, 1991).

[50] Attamimi.

law.[51] Thus, it can be stated that, in the context of the formation of the ideal law, the law has an important position with its regulative and constitutive functions. The abstract ideal of law becomes the source of written basic law, which then written basic law becomes the source of the laws and its regulations.

The legal ideals for the Indonesian nation are reflected in the Preamble of the 1945 Constitution, which contains the values of Pancasila as the foundation of the state. According to the views of Hans Kelsen and Hans Nawiasky, Pancasila functions as a *Staatsfundamentalnorm*, which is a legal principle that is the basis for the formation of a constitution or Basic Law. The concept of *Staatsfundamentalnorm* is the main requirement for the validity of a constitution, because its existence already exists before the state constitution is formed. According to A. Hamid S. Attamimi, Jimly Asshiddiqie explained that Pancasila has a position as a *Staatsfundamentalnorm*, which shows the importance of Pancasila in the formation and application of law in Indonesia.[52] The formation, application, and implementation of laws that cannot be separated from Pancasila, as well as showing that Pancasila is the source of all sources of state law, as affirmed in Article 2 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. The position of Pancasila as a primary source of state laws has been in accordance with the Paragraph IV of the Preamble to the 1945 Constitution. Any content of laws and regulations must not in conflict with the values of Pancasila.

Reflected in the Preamble of the 1945 Constitution, it includes four main points. *First*, the state is responsible for protecting all Indonesians and the unity of the nation, without favoring any particular group. This confirms that Indonesia is a country that does not differentiate individuals based on physical aspects, skin color, religion, or regional language, but rather unites based on common goals and love for the country. The diversity of ethnicity, religion, race, and class is respected in the spirit of Bhinneka Tunggal Ika. *Second*, the ideal of the Indonesian rule of law is to achieve social justice for all, ensuring that every citizen experiences prosperity commensurate with their efforts and needs, recognizing human dignity and rights. This reflects the spirit of a welfare state that seeks to collectively create a just and prosperous society, with the

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[51] Bernard Arief Sidharta, *Ilmu Hukum Indonesia, Upaya Pengembangan Ilmu Hukum Sistematik Yang Responsif Terhadap Perubahan Masyarakat* (Yogyakarta, Indonesia: Genta Publishing, 2013).

[52] Jimly Asshiddiqie and M. Ali Safaat, *Teori Hans Kelsen Tentang Hukum* (Jakarta: Konpress., 2012).

government acting as a servant of the people to achieve this goal.[53] The *third* point emphasizes that the state system regulated in the Constitution as a written basic law must be based on the sovereignty of the people and based on representative consultation. In this third point of thought there is an affirmation that the system used is a democratic system with a representative system.

Regulation of important matters in the life of the state, including those concerning human rights, needs to be regulated in law. The regulation in the law is a manifestation of the democratic system and the representative system, because the law is formed by the House of Representatives (DPR) and the President, who is elected through a democratic mechanism and is a representative of the people. Laws formed by the DPR and the President are interpreted as products formed by the people. The fourth point in the Preamble of the 1945 Constitution is the affirmation that Indonesia as a country based on the One and Only God according to the basis of just and civilized humanity. This principle asserts that not only the citizens are godly, the administration of the state is also based on divinity.

From the perspective of politics of law, the PBM 2006 has not fulfilled the rules for the formation of laws and regulations, both from a formal and substance aspects. Formally, the validity of legal sources in the order of laws and regulations and the form of regulations in the form of joint regulations are not known. In addition, the quality of norms is contradictory because there is no reference article ordering the establishment of PBM 2006. In terms of substance, the content of regulations on places of worship is related to human rights which should be regulated by law.[54]

Regulations on the establishment of places of worship are stipulated in the Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs Number 9 and Number 8 of 2006. According to Article 1 point 3 of the regulation, a place of worship is defined as a building that is specifically used for permanent worship for adherents of each religion, except for family places of worship. Thus, the essence of a place of worship is as a building intended for worship activities. Law No. 28 of 2002 on Buildings confirms that places of worship, such as mosques, churches, temples, monasteries, and temples, are included in the category of buildings with religious functions. In the context of their establishment, there are two main criteria that must be met, namely

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[53] Sidharta, *Ilmu Hukum Indonesia, Upaya Pengembangan Ilmu Hukum Sistematik Yang Responsif Terhadap Perubahan Masyarakat*. (Yogyakarta: Genta Publishing, 2013): 106

[54] Komisi Nasional Hak Asasi Manusia Republik Indonesia, "Pengkajian Komnas HAM RI Atas Peraturan Bersama Menteri No. 9 Dan No.8 Terkait Pendirian Rumah Ibadah" (Jakarta, 2020).

administrative requirements, such as land ownership status and building construction permits, as well as technical requirements related to building codes and the reliability of building structures. In addition, the UUBG also emphasizes that the function of the building must be in accordance with the spatial layout regulated in the Regional Regulation on the Regency / City Regional Spatial Plan stipulated by the Regional Government and include this information in the Building Construction Permit.

The regulation for the construction of buildings with religious functions contained in the UUBG is a better form of regulation than the arrangement for the establishment of places of worship in PBM 2006. UUBG only lists administrative requirements and technical requirements (objective) and does not list specific requirements (more subjective). Specific requirements in PBM 2006 as contained in Article 14 paragraph 2 of PBM 2006, include: (a) a list of names and Identity Cards of users of places of worship of at least 90 (ninety) people authorized by local officials in accordance with the level of regional boundaries (villages/*kelurahan*), (b) local community support of at least 60 (sixty) people authorized by the *lurah*/village head, (c) written recommendation of the head of the district / city religious department office, and (d) written recommendation of the district/city's FKUB. In this context, Komnas HAM RI states that subjective requirements, especially the consent of local residents in the establishment of places of worship, lead to and are potentially discriminatory, because the right to worship of everyone and religious people will depend on the consent of people or adherents of other religions.[55]

The existence of special requirements in the establishment of places of worship in the joint regulation of the two ministries shows that the regulation is not in line with Law Number 28 of 2002. The existence of special requirements for the establishment of places of worship as stipulated in Article 14 paragraph (2) by the regulators seems to be necessary to fulfill the provisions of Article 13 of the joint ministerial regulation, so that the establishment of places of worship is really as needed because it is based on real and genuine needs based on the composition of the population for the services of the religious community concerned in the *kelurahan*/village area. In this case, the restriction is related to the issue of the number of religious believers who will establish places of worship.

The minimum number of 90 believers does not yet have a clear basis as the lower limit of the required amount. In addition, the requirement for minimum local community support of at least 60 (sixty) people, and should be

[55] Komisi Nasional Hak Asasi Manusia Republik Indonesia.

authorized by the *lurah*/village head, seems to be designed so the existence of worship places in an area can keep religious harmony, not disturb public peace and order, and comply with laws and regulations. However, SETARA Institute argues that almost all problems related to worship places are results of the joint two-ministerial regulation. The research report of the National Law Development Agency also shows that the effectiveness of the implementation of SKB for the resolution of internal and inter-religious conflicts is still lacking.[56] Substantively, the joint ministerial regulation does not provide justice and legal certainty to minority groups in intra- and inter-religious relations. The issuance of the joint ministerial regulation does not mean that the entire problem of establishing places of worship is resolved. The joint ministerial regulation prefers to use the concept of religious harmony, which demands restrictions on freedom in the context of different views on the joint ministerial regulation, the author argues that the existence of special requirements indicates that whether or not a religious worship place can be established is determined by, or depends on, other religious groups as evidenced by a letter of approval.

It is in this context that these regulations become unclear and potentially cause problems. The attitude and action to agree or disagree with the establishment of a religious place concerns a very broad dimension, and it is possible that the disapproval of a person or group of people is caused by matters of a very subjective nature. This is exacerbated by the fact that some Indonesians lack awareness of the reality of social diversity and pluralism. Empirically, specific requirements contain subjectivities that can be tested in their implementation. The special requirements of Article 14 paragraph (2) of the Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs Number 9 and Number 8 of 2006 refer to the rejection of the construction of places of worship in various places. For example, in the 2016 annual report Komnas HAM stated that there were 12 problems with the establishment of places of worship, namely the ban on the construction of mosques in Bitung Sulut City, the insistence on canceling the construction of the Baiturahman Wamena Mosque in Jayawijaya, the ban on the construction of Mushalla As Syafiiyah Denpasar City, the problem of 24 churches in Aceh Singkil, the resolution of GKI Yasmin Bogor problems, the sealing of 7 churches in Cianjur, the problem of GBKP Pasar Minggu, the problem of HKBP Filadelfia Bekasi, the problem of refusal of mosques in the former Texas Manado Village, the problem of Jabal Nur Manado Mosque, the problem of a

[56] Suherman Toha, "Eksistensi Surat Keputusan Bersama Dalam Penyelesaian Konflik Antar Dan Intern Agama" (Jakarta, Kementerian Hukum dan HAM 2011).

number of churches in the city of Bandung, and the findings of extortion of churches in West Java.

In the context of obtaining approval from followers of other religions, groups that disagree with the establishment of synagogues can "*accuse*" the acquisition of signatures as proof of approval in inelegant ways under the pretext of providing assistance in various activities. The requirement for a written recommendation from the district/city's FKUB that is also proposed as an effort to obtain sociological support can also be a trigger for problems such as the case of the establishment of a mosque in Kupang, East Nusa Tenggara, and the closure of a Christian church in Gunungkidul. FKUB does not play a role and even fails to act as an interfaith forum because it is co-opted by political forces and the very strong personal sentiments of members of the dominant group. Based on the description above, it can be said that requirements related to local community support and written recommendations of FKUB that were originally intended as evidence of sociological enforceability of regulations, can be a source of problems, because they are related to majority-religious minority aspects in a region. In addition, the two elements of the requirement are determined by society, which does not represent elements of government or state. With reference to the licensing regime, it should be the authorities who allow something to be done or not to be done, in this case the government as a representative of the state in line with the principle of the state guaranteeing freedom to practice worship.

The role of the government in the establishment of this house of worship is actually already in the formulation of Article 14 paragraph (3) that in the event that the requirements for the list of names and Identity Cards of users of places of worship are at least 90 (ninety) people are met while the requirements for local community support of at least 60 (sixty) people have not been met, the local government is obliged to facilitate the availability of construction sites for places of worship. This provision can be interpreted as the Government is actually given the responsibility to solve the problem of establishing places of worship that are experiencing problems in terms of community support approval. However, these government roles and responsibilities can be ineffective with calculations that boil down to majority-minority and other political calculations. Thus, regarding the specific requirements for the establishment of places of worship, the requirement of consent from followers of other religions should be waived.

CONCLUSION

The politics of law on the establishment of worship places in Indonesia has originated from the Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution, which affirms that the State is based on the one and only God and that there is a guarantee for all Indonesian citizens to profess religion and worship according to their religion and belief. State and religious relations in Indonesia is based on the One and Only God. This relationship confirms that Indonesia is not a religious state and, at the same time, is not a secular state. As a divine state, the state guarantees the freedom of each citizen to profess his or her own religion and worship according to his or her religion and belief. The establishment of places of worship is a manifestation of religious freedom in the realm of external forums, which can be limited by law, namely democratic laws. The regulation on the establishment of places of worship in the form of PBM 2006 has not qualified as democratic laws. PBM 2006 provides special requirements, which are partly determined by other religious groups, not by the government as a representative of the state. In a political perspective, the PBM 2006 is a regulation that must be replaced, because it is not in line with the ideals of Indonesian law. The Law on the Establishment of Places of Worship that will be created must be based on Indonesian legal ideals, not contain discriminatory legal norms, be more objective, its regulation takes into account aspects of ownership, use and utilization of land as well as technical aspects of buildings.

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