

REFORM THE LEGAL SYSTEM IN THE ESTABLISHMENT OF THE INDONESIAN HOUSE OF WORSHIP

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ABSTRACT

This study aims to explain how discrimination against religious minorities in Indonesia is caused by the regulation and mechanism of the establishment of houses of worship. In addition, this study aims to provide prepositions and recommendations (*ius constiuendum*) regarding the ideal format of reform of the legal system that can be designed to improve the guarantee of the right of religious minorities to establish houses of worship.

The method used in this legal research is normative-empirical (socio-legal). Research data in the form of primary data obtained through interviews with respondents can provide an idea of the flow/process of establishing houses of worship. In addition, the study also used secondary data consisting of primary, secondary, and tertiary legal materials. This research also uses several approaches like the statute approach, conceptual approach, historical approach, case approach, and comparative approach.

Freedom of worship is still a concern until now, it is due to the number of houses of worship that do not have permission to establish a house of worship (IMB). Freedom of worship has been a common commitment among the founders of the nation since the establishment of the Republic of Indonesia. The Constitution, which has undergone several amendments, does not change the substance of freedom of worship (Article 29). The establishment of houses of worship is specifically regulated in the Ministerial Joint Regulation (PBM of 2006) which is substantively contrary to the basic principles of human rights. Human rights restrictions can only be limited by law, but do not apply in Indonesia as in other countries. The application and enforcement of the law are still far from expectations and there is discrimination and intolerance against religious minorities, where the community and government are given a lot of authority to deviate from the provisions in the regulation. Building permits that are the authority of the state are handed over to the community. Based on this, the author offers a concept to reform the legal system for the establishment of houses of worship in Indonesia.

Keywords: Reform of the Legal System, Freedom of Worship, Establishment of Houses of Worship

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REFORMASI SISTEM HUKUM DALAM HAL PENDIRIAN RUMAH IBADAH DI INDONESIA

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INTISARI

Penelitian ini bertujuan untuk menjelaskan bagaimana diskriminasi umat beragama minoritas di Indonesia yang disebabkan oleh pengaturan dan mekanisme pendirian rumah ibadah. Selain itu, penelitian ini bertujuan untuk memberikan preposisi dan rekomendasi (*ius constituendum*) mengenai format ideal reformasi sistem hukum yang dapat didesain untuk memperbaiki jaminan hak umat beragama minoritas untuk mendirikan rumah ibadah.

Metode yang digunakan dalam penelitian hukum ini adalah normatif-empiris (*sosio-legal*). Data penelitian berupa data primer yang didapat melalui wawancara dengan responden yang dapat memberikan gambaran mengenai alur/proses pendirian rumah ibadah. Selain itu, penelitian ini juga menggunakan data sekunder yang terdiri atas bahan hukum primer, sekunder dan tersier. Penelitian ini juga menggunakan beberapa pendekatan seperti pendekatan undang-undang, konseptual, historis, kasus dan perbandingan.

Kebebasan beribadah masih menjadi perhatian hingga saat ini, hal tersebut diakibatkan banyaknya rumah ibadah yang belum memiliki Izin Mendirikan Rumah Ibadah (IMB). Kebebasan beribadah pada dasarnya telah menjadi komitmen bersama diantara para pendiri bangsa sejak pendirian negara Republik Indonesia. Konstitusi yang mengalami beberapa kali amandemen pun tidak merubah substansi dari kebebasan beribadah (Pasal 29). Pendirian rumah ibadah secara khusus diatur dalam Peraturan Bersama Menteri (PBM Tahun 2006) dimana secara substantif sangat bertentangan dengan prinsip-prinsip dasar hak asasi manusia. Pembatasan hak asasi manusia hanya dapat dibatasi dengan undang-undang, namun tidak berlaku di Indonesia sebagaimana negara-negara lain. Penerapan dan penegakan hukum, masih jauh dari harapan serta terjadi diskriminasi dan intoleransi terhadap minoritas agama, dimana masyarakat serta pemerintah yang diberikan wewenang banyak menyimpangi ketentuan dalam peraturan tersebut. Izin mendirikan bangunan yang merupakan wewenang negara diserahkan kepada masyarakat. Berdasarkan hal tersebut, penulis menawarkan konsep guna mereformasi sistem hukum terhadap pendirian rumah ibadah di Indonesia.

Kata Kunci: Reformasi Sistem Hukum, Kebebasan Beribadah, Pendirian Rumah Ibadah

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