



Analysis Of Law And Good Government's public Policy of Granting Permits to Build Mosques Related to Qibla Direction Mistake

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Abstract-Permit belongs to the part of administration law which becomes a device for government to control its people in order to work regularly and for this aim, it needs an administration device. Some problems which have occurred recently related to licensing is building construction permit that is mosque building, where government as the party who has the authority in giving that permit has not been included some requirements, where the requirements have a purpose to maintain the validity of worship of Moslems in Indonesia. A conclusion we can draw from this study is that salat by facing the Qibla is obligatory by the postulate rule of ushul fiqh “maa laa yatimmu alwajibu illa bihi fa huwa wajib” (Anything that becomes the requirement for the perfection of something obligatory, then this thing becomes obligatory). Government as the party who has authority in issuing (Building Construction Permit) of Mosque in Indonesia, should apply the procedure of Qibla certification from some competent parties on this field as the requirement for the issuance of Mosque Building Construction Permit in Indonesia to minimize this kind of mistake, because what happens recently is that the taken data states that there are about 32.000 mosques in Indonesia with inappropriate Qibla direction.

Keywords- Public Policy, Qibla, Good Government;

I. INTRODUCTION

Permit is one of instruments which is used in administration law. Government uses permit as a juridical means to regulate the attitude of its society.[1] This concept shows that permit is a norm of regulation and a norm of controller in order that society in carrying out a certain activity, such as the licensing in constructing a building or other activities, are appropriate to the applicable law provisions.

Permit is a part of administration law which becomes a tool for government to control its people in order to work regularly and for this purpose it needs an administration tool.[2] Some problem which are happening recently related to licensing is permit for building construction, that is mosque, where government as the authority in giving this permission, does not include any requirements, where the requirements have an aim for the validity of the worship of Moslems in Indonesia.

A requirement which determines the valid worship of salat of a Moslem in Mosque is the Qibla direction which is not deviated, in accordance to the words of Prophet from Malik from Abdullah bin Dinar from Ibnu Umar said when people were performing morning prayer (Shubuh prayer) in Qubah Mosque, suddenly came a person that Rasulullah saw had received revelation and been ordered to face the Qibla the night before. Then they changed the direction of their pray (salat), where at that time faced to Syam (Baitul Maqdis) to Qibla (Masjid al Haram)”. (Hadith Bukhari),[3] Qibla itself has meaning as a direction to where every Moslem face when performing salat. The last data shows that about 20% Qibla direction of all Mosque in Indonesia or 320.000 has changed.[4] It is because of earthquake which happened and caused land shifts.

Starting from the explained issue, the government has a responsibility as an authority to issue the licensing of building construction in accordance to Law Number 28 of 2002 of Building and it seems loose in applying some procedures in issuing the permit of Mosque construction exists in Indonesia.

II. LITERATURE REVIEW

a. Basic regulations and good public policy

Regulation of the Minister of Religion and the Minister of Home Affairs Number: 9 of 2006, and Number: 8 of 2006 dated March 21 2006, concerning Guidelines for Implementing the Duties of Regional Heads/Deputy Regional Heads in Maintaining Religious Harmony, Empowering Religious Harmony Forums, and Establishing Homes Worship. The basis for creating this Joint Regulation of course refers to the 1945 Constitution, especially in article 29 paragraph (2) of the 1945 Constitution which states, "The State guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and beliefs".

If you examine it carefully, the Joint Union Regulations actually do not only regulate the establishment of places of worship, but more than that regulate the tasks and policies of regional governments, both provincial and district/city in order to build religious harmony in the regions. Every person who are going to construct a building is obligated to have the permit of Building Construction, Building Construction Permit is a licensing which is given by regional government to the owner of a building to construct new, to change, to expand, and/ or to reduce building in accordance to the applicable administrative requirements and technical requirements. The arrangement on the Permit of Building Construction generally is regulated in Law Number 28 of 2022 on Buildings, where on its implementation is regulated in Government Regulations Number 36 of 2005 on the Implementing Regulation of Law Number 28 of 2002 on Buildings.[1]

From the aspect of purpose, Ten Berge explains several points related to motivation in giving permission:

- a. A desire to direct (controlling certain activities, for example the permit of building construction)
- b. Preventing some dangers for environment (environmental permits)
- c. A desire to protect certain objects (the permit of logging operation, the permit to dismantle on monuments)
- d. A will to distribute objects that are small in number (the permit of occupancy an area to population)
- e. Directing by selecting some activities (the permit based on Dran-en Horecawet, where the name of the board should fulfill certain requirements)

From the opinions explained above, it can be said that the policy which is related to licensing absolutely becomes the authority of government, where in the purposes of giving permission, one of them is to regulate certain activities such as constructing a building. In Law Number 28 of 2002 on Buildings Article 5 paragraph 1 it is said that the function of building consists of residential, religious, social, and cultural function, and also special function.

b. Legal basis for qibla in prayer

Etymologically, the word of Qibla is from Arabic *قبلة*, which is a Masdar form of verbs *قبِلَ, قبلة, يتقبل*, which means facing. Whereas terminologically, the word of Qibla has several definitions. Among them, Abdul Azis Dahlan has defined Qibla as Ka'bah building or the direction which Moslem intend in performing worship. Whereas Harun Nasution defines Qibla as the direction to face when salat. The Department of Religion of the Republic of Indonesia defines Qibla as a certain for Moslems to direct their face in performing salat. Therefore, the definition of facing Qibla is facing to the direction or at least directing to the haram Mosque by considering the directional position and the nearest position counted from the desired area.

From the definition of Qibla above, facing Qibla is one of the requirements of the validity of salat. Therefore, it indicates that if a person is deviating from the Qibla when performing salat, then his salat is not valid, as well as the ushul fiqh rules which states "maa laa yatimmu alwajibu illa bihi fa huwa wajib" (Anything that becomes the requirement for the perfection of something obligatory, then this thing becomes obligatory). In this context, then the meaning of facing the Qibla is an intermediary to be able to establish salat. Because establishing salat is obligatory for Moslems, then everything which becomes the intermediary to be able to establish salat become obligatory to be carried out.

In the opinion of the majority of Shariah scholars, someone who prays but is far from the Kaaba is still obliged to face straight towards the the Kaaba, and must comply with Allah's command in QS: Al Baqarah verse 150,[9] while the scholars Maliki circles argue that the Kaaba is the Qibla in the Grand Mosque or the Qibla for Makkah peoples. This Qibla also applies to the Haram Land, while the Haram Land peoples which become a guidance for Muslims throughout the world.[5]

Ulama from the Hanafi and Hambali circles have a more straightforward opinion. According to most of them, someone who does not see the Qibla directly can face themselves towards the Qibla and does not need to make sure they are aligned precisely with the Qibla. The important thing is that they already know where the Qibla is, and they face there. According to them, as long as it is not said to be turning away from the Qibla as a whole, it is still said to be facing the Qibla; the meaning of the word not turning away is not turning the whole face away from the front or from the side. The opinion of the minority of Shafiiyah scholars is also the same as that of scholars from the Maliki and Hambali circles, one of whom is Al Ghazali. However, they must intend to face the Qibla, namely the Kaaba.[6]

To be able to perform prayers that comply with Sharia and are considered valid, Muslims must face the correct Qibla direction. However, from a historical perspective, there are several records of errors in determining the direction of the Qibla. Firstly, they were not measured using correct astronomical principles. Secondly, they were measured, but the measurements could have been more precise and were only approximate directions. The third is measured by referring to local roads without following the accuracy of the compass.[7]

III. METHOD

The methodology employed to compose this study was library research. An examination of the identified and described matter is conducted in light of the current regulations in the field and in conjunction with pertinent legal theories.[8] Utilizing a variety of primary and secondary legal sources, this library research is able to the correct implementation of public policy in legal review in Indonesia and Islamic law

IV. FINDINGS AND DISCUSSION

Licensing is an essential aspect of public services. Licensing provides legality to a person or particular business actor/activity through a permit or business registration certificate. Administrative law's logic has allowed the government to issue permits. This permission is then used as a means to shape citizen behavior. Permission can also be interpreted as a dispensation or release from a prohibition. There is also the definition of permission in a narrow or broad sense [9]

A policy relates to planning, decision-making and formulation, decision implementation, and evaluation on the impact of the implementation of this decision to many people who become the target of the policy (group of targets). A policy is a tool or instrument to regulate the population from top to bottom. According to Heinz Eulau and Kenneth Prewitt, a policy is a permanent decision which is characterized by the consistence and the repetition of behavior from the people who obey this decision, by giving sanctions and rewards. Centrally, a policy is a technical, rational, and action-oriented instrument to solve a certain problem. It is a blue print for the action which points to and influences the behavior of many people who get impact from the decision. A policy is deliberately arranged and designed in order to make the behavior of the targeted people (the group of targets) becomes patterned and in accordance to the meaning and formulation of the policy.

Every person who are going to construct a building is obligated to have the permit of Building Construction, Building Construction Permit is a licensing which is given by regional government to the owner of a building to construct new, to change, to expand, and/ or to reduce building in accordance to the applicable administrative requirements and technical requirements. The arrangement on the Permit of Building Construction generally is regulated in Law Number 28 of 2022 on Buildings, where on its implementation is regulated in Government Regulations Number 36 of 2005 on the Implementing Regulation of Law Number 28 of 2002 on Buildings.[1]

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From the opinions explained above, it can be said that the policy which is related to licensing absolutely becomes the authority of government, where in the purposes of giving permission, one of them is to regulate certain activities such as constructing a building. In Law Number 28 of 2002 on Buildings Article 5 paragraph 1 it is said that the function of building consists of residential, religious, social, and cultural function, and also special function.

As a regulator, the government has the authority to manage public affairs. This authority is related to managing public interests so that people's social lives can run well and that no public rights are violated. Government decisions relating to these functions are also part of public policy formulation[10]

The mosque as a means of worship for muslims should be able to provide peace for its users. The comfort expected by its users is not only its physical building but also the spiritual and sharia aspects of a mosque must be fulfilled for the sake of sincerity in performing worship[7]

The granting of permit of Mosque building which exists in Indonesia seems loose in applying the procedures of the publishing, because something that becomes the problem is that there are still many people who assume that the building of Mosque Qibla are following west direction or following the Qibla direction of the previously established mosques. Whereas from many surveys it is stated that the Qibla direction of Mosques in Indonesia has changed because of the occurred earthquakes have made a ground shifting.

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The provision of facing qibla during prayer is explicitly explained in surah al-Baqarah (2): 144, 149, and 150 and the hadith narrated by Abû Hurairah in al-Sunan al-Kubrâ by al-Baihaqî.[11] Based on this verse and hadith, the scholars made individual interpretation and judgment (*ijtihad*) as well as agreed that facing the qibla is a condition of the validity of prayer. The difference between them is related to the time when someone could not see the Kaaba directly. According to Abû Ishâq Ibrâhîm ibn 'Alî al-Syîrâzî, a scholar of the Syafî'i school, for example, a person who is in al-Masjid al-Harâm must face the form or physical of the Kaaba ('ain al-Ka'bah). However, if he is not in al-Masjid al-Harâm, his provisions are as follows: if he knows the direction of qibla, then he must face that direction; if there is a person who is trusted to inform the existence of the qibla direction, then he should receive that information and there is no need for *ijtihad*; and when he sees a group of people praying facing one direction, then he must follow it because the person who sees the person praying is the same as the person who knows the direction of qibla through a trusted person.[12]

From the definition of Qibla above, facing Qibla is one of the requirements of the validity of salat. Therefore, it indicates that if a person is deviating from the Qibla when performing salat, then his salat is not valid, as well as the ushul fiqh rules which states "maa laa yatimmu alwajibu illa bihi fa huwa wajib" (Anything that becomes the requirement for the perfection of something obligatory, then this thing becomes obligatory). In this context, then the meaning of facing the Qibla is an intermediary to be able to establish salat. Because establishing salat is obligatory for Moslems, then everything which becomes the intermediary to be able to establish salat become obligatory to be carried out.

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To be able to perform prayers that comply with Sharia and are considered valid, Muslims must face the correct Qibla direction. However, from a historical perspective, there are several records of errors in determining the direction of the Qibla. Firstly, they were not measured using correct astronomical principles. Secondly, they were measured, but the measurements could have been more precise and were only approximate directions. The third is measured by referring to local roads without following the accuracy of the compass.[7]

Government has a responsibility as the authorized party to issue permits of building construction in accordance to Law Number 28 of 2002 on Buildings and it seems loose in applying the procedures in issuing the permits of Mosque building construction exist in Indonesia. Because of this allowance, then it arises many procedural errors which breaking the procedures in constructing Mosque in order that the salat become valid.

From the explanation above, the author believes that the government (as the party that has the authority in terms of licensing) must have material responsibility in the process, considering the many cases of mosques that have the problem of shifting the Qibla due to land shifting or several new mosques where the mosque follows the direction of the mosque's Qibla. The land has shifted, and considering the context of modern times, GPS equipment to determine the right direction is straightforward to use by many people.

From the following explanation, the author believes that the ulama in the past had differences of opinion regarding where the correct direction of the Qibla was due to the limitations of existing technology when viewed from the context of their time, so for the validity of worship, we must be careful in carrying it out considering the tools available in the modern era that can be used to determine the correct Qibla direction.

V. CONCLUSION

A conclusion can be drawn here is that salat by facing the Qibla is obligatory by the postulate rule of ushul fiqh “maa laa yatimmu alwajibu illa bihi fa huwa wajib” (Anything that becomes the requirement for the perfection of something obligatory, then this thing becomes obligatory). Government as the party who has authority to issue Mosque *Building Construction Permit* in Indonesia should be already applying the procedures of Qibla direction certification from the competent parties as a condition for the issuance of Mosque *Building Construction Permit* in Indonesia in order to minimize that mistake because what happens recently is that the taken data states that there are about 32.000 mosques in Indonesia with inappropriate Qibla direction.

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