

When Majority Becomes Veto: Judicial Review of Religious Minority Exclusion in House-of-Worship Licensing in Indonesia

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Abstract

Indonesia's constitutional framework formally guarantees freedom of religion and worship, yet religious minorities continue to encounter institutional barriers in establishing and maintaining houses of worship. This article examines how local licensing mechanisms may transform majority preferences into effective veto powers over the religious rights of minority communities. The study aims to identify the legal and institutional mechanisms through which seemingly neutral licensing requirements produce discriminatory outcomes. Employing normative juridical and socio-legal approaches, the research examines relevant constitutional provisions, regulations concerning houses of worship, selected judicial decisions, and documented conflicts involving religious minorities. The analysis focuses on the relationship between administrative discretion, local majoritarianism, and the state's positive obligation to protect minority rights. The article argues that the central problem is not merely the existence of restrictive requirements but the delegation of substantial regulatory power to institutions vulnerable to majoritarian pressure. Such arrangements may undermine equality before the law and transform procedural requirements into instruments of exclusion. The article proposes a rights-based interpretation of licensing authority, emphasizing proportionality, non-discrimination, and effective judicial oversight. It concludes that meaningful protection of religious minorities requires institutional mechanisms capable of preventing local majorities from exercising de facto veto power over constitutionally protected religious freedoms.

[Kerangka konstitusional Indonesia secara formal menjamin kebebasan beragama dan beribadah, namun minoritas agama terus menghadapi hambatan kelembagaan dalam mendirikan dan memelihara tempat ibadah. Artikel ini mengkaji bagaimana mekanisme perizinan lokal dapat mengubah preferensi mayoritas menjadi kekuatan veto yang efektif atas hak-hak keagamaan komunitas minoritas. Studi ini bertujuan untuk mengidentifikasi mekanisme hukum dan kelembagaan yang melalui persyaratan perizinan yang tampaknya netral menghasilkan hasil yang diskriminatif. Dengan menggunakan pendekatan yuridis normatif dan sosio-hukum, penelitian ini mengkaji ketentuan konstitusional yang relevan, peraturan mengenai tempat ibadah, beberapa keputusan pengadilan, dan konflik yang didokumentasikan yang melibatkan minoritas agama. Analisis ini berfokus pada hubungan antara diskresi administratif, mayoritarianisme lokal, dan kewajiban positif negara untuk melindungi hak-hak minoritas. Artikel ini berpendapat bahwa masalah utamanya bukan hanya keberadaan persyaratan yang membatasi, tetapi juga pendelegasian kekuasaan pengaturan yang substansial kepada lembaga-lembaga yang rentan terhadap tekanan mayoritas. Pengaturan semacam itu dapat merusak kesetaraan di hadapan hukum dan mengubah persyaratan prosedural menjadi instrumen eksklusif. Artikel ini mengusulkan interpretasi berbasis hak atas kewenangan perizinan, menekankan proporsionalitas, non-diskriminasi, dan pengawasan peradilan yang efektif. Kesimpulannya, perlindungan yang bermakna bagi minoritas agama membutuhkan mekanisme kelembagaan yang mampu mencegah mayoritas lokal menggunakan hak veto de facto atas kebebasan beragama yang dilindungi secara konstitusional.]

Keywords: religious minorities, freedom of religion, house of worship, judicial review, majoritarianism

Introduction

Indonesia presents a constitutional paradox in the protection of religious freedom. The 1945 Constitution guarantees every person the freedom to embrace a religion and worship according to his or her religion or belief, while Article 28I further protects freedom of religion as a right that cannot be reduced under ordinary circumstances. Article 29(2) also imposes an affirmative constitutional commitment upon the state to guarantee religious practice. Nevertheless, the formal recognition of religious freedom does not automatically ensure equal access to the physical conditions necessary for its exercise. Religious minorities frequently experience administrative obstacles when establishing houses of worship, particularly where local authorities rely on the 2006 Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs. The resulting contradiction is therefore institutional rather than merely doctrinal: constitutional rights are recognized at the highest level of the legal hierarchy, yet their practical realization can be constrained

through lower-level administrative procedures and localized social opposition (Asroni 2012; Crouch 2013; Harefa 2016).

The central controversy concerns the requirement that an applicant for a house-of-worship permit demonstrate the support of at least sixty local residents and the existence of at least ninety prospective worshippers, alongside obtaining a recommendation from the local Religious Harmony Forum (Forum Kerukunan Umat Beragama, FKUB). Although these requirements are formally presented as instruments for preserving social harmony, their operation raises a fundamental constitutional question: can a majority be permitted to determine whether a minority may exercise a right guaranteed to every individual? The problem becomes particularly acute when social support is treated as a prerequisite for administrative legality rather than as evidence relevant to legitimate technical concerns such as public safety, zoning, or environmental impact. Under such circumstances, procedural participation may become a mechanism through which numerical majorities exercise substantive control over minority rights, effectively transforming constitutional guarantees into rights contingent upon social approval (Arifinsyah and Sofian 2021; Wijaya and Prasojo 2024).

Previous studies have examined the Indonesian regulation of houses of worship from several perspectives. Asroni (2012) critically identified the potential of the 2006 Joint Regulation to intensify conflict and institutionalize discrimination against minority religious communities. Harefa (2016), through an evaluation of implementation in East Java, demonstrated that weak commitment, inadequate socialization, and insufficient law enforcement limited the effectiveness of the regulatory framework. More recent research by Wijaya and Prasojo (2024) conceptualized the regulation as an institutionalization of administrative burdens, showing that the problem cannot be reduced to isolated incidents of intolerance. Other scholars have similarly emphasized the relationship between restrictive licensing procedures, unequal access to justice, and the emergence of what may be described as a “social veto” against minority worship (Arifinsyah and Sofian 2021; Harahap, Panjaitan, and Sihite 2025).

However, existing scholarship has not sufficiently integrated the administrative, constitutional, and judicial dimensions of the problem into a unified theory of majoritarian veto. Studies of religious freedom often emphasize intolerance or social conflict, whereas administrative-law research frequently concentrates on procedural effectiveness without fully addressing the constitutional implications of delegating gatekeeping authority to social actors. Likewise, the literature on minority rights tends to examine discrimination as an outcome without systematically explaining the institutional pathway through which formally neutral licensing conditions generate exclusion. This article contributes by conceptualizing house-of-worship licensing as a constitutional site where administrative discretion can convert demographic dominance into legal power. Its novelty lies in shifting the analysis from whether the regulatory requirements are merely burdensome to whether they impermissibly transfer decision-making authority over fundamental

rights from constitutionally accountable institutions to majoritarian social preferences.

This article therefore asks three related questions: first, how do house-of-worship licensing requirements transform local majority preferences into de facto veto powers over religious minorities? Second, what standards should courts apply when reviewing administrative decisions and regulations that condition religious freedom upon community approval? Third, how can Indonesia reconcile religious harmony policies with its constitutional and international human rights obligations? The article argues that judicial review should distinguish legitimate regulation of land use, public order, and building safety from illegitimate delegation of rights determination to social majorities. A constitutional democracy may regulate the manner in which a house of worship is constructed, but it should not permit an administrative system to determine whether a minority may worship by counting the willingness of outsiders to tolerate that worship.

Methodologically, the study employs a combined normative juridical and socio-legal approach. The normative component examines the hierarchy and interaction of the 1945 Constitution, Law No. 39 of 1999 on Human Rights, Law No. 30 of 2014 on Government Administration, the 2006 Joint Regulation, and relevant international standards, particularly the International Covenant on Civil and Political Rights (ICCPR). The socio-legal component examines documented patterns of licensing disputes and conflict to understand how legal norms operate within local political environments. The analysis also considers constitutional and judicial developments concerning equality and religious belief, including Constitutional Court Decision No. 97/PUU-XIV/2016. Rather than treating judicial review narrowly as the annulment of formal norms, the study adopts a broader conception that includes constitutional interpretation, review of administrative discretion, and judicial remedies against discriminatory implementation.

Results and Discussion

1. From Constitutional Guarantee to Conditional Religious Freedom

The Indonesian constitutional order establishes religious freedom as a fundamental legal commitment rather than a discretionary privilege granted by local authorities. Article 28E of the 1945 Constitution protects the freedom to embrace religion and worship, Article 28I(2) prohibits discriminatory treatment, and Article 29(2) requires the state to guarantee religious freedom. These provisions must also be interpreted together with Law No. 39 of 1999 on Human Rights, particularly Article 22, which recognizes the freedom of every person to embrace and practice religion. Indonesia is additionally bound by the ICCPR, ratified through Law No. 12 of 2005, including Article 18 on freedom of thought, conscience, and religion and Article 27 on minority protection. Consequently, the constitutional question is not whether religious activity may be regulated at all, but whether restrictions satisfy legality, legitimate purpose, necessity, proportionality, and non-

discrimination (United Nations Human Rights Committee 1993; United Nations 1966).

The establishment of a house of worship should be understood as closely connected to the effective exercise of religious freedom. Worship is not solely an internal act of belief; it often requires collective organization, physical space, and institutional continuity. The inability of a community to secure a lawful place for worship may therefore constitute a substantial interference with religious practice even when the state does not formally prohibit the religion itself. This distinction is essential because discriminatory systems frequently operate indirectly. A legal regime may declare that every religion is free while simultaneously establishing administrative conditions that some communities can satisfy easily and others cannot. The constitutional principle of equality requires attention to such disparate effects, particularly where requirements that appear neutral disproportionately burden religious minorities whose demographic position makes community support structurally more difficult to obtain (Kymlicka 1995; United Nations Human Rights Committee 1993).

This perspective is reinforced by the doctrine of positive state obligations. Freedom of religion requires not only governmental abstention from direct interference but also reasonable protection against coercion and exclusion by private actors. Where local communities threaten, obstruct, or pressure minority religious groups, public authorities cannot automatically transform private hostility into an administrative reason for refusing protection. The state must remain constitutionally independent from the preferences of dominant groups when fundamental rights are at stake. Otherwise, a hostile crowd may obtain through administrative pressure what it could not constitutionally obtain through legislation. In the Indonesian context, this means that governmental officials should not treat social resistance as self-validating evidence against a permit application; instead, the state has an obligation to assess whether the resistance itself reflects discriminatory conduct that must be prevented (Crouch 2010; Law No. 39 of 1999).

2. The Architecture of Majoritarian Veto in House-of-Worship Licensing

The most significant institutional problem arises when licensing requirements create a dependency relationship between a minority applicant and the social majority surrounding the proposed house of worship. The requirement to obtain signatures from local residents may appear participatory, but participation is constitutionally problematic when it becomes a condition for the enjoyment of a fundamental right. A neighborhood may legitimately be consulted regarding traffic, safety, environmental consequences, and land-use compatibility. However, consultation differs fundamentally from consent. Consultation gathers information relevant to a governmental decision, whereas a consent requirement may effectively delegate decision-making power to private persons. When the relevant private persons belong overwhelmingly to a religious majority, the distinction

becomes particularly important because demographic superiority can be converted into legal exclusion (Asroni 2012; Wijaya and Prasajo 2024).

The requirement of support from local residents therefore creates an asymmetrical burden. A large religious community in a locality where it constitutes the majority generally does not face a structural difficulty in obtaining signatures from neighbors who share its religious identity. A minority community, by contrast, must seek permission from individuals who may not share its beliefs and who may have ideological reasons to oppose its presence. The regulation thus does not distribute administrative burdens equally in practice, even if it uses formally identical language. Equality before the law cannot be assessed solely by examining whether the same rule applies to everyone; it must also consider whether a rule systematically advantages those whose demographic position makes compliance easier. A formally universal threshold may therefore produce substantively unequal consequences (Kymlicka 1995; United Nations Human Rights Committee 1993).

The involvement of FKUB recommendations introduces a second layer of institutional complexity. FKUB was designed as an interreligious mechanism for dialogue and harmony, but its participation in licensing may create constitutional tension when its recommendation becomes a practical gatekeeping instrument. Deliberative institutions can contribute to peaceful coexistence, yet dialogue should not be confused with adjudicative authority. A body organized around representation and interreligious consensus is not necessarily institutionally suited to determine whether a constitutional right may be exercised. The greater the dependence of administrative approval upon such recommendations, the greater the risk that representative majorities within local institutions will reproduce broader demographic inequalities. This does not mean that FKUB lacks social value; rather, its constitutional function should be advisory and facilitative, not determinative of whether minorities may access fundamental rights (Harefa 2016; Wijaya and Prasajo 2024).

The concept of majoritarian veto provides a more precise explanation of this institutional structure. A veto exists when an actor who is not the primary constitutional rights-holder can prevent the exercise of that right by withholding approval. The veto need not be formally expressed in statutory language. It may arise indirectly where administrative procedures make approval impossible without cooperation from groups that have no constitutional duty to provide it. In house-of-worship licensing, the majority may not possess a formal legal power to prohibit minority worship, yet its refusal to provide signatures, support, or institutional endorsement may produce exactly that consequence. The law therefore creates a functional veto by establishing procedural dependencies that convert private preferences into public barriers (Arifinsyah and Sofian 2021; Harahap, Panjaitan, and Sihite 2025).

3. Administrative Discretion, Neutrality, and Indirect Discrimination

Administrative law is often presented as politically neutral because it governs procedures, permits, and institutional competence. However, neutrality in administrative form does not guarantee neutrality in constitutional effect. Licensing decisions involve discretion whenever officials interpret ambiguous requirements, assess evidence, evaluate social conditions, or determine whether an applicant has fulfilled procedural obligations. In contexts characterized by religious polarization, this discretion may become particularly vulnerable to external pressure. Officials may prefer to refuse or delay a permit because approval is politically costly, even when refusal lacks a strong legal foundation. Administrative discretion then becomes a mechanism through which public authorities avoid direct responsibility while allowing majority opposition to determine the practical outcome.

The concept of administrative burden is particularly useful in explaining why procedural requirements can function as substantive restrictions. Administrative burdens include learning costs, compliance costs, and psychological costs imposed by governmental procedures (Moynihan, Herd, and Harvey 2015). In the Indonesian context, minority communities may face repeated documentation requirements, delays, contested signatures, institutional recommendations, security concerns, and political negotiations before obtaining a permit. These burdens are not necessarily experienced equally by all applicants. Their cumulative effect may be significantly greater for communities already positioned outside local religious majorities. Wijaya and Prasojo (2024) demonstrate that the regulatory framework surrounding houses of worship has institutionalized administrative burdens over time, suggesting that exclusion is embedded not merely in individual acts of discrimination but also in the structure of the regulatory process itself.

Indirect discrimination occurs when a formally neutral measure places a particular group at a disproportionate disadvantage without sufficient justification. This principle is relevant because the numerical requirements in house-of-worship licensing do not explicitly state that minority religions are disfavored. Nevertheless, minority communities are structurally more likely to fail requirements based on local numerical support because their religious identity is, by definition, less dominant in particular demographic settings. The legal analysis should therefore move beyond the question of discriminatory intent. A constitutional system committed to equality must also examine discriminatory effects. If a procedure predictably prevents minorities from accessing rights while imposing little comparable burden upon majorities, formal neutrality cannot by itself establish constitutional validity (United Nations Human Rights Committee 1993; Kymlicka 1995).

The principle of proportionality provides an appropriate framework for evaluating such restrictions. First, the state must identify a legitimate objective, such as public order, safety, or the prevention of violence. Second, the measure must be suitable for achieving that objective. Third, it must be necessary, meaning that less restrictive alternatives are unavailable. Finally, the restriction must maintain a fair

balance between the public objective and the burden imposed upon the fundamental right. Requiring proof of community support is difficult to justify under this framework because genuine public-order concerns can be addressed through neutral security planning, zoning regulations, and law enforcement. A minority's inability to obtain majority approval is not itself evidence that its worship threatens public order. Indeed, allowing hostility to justify restrictions creates a perverse incentive in which opposition generates the legal basis for its own success.

4. Judicial Review and the Limits of Administrative Majoritarianism

Judicial review is essential because fundamental rights require an institutional actor capable of applying constitutional standards independently of local political majorities. In Indonesia, this protection may operate through different judicial channels depending on the object of review. The Constitutional Court reviews the constitutionality of statutes, while the Supreme Court may review regulations beneath statutes. Administrative courts, meanwhile, play an important role in reviewing concrete governmental decisions and administrative conduct. The fragmentation of these review mechanisms should not obscure the substantive constitutional principle that lower-level regulations and administrative decisions must remain consistent with higher legal norms. A permit denial based on discriminatory reasoning cannot become constitutionally acceptable merely because it is expressed through administrative language.

Constitutional Court Decision No. 97/PUU-XIV/2016 is particularly relevant to the broader development of equal recognition in Indonesia. The Court granted protection to adherents of indigenous beliefs in the context of civil registration and rejected a legal framework that produced unequal recognition between officially recognized religious categories and indigenous belief systems. Although the decision did not directly concern house-of-worship permits, its constitutional significance lies in its insistence that legal recognition and equal treatment cannot be structured in a manner that renders particular belief communities institutionally inferior. The decision demonstrates that constitutional adjudication may require the Court to move beyond formal classifications and examine the exclusionary consequences of legal arrangements (Constitutional Court of the Republic of Indonesia 2017).

A rights-based judicial approach to house-of-worship licensing should therefore review both the legal rule and its operational effects. Courts should ask whether a requirement is genuinely related to a constitutionally legitimate administrative purpose or whether it transfers substantive authority over religious freedom to private majorities. They should also examine whether officials considered less restrictive alternatives, applied criteria consistently, and provided adequate reasons for denial. Where authorities invoke “social harmony,” courts should demand evidence that the proposed house of worship itself creates a legally cognizable risk rather than merely demonstrating that some members of the public oppose it. Judicial deference should be limited because majoritarian pressure is

precisely the circumstance in which constitutional rights require counter-majoritarian protection.

Effective judicial remedies must also address timing. Delayed justice can be particularly damaging in licensing disputes because religious communities may spend years without a lawful place to worship while litigation proceeds. Courts should therefore have access to remedies capable of preventing irreparable harm, including orders requiring authorities to process applications within specified periods, prohibiting discriminatory reliance on social hostility, and invalidating decisions that fail proportionality review. In appropriate cases, judicial oversight should focus on outcomes as well as procedures. If authorities repeatedly use administrative formalities to postpone a decision, judicial review must recognize delay as a substantive interference with religious freedom rather than treating it as a merely technical matter.

5. Reconstructing Licensing through a Rights-Based Model

A constitutionally defensible licensing framework should separate technical regulation from religious approval. The state may legitimately require compliance with building codes, land-use planning, environmental standards, accessibility requirements, and public safety measures. These criteria are objectively connected to the physical construction and operation of a building and can be applied equally to religious and nonreligious institutions. What should be rejected is the use of social consent as a proxy for legality. The relevant administrative question should be whether the applicant has satisfied neutral and proportionate technical requirements, not whether a local majority wishes the religious community to exist in the area. A rights-based framework therefore requires the replacement of approval-oriented criteria with impact-oriented assessment.

Community participation should nevertheless be preserved in a redesigned form. Residents may be consulted regarding factual consequences of a proposed development, including traffic management, parking, noise, safety, and infrastructure. However, participation must be structured so that objections are legally relevant only when they concern identifiable and evidence-based impacts. A resident's disagreement with a religion, theological objection, or generalized fear should not constitute a valid ground for denying a permit. This distinction would preserve democratic participation without allowing democracy to become majoritarian domination. It would also place the burden of maintaining public order where it constitutionally belongs: on the state, rather than on the minority community that becomes the target of opposition.

The institutional role of FKUB should likewise be reconsidered. FKUB can continue to facilitate communication, mediate misunderstandings, and promote interreligious dialogue. These functions are valuable precisely because they operate through persuasion and relationship-building rather than coercive authority. Its recommendation should not, however, operate as a condition whose absence automatically prevents the exercise of constitutional rights. If the state wishes to

retain an institutional assessment, the assessment should be governed by transparent criteria, written reasons, procedural safeguards, and effective judicial review. Minority representation within relevant institutions should also be protected to reduce the risk that formally plural structures simply reproduce demographic majoritarianism.

Finally, the Indonesian legal system should adopt a presumption in favor of religious freedom when interpreting ambiguous licensing provisions. Restrictions should be narrowly construed, and the government should bear the burden of demonstrating that interference is legally justified. This presumption reflects the constitutional hierarchy of norms: administrative convenience cannot outweigh a fundamental right without compelling justification. Such an approach would also strengthen the rule of law by ensuring that local political pressure cannot override constitutional commitments. The objective is not to immunize religious institutions from ordinary regulation but to ensure that regulation remains regulation, rather than becoming an indirect mechanism for deciding which religious communities are sufficiently acceptable to exercise their rights.

Conclusion

This article has argued that the principal problem in Indonesian house-of-worship licensing is not simply bureaucratic complexity but the institutional conversion of majority preferences into effective veto powers over minority religious rights. Requirements involving numerical support, community approval, and influential institutional recommendations may appear administratively neutral, yet they can produce substantively unequal consequences where religious minorities are structurally dependent upon the consent of local majorities. Such an arrangement conflicts with constitutional guarantees of religious freedom, equality, and non-discrimination because a fundamental right becomes contingent upon the willingness of others to tolerate its exercise. The state may regulate construction and land use, but it cannot constitutionally delegate the ultimate determination of religious freedom to demographic majorities.

Judicial review should consequently apply a rights-based and proportionality-oriented standard to both regulations and individual administrative decisions. Courts should distinguish legitimate technical regulation from procedures that function as mechanisms of social exclusion. Community participation and interreligious dialogue remain important, but they must not become substitutes for constitutional adjudication. Administrative authorities should be required to provide evidence-based reasons, apply neutral criteria, avoid reliance on religious hostility, and demonstrate why less restrictive alternatives cannot achieve legitimate governmental objectives. Judicial institutions, in turn, should provide effective and timely remedies capable of preventing administrative delay from becoming a method of exclusion.

Future research should develop this argument through comparative and empirical investigation. Comparative studies could examine how other

constitutional democracies regulate houses of worship while balancing zoning authority, local participation, and minority protection. Empirical research should also map permit applications, rejection patterns, administrative delays, and judicial outcomes across Indonesian regions to determine whether particular requirements produce measurable disparate effects. Interviews with minority communities, local officials, FKUB representatives, and judges could further clarify how majoritarian pressure enters administrative decision-making. Such research would help transform the concept of majoritarian veto from a normative diagnosis into an empirically testable framework. Ultimately, the durability of Indonesian constitutional pluralism will depend on whether institutions can ensure that democracy means the protection of equal citizenship for all, rather than the legal supremacy of the religious majority over the constitutional rights of minorities.

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