
JURIDICAL ANALYSIS OF BLASPHEMISTS OF RELIGION BASED ON A CRIMINAL PERSPECTIVE

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ABSTRACT

Indonesia is a heterogeneous and pluralist country, especially regarding religious diversity. Although different, all religions in Indonesia become one in the spirit of *Bhinneka Tunggal Ika*. However, the issue of blasphemy is considered taboo and very sensitive because it concerns interfaith and intertribal or ethnic interests. Therefore, the state is present to anticipate this problem with pre-prepared laws and regulations. So the purpose of this study is to find out and analyze related punishments and criminal violations related to blasphemy based on applicable legal regulations and theories in Indonesia. The method used is to study laws and regulations that are the primary references, books and legal journals as secondary material, and websites and social media as tertiary material. Indonesia's diverse society and democratic values demand that the country maintain harmony among different cultures. The state has prepared Article 156a to protect religion and its adherents, like other articles in the law. In blasphemy cases, the state should mediate and resolve disputes, punish violators, and support victims. Extensive discussions and analyses using various sources have been conducted about blasphemy cases.

Keywords: protection, blasphemy of religion, punishment.

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INTRODUCTION

Indonesia is a heterogeneous country, not only in nature and its islands but also in religion. The state recognizes many religions, and therefore the state is obliged to be present to protect and protect them, both protecting their religion and protecting religious adherents who practice their religion following their religion and beliefs. Some of the state's protected religions are Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism (Wibisono et al., 2020).

These religions present in Indonesia have their history in the development of their religion in this country. The state does not necessarily recognize religion which has no historical value and came suddenly. The present state of religion suddenly rejected it vehemently because it was believed to violate existing rules outlined in Indonesian laws and regulations.

In its journey and development in the Indonesian state, phenomena will continue to emerge with new religions and beliefs if only the state does not fortify them with valid laws and regulations; of course, many religions and beliefs are present now and developing in this country. With the presence of these six religions, the state is often busy with the followers of these religions. The state must be present to mediate and provide solutions because the state must reconcile.

There are adherents of religion making commotion or doing things in practising their religion because the actions of those adherents of that religion end up being all over the place, there are also followers of different religions making fun of other religions, and this phenomenon happens very

often. Again the state must be present to break it up. The state exists through laws and regulations which are already fundamental, meaning they already have legal standing, including those contained in Article 29 of the 1945 Constitution (Gunawan, 2019).

It states that the state has guaranteed the independence of each citizen, and because it has become the religion they believe in and performs worship according to their beliefs, namely belief in their creator. The Indonesian state which understands democracy, a democracy whose understanding is identical when it is associated with religion is that it is allowed to choose a religion according to its beliefs and beliefs, so it is an absolute requirement for the state to be present and intervene from the security side of its citizens when carrying out their worship.

The principle of freedom of religion is evident in the opening of the third paragraph of the 1945 Constitution, which reads that "By the grace of Allah the Almighty and driven by a lofty desire so that a national life that is free and independent and respects the norms Yes, the people of Indonesia at this moment declare their independence (Ishaq & SH, 2021).

In line with Indonesian laws and regulations, it is also following articles such as those in Law Number 39 of 1999 and Laws Number 12 and 18 of the 2005 Law concerning civil and political rights (Paryadi, 2018). Moreover, it is also stated that "no one can be forced into a belief following the religion of his choice that becomes his belief". Based on the description above, this study examines a case related to blasphemy that occurred a few months ago in an area in Indonesia.

Laws that constitute blasphemy events; It is said that in that event there has been a violation of the law that deviates from the laws and regulations outlined by the Indonesian government, namely the regulations mentioned above. So, this study aims to discuss the legal event in terms of criminal acts or leaders, analyze whether the event has fulfilled the criminal element, and present other legal arguments that are in line with the subject.

METHOD

This research uses research methods based on normative legal aspects, where the research is carried out by looking at and analyzing the basic system of laws and regulations, which is the main reference; In addition, as an additional basis, examining the legal basis which is secondary material in the form of law books and journals and refined by digging tertiary materials taken from websites and other electronic social media.

RESULTS AND DISCUSSION

Chronology of Events and Criminal Accountability

Somewhere in one of the regions in Indonesia, an incident has occurred, Somewhere in one of the regions in Indonesia there has been an event that is a legal event, more precisely a criminal law event, a blasphemy law event (Priyatmojo, 2019). There is an entertainment area where it is suspected that various drinks are sold for the guests who attend. On the label of the drink bottle, there is a name where that name is believed to be a name that is sacred to humanity.

How could it not be because the name of the role model of one religion is written on the label of the drink and the name of the label of another drink is the name of God of another particular religion? In addition, the drink is an alcoholic beverage that is believed to be intoxicating if drunk. Therefore, this incident is in the criminal realm because it violates the laws and regulations that the

rules of this country and its followers have automatically received protection for both religion and its followers. This includes criminal events related to blasphemy. This case has just happened, which means that it is unprecedented in this country. So this event becomes something new in this legal event.

Criminal Accountability Against Religious Blasphemy Perpetrators.

This research will first reveal Van Hamel's opinion, which according to him, is that human behaviour that violates the law outlined in the state legislature should and must be punished for that mistake (Hambali, 2019). It is different from Pompe's opinion, which says that a criminal act which in Theory is also written as an act of violation of the rules which is a disturbance to the legal order either intentionally or unintentionally, the punishment of the perpetrator must be imposed for the sake of maintaining legal order, guaranteeing the interests of and legal certainty.

In that incident, there was a criminal incident in the Blasphemy of Religion incident, which was made by two groups, namely the group that produced it and the other group that marketed the product and sold it. The elements that go into the act of blasphemy, including as stated by Van Hamel who states that the perpetrator has and fulfills three elements of ability (Siahaan, 2017), namely; 1) understand the meaning and consequences of what is done by the perpetrator, both the actor who produces and the actor who sells it (seller), 2) understands that his actions are something that is prohibited by the state and society, 3) that the perpetrator of the activity has the ability and skills in doing.

Based on these three elements, the perpetrator of blasphemy has fulfilled the three criminal elements and is therefore subject to criminal sanctions in the form of punishment. Then what must also be considered is that in this event there is a perpetrator, there is an act both actively and passively, and there is a mistake, there is a willingness to be held accountable, and the act is clearly against the law.

In the above case, according to the laws and regulations in Indonesia, it has fulfilled the elements of a criminal offence, namely the blasphemy article, namely Article 156a Number 1/PNPS/1965, namely regarding the blasphemy article (Rohana, 2022). That article explains that it is related to blasphemy of religion; the suspected article is Article 156a, with a criminal sentence of approximately five years. In that article, it is also stated if there are indications of specific blasphemy based on deified people.

a. There are criminals

In that article, there is an offence "whosoever" that is intended as a legal subject where the perpetrators of criminal acts in the Criminal Code referred to as subjects are people or humans (Maulani, 2013). In this case, according to article 1556a, the perpetrator of the crime is the subject or person or person. While the company/corporation is not the perpetrator or not the subject, a criminal prosecution cannot be carried out against the company because, based on the offence of this article, it is "anyone" (Ariasa, 2019).

b. There are deeds, and there are mistakes.

Another element contained in Article 156a is that there was an act; again, what he meant was that the person or person who committed the act was not a legal entity or company (Sjawie & SH, 2017). Also, there is a fault (culpa) in the culprit. This mistake, whether intentionally or unintentionally, based on the rules of this article, is still considered to have made a mistake.

Moreover, in this error, was it done with intentional intent (opzet als oogmerk) or ordinary or simply intentional (doorway deli kept or dolus eventualis) or whether it was intentional with awareness of certainty (opzet met zekerheidsbewustzijn) or also intentional with awareness of possibility (voorwaardelijk opzet). An element of intent is stated to exist if an offence becomes an act (Willens and written), and in the above activities, all elements are fulfilled both the act and the intention because Article 156a of the Criminal Code is fully fulfilled. Punishment can be imposed on the perpetrator.

- c. Analyzing the events above, there is an element of intent where this intention is determined** based on the Theory of will (Witesheorie), where the will is directed towards the realization of an act, but based on the opinions of other jurists that a desire to do that will. Based on the Theory of knowledge (voorstellings Theorie), the intention is accepted as knowledge. However, in this case, there is only a causal relationship between motives and actions, namely behaviour and consequences and accompanying circumstances (Sari & SH, 2020).

It has been written above that intention is a crime committed by a legal subject who meets the following criteria; 1) Intentional intent (Dollus Directus), where a person is suspected of having committed an act with an element of intent and making it a goal; 2) Deliberation with certainty (Opzet bijt zekerheids bewutzjin) where the action is conscious or not of the consequences of his actions that arise and is not the goal of an act of arbitrariness for certainty; 3) Deliberation with the possibility (Dollus Eventualis), is an act with a conscious purpose or not so that the goal can be achieved and the desired result becomes a reality.

- d. Oversight**

The act was considered criminal, and because of his carelessness, the act was still carried out. Ultimately, the act resulted in a criminal act in the form of crime. Based on Van Hamel's opinion that for a person carrying out his actions, it contains a mistake or not, it is necessary to look at two elements, whether these two elements are fulfilled or not, namely the element of not making assumptions as required by law, and the element of not being careful. as required by law (Larumpa & Laritmas, 2022).

- e. Able to be Responsible**

Criminal responsibility is required if there is an element of intent or negligence as an emotional connection between the creator and his work, and there is no reason to forgive the perpetrator for his actions. The person can take responsibility for his actions because he could do so (Toerekenings vatbaarheid). The basis is that the person is capable and knows and is aware of the consequences that arise because of his actions. Indeed his actions are against the law, and then that person has a will with the awareness he has.

- f. Unlawful.**

Whatever form it takes, which is against the law, including blasphemy of religion, is a criminal act because such an act is included in such an unlawful act based on Article 156a of the Criminal Code (Mirzana, 2012). Thus, whatever the form and type and nature of it, if the implementation or practice violates the law, then the act is automatically contrary to the law, and the article is very appropriate as the answer.

g. The basis for Punishment of Blasphemy of Religion.

Referring to Hulsman's opinion, a legal expert said that punishment has become a statutory rule closely related to the punishment (the sanctions and punishment) (Tarigan, 2019). Because the notion of sentencing is defined as a sentencing system, it must be carried out by carrying out two different points of view, namely the point of view in the broad sense and the point of view in the narrow sense (Sugiharto, 2016).

From a broad point of view, it has two meanings, namely, the whole system of functionalization or operationalization and the whole system of how the law is upheld, operationalized, or carried out naturally or concretely. Because in sentencing, punishment consists of sub-systems of material law and sub-systems of ceremonial law as well as sub-systems of execution of sentencing (Rozah, 2015).

The narrow meaning related to sentencing, interpreted as imposing a sentence, is a whole system for sentencing and the whole for imposing punishment. Based on the Theory of retaliation (retributive/vergelding theories) states that punishment is imposed because of a crime or because of a crime that is in line with what Immanuel Kant said in his book *Philosophy of Law*.

In contrast to the opinion put forward by Hegel, who is famous for his quasi-mathematic Theory with his famous sentence titled *Wrong being is the negation of right*, punishment is the negation of that negation, which says that this punishment must be logical and make the cause and effect of a crime, where crime is a denial of the legal order of the state which is a manifestation of moral ideals. Unlike Nigel Walker, famous for the Theory of Revenge or The Absolute Theory, he stated that suffering must be rewarded with something commensurate with what that person has done, so it must be rewarded accordingly.

However, in another theory, Nigel Walker says different things that are not always worth the mistake and do not have to exceed the limit of comparability. Returning to Hulsman's Theory states that Relative Theory makes it a goal theory which states that imposing a sentence is not to take revenge but that retaliation is a place of community protection which later became known as the Theory of community protection. Another supporting theory is the Reductive Theory which holds that punishment aims to reduce the frequency of crimes. In the end, there is the Destination Theory, where punishment is a reward with a practical value.

The attitude of the State towards Perpetrators and Victims of Blasphemy of Religion

Suppose the state is asked to behave towards these two things. In that case, it will be neutral because it will provide punishment and protection. To both of them, the state's attitude will give rewards in the form of punishment (finish) and rewards in the form of protection. Punishments are given through law enforcers following the level of error and the applicable legal rules that will be given to perpetrators as executors of acts of blasphemy, and to those who become victims, the attitude of the state will increase guarding as a form of responsibility and commitment to legal protection for all religions and adherents so that in the future it will not happen again.

If the state views and believes in running the wheels of government so that it runs well, then the law that becomes the commander-in-chief must be upheld. The state, with its laws, must live in a society so that in the future, the community will be peaceful and safe in practising the religion of their choice and belief.

CONCLUSION

Indonesia is a heterogeneous country and a country with a democratic view. Therefore, there are many cultures within which the state must maintain its continuity. There is a case of blasphemy, and the state has prepared an article to charge the perpetrators of this blasphemy. The article in question is Article 156a, stating that the state exists to protect religion and its adherents. In other articles, there is something similar about that. Namely, the content is similar, only the editorial is different, but the aim is the same as Article 156a.

The blasphemy of religion case has been discussed about the existing articles in the legislation and the articles contained in the Criminal Code as the primary reference, added to the opinions of other experts in various literature and journals and reinforced with tertiary material such as related news on websites and other electronic media. Moreover, something like this will happen in the future. In that case, the state must and must be present to mediate and resolve it against the people in dispute; the state gives punishment to the perpetrators of blasphemy and protects and gives hope, enthusiasm, and confidence to those who are victims of the perpetrator.

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