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Implementing the Regulation on Places of Worship in Indonesia: New Problems, Local Politics and Court Action

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Abstract: *This article examines the local implementation of the national Joint Regulation 2006 on places of worship in Indonesia. It focuses on the case study of the Protestant Christian Batak Congregation, which became one of the first churches to successfully challenge the authority of a local leader to cancel its permit to build a church. I begin by exploring the history of the regulation of permits for places of worship in Indonesia and the various proposals for law reform that have been put forward since 1998. I then outline the provisions of the new Joint Regulation and highlight the ongoing problems for religious minorities at the local level because of the failure of local authorities to implement the national regulation. I will demonstrate how religious minorities are challenging the decisions of local authorities by complaining to independent watchdogs, taking court action and using the political process. In conclusion, I argue that the Protestant Christian Batak Congregation court case is part of a broader trend for local authorities to use conflict over places of worship as an opportunity for political gain in the highly competitive political atmosphere since the downfall of Suharto in 1998.*

Keywords: *Indonesia, religion, law, places of worship*

In May 2009, the Protestant Christian Batak Congregation (Huria Kristen Batak Protestan) of Cinere, a town in the province of West Java, became one of the first churches in Indonesia to take court action in relation to its permit for a place of worship (hereafter, Place of Worship Case). Even more surprisingly, it was successful at first instance, with the State Administrative Court of Bandung ruling that the mayor of Depok did not have the authority to cancel its permit for a place of worship. This case is highly symbolic because this church belongs to the largest

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Protestant denomination in Indonesia, with an estimated 3.5 million members across Indonesia (WCC, 2006). It is also significant because it is one of the first court actions taken by a church against a mayor in relation to a dispute over a permit for a place of worship in Indonesia.

The Place of Worship Case occurred in West Java, where 96 per cent of the population is Muslim, of which a small minority identifies with radical Islam, beginning in the 1940s with the Darul Islam movement that struggled for an Islamic state.[1] Indonesia, however, has grown to be the largest Muslim-majority democratic country in the world. In 2005, approximately 87.2 per cent of the 230 million population was Muslim, 6.21 per cent Protestant, 3.32 per cent Catholic, 2.2 per cent Hindu, and 1.07 per cent Buddhist.[2] Although Muslims form the majority in most provinces, some areas such as Papua and North Sulawesi are dominated by Christians (Department of Religion, 2005).

In this context, places of worship (*tempat ibadah*)[3] of religious minorities are an extremely sensitive issue in Indonesia and remain a matter of significant concern ten years into the *Reformasi* (Reform) era. Despite the introduction of the national Joint Regulation No. 8 & 9 of 2006 on places of worship, attacks on places of worship of religious minorities have persisted, and new issues have emerged. In particular, the transition to decentralisation has allowed local authorities to use conflict over places of worship as opportunities for political gain in the highly competitive political atmosphere since the downfall of Suharto in 1998. Local government leaders, particularly in West Java, have become more responsive to the demands of the Islamic constituency by cancelling permits for places of worship of religious minorities. More broadly, the controversy raised by the regulation of places of worship also relates to wider concerns about the extent to which the state can legitimately and effectively regulate religious activities at the local level in an era of decentralisation.

This article will focus on the Place of Worship Case in order to illustrate the issues raised by the implementation of the national Joint Regulation on Places of Worship since 2006 in West Java. I will begin with an analysis of the history of the regulation of places of worship in Indonesia during the New Order period (1966–98). I will then examine the proposals that were put forward for reform. Next, I will analyse the new Joint Regulation in detail and question whether it has been contradicted by local laws. Finally, I will focus on the court case of the Protestant Christian Batak Church to demonstrate how the national regulation is being implemented at the local level and whether it has addressed the difficulties religious minorities face in obtaining a permit for a place of worship. It will be argued that places of worship raise significant, ongoing issues of concern at the local level that have not been addressed by the Joint Regulation.

History of Regulating Places of Worship

It is important to understand the history of regulation of the construction of places of worship in Indonesia in order to put the recent developments in context. In the late 1960s, in the first few years of Suharto's New Order, there were very few incidents of conflict at places of worship. The first major incident at a place of worship that drew the attention of the national government was the destruction of

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a church in Melauboh, Aceh, in 1967 (Mujiburrahman, 2008, pp. 29–34). This was followed by an attack on a church in Makassar, South Sulawesi, in November of 1967, and the destruction of a church in Slipi, Jakarta, in 1969 (Steenbrink, 2006, p. 143). These events raised concerns for the central government in regard to the construction of new buildings for religious minorities in areas heavily dominated by one particular religion. In response, in September 1969 the Minister of Religion and the Minister of Home Affairs introduced Joint Decree 1/1969 to control religious activities and the building of places of worship for all religious communities in Indonesia. This Joint Decree will be shown to be problematic because it was frequently misused by radical Islamic groups to justify violent attacks on churches.

Administered by the Department of Religion, Joint Decree 1/1969 gave the mayor/regent of the city/regency the responsibility to oversee and monitor religious activities to ensure that religious communities did not disturb public peace and order (art.2). The local branch of the Department of Religion was also to monitor religious leaders and ensure that they did not denigrate other religions (art.3). Although it appeared to emphasise the need to protect religious freedom, the Joint Decree was more concerned with promoting the government's agenda of control over religious groups to ensure that these groups did not weaken the government's grip on political power.

To obtain a permit to build a place of worship, a religious community was required to obtain permission from the mayor/regent. In making their decision, the mayor/regent would consider the recommendation of the Department of Religion, the plans for the proposal, and "local conditions", including the opinion of local religious leaders (art.4). Rather than providing clear guidelines for those who wished to apply for a permit to build a place of worship, the Joint Decree left the application process to the discretion of local authorities and the influence of local religious leaders. Overall, the Joint Decree was vague, with only six brief provisions, and designed to ensure that the government had the unrestricted power to control applications for the construction of places of worship.

This position was reinforced by other government departments in subsequent years. For example, a growing number of religious minorities began to use houses as places of worship because they were unable to get a permit for a building. In response, in November 1975, the Department of Home Affairs issued an Instruction to the Governor of every province clarifying that private houses could not be used as churches and urging local authorities to enforce this law (Department of Religion, 2008, pp. 157–58).

As it became increasingly difficult for religious minorities to obtain a permit, these groups maintained a consistent attitude of resistance to Joint Decree 1/1969 on the basis that it was discriminatory and contrary to the right to religious freedom. For example, in October 1969, the Indonesian Council of Churches (Dewan Gereja-Gereja Indonesia, DGI)[4] and the High Council of Indonesian Bishops (Majelis Agung Wali Gereja Indonesia, MAWI)[5] issued a joint memorandum expressing their opposition to the decree (ICC, 2006). This was in part because Joint Decree 1/1969 had increasingly been used by radical Islamic groups as a convenient justification for vandalising and destroying over 450 places of worship during the New Order (ICCF, 1997, p. 42; Diakonia PGI, 2009a).

The intensification of attacks on places of worship of religious minorities after 1998 was notable. During the 17 months (1998–99) of the Habibie government,

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more than 156 churches were destroyed. In the following 21 months under President Abdurrahman Wahid (1999–2001), 232 churches were destroyed. While there was a ''lull'' under President Megawati Sukarnoputri (2001–04), 92 churches were still destroyed during this time. During the first term of President Susilo Bambang Yudhoyono (2004–09) more than 100 churches were attacked or closed (Diakonia, 2009b).

It must be acknowledged that there were also attacks on the places of worship of other religious minorities such as Ahmadiyah (Crouch, 2007a, pp. 7–8; Crouch, 2009a) and Muslim minorities in Hindu-majority Bali or Christian-majority areas during this time, although not to the same extent. In this article, I will restrict my focus to attacks on Christian places of worship in West Java. The National Protestant Council has documented more than 200 attacks on churches in the province of West Java in particular, or 35.17 per cent of the attacks that have occurred since 1998 (Gultom, 2009b; 2009c). This is more than double the number of churches that were attacked or destroyed in West Java during the Suharto period (ICCF, 2007, p. 44). Overall, the figures show that more Christian places of worship have been destroyed in the first ten years of the *Reformasi* era than in the entire 30 years of the New Order (1966–98).

In sum, the Joint Decree became problematic because it made it more difficult for religious minorities to obtain a permit to build a place of worship, leaving many congregations with no option but to hold services in their homes, further disturbing the surrounding neighbourhood. It also gave radical Islamic groups a convenient justification for attacking and closing hundreds of churches. These attacks in turn led to urgent calls for legislative reform.

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Proposals for Reform

Since 1998, three main options for reform have been debated and proposed to address the problems created by Joint Decree 1/1969. This included a general Draft Law on Inter-religious Harmony, which would address places of worship, among many other issues related to inter-religious relations; a proposal to insert criminal sanctions in the Criminal Code for offences against places of worship; and a new law specifically on Places of Worship that would replace Joint Decree 1/1969. I will discuss each of these in turn.

In 2003, the first proposal was in the form of the Draft Law on Inter-religious Harmony. This proposal was the result of a seminar on inter-religious harmony in July 2002, organised by the Research Office of the Department of Religion and an Academic Drafting Team. In December 2003, the Research Office of the Department of Religion held a press conference to explain the proposed law on inter-religious harmony (*Tempo Interaktif*, 2003). Section 7 of the draft addressed the 'Construction of Places of Worship' in two articles, as follows:[6]

Article 11

(1) The construction of a place of worship must be based on the need to be aware of inter-religious harmony as mentioned in article 7.
(2) The construction of a place of worship must not be illegal, disturb public order or the peace of the community.

Article 12

(1) Any construction of a place of worship must first have the permission of the government.
(2) The government, as mentioned in Article 1(1), will give their consent after considering the opinion of the local branch of the Department of Religion, the proposed application and local conditions.
(3) The government may seek the opinion of a religious organisation, religious believers, or local community leaders.
(4) If a disagreement occurs over the construction of a place of worship, the government must immediately conduct an investigation which is just and independent, according to the regulations in effect.

This provision aimed to perpetuate the New Order discourse of "social control" and the need to maintain "public order" by cutting and pasting the two key provisions of the Joint Decree into the broader draft law on inter-religious harmony. Although the draft law has been on the national legislative agenda since 2003, it has failed to be passed as law to date. In particular, the bill was criticised for attempting to legislate inter-religious harmony, and was considered by many non-government organisations to be unnecessary intervention by the government in religious affairs (Bela, 21 January 2004). Nevertheless, according to Abdul Rahman Mas'ud of the Research Office of the Department of Religion, the Department plans to propose a revised version of the law in 2010 (Interview, 27 October 2009).

The second proposal, which is more concerned with preventing criminal activity than with regulating the permit process, is the Draft Criminal Code proposed in 2006. Section 2 addresses 'Criminal Behaviour Concerning Religious Life and Worship', as follows:

Interference in the Implementation of Religious Worship and Religious Activities
Article 346

(1) Any person who disturbs, interferes with or illegally and violently closes down or threatens to close down a congregation conducting a religious service, religious ceremony or religious meeting, will be punished with a maximum jail term of 3 (three) years or a maximum Category 4 fine.
(2) Any person who starts a fight near a building that is used as a place of worship at the time that the service is held will be punished with a maximum Category 2 fine.

The Destruction of Places of Worship
Article 348

Any person who desecrates or illegally damages or sets fire to a building used as a place of worship or an object which is used for worship, will be punished with a maximum jail term of 5 (five) years or a maximum Category 4 fine.

The draft provisions on religion, of which the articles above form only a part, have been heavily criticised by non-government organisations such as the Wahid Institute and the Indonesian National Alliance for the Reform of the Criminal Code (Rumadi, 2007; Indonesia Aliansi Nasional Reformasi KUHP, 2007). These groups

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argue that the problem is not a lack of laws to punish perpetrators, but the lack of law enforcement. That is, the government rarely prosecutes the perpetrators of violent attacks on places of worship. Like the Draft Law on Inter-religious Harmony, however, the Draft Criminal Code has failed to receive sufficient support to be passed as law to date.

The third option, which was eventually adopted, was to replace Joint Decree 1/1969 with a law on places of worship. The drafting process began in September 2005 with a meeting between the police, the Department of Religion, the Attorney General, the Department of Home Affairs and the Department of Justice and Human Rights. Unlike in 1969, when no consultations were undertaken with religious organisations regarding the drafting of Joint Decree 1/1969, consultations were conducted with representatives of the six recognised religious organisations between January and March 2006 (FKUB Bantul, 2008, p. 156). The regulation went through several drafts, and the final version was passed on 21 March 2006 (ICC, 2006). This national law has since been followed in some areas by proposals for local regulations.

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National and Local Regulations: Complementary or Contradictory?

The new Joint Regulation not only established a new legislative framework at the national level, but also at the provincial and city/regency levels. I will begin with a discussion of the national framework, followed by an analysis of related local legislation. The key issue is the implementation of the national regulation at the local level and whether local laws proposed since 2006 would complement or contradict the national regulation.

The national framework focuses on five key areas: the Inter-religious Harmony Forum; obtaining a permit; dispute resolution procedures; reporting requirements; and implementation. The first section of the regulation purports to focus on achieving inter-religious harmony (art.1–12). The primary way the regulation seeks to do this is through the establishment of an Inter-religious Harmony Forum (Forum Kerukunan Umat Beragama) which consists of representatives from each of the six recognised religions[7] in proportion to the percentage of adherents of these religions in each province and city/regency (art.1(6)). The role of the Forum is to conduct inter-religious dialogue; formulate policy recommendations; and educate the community on laws related to religious harmony (art.9(1)) at the provincial and regency/city levels (art.8(1)). The city/regency Forum has the additional responsibility of providing written recommendations for requests to build a place of worship (art.9(2)). There are 21 members of the provincial Forum and 17 members of the city/regency Forums (art.10(2)). The members of each Forum are chosen by the Forum Advisory Council (art.11), which consists of representatives of relevant government departments. These Forums are to be established by regulations of the Governor and regent/mayor (art.12).

The second section of the regulation outlines the requirements that must be met for a religious community to obtain a permit to build a new place of worship or to renovate an existing place of worship (art.13–20). First, the general conditions stipulate that an applicant must demonstrate a ''real'' need for a new place of worship and show they will comply with the general administrative conditions for

the construction of a building for "religious purposes" (art.13(2)).[8] Second, the religious group must obtain the signatures and photocopies of the identity cards of at least 90 members of their congregation and at least 60 local residents of another religion (art.14(2)). This is known as the "90/60 requirement". Further, an applicant must obtain a written recommendation from the city/regency Department of Religion and from the city/regency Forum (art.14(3)).

The third section of the regulation deals with avenues for the resolution of disputes (art.21–22). If a dispute over the building of a place of worship arises, a meeting must first be held by the community. If the dispute remains unresolved, the regent/mayor, assisted by the Department of Religion, must facilitate a meeting between the religious groups concerned. If this fails, the parties involved can take the case to court.

The fourth section of the regulation stipulates reporting requirements (art.22–23) as a mechanism for accountability. At the provincial level, the Governor, assisted by the Head of the provincial Department of Religion (art.23(1)) must report to the Minister for Home Affairs and the Minister of Religion (art.24(1)). At the city/regency level, the regent/mayor, assisted by the city/regency Department of Religion (art.23(2)), must report to the Governor every six months or when it is considered necessary (art.24(3)).

Finally, the implementation of the regulation is subject to a specific timeline (art.25–30). The Forum and the Advisory Council needed to be formed in the provinces and cities/regencies within one year – that is, by 21 March 2007 (art.27(1)); and local Laws needed to comply with this Law within two years – that is, by 21 March 2008 (art.29). This national regulation has led to the creation of related local regulations.

The national government delegated the responsibility to create further regulations on the Forum to the provincial and regency/city governments so that they could take account of regional differences. By 2009, all 33 provinces and approximately half the cities/regencies in Indonesia had established the Forum in their area (Department of Religion, 2009).[9] This is because the Forum is not an entirely new creation. Many regions had inter-religious harmony forums that pre-dated the 2006 national regulation.

The regulations outline the tasks of the Forum and the reporting procedures, although these are generally along the same lines as the national regulation. The regulations also usually specify the criteria for candidates and their terms as members. For example, members are elected for three years to the provincial Forum of Central Kalimantan (Regulation 6/2007, art.2), while members of the provincial Forum of Yogyakarta are elected for five-year terms (Regulation 10/2007, revised by Regulation 31/2008, art.3). Other regulations, such as the Regulation of the Governor of Riau 21a/2006, establish the Forum in broad terms and do not provide any details about the criteria for members or the terms of membership.

Some provincial regulations, however, including local regulations that have been passed since 2006, contradict the national regulation on places of worship. This has primarily occurred in two of the provinces that have been granted special autonomy: Aceh and Papua.[10] Special autonomy in Aceh includes the power to regulate on matters of religion (Law 11/2006, art.7(2)), although this is not the case in Papua

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(Law 21/2001, art.4(1)); for all other provinces, this power is retained by the national government (Law 10/2004, art.10(3)(f)).

In Aceh, Law 11/2006 on Acehnese Governance was passed less than five months after the national regulation on places of worship. It states that the construction of a place of worship in Aceh requires the permission of the Provincial Aceh Government and the city/regency government (art.127(4)). This provision is an attempt by the Acehnese government to assert its authority over the permit application process. It was anticipated that a *Qanun*[11] on places of worship would provide more details at a later stage (art.127(5)). The first step towards this occurred in July 2007, when the Governor of Aceh passed Regulation 25/2007 on Places of Worship. This required applicants for a place of worship to obtain the signatures of at least 150 members and the approval of at least 120 local residents (art.3(2)). This became controversial in late 2008 when the Governor, Irwandi Yusuf, proposed to strengthen this regulation by making it a *Qanun*. This proposal was opposed by the *ulama* (Islamic religious scholars) in Aceh because they feared it could make it easier for non-Muslims to build places of worship (*Acehlong*, 2009a; *Acehlong*, 2009b; *Acehlong*, 2009c). This complaint is ironic, given that the national 90/60 requirement is a much lower threshold (Wahid Institute, 2009), and indicates the *ulamas'* basic lack of understanding of the Joint Regulation in this regard.

Another example is the draft local regulation of Manokwari, Papua, first proposed in 2007. The draft Local Regulation on a "Bible-based City" (*Kota Injili*)[12] addresses places of worship in a general manner, but also outlines sanctions in Article 39, as follows:

1. Every person and/or legal body which builds/establishes a place of worship without regard to the conditions in Article 20 will be punished with an administrative sanction, as follows:
    a. Their activities will be stopped and their permit cancelled;
    b. Ordered to evacuate and/or demolish the building at their own expense;
    c. Ordered to evacuate and/or the building will be demolished by force by the authorities; and
    d. Pay an administrative fine.

This draft local regulation (*peraturan daerah*, known as *perda*) clarifies the consequences for groups that fail to comply, which in the case of Papua is more likely to be the minority-Muslim population, who face difficulties to obtain permits within the Christian-majority province of Papua. This draft was revised in 2008, and the revision acknowledged the existence of the Joint Regulation 2006, which the previous version did not do. This local regulation is also remarkable because, in light of many local regulations based on Islam (Crouch, 2009b), it is one of the few local regulations explicitly based on Christianity. The draft has also not yet received support to be passed as law in Papua.

These two examples, Aceh and Papua, illustrate that some provinces have attempted to pass regional laws that contradict the national government. These attempts have been largely unsuccessful to date, but do raise important questions about whether local regulations on places of worship are compatible with the national regulation. Aside from legislative action, other local governments have

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issued decisions to cancel permits in response to the demands of radical Islamic groups that oppose the construction of Christian places of worship, as discussed below in the case of a Protestant church in Depok.

Court Action: Church v Mayor of Depok[13]

The dispute over a permit for the Protestant Christian Batak Congregation (hereafter "the church") has a long history.[14] In June 1998, the church was granted a permit to build a place of worship through Decision No 453/1998 of the mayor of Bogor. Four months later, in October 1998, the construction of the church commenced. Between 1998 and 2000, however, the Muslim Solidarity Forum (Forum Solidaritas Umat Muslim, FSUM) led by Mr Syamsi Nasution[15] opposed the construction of the church. On 9 May 1999, an *istighosah*[16] ceremony was held in protest against the building of the church. The Muslim Solidarity Forum also lobbied the local government to stop construction (FSUM, 2009a, p. 4).

On 8 July 2000, the then mayor of Depok, Mr Badrul Kamal, sent Letter No 300/923-TIb to the church recommending that construction cease temporarily until opposition to it had died down. This effectively brought all construction work to a halt. Seven years later, in 2008, the church wrote to the mayor of Depok, Mr Nur Mahmudi Ismail, on three separate occasions asking for clarification of the validity of its permit and for permission to continue building. The mayor did not respond, so the church recommenced building. It only had time to complete the foundations and the first level of the building before a second *istighosah* ceremony was held, on 26 October 2008, in protest against the church, attended by people from six local mosques and residents from the local neighbourhood (Court Decision, 2009, p. 36).

On 27 March 2009, with no prior warning to the church, the mayor issued Decision 645.8/144/Kpts/Sos/Huk/2009, which cancelled the church's original permit. Mrs Betty Sitorus, the current vice-chairman of the church building committee, suspects that this decision was made to gain support for the Islamic-based Prosperous Justice Party (Partai Keadilan Sejahtera, PKS) in the upcoming local elections in the city of Depok in 2010 (Interview, 20 November 2009). According to Mrs Sitorus, when the church questioned the mayor about his decision, he emphasised the fact that he had made the decision as a Muslim and as a representative (and the former chairman) of PKS.

The mayor's decision was based on submissions from various government departments and community groups, such as the Muslim Community Solidarity Forum, an Islamic group that claims to represent the aspirations of local Muslims in Depok. According to Mr Budi, the Chairman of the Muslim Community Solidarity Forum, they demanded that the church permit be revoked because it had acted unfairly by failing to comply with the new national regulation (Interview, 2009).

The mayor also relied on letters from the local branch of the Department of Religion[17] and from the newly-established Inter-religious Harmony Forum.[18] The Department's brief letter simply recommended that it was the responsibility of the mayor to take action to resolve the conflict. Neither did the Forum suggest that the mayor cancel the existing permit in this case, as explained by Dr Lodewijk Gultom, one of the two Protestant representatives of the Inter-religious Harmony Forum of Depok (Interview, 3 November 2009). As noted earlier, this Forum has

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the role of facilitating the application process for permits to build a place of worship. According to Gultom, the Forum had been unable to prevent escalating tensions in this case and, through a misinterpretation of its recommendation, was used by the mayor to legitimise his decision (Interview, 3 November 2009). This eventually led the church to take court action.

On 6 May 2009, the church, represented by the current national leader of the denomination, Reverend Bonar Napitupulu, and Cinere church pastor, Reverend Mori Sihombing, filed a lawsuit in the State Administrative Court of Bandung. Represented by lawyer Junimart Girsang, they challenged the administrative decision of the mayor to cancel the building permit (Gugatan, 2009).

The plaintiffs argued that the church had obtained the permit legally and that they had fulfilled the conditions of both national and local building laws. They therefore asserted that the mayor had no legal basis on which to cancel their permit and that his decision to do so was contrary to the right to freedom of religion (Gugatan, 2009). Junimart claims the church also presented the court with the signatures of over 100 local residents in the area as evidence of local support, which is more than is required under the present regulation (Interview, 26 October 2009).

The defence tells a different story. The case for the defence rested on the changes that have taken place since decentralisation and the introduction of the new regulation on places of worship. They argued that because the regency of Cinere was only formed in 1999 as part of the process of decentralisation and the permit was obtained *before* this time, the regent of Cinere had not had the opportunity to consider the application for the permit (Court Decision, 2009, p. 11). Further, they argued that the original permit was no longer valid because it was issued under Joint Decree 1/1969 (Court Decision, 2009, p. 12).

This regulation, however, also confirms that permits issued prior to the Joint Regulation of 2006 are still valid and legal. According to Mrs Fatmawati Djugo, lawyer for the Indonesian Christian Church of Bogor in a similar case in 2008, this provision clarifies that a church that holds a permit under the old system does not need to obtain another permit under the new regulation. In addition, she emphasised that a mayor or regent does not have the power to cancel permits merely because there is opposition from the local community (Interview, 14 December 2009). As noted earlier, a clear dispute resolution process is set out under the regulation (art.21–22). If there is dispute over a proposal for a place of worship, a meeting must first be held by the local community. If that fails to resolve the dispute, consultations are to be arranged with the local division of the Ministry of Religion and the local Inter-religious Harmony Forum. If that is not successful, the case can then be taken to court.

In court, evidence from the witnesses in this case was inconclusive at best. Both sides produced local Muslim residents as witnesses. Those for the plaintiff testified that they did not have any objections to the construction of the church, while the witnesses for the defence testified the opposite (Court Decision, 2009, pp. 32–33). According to Betty Sitorus, about 50 people staged a protest outside the church, many wearing clothes bearing the words ''Front Pembela Islam'' (Islamic Defenders' Front), a radical Islamic group infamous for its use of violence to achieve its goals (Interview with Betty Sitorus, 2009). On 29 October 2009, the court found that the church had obtained the permit legally under the regulation that existed at that time,

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and that the building also fulfilled the requirements of national and local building laws (Court Decision, 2009, p. 48). The court found that the church was not misusing the permit, which is the only grounds on which a mayor could legitimately cancel a permit. On this basis, the court ruled in favour of the church,[19] although the mayor has since lodged an appeal against the decision.

Complaints, Legal Cases and Political Action

The Place of Worship Case is one example of civil society challenging the power of local authorities through the legal system. Since the introduction of democracy in 1998, minorities have attempted to assert their rights in numerous ways, including by making complaints to independent bodies such as the Ombudsman or the National Commission for Human Rights (Komnas HAM);[20] by taking their case to court; or by lobbying for reform of the regulation on places of worship in the political arena.

Numerous complaints about violent attacks on places of worship have been made to independent bodies such as Komnas HAM, the Ombudsman and the Legal Aid Institute (LBH). Complaints have been made to the national Ombudsman, to its regional branches, and to the local Ombudsman. In the Place of Worship Case, the church made a complaint to the national Ombudsman. In some cases, however, the national Ombudsman has declined to act. For example, in January 2007, a complaint was made to the Representative Office of the National Ombudsman in Central Java and the Special Province of Yogyakarta by Indonesia Bethel Church about a decision concerning a permit for a place of worship in Purbalingga, in the province of Central Java. In this case, the regent had rejected an application for a permit to build a church based on the recommendation of the Forum. The Ombudsman decided that this case fell outside its authority because it considered the Forum to be an independent body and, based on Law 37/2008 on the National Ombudsman, the Ombudsman only has the power to investigate government institutions (art.6).[21]

Complaints from other religious minorities have had more success in cities where a local Ombudsman exists.[22] For example, the local Ombudsman of the province of Yogyakarta received a complaint about a church permit in October 2008. On 24 March 2009, Ombudsman Anik Setyawati issued a recommendation, concluding that the leader of the village had the power to reject such applications, but that he must provide adequate reasons for his decision to refuse a permit to the church (Recommendation of Yogyakarta Local Ombudsman, 2009).

Numerous religious minorities have also made complaints to Komnas HAM regarding places of worship. For example, after local authorities demolished the Protestant Christian Batak Congregation Church in Parung, Bogor, on 21 July 2009, church members reported the case to Komnas HAM (Hariyadi, 2009). In March 2008, the Indonesian Christian Church (GKI) Bogor complained to Komnas HAM after the permit it had received in 2006 was cancelled. Although the Ombudsman and Komnas HAM have made recommendations in these cases, the limitation, of course, is that these decisions are not legally binding on local authorities.

The second way in which religious minorities have attempted to assert their rights is through court action, which includes both challenges to the validity of the law and

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challenges to specific incidents concerning applications for permits. For example, seven days after the national regulation was passed, a request for judicial review of the Joint Regulation 2006 was submitted to the Supreme Court by the Defence Team for Religious Freedom (Saraswati, 2006). According to Saor Siagian, one of the lawyers in the case, review was sought on the grounds that the national regulation contravenes the constitutional right to freedom of religion (Interview, 26 November 2009). At the end of 2009, the Religious Defence Team was still waiting for a decision from the court.

In another incident similar to the Place of Worship Case in Depok, the Santa Maria Catholic church in Purwakarta took the regent of Purwakarta to the State Administrative Court of Bandung in late 2009 for cancelling its permit (*Tempo Interaktif,* 2009; *Christian Post,* 2009; *Kompas,* 2009). Another case was brought to court in 2008 when the Indonesian Christian Church of Bogor successfully challenged the authority of the mayor of Bogor to cancel its permit (Interview with Fatmawati, 2009; Court Decision, 2008). One noticeable trend is that all of these cases to date have occurred in West Java, which has a history of a radical Islamic minority within the majority Muslim population. Many of these cases are still ongoing due to the appeal process.

Finally, a third avenue through which religious minorities have asserted their rights is the political arena. The Peace and Prosperous Party (Partai Damai Sejahtera, PDS) was the largest Christian-based political party to run in the 2009 national elections. Its candidates are drawn from a range of religious backgrounds, although the vast majority are Christian, as a tangible demonstration of its support for the rights of religious minorities (Interview with Ruyadi Hutasoit, 12 November 2009). At a press conference held by the PDS in the lead-up to the elections, places of worship and the need to improve the situation for religious minorities was specifically mentioned as one of their platforms. As Chairman Ruyadi Hutasoit admits, however, PDS did not fare well in the 2009 elections (Interview, 12 November 2009). The results of attempts by religious minorities to exercise their democratic rights both in the courts and in the competitive political arena have therefore been mixed.

Religious minorities still face major difficulties in obtaining permits from local authorities. Many religious groups have never been able to obtain a permit because of resistance from within or outside the community. Other groups simply cannot satisfy the 90/60 requirement. This is the case for many groups that do not have 90 adult members in their congregation who live in the immediate area of the church property. Further, any application is likely to face difficulties obtaining the signatures of at least 60 members of the local community in an area where they are a minority living in the middle of a religious majority. One example is the Forum of Bantul (Yogyakarta), which has rejected three applications for permits for churches because the majority of the church members did not live in the immediate area and they therefore failed to meet the 90/60 requirement (FKUB Bantul, 2008, pp. 97–110).

Difficulties in obtaining permits have led to the proliferation of churches in hotels, apartment blocks, and shopping centres. One example is Gereja Yesus Sejati, which had been holding its services in a shopping complex in the city of Bantul, Yogyakarta, since 2004. In January 2009, a complaint was made by a local Muslim group to the Bantul Forum, which decided that the church could no longer meet in the shopping complex without a permit. It ordered the church to remove all its signs

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within three days and, when the church failed to respond, the local community forcibly removed the signs (FKUB Bantul, 2009).

The one exception to this is wealthy evangelical (often Chinese) churches in major cities such as Jakarta. For example, in September 2008, a new Christian mega-church opened in Jakarta, perhaps the largest Chinese Christian evangelical facility in the world. The Evangelical Reformed Church was granted a permit to build the US$27 million dollar, 4,500-seat Millennium Cathedral after 16 years (*The Straits Times*, 2008). The church is led by well-known Chinese Indonesian Pastor Stephen Tong, who founded the Indonesian Evangelical Reformed Church based on his own unique theology, a blend of Reformed theology, also referred to as Calvinism, with an evangelical focus on the Bible.[23] Another three mega-churches are reportedly under way in Jakarta (Sullivan, 2008). Given the large number of small churches, particularly around West Java, that continue to be harassed or closed by radical Islamic groups, it must be questioned why only wealthy evangelical churches are able to obtain permits. According to Elga Sarapung, the chairperson of Interfidei, a non-government inter-religious harmony organisation based in Yogyakarta, it is well known that some wealthy churches bribe the relevant local officials in order to obtain a permit (Interview, 7 August 2009).

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Regulating Religion in Indonesia

Despite the introduction of the new regulation in 2006, little has changed at the local level for the places of worship of religious minorities. Instead, the Place of Worship Case indicates a growing tendency for local authorities to use conflict over places of worship as an opportunity for political gain in the highly competitive political atmosphere since the downfall of Suharto in 1998. The church in Cinere is not alone, with the Santa Maria Catholic church of Purwakarta, also in the province of West Java, having its permit cancelled in October 2009. Similar incidents are likely to follow as local leaders try to garner the Islamic vote in a competitive political environment.

It has been shown that the places of worship of religious minorities are still targets of violence, and that many remain unable to obtain a permit. The exception to this is wealthy evangelical Chinese churches. For all other churches, problems continue because of the failure of local authorities to implement the national regulation, leaving the places of worship of religious minorities vulnerable to violent attacks and allowing the perpetrators of these attacks to escape prosecution. Some religious minorities have responded by challenging the decisions of local authorities through independent watchdogs, the courts or the political process.

The Place of Worship Case highlights the challenges of decentralisation and demonstrates that the influence of local politics has complicated the process of obtaining a permit for a place of worship. This case is one of the first examples of an Indonesian church congregation, facing opposition to the construction of its place of worship, exercising its democratic rights by taking its case to court. It is even more significant that the church, which belongs to the largest Protestant denomination in Indonesia, actually succeeded at first instance.

The outcome of the mayor's appeal against the church in Cinere is a significant test case in this regard. In a separate case, a church in Bogor succeeded in

challenging the decision of local authorities to cancel its permit. This church's legal victory is hollow, however, because radical Islamic groups continue to threaten the church to the point that it is still unable to commence construction. The unwillingness of local authorities to implement the national regulation if it is likely to compromise their political power, and the lack of protection offered to religious minorities, therefore have the potential to undermine the processes of democracy and law reform in Indonesia.

Notes

1. For a history of the Darul Islam movement, see Van Dijk, 1981.
2. Suharto's Presidential Instruction 14/1967, which banned Confucianism, was cancelled by the Presidential Decision 6/2000. Since then, Confucianism has been recognised as the sixth official religion in Indonesia.
3. By a "place of worship" I include churches, mosques and temples, as well as any other buildings such as homes, theological institutes, hotels or auditoriums that are used to hold religious services or gatherings.
4. DGI is now known as the national Indonesian Communion of Churches (Persekutuan Gereja-Gereja Indonesia, PGI). This is the primary national council for Protestant churches and organisations, including the Presbyterian, Lutheran and Calvinist churches, among others.
5. MAWI is now known as the Bishops' Council of Indonesia (Kantor Waligereja Indonesia, KWI).
6. All translations in this article are the author's.
7. According to the Explanation of Presidential Decision 1/1965 on the Prevention of Abuse and/or Disrespect of Religion, there are six official religions in Indonesia: Islam, Hinduism, Buddhism, Protestantism, Confucianism and Catholicism. As long as they do not disturb the community, other religions or beliefs, such as Judaism, also have the freedom to practise (Department of Religion, 2008, p. 101).
8. A building has a "religious function" if its primary use is as a place of worship, such as a mosque or *musholla*, a church or chapel, a Hindu temple (*pura*), Buddhist monastery (*vihara*), or Chinese temple (*kelenteng*). See Law 28/2002, art.5(3) and Government Regulation 36/2005, art.4(2).
9. Reports are mixed on whether the FKUB will assist in processing applications for permits. See The Wahid Institute, 2007; Setara Institute, 2009; The Wahid Institute, 2008.
10. Law 11/2006 on Acehnese Governance; Law 21/2001 on Special Autonomy for Papua.
11. According to Islam, *Qanun* is man-made law as opposed to laws set by God. In Indonesia, only Aceh has the power to pass *Qanun*. These have the same legal authority, however, as *Peraturan Daerah*, or local regulations, in other provinces.
12. For a discussion of the history of and support for this *perda*, see Romli, 2008; International Crisis Group, 2008; Hutabarat, 2008, pp. 45–58.
13. Copies of all documents that relate to the Places of Worship Case referred to in this article are held by the author.
14. For a history of the dispute as constructed by the Muslim Solidarity Forum, see FSUM, 2009b.
15. Syamsi Nasution is the brother of Adnan Buyung Nasution, a well-known lawyer in Indonesia who established Indonesian Legal Aid (Lembaga Bantuan Hukum) in the 1970s.
16. *Istighosah* is a ceremony in which Muslims gather to pray for a particular situation.
17. On 9 June 2008, the Department of Religion recommended through Letter No 10.22/I/HM00/1126/2008 that the construction of the church should stop.
18. Recommendation of the Inter-religious Harmony Forum of Depok No 023/FKUB/VI/2008.
19. For some media reports on the outcome of this case at first instance, see *Gloria,* 2009; *Reformata,* 2009a; *Reformata,* 2009b; *Mitra Indonesia,* 2009.
20. For an explanation of the powers of Komnas HAM, see Herbert, 2008, pp. 400–66.
21. See Letter No 0157/SRT/00821.2009/yg-11/VIII/2009 from the Head of the Office of the Ombudsman Regional Office, Yogyakarta and Central Java, dated 14 August 2009; Letter No 03/FKUB/IX/2007 of the FKUB Purbalingga concerning the request for a permit for a place of worship, dated 21 September 2007; Recommendation of the FKUB of Purbalingga No 450/01/

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2007 rejecting the application for a permit for a place of worship on No 20B Kapten Street, Sarengat.

22. In Indonesia, the local Ombudsmen are initiatives of particular provinces and are not under the authority of the national Ombudsman (see Crouch, 2007b; Crouch, 2008).
23. Interview with Mr Benyamin Fleming Intan, Executive Director of Reformed Centre of Religion and Society, Reformed Church of Indonesia, Jakarta, 23 October 2009.

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