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## Enforcement of Legal Terms of Households Establishment on the Establishment of Mosque In Bandung

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### Abstract

Indonesia, through the 1945 Constitution of the Republic of Indonesia, provides a constitutional guarantee for the principles of freedom and equality. This is reflected directly in the 1945 Constitution Chapter XA, which regulates Human Rights. This includes religious freedom, and thus as a consequence, the State needs to regulate the procedures for carrying out the construction of places of worship. In Indonesia, the procedures for implementing the construction of houses of worship are regulated specifically in the Joint Regulation of the Minister of Religion and the Minister of Home Affairs number 8 & 9 of 2006 concerning Guidelines for Implementing the Duties of Regional Heads / Deputy Regional Heads in Maintaining Religious Harmony, Empowering Forum for Religious Harmony, and Establishing Houses Worship. In practice, however, the implementation of this Regulation still has several obstacles and the construction of certain houses of worship, especially for houses of worship for adherents of minority religions. It is well known that Indonesia is a country with a majority Muslim population. For Muslims, the construction of houses of worship, namely mosques, tends to be easier. However, behind this convenience, it is necessary to examine further whether all the requirements as formulated in the PBM for the Establishment of Houses of Worship have fulfilled in terms of mosque construction.

## INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia the 3rd amendment as a constitution, states that: “Indonesia is a state of law (*rechstaat*).” As the rule of law, for the state of functioning well, the rule of law must have a legal system as a guideline for the pattern and basis of law enforcement<sup>1</sup>. Likewise, Indonesia, as the rule of law based on the rule of law, also has a legal system. Indonesia, which is also a constitutional state, upholds the recognition and protection of human rights that covers the hierarchy of

<sup>1</sup> Christine S. T. Kansil. *Perbandingan Hukum Administrasi Negara*. (Jakarta: Rineka Cipta, 2010), 25.

needs<sup>2</sup>. The existence of the 1945 Constitution of the Republic of Indonesia provides a constitutional guarantee to the principles of freedom and equality. This is reflected directly in the 1945 Constitution Chapter XA, which regulates Human Rights. This includes religious freedom.

Article 28 E The 1945 Constitution of the Republic of Indonesia states that: "Everyone is free to embrace his religion and worship according to his religion". This is in line with Article 22 paragraph (1) and paragraph (2) of Law Number 39 of 1999 concerning Human Rights, which states that:

- 1) Every person is free to embrace his religion and worship according to his religion and beliefs.
- 2) The state guarantees the freedom of every person to embrace their respective religions and worship according to their religion and beliefs.

As a direct consequence of these two articles, the state needs to regulate how law enforcement establishes houses of worship for every religious community, to ensure the comfort of worship for every religious community without prejudice to the legality of the establishment of houses of worship. In Indonesia, the construction of houses of worship is not regulating by law but regulated in the Joint Regulation of the Minister of Religion and Minister of Home Affairs number 8 & 9 of 2006 concerning Guidelines for Implementing the Duties of Regional Heads/Deputy Regional Heads in Maintaining Religious Harmony, Empowering Forum for Religious Harmony, and Establishment of Houses of Worship. This regulation will henceforth be referred to as PBM for the Establishment of Houses of Worship.

In Article 6 letter e PBM for the Establishment of Houses of Worship is explained that one of the duties and obligations of the mayor/regent is to issue a building permit (IMB) for a synagogue. According to Sjachran Basah, a permit is a legal act of a one-sided state administration that applies regulations in concrete terms based on requirements and procedures as stipulated by statutory provisions. As one of the purposes of a permit is to direct certain activities, a Building Permit is required to regulate and direct the activities of establishing a synagogue<sup>3</sup>.

To obtain the issuance of a building permit (IMB) for a synagogue from the mayor there are certain conditions and criteria that must be met by religious communities. These are

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<sup>2</sup> Alexander Yandra, "Fisibilitas Pilkada Serentak Tahap II Kota Pekanbaru Pasca Permendagri No 18 Tahun 2015", *Jurnal Niara* 9, No 2 (2017): 65.

<sup>3</sup> H. R. Ridwan. *Hukum Administrasi Negara*. (Jakarta: Rajawali Pers, 2011), 205.

stated in Article 13 to Article 17 of the PBM for the Construction of Houses of Worship. Although the criteria and conditions for the construction of houses of worship have been determined in the PBM for the Establishment of Houses of Worship, in practice there are still some obstacles in establishing certain houses of worship, especially for houses of worship for adherents of minority religions. This is in line with the statement of a resource person from the initial interview stating that there were several obstacles in the erection of the synagogue, the church. The obstacle experienced is that in general the requirements requested at PBM for the Establishment of Houses of Worship have been fulfilled by Christians, but when submitting the permit process, the community who had previously stated no objection to the construction of the church turned into an objection and poured the objection in a written statement so that the licensor does not issue a Permit to Establish the Church's synagogue. Another obstacle that can occur is when the Permit to Establish the Church's synagogue has been issued by the community who had previously stated that they had no objections to the establishment of the church, changed their attitude and expressed objections so that the licensor cancelled the permit that had been issued.

As is known that Indonesia is a country with a majority Muslim population<sup>4</sup>. For followers of Islam, the construction of houses of worship, namely mosques, tends to be easier. However, behind the convenience, it is necessary to question further whether all the requirements as formulated in the PBM for the Establishment of Houses of Worship have been fulfilled in terms of mosque construction. This is what then makes it seem as if there is hidden discrimination, so that further research is needed.

This kind of thing raises doubts about the law enforcement of PBM Establishing Houses of Worship against the implementation of the construction of houses of worship. To see the law enforcement of the PBM for the Establishment of Houses of Worship, the researchers then conducted a study using Sukajadi District as a sample. Researchers chose Sukajadi Subdistrict, Bandung as a research sample because the population data table according to religion adhered to districts in Bandung in 2015, Sukadi Subdistrict has a Muslim majority population with quite a large number of 94, 924 adherents of Islam.

Sukajadi being a Muslim-majority subdistrict is relevant to the administrative requirements for establishing a synagogue as formulated in Article 14 Paragraph (1) and

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<sup>4</sup> Junaidi et al., "Riots in Indonesian Main Island: Peace Action of Defend Islam Impact on Economic Environment in Local Media Discourse" (Conference, IOP Conference Series: Earth and Environmental Science, 156, 1, February, 2018), 1.

Paragraph (2) of the PBM for Establishing a Synagogue. Where to build a synagogue, at least 90 (ninety) names and ID cards of the users of the synagogue are required (see Article 14 Paragraph (2) letter a). The number of followers of the religion in Sukajadi Sub-district will then influence the level of need for construction of houses of worship in this area. In addition, Sukajadi Sub-district also has more mosques compared to other sub-districts in Bandung, of which there are 123 mosques in Sukajadi Sub-District.

Based on the description above, it can be obtained a question that can be used as a formulation of the problem, namely, how is the application of PBM Establishing a Synagogue on the establishment of a mosque as a synagogue in Sukajadi sub-district, Bandung? How is the application of the PBM for the Establishment of Houses of Worship over the construction of mosques as houses of worship in Sukajadi sub-district, Bandung?

This research conducted with a sociological approach. A sociological juridical approach is an approach used to trace literature material (secondary data) that has to do with the problem to be solved which is then continued and conduct research on primary data in the field<sup>5</sup>. Primary data were obtained directly from the first source, namely the community, through field research. Secondary data, among others, include official documents, books, research results in the form of reports, diaries, and so on. This is a direct consequence of the purpose of this study, in which the researcher wants to examine the PBM law enforcement for the Establishment of Houses of Worship over the implementation of the establishment of mosques as houses of worship.

## **THE IMPLEMENTATION OF PBM ON THE ESTABLISHMENT OF HOUSES OF WORSHIP AGAINST THE ESTABLISHMENT OF MOSQUES AS HOUSES OF WORSHIP IN SUKAJADI DISTRICT**

As explained in the previous chapter, Indonesia, as the rule of law upholds the recognition and protection of human rights. The existence of the 1945 Constitution of the Republic of Indonesia provides a constitutional guarantee to the principles of freedom and equality. This is reflected directly in the 1945 Constitution Chapter XA, which regulates Human Rights. This includes the matter of religious freedom.

Article 28E of the 1945 Constitution of the Republic of Indonesia states that: "Everyone is free to embrace his religion and worship according to his religion". This is in

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<sup>5</sup> Soekanto Soerjono. *Pengantar Penelitian Hukum*. (Jakarta: UI Press, 1968), 52.

line with Article 22 paragraph (1) and paragraph (2) of Law Number 39 of 1999 concerning Human Rights, which states that:

- 1) Every person is free to embrace his religion and worship according to his religion and beliefs.
- 2) The state guarantees the freedom of every person to embrace their respective religions and to worship according to their religion and beliefs.

As a direct consequence of the two articles, the state needs to regulate how law enforcement establishes houses of worship for all religious communities in order to ensure the comfort of worship for every religious community without prejudice to the legality of the establishment of places of worship. In Indonesia, this matter is regulated in the PBM for the Establishment of Houses of Worship. The researcher further wants to see how the PBM for the Establishment of Worship Services is implemented in the establishment of a Mosque in Sukajadi Subdistrict which is also a place of worship for Muslims which is the majority religion in Indonesia and also in Bandung in particular.

One of the factors that influence law enforcement is the community. Soerjono Soekanto, in his book, stated that when talking about the community more or less concerned with the degree of compliance.<sup>6</sup> Compliance here is an indicator of the functioning of the law. The community can obey a law if it knows its obligations and rights, so here it also needs to be examined about the legal knowledge of the community.<sup>7</sup> In this case, the community studied is the Mosque Prosperity Council which will be referred to as DKM as one of the stakeholders of the establishment of a mosque. The DKM of Mosques in Sukajadi Sub-district were 123 respondents, and this was because there were 123 Mosques in Sukajadi Sub-district, and it was these DKM Mosques that were responsible for the management of the Mosques.

From interviews with respondents, data were obtained that of the 123 mosques that had been established 108 of them claimed that their mosque had a building permit, but only 1 mosque could show physical proof of ownership of the building permit as required in the PBM for the Establishment of Houses of Worship. And 13 respondents stated that the mosque does not yet have a Building Permit (IMB) from the Mayor of Bandung.

From the results of observations and interviews, it can be concluded that the mosques that claim to have a Building Permit (IMB) from the Mayor of Bandung are the main

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<sup>6</sup> Soekanto Soerjono. *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. (Jakarta: UI Press, 1983), 44.

<sup>7</sup> Satjipto Rahardjo. *Masalah Penegakan Hukum Suatu Tinjauan Sosiologis*. (Bandung: Sinar Baru, 2011), 25.

mosques which are relatively young in construction and mosques with relatively structured management. Whereas those who said they did not know and did not receive it tended to be small mosques with unclear management structures.

Of the 108 respondents who claimed that the mosque he manages had a Building Permit, only one respondent could show physical proof of the Building Permit. The other respondents claimed that they did not hold physical evidence because the management structure often changed, so there was difficulty in finding important files such as permission to build a mosque.

Actually, the City Government of Bandung in collaboration with FKUB has conducted socialization to educate the DKM of Mosques about the importance of having a permit to erect a synagogue building as explained in the PBM for the Establishment of Houses of Worship so that the DKM of the Mosque in Sukajadi as the community as well as stakeholders of the establishment of the synagogue know the rights and obligations he has in the PBM for the Establishment of Houses of Worship. Mosque DKM in Sukajadi Subdistrict as a community that has an interest in the establishment of houses of worship as one of the factors that influence law enforcement needs to know the rights and obligations that it has in a regulation to succeed the law enforcement of the relevant regulations, in this case, PBM Establishing Houses of Worship.

Besides the community, another factor influencing law enforcement is the law enforcement factor itself. Satjipto Rahardjo also explained that the success or failure of law enforcers in carrying out their duties actually had started since the legal regulations that had to be carried out were made. So since PBM for the Establishment of Houses of Worship is made by law enforcers, in this case, one of them is the Government of Bandung City needs to make an effort so that PBM for the Establishment of Houses of Worship can be applied in the community.

The construction of a mosque must also meet Article 14 Paragraph (2) letter a, namely the required list of names and Identity Card of the users of the synagogue of at least 90 (ninety) persons authorized by the competent authority, in this case, the lurah. For this reason, most mosques in Sukajadi Sub-District have received permits in the form of a list of names and Identity Cards of at least 90 people using synagogues that have been endorsed by village and Sukajadi sub-district officials. The collection of conditions in the form of 90 names and ID cards is not difficult to do considering the majority of the population in

Sukajadi are Muslim, so the community is enthusiastic in providing a list of their names and ID cards to be used as a requirement in establishing a mosque. In gathering the list of names and ID cards there are also people who have non-Muslim religions, but they also do not feel objected to being asked to participate by submitting a list of names and ID cards in the interests of licensing requirements Establishing a Mosque House of Worship Building in Sukajadi District.

Other requirements in setting up a mosque are contained in Article 14 Paragraph (2) letter b, which must have the support of the local community of at least 60 (sixty) people authorized by the village head/village head. This also has no significant technical constraints, because as previously explained that the majority of people in Sukajadi Sub-district are Muslims, so it is not difficult to get support from the community, especially since this support is for the common good so that it is easy to obtain. Therefore, in fulfilling the requirements of local community support, at least 60 (sixty) people have almost all been carried out by the DKM Mosque in Sukajadi District. However, from the total Mosque DKM that has fulfilled these requirements, there is 1 Mosque DKM that does not know the provisions of Article 14 Paragraph (2) letter b. This is because there has been a change of management of the mosque so that the new mosque DKM had not had time to participate in the socialization and the absence of information provided by the mosque's DKM before and resulted in one mosque not fulfilling the requirements contained in Article 14 Paragraph (2) letter b.

Although the requirements contained in the PBM for the Establishment of Houses of Worship Article 14 Paragraphs (2) letters a and b have generally been fulfilled, overall the requirements for Article 14 Paragraph (2) letter c have not all been obtained. From the results of interviews with the DKM of each Mosque in Sukajadi Sub-district of Bandung as stated above, it is known from the majority of Mosques that they have fulfilled the requirements as stated in Article 14 Paragraph (2) letter c, and some stated they did not know. The rest stated that they did not have the requirements listed in Article 14 Paragraph (2) letter c. however, this statement contradicts what was stated by FKUB officials. From the statement of the Head of the Division of the National Unity and Politics of the City of Bandung, it was stated that if all the mosques in Sukajadi Sub-district had not submitted a permit application and had not received a written recommendation from the head of the Regency / City Department of Religion office.

In this case, there is a gap between the statement of the DKM of the Mosque in Sukajadi District and the Head of the Division of the National Unity and Politics Agency in Bandung, on the other hand, 106 mosque administrators stated that they had received a written recommendation letter from the head of the district/city religious department office, but in fact, evidence was requested. The letter of recommendation written by the head of the DKM mosque/regency/religious department office could not show it because some of the letters were still in process and some others claimed to have existed at the previous DKM Mosque.

Differences in statements related to the fulfilment of the requirements of Article 14 Paragraph (2) letter c, it is probable that the mosque management misinterpreted the intention of already having a recommendation letter and will only submit a recommendation letter, they assume if they have applied for a permit then it is the same as having a permit and automatically having also a letter of recommendation from the local Department of Religion, but permission has been given legally when there is evidence that can be legally recognized, so the problem of compliance with Article 14 Paragraph (2) letter c has not been fulfilled legally by the mosque management in Sujadi District.

In the fulfilment of Article 14 Paragraph (2) letter d basically, the problem that occurs is not different from the fulfilment of Article 14 Paragraph (2) letter c, in fulfilling the requirements of Article 14 Paragraph (2) letter d, it is declared that the mosque management has received 83 FKUB recommendations. However, FKUB itself stated that it had never issued a recommendation to establish a mosque in the Sukajadi District. This difference of opinion can occur because basically the year of the establishment of a mosque in Sukajadi District has an old year and was established long before the existence of FKUB in the city of Bandung, so they assess that the mosque that has been standing for a long time has also automatically received a recommendation from the FKUB.

The same thing happened to the fulfilment of the latest requirements in building a mosque, where when all the requirements contained in article 14 have been fulfilled, the House of Worship Establishment Committee can apply for a permit to build a synagogue with the Mayor/Regent. From the results of interviews with the DKM Mosque, information was obtained that as many as 108 mosques had obtained building permits from the mayor, 2 mosques were unaware and the remaining 13 mosques had not received permits to build buildings from the mayor. While from the Bandung City Kesbangpol itself stated that they



had never issued a building permit from the Mayor for a mosque in Sukajadi District. This is in line with the Chairperson of FKUB who also stated that he had never received a request for a recommendation letter from a mosque in Sukajadi sub-district. But on the other hand, DKM Al-Hidayah Mosque can show physical proof of ownership of the Building Permit from the Mayor. This discrepancy is likely to occur due to several factors, first the understanding factor if the DKM of the Mosque, which is wrong with understanding the provisions of the requirements contained in Article 14. Second, the occurrence of poor administration of the apparatus related to the management of the mosque's licensing arrangements, so that when the DKM of the Mosque as the mosque manager has submitted the documents are not stored properly and when there is a change in the management structure in the DKM Mosque which deals with this document is forgotten. In addition, the Government, namely the National Unity and Politics Agency and FKUB itself, also did not have a complete data bank because they stated that all the mosques in Sukajadi Sub-district had never admitted any request for recommendation, and no one had a building permit from the Mayor, while DKM Masjid Al - Hidayah can show physical proof of ownership of the building permit for the mosque from the mayor.

The Government has indeed conducted socialization in order to provide an understanding of the community about their rights and obligations contained in the PBM for the Establishment of Houses of Worship to succeed in the implementation of the PBM for the Establishment of Houses of Worship. However, it seems that community understanding, in this case, the DKM Mosque in Sukajadi District has not truly thorough so that they still hold on to their wrong understanding. It is this wrong understanding that then makes them indirectly disobedient to the PBM for the Establishment of the Synagogue. It can be said that the degree of public compliance with the law is one indicator of the functioning of the law in question. Thus, the PBM for the Establishment of the Synagogue can only function if the community is aware of the rights and obligations contained therein so that they comply with the PBM for the Establishment of the Synagogue.

In addition to community factors, the facilities or facilities factor also has a very important role in law enforcement. These facilities or facilities include educated and skilled human resources, good organization, adequate equipment, sufficient finance, and so on. In this case, the factors that may need to be considered are educated and skilled human resources and good organization because if it is further considered the DKM Mosque in Sukajadi Sub-

District is mostly old and has difficulty understanding the socialization material provided, plus the frequent change in the organizational structure of management without pay attention to filing important documents about the mosque so that the new mosque management will be confused to determine the steps, whether to make a permit application or whether it has been done by the previous administrator. Not only from the DKM of the Mosque, but the facilities and infrastructure here must also be improved by the Government, one example is the Government in terms of the National Unity and Politics Agency and FKUB need to improve the completeness of the data they have, so they have accurate data about any mosque which stands according to the procedure and which are not.

#### **PBM LAW ENFORCEMENT ESTABLISHMENT OF WORSHIP HOUSE AGAINST ESTABLISHMENT OF MOSQUE AS WORSHIP PLACE IN SUKAJADI DISTRICT**

It was concluded that there was no law enforcement effort that could be carried out or ever carried out by the Bandung City Government if there was a mosque that stood without a Building Permit from the Mayor. This was because PBM for the Establishment of Houses of Worship only governed the procedures and conditions for submitting an application for a Building Permit worship but does not include sanctions. If you want to sanction PBM the establishment of houses of worship must be implemented in the form of regional regulations, but the Bandung city government feels it is not necessary to enact regional regulations concerning the construction of houses of worship.

Regional regulations that have sanctions should be made so that there are legal remedies that can be carried out for law enforcement against mosques that stand without a building permit from the Mayor and without fulfilling the administrative requirements as required in the PBM for the Establishment of Houses of Worship. Sanctions here are one of the things that affect the level of community compliance with the PBM for the Establishment of the Synagogue. Law enforcement in the form of sanctions can encourage people to comply more with the PBM for the Establishment of Worship House, even more so the application of the PBM for Establishing the Worship House actually provides benefits for the mosque that was built because the mosque has a definite legal status. The need for local regulations related to the establishment of houses of worship is important in order to carry out law enforcement, as stated by Syafrudin Kalo in his journal namely, for the achievement of an order and peace, the law serves to provide guarantees for a person so that his interests are considered by

everyone else.<sup>8</sup> If that interest is disturbed, then the law must protect it, as well as any violation of the law. So to curb a mosque that stands without having a Building Permit from the Mayor and without fulfilling administrative requirements as required in the PBM for the Establishment of Houses of Worship, in order to provide legal guarantees for the interests of the Mosque as well as the interests of the people in carrying out Worship, so that there is clear legal protection as well for the mosques.

This is in line with Soerjono Soekanto's statement in his book, which states that one of the factors influencing law enforcement is its own legal factor.<sup>9</sup> Furthermore, Soerjono Soekanto stated that one of the obstacles to law enforcement derived from his own law was the absence of implementing regulations to implement these regulations.<sup>10</sup> So, to enforce the law against the PBM for the establishment of the Synagogue, it is necessary to invite a Regional Regulation that contains sanctions so that the PBM for the establishment of the Synagogue can be carried out and can also provide a sanction and other legal remedies against the mosque that was built without meeting administrative requirements or without having a Permit Building a Mayor's Building.

## CONCLUSION

The Bandung City Government has tried to implement the PBM for the Establishment of Houses of Worship to the Community in Sukajadi District through regular socialization to the DKM of Mosques in Sukajadi District. It's just that there are differences from the results of interviews with 123 DKM Mosques in Sukajadi District with the Head of National Vigilance and The Chairperson of the Bandung FKUB regarding the fulfilment of administrative requirements and having a Building Permit from the Mayor as required in the PBM for the Establishment of Houses of Worship. The majority of DKM Mosques in Sukajadi Subdistrict stated that they met the administrative requirements and already had a Building Permit, while according to the Head of National Vigilance and the Head of FKUB in Bandung stated that none of the Mosques in Sukajadi Subdistrict had fulfilled the administrative requirements or already had a Building Permit, because no mosque in Sukajadi Subdistrict has ever applied for their mosque licensing.

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<sup>8</sup> Syafruddin Kalo, "Penegakan Hukum yang Menjamin Kepastian Hukum dan Rasa Keadilan Masyarakat Suatu Sumbangan Pemikiran", (Makalah, Pengukuhan Pengurus Tapak Indonesia Koordinator Daerah Sumatera Utara, Jum'at, 27 April 2007), 1.

<sup>9</sup> Soerjono Soekanto. *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. (Jakarta: Rajawali Pers, 1983), 8.

<sup>10</sup> Soerjono Soekanto. *Pengantar Penelitian Hukum*. (Jakarta: UI Press, 1942), 17.

For PBM for the Establishment of Houses of Worship, it is never necessary to enforce any law if a mosque is erected without fulfilling the conditions stated in the PBM for Establishing Houses of Worship. This is because the PBM for the Establishment of Houses of Worship does not include provisions on sanctions so that the Bandung City Government cannot take any legal action to follow up on the Mosques in Sukajadi District that stand without fulfilling the requirements stated in the PBM for Establishing Houses of Worship and without having an Establishment License The building of the Mayor. Sanctions can only be given if the Bandung City Government makes a Regional Regulation that refers to the PBM for the Establishment of Houses of Worship by stating the sanctions in it, but until now the Bandung City Government feels that this is not yet necessary.

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