

REGULATING PLACES OF WORSHIP IN INDONESIA: UPHOLDING FREEDOM OF RELIGION FOR RELIGIOUS MINORITIES?

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Focusing on places of worship in Indonesia, this paper examines whether the right to freedom of religion for religious minorities is protected by recent changes to the law. The paper begins by looking at an Old Decree, which was an attempt by the New Order to control religion and came to be used as justification by radical Islamic groups to close churches. Given a number of key changes in the law since the end of the New Order, this Old Decree became obsolete. The second part of this paper analyses the New Regulation. It does this by charting the debate surrounding the New Regulation, outlining the present framework of the Regulation and then discussing the response of the public since its introduction. The final part reflects on why the New Regulation was passed by the government and suggests options to restore the right to freedom of religion for religious minorities in relation to places of worship.

I. PLACES OF WORSHIP, PLACES OF VIOLENCE

Places of worship have often been the target of religiously motivated attacks in Indonesia. Although such religious conflict is not a new occurrence, the recent intensification of attacks on places of worship of religious minorities is alarming.

In 2005, an estimated 50 Christian churches in West Java alone,¹ and at least 10 Ahmadiyah² mosques, have been damaged or forced to close by radical Islamic groups.³ In the same year, Hindu temples were vandalised in Bali.⁴ This violence

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¹ U.S., Bureau of Democracy, Human Rights and Labor, *International Religious Freedom Report: Indonesia* (15 September 2006), online: U.S. Department of State <<http://www.state.gov/drl/rls/irf/>> [‘US Bureau’].

² Ahmadiyah, also commonly known in Indonesia as *Jemaah Ahmadiyah Islamiah* (JAI), is classified as an Islamic sect, mainly because it believes that there was another prophet after Muhammad. See II.B., below, for further discussion on Ahmadiyah in Indonesia.

³ Lembaga Bantuan Hukum Jakarta, *Laporan Hukum and Hak Asasi Manusia: Ketika Negara Bersimpuh di Hadapan Kuasa Modal* (Jakarta: LBH, 2005) at 60-61.

⁴ US Bureau, *supra* note 1.

against religious minorities—such as Christians, Catholics, Islamic sects, Hindus and Buddhists—continued⁵ up to the introduction of the *Joint Ministerial Regulation on Places of Worship*⁶ (‘New Regulation’) in March 2006.

The New Regulation stipulates the procedure to obtain permission to build a place of worship. It replaced Ministerial Decision No 1/1969 (‘Old Decree’), which had been criticised for its contribution in justifying violence at places of worship. Despite the commencement of the New Regulation, attacks on places of worship have persisted with disregard to the right to freedom of religion protected in several legal instruments.⁷ Does the New Regulation, then, uphold this right to religious freedom, particularly for religious minorities?

This article will argue that it does not. To begin with, in Part II, the Old Decree will be analysed on three levels: as a product of Suharto’s New Order regime,⁸ as a legal instrument used to justify and perpetuate violent attacks on the places of worship of religious minorities and, since 2005, as an outdated law in conflict with Indonesia’s religious freedom obligations under the Constitution and national laws. Then, in Part III, the New Regulation will be considered, beginning with a discussion of the intense public debate on the subject, which will illustrate how the religious majority, *i.e.* Islam,⁹ and minorities have become further polarised. Then, an analysis of the framework of the New Regulation will highlight the ways it fails to uphold religious freedom. Finally, the public response since the introduction of the New Regulation, in the form of minority resistance and the persistence of violence, will be drawn upon to assert that democracy has not only brought rights to the religious minority in Indonesia but oppression as well, because of the perceived necessity for political parties to appease the Islamic majority¹⁰ in the process of law reform, in order to maintain their political support.

⁵ For example, in January 2006, eight house churches were closed in Rancaekek, Bandung. See Josef Widyatmadja, “Rumah Ibadah Dalam Negara Pancasila” *Kristani Pos* (1 February 2006), online: [Kristani Pos <http://www.christianpost.co.id>](http://www.christianpost.co.id).

⁶ The long title is the *Joint Ministerial Regulation No. 8 and 9/2006 on the implementation of the task of the District Head/Representative of the District Head to maintain religious harmony, equip the Religious Harmony Forum and to regulate the building of places of worship*.

⁷ See II.C. below.

⁸ The New Order, known as *Orde Baru* or *Orba*, refers to the period from 1966 to 1998 when Suharto was the President of Indonesia.

⁹ The data from the Indonesian Central Statistics Bureau in 2000 showed that 88 percent of the population identified as Muslim; of the remainder, 5.9 percent are Protestant, 3.1 percent Catholic, 1.8 percent Hindu, 0.8 percent Buddhist, and 0.2 percent “other” (a category that includes traditional indigenous religions, other Christian groups, and Judaism). See U.S., Bureau of Democracy, Human Rights and Labor, *International Religious Freedom Report: Indonesia* (8 November 2005), online: U.S. Department of State < <http://www.state.gov/g/drl/rls/irf/>>. For extensive quantitative data on the five religions, see Leo Suryadinata, Evi Nurvidya Arifin & Aris Ananta, *Indonesia’s Population: Ethnicity and Religion in a Changing Political Landscape* (Singapore: Institute of Southeast Asian Studies, 2003) at 103-137. At this time, Confucianists were recorded as Buddhists in Java, if not in all of Indonesia: see Suryadinata *et al.*, at 123.

¹⁰ Of course, the diversity within the Islamic majority must be noted. A prime example is the distinction, originally made by Clifford Geertz, between *santri*, pious Muslims, and *abangan*, nominal Muslims, although this has been criticised, and has arguably changed over the years. See MC Ricklefs, “The Birth of the Abangan” (2006) 162-1 *Bijdragen tot de Taal-, Land-en Volkenkunde* (BKI) 35.

II. OLD DECREE

A. State Control of Religion

The Old Decree¹¹ was introduced during the New Order, a period of intense state control of religion. Administered through the bureaucratic institution of the Department of Religion ('the Department'), the Old Decree was a crucial part of the New Order's agenda¹² of control.¹³ Both during the New Order and more especially since its downfall in 1998, the Old Decree has become a tool in the hands of hardline (*garis keras*) Muslims¹⁴ to justify the closure of places of worship of religious minorities.

1. Regulating places of worship

The Old Decree¹⁵ was introduced by the then Home Minister, Amir Machmud, and the Minister for Religious Affairs, K.H. Mohammad Dahlan and came into force on 13 September 1969.¹⁶ It was hoped that, through the regulation of the administration of places of worship, conflict caused by religious activities would be curtailed.¹⁷ That is, the construction of new religious buildings in areas heavily dominated by another recognised religion was seen as a potential source of social tension and religious conflict.

The Preamble supported this agenda by giving the Government the responsibility to "facilitate efforts to develop religion" in a "harmonious environment", and to allow worship as long as such activities did not "disturb public peace". To achieve this, the Government had the power to introduce and enforce relevant "standards". Although the Preamble declared that the State must ensure the freedom of every citizen to follow a religion and to worship, this was largely rhetoric given the following provisions.

Basically, the Old Decree gave the District Head (*Kepala Daerah*) the mandate to "allow all efforts to...conduct worship...provided such activities...do not disturb

¹¹ For an English translation of the Old Decree, see Fatimah Husein, *Muslim-Christian Relations in the New Order Indonesia: the Exclusivist and Inclusivist Muslims' Perspective* (Bandung: Mizan Pustaka, 2005) at 331-4.

¹² For an analysis of how this agenda of control was also exerted over Islam, see Lubis, Nur A. F., "The State's Legal Policy and the Development of Islamic Law in Indonesia's New Order" in Salim, Arskal & Azyumardi, Azra, *Sharia and Politics in Modern Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003) 48.

¹³ Abd Moqsith Ghazali, "Perihal Pendirian Rumah Ibadat" *Jaringan Islam Liberal* (22 December 2005), online: Jaringan Islam Liberal <<http://islamlib.com/id>>.

¹⁴ The term 'hardline' or 'radical' Muslims will be used in this essay to refer to Muslims who give high priority to establishing an Islamic state governed by *syariah* law. For an explanation of the different terms used to refer to Muslims in Southeast Asia see Fealy, Greg and Hooker, Virginia, *Voices of Islam in Southeast Asia: A Contemporary Sourcebook* (Singapore: Institute of Southeast Asian Studies, 2006) at 4-5.

¹⁵ The Old Decree was known as the *Joint Decree of the Ministers of Religious and Internal Affairs on the Implementation of Government Mandates for Ensuring Law and Order and the Effective Administration of Religious Development and Worship by Religious Followers*.

¹⁶ Old Decree, art. 6.

¹⁷ Pandaya, "Let's Revive Religious Tolerance on All Sides" *The Jakarta Post* (1 April 2006), online: The Jakarta Post <<http://www.thejakartapost.com>>.

public peace and order”.¹⁸ This appears to emphasise the District Head’s duty to protect religious freedom. In practise, their overriding task was to “monitor” religion to avoid divisions, prevent intimidation between groups and maintain law and order.¹⁹

The agenda of control is evident in article 3, which gives the Local Head of the Department (‘Local Head’) the responsibility to monitor those who teach and ensure they refrain from attacking other religions. If a group wishes to build a place of worship,²⁰ they were required to obtain permission from the District Head,²¹ who could grant permission on consideration of: the Local Head, the “plans of the proposal” and “local conditions”.²² The ambiguity of these terms was—probably deliberately – problematic. Further, the practical application of these provisions made it very difficult for religious minorities to ever actually obtain a permit. Part of the problem here was that, to determine whether a permit should be given, the District Head could also consult the opinion of local religious leaders who were, not surprisingly, representative of the Muslim majority, and would be unlikely to vote in favour of applications for permits by religious minorities.²³

Finally, the Old Decree anticipates situations of conflict by giving the District Head wide authority to “provide a fair...resolution”.²⁴ Despite being short in substance (comprising just six provisions) but long in title, the sweeping provisions of the Old Decree made a profound public statement about where and how places of worship could be built, and who controlled this process.

2. *The Department of Religion and governance reforms*

Importantly, the Old Decree had strong connections with the Department through the Local Head. The Department was created in 1946 as a concession granted by the government to Muslim groups after the omission of the Jakarta Charter²⁵ in the 1945 Constitution.²⁶ In fact, the Department was initially proposed as the “Department of Islamic Affairs.”²⁷ Although a multi-religious approach was ultimately taken, the

¹⁸ Old Decree, art. 1.

¹⁹ Old, Decree, art. 2.

²⁰ Only groups whose religions were recognised by the state could apply to obtain a permit. In 1965, the then President, Sukarno, recognised six religions: Islam, Catholicism, Protestantism, Buddhism, Hinduism and Confucianism. In 1967, President Suharto ‘de-recognised’ Confucianism: see Leo Suryadinata, “State and Minority Religion in Contemporary Indonesia: Recent Government Policy Towards Confucianism, Tridharma and Buddhism” in Tsuneo Ayabe, *Nation-State, Identity and Religion in Southeast Asia* (Singapore: Society of Asian Studies, 1998) 5. It was not until January 2006 that it was ‘re-recognised’ and given official status by the Department of Religion: US Bureau, *supra* note 1).

²¹ Old Decree, art. 4.

²² Old Decree. art. 5.

²³ Old Decree, art. 4(2).

²⁴ Old Decree, art. 5.

²⁵ In the draft Constitution 1945 the words “with the obligation to carry out *syariah* for adherents of Islam” were included. This phrase was omitted from the final draft of the Constitution. The Jakarta Charter did not amount to the creation of a *Negara Islam* (Islamic State), although it did set a clear agenda or political ideology for *syariah*. See MB Hooker, “The State of *Syariah* in Indonesia 1945-1995” in Tim Lindsey, ed., *Indonesia Law and Society* (New South Wales: Federation Press, 1999) 102; MB Hooker & Tim Lindsey, “Public Faces of *Syariah* in Contemporary Indonesia: Towards a National *Mazhab*?” (2002) 4 *Austl. J. Asian L.* 259 at 264-5.

²⁶ Tim Lindsey, *Islamic Law in Indonesia* [forthcoming in 2007] at Ch. 6.

²⁷ Greg Fealey, ‘Divided Majority: Limits of Indonesian Political Islam’ in Abdullah Saeed and Akbarzadah Shahram, eds., *Islam and Political Legitimacy* (New York: RoutledgeCurzon, 2003) at 156.

Department was dominated by Islam²⁸ from the beginning²⁹ and, as a result, met with criticism from religious minorities.³⁰

Since the creation of the Department, and the subsequent introduction of the Old Decree in 1969, there have been some major governance reforms in Indonesia. In 1999, landmark decentralisation Laws³¹ fundamentally changed the relationship between the national, provincial and local governments. Authority over all fields, except foreign affairs, defence and security, justice, economic policy and, importantly, religion, was transferred to local governments.³²

In relation to the Old Decree and religious freedom in general, practical implementation of the decentralisation Laws has exposed the darker side of decentralisation—“nativism” and “heightening xenophobia” emerging in the local sphere.³³ This is particularly evident in the controversial flourishing of Local Regulations (*Peraturan Daerah*) as a means of introducing Islamic law at the local level.³⁴

In this era of reform, the Department has not been exempt from change. Most notably, the Department has been stripped of the power it previously shared with the *Mahkamah Agung*³⁵ to administer the Religious Courts³⁶ (*Pengadilan Agama*).³⁷ It has, however, experienced little internal change. Although the Department includes a Directorate General for each of the five recognised religions,³⁸ it remains dominated by Islam,³⁹ which has two additional Director Generals.⁴⁰ The Department’s focus on Islam, strengthened through its support of the construction of mosques and Islamic schools, has reinforced ‘Islamisation’.⁴¹

Restrictions on religious freedom, particularly for religious minorities, can therefore be traced back to the New Order’s policy of control. One example of this agenda

²⁸ This formed part of the New Order’s agenda to control Islam. For an analysis of the ways in which Islam was administered under the New Order, see Deliar Noer, *The Administration of Islam in Indonesia* (Ithaca, N.Y.: Cornell University, 1978).

²⁹ For example, the Department’s logo was a Qur’an resting on a *rehal* (book stand) and the motto using the Arabic-derived words ‘*ikhlas beramal*’ (sincere commitment to service). See Greg Fealey, *supra* note 27 at 157.

³⁰ BJ Boland, *The Struggle of Islam in Modern Indonesia* (The Hague: Nijhoff, 1971) at 106.

³¹ *Law 22/1999 on Regional Autonomy* and *Law 25/1999 on Fiscal Balance*. For an analysis of these Laws see Gary Bell, “The New Indonesian Laws Relating to Regional Autonomy: Good Intentions, Confusing Laws” (2001) 2 *Asian Pac. L. & Pol’y J.* 1.

³² Art. 7(1).

³³ Maribeth Erb, Sulistiyanto Priyambudi & Carole Faucher, *Regionalism in Post-Suharto Indonesia* (USA: RoutledgeCurzon, 2005) at 170.

³⁴ See Melissa Crouch, “The Proselytisation Case: Law, the Rise of Islamic Conservatism and Religious Discrimination in West Java” (2006) 8(3) *Austl. J. Asian L.* 322.

³⁵ Often translated as the Supreme Court, the *Mahkamah Agung* is the highest court in the Indonesian court hierarchy (*Law 4/2004*, art. 11).

³⁶ The Religious Courts are primary regulated under *Law 7/1989 on the Religious Judiciary*, as amended by *Law 3/2006*.

³⁷ See Presidential Decree 21/2004 and Presidential Regulation 13/2005.

³⁸ Islam, Christianity, Catholicism, Buddhism and Hinduism. Ministerial Decree 3/2006, introduced on 24 January 2006, sets out the functions of the Directorates General. It must be questioned therefore why a Directorate General was not established to represent Confucianism, the sixth recognised religion.

³⁹ Tim Lindsey, *supra* note 26.

⁴⁰ These relate to education and the *Haji* and *Umrah* (pilgrimage). Ministerial Decision 3/2006, art. 4.

⁴¹ Robert Hefner, *Islam in an Era of Nation States: Politics and Religious Renewal in Muslim South East Asia* (Honolulu: University of Hawai’i Press, 1997) at 111. The term ‘Islamisation’ is said to have two meanings: one, the transformation of public space in terms of an increase in political Islam, and two, the assertion of an Islamic world view through Islamic values and methods. See Georg Stauth, *Politics and Cultures of Islamisation in Southeast Asia* (London: Digital Print, 2002) at 9.

is the Old Decree, administered by the Islamic bureaucracy of the Department, which became justification for the increasing violence against places of worship of religious minorities.

B. Response to the Old Decree

Two different responses to the introduction and impact of the Old Decree can be identified. First, it was embraced by radical Muslims, who relied on it to justify attacks on and the closure of churches without permits. Second, the Old Decree was criticised by religious minorities, because it was seen as discriminatory and against religious freedom. Manifestations of these two views at places of worship of religious minorities have intensified since 1969.

Between the issuing of the Old Decree up to 2006, over 1,000 churches across the archipelago have been vandalised or destroyed.⁴² This number has gradually increased over the years. Before the Old Decree, in the 21 years (1945–1966) of the rule of the first President, Sukarno,⁴³ only two churches were destroyed. This is to be contrasted with the 32 years (1966–1998) under President Suharto, when 456 churches were destroyed.⁴⁴ These attacks intensified during the 17 months (1998–99) of the Habibie government, when more than 156⁴⁵ churches were destroyed. In the following 21 months (1999–2001) under President Abdurrahman Wahid, 232 churches were destroyed. While there was a ‘lull’ under President Megawati Sukarnoputri (2001–2004), 68 churches were still destroyed during this time.⁴⁶ Since the Presidency of Susilo Bambang Yudhoyono (2004–present) the rampage has heightened considerably, most notably in West Java (against Christians) and against Ahmadiyah.⁴⁷

⁴² Hera Diani & Muningar Saraswati, “Doubts Dog Revised Decree on Places of Worship” *The Jakarta Post* (24 March 2006), online: The Jakarta Post <<http://www.thejakartapost.com>>.

⁴³ For brief biographies of Sukarno and other past Presidents see Adrian Vickers, *A History of Modern Indonesia* (United Kingdom: Cambridge University Press, 2005) at 225–230.

⁴⁴ These attacks were most intense between 1995 and 1997, during which time 131 of these churches were destroyed. See Leo Suryadinata, *Elections and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2002) at 60.

⁴⁵ Lembaga Bantuan Hukum Jakarta, *Laporan Hukum and Hak Asasi Manusia: Ketika Negara Bersimpuh di Hadapan Kuasa Modal* (Jakarta: LBH, 2005) at 59.

⁴⁶ Theophilus Bela, “The Future of Inter-religious Relations in Indonesia: Assessments from a Non-Muslim Viewpoint” *Indonesian Committee on Religion and Peace* (21 January 2004), online: Proconcil <<http://www.proconcil.org>>.

⁴⁷ For a history of the origins of Ahmadiyah, an Islamic sect founded by Mirza Ghulam Ahmad in India in the 1880s, and an analysis of how its teachings differ from mainstream Islam, see Spencer Lavan, *The Ahmadiyah Movement: Past and Present* (Amritsar: Guru Nanak Dev University, 1976); Mulyono, *Bunga Rampai: Paham Keagamaan Gerakan Ahmadiyah Indonesia* (Yogyakarta: Darul Kutubil Islamiyah and Lembaga Mahasiswa Akademi Teknik Piri Yogyakarta, 2003) and Azyumardi Azra, *Gerakan Ahmadiyah di Indonesia* (Yogyakarta: LkiS, 2005). More specific to Indonesia, the Ahmadiyah movement has been present since 1926 and formally recognised by the state since 1953 (Decree of Minister of Justice Republic of Indonesia on 13 March 1953, No. JA.5/23/13). Since that time, Ahmadiyah has established around 300 branches across Indonesia (“Tentang Kasus Ahmadiyah: Polisi Tidak Boleh Mendinginkan Kasus Ini” *Jaringan Islam Liberal* (25 August 2005), online: Jaringan Islamic Liberal <<http://islamlib.com/id>>) and was estimated to have 200,000 followers in 2006 (“Government Told to

It has been widely reported that an increasing number of churches have been closed down in West Java since 2004.⁴⁸ The tension over places of worship not only exists between radical Islamic groups and Christians, but also between the regional and local governments and Christians. This is evident in the response of the present West Java Governor, Danny Setiawan, who actually claimed that there had been *no* forced closures of churches by radical Muslims in West Java and *no* violence committed against congregations,⁴⁹ despite substantial evidence to the contrary.⁵⁰ Other minority faiths that have not obtained permits have also been targeted.⁵¹

These attacks in West Java, and elsewhere across Indonesia, have not only been directed at religions *outside* the Islamic majority, but also at factions *within* Islam, in particular, the Ahmadiyah religious sect.⁵² In addition to the Old Decree, these attacks have also been 'justified' by a *fatwa*⁵³ issued by *Majelis Ulama Indonesia* (Council of Indonesian Religious Scholars, MUI)⁵⁴ that was recently renewed against Ahmadiyah.⁵⁵ Although it is increasingly a target for attack, and several regencies

Take Action Against Culprits in Ahmadiyah's Attack" *The Jakarta Post* (6 February 2006), online: The Jakarta Post <<http://www.gusdur.net/english>>.

⁴⁸ In West Java, Christians account for less than 10 percent of the population of 34 million: Yuli Suwarni & Nethy Somba, "West Java Tells Christians to Respect Government Regulations" *The Jakarta Post* (9 September 2005), online: The Jakarta Post <<http://www.thejakartapost.com>>.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ For example, on 5 February 2006, mobs closed a big house used as Hindu temple in Tangerang: US Bureau, *supra* note 1.

⁵² When Ahmadiyah first came to Indonesia, it was welcomed by Islamic groups, such as Muhammadiyah, because it was perceived as an ideal partner to assist Islamic groups develop the Muslim education system and resist Christianisation. Cooperation between Muhammadiyah and Ahmadiyah broke down in 1929: Herman Beck, "The Rupture Between the Muhammadiyah and the Ahmadiyah" (2005) 161-2/3 *Bijdragen tot de Taal-, Land-en Volkenkunde (BKI)* 210 at 241.

⁵³ A *fatwa* is a non-binding pronouncement by a qualified Islamic religious legal scholar on an issue, belief or practise made in the context of past interpretations. There are four main sources of *fatwa* in Indonesia: *Majelis Ulama Indonesia* (Council of Indonesian Religious Scholars, MUI), *Persatuan Islam* (Islamic Association, Persis), *Muhammadiyah* and *Nadhatul Ulama*. See MB Hooker & Tim Lindsey, *supra* note 17 at 286-7; Nadirsyah Hosen, "Fatwa and Politics in Indonesia" in Arskal Salim & Azra Azyumardi, eds., *Sharia and Politics in Modern Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003) 168. For a current explanation of Islamic thought more generally, see Abdullah Saeed, *Islamic Thought: An Introduction* (New York: Routledge, 2006).

⁵⁴ The MUI was established by the New Order to *control* the public expression of Islam. Since 1998, the MUI has sought to be independent of government and become closer to the *umat*, members of the Muslim community: "MUI's Fatwa Encourage Use of Violence" *The Jakarta Post* (1 August 2005), online: The Jakarta Post <<http://www.thejakartapost.com>>. Its present role includes issuing *fatwa*, advising the government on Islamic issues and promoting relations amongst Islamic groups: Abdullah Saeed & Shahram Akbarzadeh, *Islam and Political Legitimacy* (London: RoutledgeCurzon, 2003) at 157.

⁵⁵ A *fatwa* issued by MUI in September 2005 renewed the ban on Ahmadiyah, and asked the government to take action against the group: "The 11 Fatwas Issued by MUI" *The Jakarta Post* (30 July 2005), online: The Jakarta Post <<http://www.thejakartapost.com>>. An earlier 1980 fatwa issued against Ahmadiyah has also been blamed for justifying attacks on Ahmadiyah congregations by Muslim extremists: Hasrul, "Ahmadiyah Mosque Vandalised in Southeast Sulawesi" *The Jakarta Post* (1 May 2006), online: The Jakarta Post <<http://www.thejakartapost.com>>.

have issued bans on all Ahmadiyah activities,⁵⁶ the state's response to Ahmadiyah remains unclear.⁵⁷

These attacks have provoked outcry from religious minorities eager to assert their new-found democratic rights. It has become increasingly clear that the Old Decree was both outdated and inhibited the right to religious freedom.

C. Outdated and Obsolete

The increase in attacks on places of worship pushed the Old Decree into the arena of public debate in 2005. This controversy highlighted a high level of community dissatisfaction with the Old Decree and, importantly, demonstrated that it conflicted with post-Suharto reforms in three ways.

First, the legitimacy of the Old Decree and its place in the hierarchy of laws in Indonesia became uncertain after the implementation of *Law 10/2004 on Lawmaking* ('Law 10/2004'). Law 10/2004 was introduced to clarify the rank of legal sources in the Indonesian legal system, as follows⁵⁸:

- a. The Constitution (*Undang-Undang Dasar Negara RI 1945*)⁵⁹
- b. Laws (*Undang-Undang*)⁶⁰/ Interim Laws (*Peraturan Pemerintah Pengganti Undang-Undang*)⁶¹
- c. Government Regulations (*Peraturan Pemerintah*)⁶²

⁵⁶ There appears to be a direct correlation between these attacks and the implementation of a ban. For example, on 20 July 2005, Bogor Regency issued such a decree following an attack by FPI on Ahmadiyah headquarters five days earlier; a similar ban was implemented on 28 September 2005 in the Cianjur Regency after mobs attacked a mosque nine days prior. In Oct 2005, the regional representative office of the Ministry of Religious Affairs in West Nusa Tenggara also issued a ban on 13 religious sects, including Ahmadiyah. See US Bureau, *supra* note 1.

⁵⁷ The uncertain status of Ahmadiyah in Indonesia is evidenced by conflicting state responses. For example, while Indonesian Attorney-General Abdul Rahman Saleh had issued a Decree outlawing Ahmadiyah ("Gus Dur Calls On Government To Take Action Against FPI Radicals" (24 August 2005), online: Gus Dur Net <<http://www.gusdur.net/english>>), the President of Indonesia declared shortly beforehand that the government would neither ban nor dissolve Ahmadiyah (Abdul Basit, "Press Release Statement of Jemaat Ahmadiyah Indonesia in response to media on the statement of President Susilo Bambang Yudhoyono on Banning Ahmadiyya Movement" (21 August 2006), online: The Persecution of Ahmadiyya Muslim Community <<http://www.thepersecution.org>>. The Minister for the Department of Religion has been reported to the police for allegedly defaming Ahmadiyah because he was quoted as saying that members of Ahmadiyah should stop calling themselves Muslims, because their beliefs were heretical to Islam: "Activists Report Maftuh For Slandering Ahmadiyah Sect" *The Jakarta Post* (4 May 2006), online: The Jakarta Post, <<http://www.thejakartapost.com>>. The response of the state towards Ahmadiyah remains unclear and must continue to be monitored.

⁵⁸ Law 10/2004, art. 7(1):

⁵⁹ The Constitution is defined as the basic law (*hukum dasar*) and the legal source (*sumber hukum*) for all other laws (Law 10/2004, art. 3(1); Elucidation).

⁶⁰ A Law is defined as a law (*peraturan perundang-undangan*) created by the People's Representative Assembly (*Dewan Perwakilan Rakyat*, DPR) with the agreement of the President (Law 10/2004, art. 1(3)).

⁶¹ An Interim Law is defined as a temporary law enacted in a crisis (Law 10/2004, art. 1(4)).

⁶² A Government Regulation is defined as a law which is established by the President and implemented accordingly (Law 10/2004, art. 1(5)).

- d. Presidential Regulations (*Peraturan Presiden*)⁶³
- e. Regional Regulations (*Peraturan Daerah*)⁶⁴

The Old Decree was in the form of a Joint Ministerial Decision (*Keputusan Menteri Bersama*). Law 10/2004 states that all Ministerial Decisions made *before* the introduction of this Law fall under ‘Government Regulations’ in article 7(1)(c)⁶⁵; it is unclear whether this includes Joint Decisions, that is Decisions made by more than one Minister. The Old Decree has since been replaced by the New Regulation, which has potentially strengthened the position of this law. At best, ‘*Peraturan Pemerintah*’ could be interpreted widely to include Joint Decisions. Therefore, it appears likely that the New Regulation is subordinate to the Constitution and Laws, but can potentially override Presidential and Regional Regulations. Article 7(1) of Law 10/2004 should be amended in order to clarify the status of Joint Decisions.

Second, the Old Decree was not in line with the transition to decentralisation. That is, it allows matters of religion to be handled by *regional* authorities. This is directly contrary to the *Regional Autonomy Law*, which declares that religion is a matter for the *central* government, as opposed to the *regional* governments.⁶⁶

Third and most importantly, the Old Decree contravened Indonesia’s commitments to religious freedom. At a national level, Indonesia has chosen to recognise the right to religious freedom and worship in the Constitution,⁶⁷ and in the *Basic Human Rights Law*.⁶⁸ At the international level, on 28 October 2005, Indonesia ratified the *International Covenant on Economic, Social and Cultural Rights*⁶⁹ (‘ICESCR’) and the *International Covenant on Civil and Political Rights*⁷⁰ (‘ICCPR’).⁷¹ Implemented under Law 11/2005 and 12/2005 respectively, these Covenants became Indonesian Law according to *Law 24/2000 on International Treaties*.⁷²

It can be seen that the first issue, the legitimacy and status of the New Regulation, would benefit from clarification, while the second issue, that religion is supposed to be a matter for the central government, remains unresolved. The third issue, religious freedom, was clearly being breached, and this goes to the centre of the recent debate on the proposal for the New Regulation.

⁶³ A Presidential Regulation is defined as a law made by the President (Law 10/2004, art. 1(6)).

⁶⁴ A Regional Regulation is defined as a law made by the Local People’s Representative Assembly (*Dewan Perwakilan Rakyat Daerah*, DPRD) with the agreement of the Local Head (*Kepala Daerah*) (Law 10/2004, art. 1(7)). This includes Regional Regulations made at the provincial, regency/city or village level (Law 10/2004, art. 7(2)), as well as the *Qanun* in Aceh, and *Perdatus* and *Perdasi* in Papua (Law 10/2004, Elucidation).

⁶⁵ Law 10/2004, arts. 54 and 56.

⁶⁶ Law 32/2004, art. 10.

⁶⁷ The Constitution, 1945, arts. 28E(1) and 29(2).

⁶⁸ Law 39/1999, art. 22.

⁶⁹ 16 December 1966, 993 U.N.T.S. 3.

⁷⁰ 19 December 1966, 999 U.N.T.S. 171.

⁷¹ Ridarson Galinggging, ‘Putting Rights Covenants into Action’ *The Jakarta Post* (6 May 2006), online: *The Jakarta Post* <<http://www.thejakartapost.com>>. Art. 18 of the ICCPR contains the specific right to religious freedom.

⁷² Law 24/2000, art. 15(2).

III. NEW REGULATION

A. *The Debate*

Demands to revise the Old Decree prompted a review by the Department in September 2005.⁷³ Subsequently, a draft proposal ('Proposed Regulation') was released in October 2005.⁷⁴ Consultations were then conducted with the five recognised religious organisations⁷⁵: the Indonesian Bishops Conference (*Konferensi Wali Gereja Indonesia*), Indonesian Communion of Churches (*Persekutuan Gereja-Gereja di Indonesia*), Indonesian Islamic Council (*Majelis Ulama Indonesia*), Indonesian Hindu Council (*Parisadhe Hindu Dharma Indonesia*), and the Buddhist Council (*Wali Umat Budha*). After five months, the Proposed Regulation was passed, on 21 March 2006.

During the revision, drafting and consultation process, public debate raged over the merits of the Proposed Regulation. Before analysing the New Regulation, it is first important to outline the forces that shaped it, that is, the parties who spoke out on the issue, and the arguments they put forth and why.

1. *Support for the Proposed Regulation*

A number of key groups voiced their support for the New Regulation. The state-sanctioned MUI was a strong advocate, to the same degree that it had supported the Old Decree.⁷⁶ So too were radical Islamic groups, who had either claimed, or been attributed, responsibility for past attacks and church closures, such as the Anti-Apostasy Alliance Movement (*Aliansi Gerakan Anti-Pemurtadan*), the Anti -Apostasy Front (*Barisan Anti-Pemurtadan*),⁷⁷ the Islam Defenders Front (*Front Pembela Islam*, FPI),⁷⁸ the Islamic Coalition of Solo (*Koalisi Umat Islam Surakarta*)⁷⁹ and the Indonesia Mujahidin Council (*Majelis Mujahidin Indonesia*).⁸⁰

⁷³ Angelina Donna, "Pemerintah Sempurnakan SKB Pendirian Rumah Ibadat" *Kompas* (7 September 2005), online: Kompas Cybermedia <<http://www.kompas.com>>.

⁷⁴ Abd Moqsiith Ghazali, "Perihal Pendirian Rumah Ibadat" *Jaringan Islam Liberal* (22 December 2005), online: Jaringan Islam Liberal <<http://islamlib.com/id>>.

⁷⁵ "Izin Rumah Ibadah Harus Enam Bulan Sebelumnya" *Suara Pembaruan Daily* (7 January 2006), online: MIRIFICA e-News <<http://mirifica.net>>.

⁷⁶ Hera Diani, "Religious Minorities Wary of Revised Decree" *The Jakarta Post* (20 February 2006), online: The Jakarta Post <<http://www.thejakartapost.com>>.

⁷⁷ "Wahid Minta Aksi Penutupan Gereja Dihentikan" *Tempo Interaktif* (23 August 2005), online: Tempo Interaktif <<http://www.tempointeraktif.com>>.

⁷⁸ For a history of FPI see Fatimah Husein, *supra* note 11 at 151-3; Muhammad Nafik, "Radicalism Extends Roots, Becoming Institutionalised" *The Jakarta Post*, Review 2005, online: The Jakarta Post <<http://www.thejakartapost.com>>. For an outline of the paramilitary division of FPI, *Laskar Pembela Islam* (Front of the Defenders of Islam, LPI), see Noorhaidi Hasan, *Laskar Jihad: Islam, Militancy and the Quest for Identity in Post-New Order Indonesia* (New York: Cornell Southeast Asia Program, 2006) at 14-6.

⁷⁹ MG Romli, "Setahun Memasung Kebebasan Beragama" *Jaringan Islam Liberal* (28 November 2005), online: Jaringan Islam Liberal <<http://islamlib.com/id>>.

⁸⁰ MMI is said to be lead by the infamous Abu Bakar Baasyir. See Noorhaidi Hasan, "September 11 and Islamic Militancy in Post-New Order Indonesia" in Kamali, Mohammad Hashim, *Islam in Southeast Asia: Political, Social and Strategic Challenges for the 21st Century* (Singapore: Institute of Southeast Asian Studies, 2005) 301.

To a lesser extent, the Justice and Welfare Party (*Partai Keadilan Sejahtera*)⁸¹ showed their support, as did the prominent Islamic organisation Muhammadiyah.⁸² Five core arguments were put forward by these groups.

First, the New Regulation was imperative to prevent conflict and to preserve religious harmony.⁸³ This argument is not convincing, given that the Old Decree has caused rather than prevented violence. Second, it was required to clarify that the closure of churches is justified where an official permit has not been obtained from the relevant authorities. This is because churches without permits can cause disturbances to the surrounding areas. Some buildings, such as houses and schools, are therefore inappropriate to be used as places of worship.⁸⁴ Third, the New Regulation will help limit places of worship, eliminate competition between religions, and prevent 'public disorder'.⁸⁵ Fourth, it was alleged that the establishment of churches in predominantly Muslim districts is aimed at proselytising non-Christian locals (especially Muslims), and must therefore be stopped.⁸⁶ Finally, some groups, such as MUI, even argued that the New Regulation was not harsh enough, making suggestions to raise the requirements to obtain a permit (discussed further below).⁸⁷

These arguments find their roots in the fear of proselytisation, and in particular 'Christianisation', which dates back to the colonial era, when Christians were seen as belonging to the Dutch, the 'other side'.⁸⁸ Proselytisation is perceived as a threat to Islam (although it is considered acceptable for Moslems to proselytise)⁸⁹ and is fuelled by the belief that Christians have the power, money and will to build an unlimited number of churches.⁹⁰ Indeed, there is evidence of a massive increase in the number of places of worship. From 1977 to 2004, the number of mosques increased by 64% (from 392,044 to 643,834). The number of churches increased at an even greater rate: Christian churches increasing by 131% (from 18,977 to 43,909) and Catholic churches increasing by a phenomenal 152% (from 4,934 to 12,473).⁹¹ Furthermore, statistics from the Department of Religion on the ratio

⁸¹ PKS is a national political party that won 7.3 percent of votes at the last general elections (2004) in Indonesia. Previously, in the 1999 election, the PKS, then known as *Partai Keadilan*, only gained 1.36 percent of votes. See Leo Suryadinata, *Indonesia: the Year of a Democratic Election* (Singapore: Southeast Asian Affairs, 2005) at 113-4.

⁸² Muhammadiyah is the largest Islamic 'modernist' social organisation in Indonesia, claiming a membership of 30 million. The other major Islamic, 'traditionalist', social organisation is Nadhatul Ulama, which claims a membership of 40 million.

⁸³ Charles Honoris, "Joint Decree a Clear Danger to Religious Freedom" *The Jakarta Post* (31 March 2006), online: [The Jakarta Post <http://www.thejakartapost.com>](http://www.thejakartapost.com).

⁸⁴ Ridwan Sijabat, "Restriction on Religious Freedom still Rampant in Indonesia" *The Jakarta Post* (12 November 2005), online: [The Jakarta Post <http://www.thejakartapost.com>](http://www.thejakartapost.com).

⁸⁵ Moerkekaq Senggotro, "Indonesian Christians Sceptical About New Decree on Places of Worship" *AsiaNews* (8 March 2006), online: [World Wide Religious News <http://www.wwrn.org/>](http://www.wwrn.org/).

⁸⁶ Ridwan Sijabat, *supra* note 84.

⁸⁷ Hera Diani, "Faiths Take Joint Stand Against New Decree" *The Jakarta Post* (25 March 2006), online: [The Jakarta Post <http://www.thejakartapost.com>](http://www.thejakartapost.com).

⁸⁸ BJ Boland, *supra* note 30 at 224.

⁸⁹ Jacques Bertrand, *Nationalism and Ethnic Conflict in Indonesia* (Port Melbourne: Cambridge University Press, 2004) at 80.

⁹⁰ "Permit to Worship" *The Jakarta Post* (31 March 2006), online: [The Jakarta Post <http://www.thejakartapost.com/>](http://www.thejakartapost.com/).

⁹¹ Department of Religion, quoted by "Peraturan Bersama Dua Menteri Tetap Akan Disahkan" *Antara News* (25 February 2006), online: [Antara News <http://www.antara.co.id/>](http://www.antara.co.id/).

between followers and places of worship for 2005 indicated that while the ratio for Christians was 1:521, the ratio for Islam was only 1:930.⁹²

In addition to the strong support shown by radical Islamic groups, the proposal for the New Regulation was accepted, somewhat surprisingly, by the Buddhist and the Hindu Religious Councils. These two religious groups, which comprise less than 0.84 and 1.81 percent respectively of the population,⁹³ were said to have “resigned” themselves to the Proposed Decree for the sake of religious harmony and because of their perceived weak status as religious minorities.⁹⁴

2. Opposition to the Proposed Regulation

Other minority religious groups were on the other side of the debate, critical of both the Old Decree and the Proposed Regulation. Most of the voices of dissent came from Christian churches and associations, such as the Indonesian Communion of Churches and the Bishops Council of Indonesia, as well as from human rights organisations, such as the Indonesian Committee on Religion and Peace⁹⁵ and the Peace Forum (which comprises Catholic, Orthodox, and Pentecostal churches, and Ahmadiyah),⁹⁶ as well as smaller regional groups, such as the East Nusa Tenggara Freedom of Religion Community Alliance (*Aliansi Masyarakat Peduli Kebebasan Beribadah, Nusa Tenggara Timur (NTT)*).⁹⁷ In terms of politics, the Prosperous Peace Party (*Partai Damai Sejahtera, PDS*),⁹⁸ a Christian-based political party, also opposed the Proposed Decree, and 42 legislators, most of them Christians, filed a petition rejecting the Proposed Decree with the House of Representatives leadership.⁹⁹ In addition to these Christian-affiliated organisations, other religious minorities have spoken out, such as Ahmadiyah,¹⁰⁰ and minority Islamic communities in Bali and NTT.¹⁰¹

These groups criticised the Proposed Regulation on several counts. First, it was said to be against the fundamental principles of the *Pancasila*,¹⁰² the Constitution¹⁰³ and the right to freedom of religion, which is a basic human right that should not be

⁹² Religious Information Centre of the Department of Religion, online: <<http://www.depag.go.id>>.

⁹³ Statistics taken from a census conducted in 2000 by the Indonesian Central Statistic Bureau (BPS); see US Bureau, *supra* note 10.

⁹⁴ Hera Diani, “Minorities Say No Room to Maneuver in Revised Decree” *The Jakarta Post* (21 February 2006), online: The Jakarta Post <<http://www.thejakartapost.com>>.

⁹⁵ Hera Diani, “Religious Minorities Wary of Revised Decree” *The Jakarta Post* (20 February 2006), online: The Jakarta Post <<http://www.thejakartapost.com>>. The ICRP was established as an NGO in the early 1970s by the late Dr. Lukman Harun, a prominent Muslim leader from Muhammadiyah. It is now the national chapter of the Asian Conference on Religion and Peace (Seoul, South Korea), more broadly connected to the World Conference on Religion and Peace (New York) (Theophilus Bela, *supra* note 46).

⁹⁶ Hera Diani, *supra* note 87.

⁹⁷ “Tolak SKB Rumah Ibadah, Massa Ampera Kupang ‘Serbu’ DPR NTT” *Christian Post* (9 March 2006), online: *Kristiani Post* <<http://id.christianpost.com/>>.

⁹⁸ Nita Lee, “Tragis 99 Jemaat Kristen Tak Boleh Mendirikan Rumah Ibadah” *Christian Post*, 6 March 2006, online: <http://www.christianpost.co.id/>. In the 2004 election, PDS secured 2.13 percent of the votes (Leo Suryadinata, *supra* note 81 at 136).

⁹⁹ Hera Diani and Muninggar Saraswati, *supra* note 42.

¹⁰⁰ Pandaya, *supra* note 17.

¹⁰¹ Ardi Winangun, “Tempat Ibadah Jangan Seperti PKL” *Republika* (13 September 2005), online: Republika Online <<http://www.republika.co.id/>>.

¹⁰² The Pancasila is the state ideology enshrined in the Constitution. It comprises five elements: Belief in God, Humanitarianism, Nationalism, Democracy and Social Justice.

¹⁰³ Nita Lee, *supra* note 98.

subject to state interference.¹⁰⁴ Second, the Proposed Regulation wrongly assumes that state interference is the key to religious tolerance.¹⁰⁵ On the contrary, the Old Decree has only exacerbated conflict within the community, and will continue to do so,¹⁰⁶ because it “pits people of different religions against each other”.¹⁰⁷ Third, the Proposed Regulation is evidence of the institutionalisation of conservatism and provides justification for religious radicalism.¹⁰⁸ On the contrary, if an official permit has not been obtained as required, then a place of worship should *only* be closed down through civil means by the government and not by militiamen.¹⁰⁹ The state must recognise and address the attacks on religious minorities.

Fourth, the Proposed Regulation requires unreasonable administrative requirements to obtain official permits from local administrations. The requirements to obtain signatures from congregation members and the local community are too high—as will be seen below, minority groups cannot realistically be expected to meet these requirements. Alternative proposals were offered, such as lowering the amount of signatures required from members and locals of other religions,¹¹⁰ or not having a limit on the number of congregants required for approval at all.¹¹¹ Fifth, the new bureaucracy would mean minority groups may have to pay corrupt government bureaucrats more to get their paperwork processed.¹¹² There is thus the potential for the proposed Religious Harmony Forum to become a political tool to repress minorities within the community.¹¹³ Sixth, the Proposed Regulation is discriminatory against minority groups—including Muslims in places like Bali and NTT—who experience difficulty building places of worship, because majority Hindus and Christians respectively are afraid of ‘Islamisation’. Conversely, minority Christian groups in the Islamic-majority of West Java experience similar difficulties because Muslims fear ‘Christianisation’.¹¹⁴ Finally, they asserted that the Old Decree failed to provide a legal basis for religious harmony and had instead become a legal stumbling block to building places of worship. The Proposed Regulation must also be questioned as to whether it is in line with the transition to democracy.¹¹⁵

In summary, the effect of this public debate has largely been to polarise the religious majority from religious minorities in Indonesia, although some minorities have ceded to the pressures of the majority. The controversy has also stirred up deep-seated fears and prejudices concerning proselytisation on both sides. Further, the importance of religious freedom, and what this should look like in reality, appears to have been sidelined in the debate. That the right to religious freedom, as upheld by law in theory, has been compromised is evident from the following overview of the framework and contents of the New Regulation.

¹⁰⁴ Hera Diani, *supra* note 94.

¹⁰⁵ Pandaya, *supra* note 17.

¹⁰⁶ *Christian Post*, *supra* note 97.

¹⁰⁷ Hera Diani, *supra* note 87.

¹⁰⁸ Muhammad Nafik, *supra* note 63.

¹⁰⁹ Ridwan Sijabat, *supra* note 84.

¹¹⁰ Hera Diani, *supra* note 95.

¹¹¹ Hera Diani, *supra* note 94.

¹¹² *The Jakarta Post*, *supra* note 90.

¹¹³ “Birokratisasi Tempat Ibadah” *Kompas* (16 December 2005), online: Kompas Cybermedia <<http://www.kompas.co.id/>>.

¹¹⁴ Ardi Winangun, *supra* note 101.

¹¹⁵ Pandaya, *supra* note 17.

B. Present Framework

The New Regulation¹¹⁶ is considerably more detailed than the Old Decree, which it cancelled.¹¹⁷ The former consists of 31 Articles divided into ten chapters, as opposed to the mere six Articles of the later. The major feature of the New Regulation is the procedural requirements to obtain a permit, which, on analysis, are unrealistic and contrary to the right to freedom of religion. Scrutiny of its framework and key provisions—relating to the supervision of religious harmony, the reporting of the implementation of religious harmony and the resolution of disputes—will reveal these provisions to be vaguely drafted and difficult to implement.

1. Religious Harmony Objectives: Articles 1 to 12

The New Regulation introduced a more comprehensive framework for the issuing of permits to build a place of worship (*rumah ibadat*).¹¹⁸ The underlying rationale will be seen to be “religious harmony” (*kerukunan umat beragama*).¹¹⁹

Broadly, the responsibility for maintaining religious harmony is conferred onto religious groups and the regional and national government.¹²⁰ In particular, the Governor has responsibility for supervising religious harmony in the province,¹²¹ assisted by the Head of the Provincial Department.¹²² Their main tasks include supervising and facilitating religious harmony and coordinating activities to promote mutual understanding and respect between religions.¹²³ The Governor must also liaise with the Regent/Mayor in their province, who has corresponding duties over their regency/city.¹²⁴

In terms of organisational oversight, a Religious Harmony Forum (*Forum Kerukunan Umat Beragama, FKUB*) (‘Forum’) is established to oversee religious harmony and equality.¹²⁵ A Forum must be formed at both the provincial and regency level by the community,¹²⁶ facilitated by the regional government.¹²⁷ Its primary role is consultation.¹²⁸ More specifically, the provincial Forum has four main tasks: conducting dialogue with religious leaders and followers, accommodating the aspirations of the Religious Community Organisation and the community, formulating policy recommendations and making efforts to educate¹²⁹ the community of Laws related

¹¹⁶ For an English version of the New Regulation see Tim Lindsey, *supra* note 26.

¹¹⁷ New Regulation, art. 30.

¹¹⁸ Defined as a building used for the purpose of worship by religious followers on a permanent basis: art. 1(3).

¹¹⁹ Defined as a relationship between religious groups based on tolerance, respect, equality and cooperation: art. 1(1).

¹²⁰ New Regulation, art. 2.

¹²¹ New Regulation, art. 3(1).

¹²² New Regulation, art. 3(2).

¹²³ New Regulation, art. 5(1).

¹²⁴ New Regulation, art.4 and 6. The Regent/Mayor can delegate these tasks to the District/Village Head: art. 6(2).

¹²⁵ New Regulation, art. 1(6).

¹²⁶ New Regulation, art. 8(1).

¹²⁷ New Regulation, art. 8(2).

¹²⁸ New Regulation, art. 8(3).

¹²⁹ The term used here is *sosialisasi*, or *sosialisation*, which refers to efforts to educate or inform the community, usually through mediums such as advertising, educational forums, etc.

to religious harmony.¹³⁰ The regency Forum is given the same tasks but at a regency level, with the additional responsibility of providing written recommendations for requests for building a place of worship.¹³¹

The Forum consists of local religious leaders from every religion in the province/regency/city. A maximum number of members are set: 21 for the Regional Forum and 17 for the Regency Forum, although no reasons are given for the difference in numbers.¹³² The members of the Forum are chosen by the Forum Advisory Council (*Dewan Penasihat FKUB*).¹³³ In addition to this role, the Advisory Council must help the District Head to formulate policies to maintain religious harmony, as well as facilitate the relationship between the Forum and the regional government.¹³⁴ Ultimate power is left with the Governor to make further Regulations in regards to the Forum and the Advisory Council at both the provincial and regency/city level where necessary.¹³⁵ Overall, the goal of religious harmony is regulated by a typically complex and intricate Indonesian bureaucratic structure.

2. Process to Obtain a Permit: Articles 13 to 20

To build a place of worship, a religious group must obtain a permit¹³⁶ by satisfying both general and specific conditions. Generally, there must be a “real need” (*keperluan nyata*) in the area for such a building, it must not disturb law and order and it must comply with the law.¹³⁷ Although it is not specified what constitutes a “real need”, it can be assumed that compliance with specific conditions is taken as indicators of a “real need”. These specific conditions include the administrative conditions for the construction of a building¹³⁸ as well as the following four “special conditions” (*persyaratan khusus*).¹³⁹

First, the religious group must obtain the permission of *at least* 90 members of their congregation,¹⁴⁰ with the list approved by a local official.¹⁴¹ The second specific requirement is similar to the first: the religious group must obtain the support of *at least* 60 local residents of another religion, with this list approved by the Head of the village.¹⁴² Combined, these provisions are known as the ‘90/60 requirement’, and are highly contentious, not to mention problematic, for three reasons.

¹³⁰ New Regulation, art. 9(1).

¹³¹ New Regulation, art. 9(2).

¹³² New Regulation, art. 10(2).

¹³³ The composition and role of the members of the Advisory Council are specified in art. 11(3) and (4).

¹³⁴ New Regulation, art. 11(1) and (2).

¹³⁵ New Regulation, art. 12.

¹³⁶ A permit to build a place of worship (*Izin Mendirikan Bangunan ‘IMB’ rumah ibadat*) is defined as a permit published by the Regent/Mayor for the development of a place of worship: art. 1(8).

¹³⁷ New Regulation, art. 13(2).

¹³⁸ *Law 28/2002 on the Construction of Buildings*.

¹³⁹ New Regulation, art. 14(2).

¹⁴⁰ Some Islamic supporters of the Proposed Decree, such as MUI, were not satisfied with 90, and argued that the minimum congregation requirement should be 100 (Hera Diani, *supra* note 87). Given that 90 is already a significant number of members, an extra 10 would probably not make much more of a difference.

¹⁴¹ New Regulation, art. 14(2)(a).

¹⁴² New Regulation, art. 14(2)(b).

The 90/60 requirement discriminates against groups with less than 90 members. One has to wonder how a religious group without a place of worship could boast of anywhere near 90 members, unless they were presently worshipping in a building without a permit, given that religious groups are not even allowed to meet in homes. Granting of a permit should not be based on the mere size of the group, but rather on the right of religious groups to have a place of worship—as guaranteed by law.

A second problem is that some regional governments already have existing requirements that differ from the 90/60 requirement. For example, in Bali, groups must have at least 100 families;¹⁴³ in Southeast Sulawesi, groups must have at least 50 families¹⁴⁴; in West Java, a group only needs 40 families.¹⁴⁵ The apparent contradiction between regional and national laws exacerbates and confuses the issue, although it can perhaps be assumed that the New Regulation, as a national law, presides over any such regional laws.

A hypothetical example further illustrates why the requirement to obtain the support of 60 local residents is unrealistic. Imagine that a Catholic group wishes to build a place of worship in a city is inhabited by a (typical) Muslim majority. Keeping in mind the animosity and suspicion between Muslims and Christians, where will this Catholic group find 60 Muslims willing to support their application? Given that such action would be seen as encouraging ‘Christianisation’, the answer could well be no. Even if other minority religious groups, such as Ahmadiyah, lived in the area, and 60 were willing to support the application, it is likely that Ahmadiyah followers could face violence from radical Islamic groups who would oppose such an application. Reversing this example, how many Christians would support an application to build a mosque in the area? Not many, unless they were the subject of intimidation from radical Islamic groups in favour of the application. This provision therefore appears to be unworkable.

Third, the applicant must obtain a written recommendation from the Head of the Regency/City Office to the Department, and, fourth, from the regency/city Forum. It is unclear on what basis a recommendation would be given, though it is likely they are intended to refer to the general provisions in article 13, as well as making sure the specific requirements have been met. Finally, assuming these general and specific conditions can, and have, been met, a request for a permit must then be proposed by the Committee for the Development of Places of Worship to the Regent/Mayor.¹⁴⁶

In addition to new permits, the New Regulation provides for temporary permits to be issued for buildings being used temporarily as places of worship.¹⁴⁷ Religious groups are given two-years grace to comply with this requirement.¹⁴⁸

The procedural requirements to obtain a permit, as outlined above, are the major focus of the New Regulation. They demand unreasonable administrative requirements, which religious minorities are not capable of fulfilling given their small numbers and minority status.

¹⁴³ “All Faiths Heard in Houses of Worship Decree” *The Jakarta Post* (8 April 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

¹⁴⁴ Charles Honoris, *supra* note 73.

¹⁴⁵ West Java Administration Gubernatorial Instruction 28/1990. See Yuli Suwarni and Nethy Somba, *supra* note 48.

¹⁴⁶ New Regulation, art. 16.

¹⁴⁷ New Regulation, art. 18.

¹⁴⁸ New Regulation, art. 19(2).

3. *Dispute Resolution Procedure: Articles 21 and 22*

The New Regulation recognises the need for an avenue for the resolution of disputes. If a dispute over the building of a place of worship arises, a meeting must first be held by the community. If it is not resolved in this way, the Regent/Mayor assisted by the Head of the Department must facilitate a meeting between the religious groups concerned. If the dispute remains unresolved, the interested groups can take the case to the local courts.¹⁴⁹ The legal grounds on which such a dispute could be heard by a court is, however, uncertain. If a dispute involved damage to buildings or physical violence, the perpetrators could potentially be charged with a criminal offence.

4. *Reporting Requirements: Articles 23 and 24*

In addition to the supervision of religious harmony, the task of reporting on “the implementation of religious harmony”, the Forum and the building of places of worship rests with two levels of government. At the regional level, the Governor, assisted by the Head of the Provincial Department¹⁵⁰ must report to the Home Minister and Religious Affairs Minister.¹⁵¹ At the regency/city level, the Regent/Mayor, assisted by the Head of the Regency/City Department¹⁵² must report to the Governor.¹⁵³ These reports must be published every six months or when it is considered necessary.¹⁵⁴ But what does it actually mean to “implement religious harmony”? What powers do government officials, who receive the reports, have if a report is not satisfactory? These issues undermine the noble intentions, of accountability and transparency, of such a reporting requirement, and need to be clarified for the reporting requirements to effectively monitor religious harmony.

5. *Implementation: Articles 25 to 30*

The implementation of the New Regulation is subject to a specific timeline. The Forum and the Advisory Council must be formed in the provinces and regencies/cities within one year.¹⁵⁵ Local Laws must comply with this Law within two years.¹⁵⁶ In light of the increasing tendency for local authorities to push their own agenda via local bylaws, this requirement is unlikely to be obeyed given that there are no consequences for non-compliance.

In summary, it can be seen that the major provision of the New Regulation, the requirements for obtaining a permit, are unworkable and impair the right of all religious believers to worship freely. Some aspects of the New Regulation are vaguely defined and may inhibit effective implementation. To uphold the right to freedom of religion and the orderly regulation of building places of worship, the Regulation must be revisited.

¹⁴⁹ Such as the Administrative Court (*Pengadilan Tata Usaha Negara*).

¹⁵⁰ New Regulation, art. 23(1).

¹⁵¹ New Regulation, art. 24(1).

¹⁵² New Regulation, art. 23(2).

¹⁵³ New Regulation, art. 24(2).

¹⁵⁴ New Regulation, art. 24(3).

¹⁵⁵ That is, by 21 March 2007: art. 27(1)).

¹⁵⁶ That is, by 21 March 2008: art. 29.

C. Public Responses to the New Regulation

In contrast to the Old Decree, where opposition gradually built up over many years, the New Regulation met with immediate resistance. Rather than being “instrumental to improving interfaith relationships”,¹⁵⁷ it has actually added to the tensions. Two different responses to the New Regulation can be identified.

First, religious minorities have begun to mobilise themselves to voice their dissent. While the usual protests have been staged by Christian groups in places such as Kupang, NTT,¹⁵⁸ resistance has been taken to a new level. For example, seven days after the Regulation was passed, a request for judicial review of the New Regulation was submitted to the *Mahkamah Agung*¹⁵⁹ by the Religious Defence Team (*Tim Pembela Kebebasan Beragama*),¹⁶⁰ which represents Christians and Ahmadiyah.¹⁶¹ Review was sought on the grounds that the New Regulation contravenes the Constitutional right to freedom of religion.¹⁶²

This came in the wake of another recent request for judicial review by Christian Reverend Ruyandi Hutasoit in relation to a separate Law that is perceived to restrict religious freedom. Hutasoit filed a plea for judicial review in January 2006 in relation to article 86 of the *Child Protection Law*,¹⁶³ which states that persons found guilty of persuading children to convert to another religion,¹⁶⁴ will be punished with a fine or imprisonment. The Constitutional Court rejected the plea, ruling that article 86 was not in conflict with the constitutional right to religious freedom.¹⁶⁵ In light of these two cases, a new trend is perhaps emerging in the race to assert new-found ‘democratic’ rights, namely by challenging oppressive Laws through litigation.¹⁶⁶ Whether religious minorities continue to choose this path must be monitored.

¹⁵⁷ As argued by the Religious Affairs Minister and the Home Minister: *The Jakarta Post*, *supra* note 90.

¹⁵⁸ *Christian Post*, *supra* note 97.

¹⁵⁹ The *Mahkamah Agung* has the authority to review Regulations that are below Laws in the legal hierarchy: arts. 24 and 24A(1) of the Constitution. Only the Constitutional Court has the power to review Laws: art. 24C(1) of the Constitution. See also arts. 31 and 31A of *Law 14/1985 on the Mahkamah Agung* (revised by *Law 4/2005*) and arts. 3A and 10(1)(A) of *Law 24/2003 on the Constitutional Court*.

¹⁶⁰ Muningsar Saraswati, “Group Goes to Court Against Places of Worship Decree” *The Jakarta Post* (30 March 2006), online: *The Jakarta Post* <<http://www.thejakartapost.com/>>.

¹⁶¹ The solidarity these two groups have found with each other is significant, given that the teachings of Ahmadiyah, in particular their belief that Jesus did not die, are contrary to Christianity (Herman Beck, *supra* note 52 at 216).

¹⁶² It is unknown to the author whether this case has been decided yet and, if so, what the outcome was.

¹⁶³ *Law 23/2002*.

¹⁶⁴ Such as the three Christian women currently behind bars in Indramayu. For a case note, see Melissa Crouch, “The Proselytisation Case: Law, the Rise of Islamic Conservatism and Religious Discrimination in West Java” (2006) 8(3) *Austl. J. Asian L.* 322.

¹⁶⁵ See Arie Rukmantara, “Jailed Teachers Hope for Release Dashed” *The Jakarta Post* (18 January 2006), online: *The Jakarta Post* <<http://www.thejakartapost.com/>>; “Konstitusi: MK Tolak Hak Uji UU Perlindungan Anak” *Kompas* (18 January 2006), online: *Kompas Cybermedia* <<http://www.kompas.co.id/>>; and “MK Tolak Uji Materiil UU Perlindungan Anak” *Republika* (18 January 2006), online: *Republika Online* <<http://www.republika.co.id/>>.

¹⁶⁶ The related idea that the courts have the potential to create new checks on the conduct of lawmakers, and provide an avenue for the politically confident to assert their rights through the judicial process (which for so long has been seen as controlled by the state and inaccessible) was argued in the context of the Chinese minority by Tim Lindsey, “Reconstituting the Ethnic Chinese in Post-Suharto Indonesia: Law, Racial Discrimination and Reform” in Tim Lindsey and Helen Pausacker, eds., *The Ethnic Chinese in Southeast Asia: Remembering, Distorting, Forgetting* (Singapore: Institute of Southeast Asian Studies, 2005) 41 at 68.

The second response to the New Regulation has been one of violence. Attacks on places of worship of religious minorities, rather than subsiding, have increased. On 26 March 2006, in the first incident since the New Regulation was passed, hundreds of residents from a housing complex in Bogor, West Java, blocked access to the service of a Pentecostal church.¹⁶⁷ In the same month a Hindu temple was bombed in Central Sulawesi, and Ahmadiyah homes were raided in Lombok.¹⁶⁸ In April 2006, a church in Mojokerto, East Java, was closed by local residents.¹⁶⁹ Then, in July 2006 a bomb exploded at Eklesia church in the Poso, Central Sulawesi.¹⁷⁰ On 25 October, in Kuningan, West Java, a mob attacked mosques and homes belonging to Ahmadiyah members.¹⁷¹

Attacks targeting Ahmadiyah have become particularly acute, forcing some followers to attempt to seek refuge abroad in places such as Australia.¹⁷² As a result, local activist groups raised these religiously-motivated attacks on Ahmadiyah followers and Christians at the recent session of the United Nation's Commission on Human Rights,¹⁷³ alongside high profile issues such as the murder of Munir Said Thalib.¹⁷⁴

Of course, at the time of writing, the New Regulation has been in operation for less than a year. On this basis, some have responded by asking people to give the government time to prove the effectiveness of the New Regulation.¹⁷⁵ Time, however, will not cure the inherent flaws in the New Regulation.

IV. LOOKING BACK, MOVING FORWARD

The introduction of and response to the New Regulation raises some key questions. Looking back, why was the New Regulation introduced? Is it likely to remain? If so, what should be done to uphold the right to religious freedom in order to move forward in relation to places of worship?

The New Regulation was introduced primarily because it reflects the concern of political parties to protect their Islamic-majority voter base. The history of political

¹⁶⁷ "Residents Block Access to Church During Sunday Service" *The Jakarta Post* (27 March 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

¹⁶⁸ US Bureau, *supra* note 1.

¹⁶⁹ Hera Diani, "Revised Decree 'Justifies Violence'" *The Jakarta Post* (25 April 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

¹⁷⁰ Ruslan Sangadji, "Bomb Damages Church in Poso" *The Jakarta Post* (3 July 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

¹⁷¹ "Punish Ahmadiyah Attackers: Watchdog" *The Jakarta Post* (1 November 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

¹⁷² "Ahmadiyah Members Consider Seeking Asylum in Australia" *The Jakarta Post* (25 July 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

¹⁷³ The 62nd session was held from March 13 to April 21 2006. See Arie Rukmantara, 'Munir, Attacks on Ahmadiyah, Churches Issues for UN Meeting' *The Jakarta Post* (25 March 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

¹⁷⁴ Munir was an outspoken human rights activist who was poisoned to death on a flight from Jakarta to Amsterdam in September 2004. Pilot Pollycarpus Budihari Priyanto was found guilty of the murder by a court in 2005, but evidence emerged during the trial that National Intelligence Agency operatives may also have been involved: Arie Rukmantara, "Munir, Attacks on Ahmadiyah, Churches Issues for UN Meeting" *The Jakarta Post* (10 March 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

¹⁷⁵ For example, the highly respected scholar and rector of Syarif Hidayatullah Islamic State University, Professor Azyumardi Azra: "Permit to Worship" *The Jakarta Post* (31 March 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

Islam in Indonesia has largely been one of failure.¹⁷⁶ In post-Suharto Indonesia, however, one of the most visible developments has been the move of mainstream Islam into political life.¹⁷⁷ This rise of ‘political Islam’ has occurred through the related¹⁷⁸ establishment of Islamic parties that adopt Islam as their basis (replacing the Pancasila) and the proliferation of ‘political’ violence by radical Islamic groups, such as the FPI.¹⁷⁹

Political parties more generally are likely to continue to favour the Islamic majority, in terms of law reform, in order to maintain their support. This motive is evident in President Yudhoyono’s move to forge political alliances with Islamic parties the Crescent and Star Party (PBB) and the PKS,¹⁸⁰ which, in the 2004 election,¹⁸¹ both secured an “impressive” number of votes.¹⁸² This aim also underlies the DPR’s willingness to pass controversial national legislation which upholds Muslims rights. One example of the later is the *Education Law*,¹⁸³ which effectively requires Christian schools to employ Muslim religious education teachers for Muslim students.¹⁸⁴

In considering what can, and should, be done to address the lack of harmony and violations of human rights, it is appropriate to turn to the issue at the heart of the New Regulation: religious freedom. The New Regulation should be revised and brought into line with the Constitutional right to freedom of religion and worship, as well as with Indonesia’s international obligations under the ICCPR and ICESCR. To do this, the 90/60 requirement should be removed so that all religious groups, regardless of size, have equal opportunity to obtain a permit.

Second, the state should begin to play a more active role in disarming radical Islamic groups who are responsible for the attacks on places of worship, as well as taking steps to prosecute the perpetrators. Although police¹⁸⁵ have arrested several perpetrators, such as in relation to the attacks on Ahmadiyah in Lombok, they have not been taken to court.¹⁸⁶ In November 2006, the Indonesian Legal Aid Foundation (YLBHI) demanded that the government take legal action against the perpetrators of recent attacks on followers of the Ahmadiyah sect.¹⁸⁷ In the absence of state

¹⁷⁶ Greg Fealy, “Islamisation and Politics in Southeast Asia: the Contrasting Cases of Malaysia and Indonesia” in Nelly Lahoud & Anthony Johns, eds., *Islam in World Politics* (Routledge: New York, 2005) 152 at 161.

¹⁷⁷ Zachary Abuza, *Political Islam and Violence in Indonesia* (New York: Routledge, 2007) at 34.

¹⁷⁸ *Ibid.* at 2.

¹⁷⁹ Azyumardi Azra, “Political Islam in Post-Suharto Indonesia” in Virginia Hooker & Amin Saikal, eds., *Islamic Perspectives on the New Millennium* (Singapore: Institute of Southeast Asian Studies, 2004) 133.

¹⁸⁰ Azyumardi Azra, *Islam in Southeast Asia: Tolerance and Radicalism* (University of Melbourne: CSCI Islamic Issues Briefing Paper Series 1, 2005) at 20.

¹⁸¹ For an analysis of the 2004 election in the context of the politics of Indonesia generally, see McIntyre, 2005; Suryadinata, *supra* note 9.

¹⁸² Aris Anata, Evi Nurvidya Arifin & Leo Suryadinata, *Emerging Democracy in Indonesia* (Singapore: Institute of Southeast Asia Studies, 2005) at 123.

¹⁸³ *Law 20/2003 on the National Education System*.

¹⁸⁴ Greg Fealy, *supra* note 176 at 165.

¹⁸⁵ For the role of the police generally in conflicts, see Suparman Marzuki *et al.*, *The Role of the Police in Socio-Political Conflicts in Indonesia* (Yogyakarta: Islamic University of Indonesia’s Human Rights Study Centre, 2005).

¹⁸⁶ “Courts Must Get Tougher on Violent Militias: Sutanto” *The Jakarta Post* (23 June 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

¹⁸⁷ “Punish Ahmadiyah Attackers: Watchdog” *The Jakarta Post* (1 November 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

action, the Jakarta Legal Aid Institute has launched an 'Anti-Thuggery Movement', in part directed to address religiously motivated attacks by groups such as FPI.¹⁸⁸ The state must become a key actor in this process. Given the history of such attacks in Indonesia, it could be appropriate to insert a provision into the New Regulation to make it an offence to close down a place of worship without the authority to do so, and prescribe a punishment for breach of this offence.

Finally, the state must become more proactive in providing adequate protection for religious minorities, particularly the Ahmadiyah sect. This need has been echoed by organisations such as the National Commission on Human Rights which, in August 2006, asked the government to guarantee the security of Ahmadiyah followers.¹⁸⁹ It is true that, in the past, the police have been present at incidents of violence, but they do not have a record of proactively intervening in such instances of violence.

V. CONCLUSION

Places of worship in Indonesia are no longer sites of religious freedom, if they ever were. Instead, places of worship of religious minorities, namely Christian churches and Ahmadiyah mosques, are increasingly becoming contested places of tension and violence. This escalating violence is directly related to the controversy and debate surrounding Indonesia's new *Joint Ministerial Regulation on Places of Worship*.

Of course, it was necessary to amend the Old Decree which, as shown, was dysfunctional and contrary to Indonesia's new religious freedom obligations. However, instead of strengthening the freedom of religious minorities—a right now formally recognised in Indonesia—the state took the opportunity to restrict this right. By passing the New Regulation, the state has made it *more* difficult for religious minorities to obtain a permit to build a place of worship than in the past.

This decision reflects the dilemma that religious minorities face in the present era of democratisation: while democracy has allowed minorities to reassert their rights and religious identity, the same is true for the religious majority.¹⁹⁰ This led to the introduction of the New Regulation, which reflects the concern of political parties to protect their Islamic-majority voter base.

It has been shown that the New Regulation actually restricts, rather than upholds, the right to religious freedom, particularly for religious minorities in Indonesia. Unless the state amends the New Regulation and proactively addresses conflict at places of worship, radical Islamic groups will continue to target the places of worship of religious minorities, who have little option but to attempt to assert their rights through litigation or, perhaps, by returning violence.

¹⁸⁸ "Group Pledges to Fight Thuggery" *The Jakarta Post* (4 July 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

¹⁸⁹ Panca Nugraha, "Human Rights Commission Wants Ahmadiyah Protected" *The Jakarta Post* (12 August 2006), online: The Jakarta Post <<http://www.thejakartapost.com/>>.

¹⁹⁰ Meidyatama Suryodiningrat, "Flirting with Democracy: Will Indonesia Go Forward or Back?" in *A Billion Ballots for Democracy: Election Year in Indonesia* (Woodrow Wilson International Centre for Scholars, Asia Program Special Report No 123, 2004) 7.