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Governing Sacred Spaces: Regulatory Gaps and Religious Freedom in Kudus

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Abstract

The approval processes for houses of worship in Indonesia are complex and contentious, often intertwining administrative law with the principle of religious freedom. This study critically examines the regulatory framework in Kudus Regency, highlighting the discrepancies between the Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs Nos. 9 and 8 of 2006 and the Kudus Regent Regulation No. 6 of 2019. Utilizing a qualitative field research methodology alongside a normative-empirical legal analysis, this research integrates regulatory examination with empirical data obtained from the Kudus Investment and One-Stop Integrated Services Agency (DPMPTSP). The findings indicate that the current Regent Regulation fails to adequately distinguish between newly proposed houses of worship and those established before 2006. As a result, numerous pre-existing houses of worship are subjected to approval procedures intended for new constructions, despite explicit transitional provisions outlined in the Joint Ministerial Regulation. This regulatory gap not only generates administrative uncertainty but also poses considerable challenges to the safeguarding of religious freedom. The study advocates harmonizing these procedures with existing regulations, emphasizing the need for specific provisions that recognize and protect pre-existing houses of worship. Establishing such measures is crucial for ensuring legal certainty, equitable public service delivery, and the overall safeguarding of religious communities in Kudus.

Keywords: *Houses Of Worship; Building Approval; Religious Freedom; Regulatory Gap; Legal Certainty*

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Introduction

The governance of houses of worship occupies a sensitive intersection between administrative regulation, spatial planning, public order, interreligious relations, and the constitutional protection of religious freedom. A house of worship is not merely a building. It is the institutional space through which a religious community performs collective worship, transmits traditions, organizes social assistance, and sustains its public identity. Consequently, an approval procedure that appears technical can determine whether a religious community is able to exercise its faith collectively and visibly. In religiously diverse societies, the legitimacy of that procedure depends on its capacity to protect freedom of religion while preventing genuine disturbances to public order (ALFITRI, 2018; Marshall, 2018).

Indonesia regulates the establishment of houses of worship through a layered legal and administrative framework. At the national level, the Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs Nos. 9 and 8 of 2006 (hereafter, the 2006 Joint Ministerial Regulation) assigns responsibilities to regional governments, strengthens the role of the Religious Harmony Forum (Forum Kerukunan Umat Beragama, FKUB), and establishes substantive and administrative requirements for houses of worship. At the local level, building approval is implemented through regional legislation and administrative agencies. This multi-level structure can make regulation more responsive to local conditions, but it also creates a risk of inconsistency when a local implementing rule omits, narrows, or alters protections contained in the national framework (Peraturan Bersama Menteri Agama Dan Menteri Dalam Negeri Nomor 8 Dan Nomor 9 Tahun 2006 Tentang Pedoman Pelaksanaan Tugas Kerala Daerah/Wakil Kerala Daerah Dalam Pemeliharaan Kerukunan Umat Beragama, Pemberdayaan Forum Kerukunan Umat Beragama, Dan Pendirian Rumah Ibadat , 2006).

Kudus Regency provides a revealing case. Kudus is widely known as a religious and commercial center in northern Central Java. Its public identity is associated with Sunan Kudus, Sunan Muria, the historical development of Islamic learning, and the cultural ethic of gusjigang—good character, religious study, and commerce. Yet Kudus is also home to Christian, Catholic, Buddhist, Hindu, Confucian, and indigenous-belief communities. In the second semester of 2025, the regency recorded 883,194 residents across nine districts. Although Muslims constituted the overwhelming majority, other communities maintained churches, chapels, monasteries, temples, and other sites of collective worship. The protection of these spaces is therefore an important indicator of how local government translates formal religious freedom into administrative practice (Ashadi, 2019, p. 57; Dinas Kependudukan dan Pencatatan Sipil Kabupaten Kudus, 2025; Said, 2014; Salam, 1977, pp. 39–45).

The central problem examined in this article arises from the relationship between the 2006 Joint Ministerial Regulation and Kudus Regent Regulation No. 6 of 2019 concerning Building Permits. The national regulation expressly contains a transitional provision for houses of worship that had been permanently used, or possessed historical value, before the regulation entered into force but did not yet have a building permit. Article 28(3) directs the regent or mayor to assist in facilitating the issuance of a permit for such buildings. Kudus Regent Regulation No. 6 of 2019, by contrast, sets building-administration requirements for houses of worship without clearly differentiating between pre-existing buildings and newly proposed ones. In practice, the same requirement—at least 90 identified users and support from at least 60 local residents—has been applied to both categories (Peraturan Bupati Kudus Nomor 6 Tahun 2019 Perihal Izin Mendirikan Bangunan, 2019).

This uniform treatment is not a minor procedural issue. A newly proposed building and a house of worship that has served a community for decades occupy different legal and social positions. The former requires an assessment of prospective need, location, and community impact; the latter represents an existing religious practice whose legality must be regularized without retroactively subjecting its continued existence to a contemporary popularity test. Requiring a long-established congregation to obtain new neighborhood support can reopen settled social relations, expose a minority community to local vetoes, and make the exercise of a fundamental freedom dependent on shifting demographic or political conditions.

Existing discussions of Indonesian houses-of-worship regulation often emphasize the 90-user and 60-supporter thresholds, the role of FKUB, or conflicts surrounding new construction. The Kudus case adds a distinct dimension: administrative vulnerability produced by the failure of local regulation to operationalize a national transitional safeguard. The issue is not simply whether the threshold is justified for new establishments, but whether it can lawfully and fairly be imposed on religious sites that predate the rule itself (Crouch, 2010).

Accordingly, this article asks three questions. First, how do the 2006 Joint Ministerial Regulation and Kudus Regent Regulation No. 6 of 2019 differ in their treatment of houses of worship? Second, how has that difference shaped approval practices for houses established before and after 2006? Third, what are the implications of the resulting regulatory gap for legal certainty, equal public service, and religious freedom? By combining doctrinal analysis with field evidence from Kudus, the article argues that local implementation has converted a transitional entitlement into an ordinary application burden. Harmonization is therefore required not only to improve bureaucratic efficiency but also to prevent administrative law from becoming an indirect restriction on religious life.

Methods

This study employs a qualitative, normative-empirical legal approach. The normative component analyzes the hierarchy, content, and legal principles governing approval of houses of worship, particularly the 2006 Joint Ministerial Regulation, Kudus Regent Regulation No. 6 of 2019, relevant building legislation, and local administrative guidance. The empirical component examines how these rules have been interpreted and applied by agencies and actors involved in the approval process.

Primary empirical materials consist of permit and recommendation records, institutional documents, demographic data, and interviews conducted between November 2025 and April 2026. The institutional sources include the Kudus Investment and One-Stop Integrated Services Agency (DPMPTSP), the Kudus Religious Harmony Forum (FKUB), the Kudus Office of the Ministry of Religious Affairs, the Population and Civil Registration Service, and the local office responsible for national unity and conflict management. Interviews were conducted with FKUB leaders and members, religious leaders representing multiple faiths, village officials, regional administrators, and officials responsible for building approval. Comparative information was also obtained from FKUB representatives in Jepara, Demak, and Pati (FKUB Kudus, Jepara, Pati, Kudus).

The analysis proceeded in four stages. First, the study classified applications according to whether they concerned a new house of worship, renovation, or a pre-2006 building seeking administrative legalization. Second, it compared the formal requirements applied to each category. Third, it examined the legal compatibility of the local rule and practice with the national transitional provision and the principle lex superior derogat legi inferiori. Fourth, it assessed the consequences for religious communities in terms of predictability, equal treatment, administrative burden, and the practical exercise of religious freedom.

The study treats interview testimony as evidence of institutional practice and stakeholder experience rather than as a substitute for legal texts. Triangulation was undertaken by comparing interviews with application lists, FKUB records, and official demographic or institutional documents. The cases discussed below are therefore used to identify recurring administrative patterns, not merely isolated disputes.

Results and Discussion

Kudus as a Religious and Administrative Setting

Kudus covers approximately 425.15 square kilometers and is divided into nine districts: Kaliwungu, Kota, Jati, Undaan, Mejobo, Jekulo, Bae, Gebog, and Dawe. Its strategic position on routes connecting Semarang and Surabaya, and Purwodadi and Jepara, has supported its role as a regional center of trade and industry. Its religious landscape is equally prominent. Muslim

traditions include the Dandangan festival before Ramadan, Rebo Wekasan prayers, the Sewu Kupat celebration in Colo, and various Ramadan and Muharram activities. Christian and Catholic communities observe weekly worship and the principal events of the liturgical calendar. Buddhist communities celebrate Vesak, Asadha, Kathina, and other sacred days; Confucian communities maintain ancestral and calendrical observances; Hindu residents conduct major worship partly outside Kudus because the regency lacks an adequate pura.

Official data for 2025 recorded 696 mosques and 2,167 mushollas, as well as 53 Protestant churches, four Catholic churches or institutional church sites, nine Buddhist worship sites, three Confucian temples, and no registered Hindu temple. The numerical imbalance reflects the demographic composition of Kudus, but it also demonstrates why legal protection cannot rely solely on majoritarian preference. Minority communities generally have fewer alternative sites and may need to serve geographically dispersed adherents. Administrative decisions affecting a single chapel, church, or monastery can therefore have consequences for an entire local community.

FKUB Kudus was established in 2007 pursuant to Regent Decree No. 300/11/2007 and was most recently reorganized for the 2021–2026 period. Its seventeen members represent academics and religious organizations, including Nahdlatul Ulama, Muhammadiyah, Catholic and Protestant bodies, Buddhist, Hindu, and Confucian organizations. FKUB assists the regent in maintaining religious harmony and issues written recommendations for houses of worship. Its institutional role places it between religious communities and the formal permit-issuing bureaucracy (Forum Kerukunan Umat Beragama Kabupaten Kudus, 2021).

From 2007 to early 2026, FKUB records identified 24 applications related to houses of worship: 19 were approved, four were rejected, and one had not yet been approved. The applications included genuinely new buildings, renovations, and old buildings that had never obtained a formal building permit. The last category is crucial because its treatment reveals whether the transitional protection in the 2006 national regulation has practical effect (Interview, FKUB Kudus).

The Regulatory Architecture

The 2006 Joint Ministerial Regulation replaced the much shorter 1969 joint ministerial decision. It addresses regional-government responsibilities for religious harmony, the formation and duties of FKUB, and the establishment of houses of worship. Its architecture combines substantive and administrative safeguards. Article 13 requires that construction be based on a real and genuine need, assessed with reference to the composition of the relevant religious

community. It must preserve interreligious harmony, avoid disturbing public peace and order, and comply with legislation. If the need cannot be demonstrated at village level, the relevant territorial assessment may extend to the district, regency or city, or provincial level (Peraturan Bersama Menteri Agama Dan Menteri Dalam Negeri Nomor 8 Dan Nomor 9 Tahun 2006 Tentang Pedoman Pelaksanaan Tugas Kerala Daerah/Wakil Kerala Daerah Dalam Pemeliharaan Kerukunan Umat Beragama, Pemberdayaan Forum Kerukunan Umat Beragama, Dan Pendirian Rumah Ibadat , 2006).

Article 14 establishes the better-known documentary requirements. An applicant must provide a list and identity cards of at least 90 users, verified by an official whose jurisdiction corresponds to the relevant territorial level; support from at least 60 local residents, verified by the village head; and written recommendations from the local Ministry of Religious Affairs office and FKUB. Where the user requirement is satisfied but local support is not, the regional government is required to facilitate an alternative location. Read as a whole, these provisions attempt to balance genuine religious need, social harmony, and government responsibility.

The regulation does not, however, treat all buildings identically. Article 28(3), located in its transitional chapter, addresses a house of worship that had been used permanently and/or possessed historical value before the regulation took effect but had no specific building permit. In that situation, the regent or mayor must help facilitate issuance of the permit. The provision recognizes that a pre-existing religious institution cannot reasonably be assessed as though it were a new proposal. Its existence, use, and social embeddedness already provide evidence of need, while the facilitation duty prevents a new procedural regime from retroactively destabilizing established worship.

Kudus Regent Regulation No. 6 of 2019 has a different principal object: it provides technical guidance for building permits generally, following Kudus Regional Regulation No. 4 of 2014 on Buildings. It covers administrative documents, land rights, technical plans, spatial conformity, building function, and the responsibilities of the DPMPTSP and technical agencies. For buildings used as houses of worship, it incorporates the requirement of 90 users, 60 supporters, and recommendations from FKUB and the Ministry of Religious Affairs. It does not expressly reproduce the substantive test in Article 13 or the transitional facilitation in Article 28(3) of the 2006 national regulation.

This omission produces an apparent uniform rule: every house of worship seeking a permit must submit the same special requirements, regardless of whether it is a proposed new building or has functioned since the 1940s, 1950s, 1960s, or 1970s. Officials explained that the Regent Regulation concerns building permits in general rather than houses of worship alone and that it

was drafted according to the procedures for forming regional legal products. That explanation describes the regulation's scope, but it does not resolve the substantive inconsistency. Once a general building rule includes a special clause for houses of worship, it must include or preserve the distinctions established by the governing religious-harmony regulation (Interview, Kesbangpol Kudus).

The Regulatory Gap in Practice

The empirical records show a clear division between new applications and long-established worship sites. Ten new houses of worship sought FKUB recommendations between 2013 and 2023, including three churches and seven mosques. These applications were assessed through the requirements for verified users, local supporters, substantive need, and social harmony. Several proposals generated community objections. The disputes illustrate why new construction may require careful verification, but they do not justify applying the same process to buildings whose religious use predates 2006.

In Dersalam in 2015, a proposed Pentecostal church faced objections after residents alleged that signatures and identity-card copies gathered during food-aid distribution had later been presented as support for the church. Village officials stated that they had not participated in preparing the proposal despite the apparent village-level verification. In Mijen, an application for Masjid Tanfaul Qulub listed 101 users and 87 supporters, but many supporters later withdrew their support. In Jepang, the proposed conversion of an Islamic meeting building into Masjid Baitut Dhohirin, associated with LDII, listed 97 users and 70 supporters; local deliberations questioned these figures because the congregation was reportedly composed of only three families. The GKMI Payaman application documented 90 users but only 30 supporters. A proposed HKBP church in Tanjungkarang was also rejected following local consultation in 2023.

These cases reveal recurring verification problems: the authenticity of signatures, the distinction between users and supporters, the geographic scale at which need should be evaluated, and the risk that a documentary threshold may conceal rather than settle social disagreement. For a new proposal, close examination of these matters is consistent with Articles 13 and 14. The state must nevertheless ensure that objections are assessed lawfully and are not treated as an automatic community veto. The existence of controversy cannot relieve the government of its obligation to protect religious freedom or, where applicable, facilitate an alternative location.

The position of pre-2006 houses of worship is materially different. Twelve such institutions sought legalization: Gereja Isa Al Masih Pajunan (established 1973); Masjid Jami' Istiqlal Ploso (1943); Masjid Al Islah, Kudus Permai, Garung Lor (1981); Masjid Al Munawaroh, Prambatan Lor

(1963); Masjid Al Mujahidin, Ploso (1947); Musholla Fathul Karim, Getassrabi (1965); Gereja Injili Tanah Jawa, Glantengan (1953); Masjid Baitus Salam, Bae (1974); Masjid Jami' Roudlotul Jannah, Kajar (1946); Kapel Santo Yusuf, Tanjungrejo (1974); Kapel Hati Kudus Yesus, Rejosari (1973); and Kapel Santa Maria Immaculata, Cranggang (1963).

When these institutions approached DPMPTSP, their applications were not processed through a distinct transitional pathway. They were required to submit 90 users and 60 supporters, together with the recommendations demanded of a new establishment. Some had first sought permits before the 2019 Regent Regulation; others applied after it entered into force. The continuity of the requirement across both periods indicates that the problem is not only the wording of the local regulation, but also an administrative interpretation that fails to give independent effect to Article 28(3) .

The burden is substantial. Collecting 90 verified users may be difficult for a small chapel or a dispersed minority congregation even when the building has been continuously used for decades. Securing 60 new neighborhood supporters may be still more difficult, especially where population composition has changed or local political actors mobilize opposition. The procedure effectively asks an established religious community to prove anew that it deserves to continue occupying a space that has long formed part of the locality.

Inconsistent exceptions further weaken legal certainty. Three older worship sites reportedly obtained permits without the full 90/60 documentation: the Catholic Church of St. John the Evangelist and the Gereja Injili Tanah Jawa in Kayuapu, both treated as heritage-era buildings, and Masjid Mujahidin in Getaspejaten, whose legalization was linked to the need to prevent internal conflict. These outcomes demonstrate that administrative facilitation is possible. Yet when facilitation depends on heritage designation or case-specific discretion rather than a transparent transitional rule, similarly situated communities may receive different treatment (Interview, DPMPTSP Kudus).

FKUB Kudus has attempted to address the distinction through internal technical guidance issued in 2021. The guidance provides that houses predating Indonesian independence need not seek an FKUB recommendation, and that houses established before the 2006 Joint Ministerial Regulation need not obtain such a recommendation when they are recognized by the relevant religious organization and accepted as actors supporting harmony. This approach more closely reflects the transitional logic of Article 28(3). Nevertheless, FKUB cannot by internal guidance bind DPMPTSP or cure an omission in the Regent Regulation. The result is an institutional mismatch: the interreligious forum recognizes a differentiated pathway, while the licensing system may continue to demand documents designed for new construction.

Table 1. Pre-2006 houses of worship subjected to the ordinary approval pathway

Established	House of worship	Location
1943	Masjid Jami' Istiqlal	Ploso
1946	Masjid Jami' Roudlotul Jannah	Kajar
1947	Masjid Al Mujahidin	Ploso
1953	Gereja Injili Tanah Jawa	Glantengan
1963	Masjid Al Munawaroh	Prambatan Lor
1963	Kapel Santa Maria Immaculata	Cranggang
1965	Musholla Fathul Karim	Getassrabi
1973	Gereja Isa Al Masih	Pajunan
1973	Kapel Hati Kudus Yesus	Rejosari
1974	Masjid Baitus Salam	Bae
1974	Kapel Santo Yusuf	Tanjungrejo
1981	Masjid Al Islah	Garung Lor

Source: FKUB Kudus application records and interviews, 2025–2026.

The first legal consequence of the Kudus arrangement is a conflict of norms. The principle lex superior derogat legi inferiori requires a lower-level rule to yield when it conflicts with a higher-level norm. The 2006 Joint Ministerial Regulation expressly directs regional executives to facilitate permits for qualifying pre-existing houses of worship. A Regent Regulation cannot neutralize that direction by imposing an undifferentiated requirement that makes facilitation contingent on the same evidence demanded from a new applicant. Even if the local regulation does not expressly deny the transitional provision, its omission becomes legally consequential when officials interpret it as an exhaustive checklist (Hosen, 2005).

The conflict should not be reduced to a formal debate over regulatory hierarchy. It also concerns the temporal operation of law. Transitional provisions exist to manage the movement from an old legal regime to a new one without unfairly unsettling established legal and social relationships. A house of worship built and used decades before the 2006 regulation could not have complied with a procedure that did not yet exist. Requiring retrospective compliance transforms a rule governing future establishment into a condition for recognition of past and continuing religious life.

Second, the practice undermines legal certainty. Communities cannot predict whether age, permanent use, historical value, FKUB recognition, or exceptional circumstances will exempt them from the 90/60 requirement. The three facilitated cases suggest one approach,

the treatment of the twelve applicants another. Legal certainty requires published criteria, a defined evidentiary route, designated responsible agencies, time limits, and a reasoned decision subject to review. Without these safeguards, outcomes may depend on institutional negotiation rather than law.

Third, formally identical treatment can produce substantive inequality. A large majority congregation can ordinarily gather user identities and neighborhood support more easily than a small or geographically dispersed minority. The rule is facially neutral because it uses the same numbers for every religion, but its effects vary according to demographic position and the availability of alternative worship sites. Equality in public service therefore requires attention to relevant differences. Treating a 1943 mosque, a 1963 chapel, and a proposed new church as identical applications is not equal administration; it is a failure to classify cases according to legally significant facts (Halliday & Liu, 2021).

Fourth, the regulatory gap implicates religious freedom. The state may regulate building safety, spatial conformity, and genuine public-order concerns. However, administrative measures that delay or prevent recognition of an existing house of worship interfere with collective worship and the institutional life of a religious community. The interference is especially serious when access to approval depends on consent from persons who do not share the applicant's religion. Local support can be relevant to consultation and harmony, but it must not become an unreviewable plebiscite on a minority's rights (Colbran, 2010).

The comparative experience of neighboring regencies reinforces this conclusion. Interviews with FKUB representatives in Jepara, Demak, and Pati indicated that these jurisdictions distinguish new houses of worship from pre-2006 buildings and apply the national transitional arrangement without adopting a local rule that collapses the distinction. Other local governments provide more explicit models. Surabaya Mayor Regulation No. 57 of 2007 incorporates the core provisions for new and pre-existing houses of worship. Kulon Progo Regent Regulation No. 52 of 2020 provides for data collection and verification of older houses by a team involving the Ministry of Religious Affairs, relevant regional agencies, and FKUB. These examples show that local operational detail and fidelity to the national framework are compatible.

A harmonized Kudus procedure should contain at least five components. First, it should define a pre-existing house of worship by reference to permanent religious use before the effective date of the 2006 regulation, with a separate category for buildings of historical value. Second, it should replace the 90/60 threshold for this category with evidence appropriate to historical existence: institutional records, land or tax documents, photographs, testimony from religious organizations and local officials, and proof of continuing use. Third, a verification team

should include DPMPTSP, the technical building agency, the Ministry of Religious Affairs, FKUB, and where relevant the cultural-heritage authority. Fourth, the procedure should separate building-safety and land-status questions from a renewed assessment of whether the congregation is socially entitled to exist. Fifth, every decision should be written, reasoned, time-bound, and open to administrative objection or review.

For new houses of worship, reform should also strengthen safeguards around documentary verification. User and supporter lists should be gathered transparently, with clear statements of purpose and protection of personal data. Signatories should be able to verify or correct their status. Officials should distinguish evidentiary questions from generalized prejudice and document the government's facilitation duty when user need is established but local support is insufficient. Such measures would make the process more credible for applicants and neighboring residents alike.

Ultimately, harmony is not achieved by avoiding all visible religious difference. Nor is it secured by making a minority community obtain majority permission for each institutional expression of faith. Sustainable harmony rests on fair procedures, accurate information, meaningful dialogue, and confidence that government will enforce the same legal safeguards across communities. In Kudus, harmonizing the permit system with the transitional provision would affirm rather than weaken this model of coexistence (Hutagalung, 2016; Telle, 2013).

Conclusion

The Kudus case demonstrates how a regulatory gap can transform a building-approval procedure into a problem of religious freedom. The 2006 Joint Ministerial Regulation distinguishes between newly proposed houses of worship and buildings that were permanently used, or possessed historical value, before the regulation took effect. Its transitional provision requires the regional executive to facilitate permits for the latter. Kudus Regent Regulation No. 6 of 2019 does not adequately operationalize that distinction. Consequently, at least twelve pre-2006 houses of worship were required to satisfy the 90-user and 60-supporter requirements designed for new establishments.

This practice creates administrative uncertainty, imposes disproportionate burdens, and produces inconsistent outcomes. It also conflicts with the logic of legal hierarchy and transitional justice in regulation: established religious institutions should not have to requalify under standards adopted decades after they began operating. Exceptional approvals for several older

sites confirm that facilitation is administratively feasible, but exceptions cannot substitute for a general, transparent rule.

Kudus should therefore amend or supplement its local regulatory framework with a specific pathway for pre-2006 houses of worship. The pathway should recognize historical and continuous use, employ a multi-agency verification process, require appropriate evidence rather than new user and supporter thresholds, and guarantee reasoned and reviewable decisions. At the same time, procedures for new houses of worship should improve verification, prevent misuse of personal data, and ensure that community consultation does not become an absolute veto. These reforms would align local administration with the national regulation and strengthen legal certainty, equitable public services, religious freedom, and interreligious trust.

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