

# Criteria of Acts That Can Be Classified As Religious Blasphemy

Oksidelfa Yanto

**Abstract:** *Criteria of Acts That Can Be Classified As Religious Blasphemy.* This study discusses the criteria for actions that can be classified as acts of religious blasphemy. The aim is to find out in-depth the types of actions that can be classified as criminal acts of blasphemy, as well as legal provisions and sanctions against perpetrators who intentionally commit such acts. This research is descriptive qualitative using a normative juridical approach. To obtain data in viewing the issues discussed, the authors use normative juridical research methods through library research using secondary data. The results of the study show that the acts of religious blasphemy include all kinds of slanderous actions aimed directly at the religion professed, either orally or in writing, regardless of whether it will endanger public order or not, with the aim that people do not adhere to a particular religion. In the realm of criminal law, the case of blasphemy is a form of a pure criminal event whose perpetrators can be given legal sanctions. The legal sanctions for perpetrators according to the Criminal Code can be sentenced to 5 (five) years in prison.

**Keywords:** religious blasphemy, criminal acts.

**Abstrak:** *Kriteria Tindakan yang Dapat Diklasifikasi Sebagai Penistaan dan Penodaan Agama.* Penelitian ini membahas tentang kriteria perbuatan yang dapat diklasifikasikan sebagai tindakan pencemaran dan penodaan agama. Tujuannya adalah untuk mengetahui secara mendalam jenis-jenis tindakan yang dapat digolongkan sebagai tindak pidana penistaan agama sekaligus aturan hukum dan sanksi terhadap pelaku yang secara sengaja melakukan perbuatan itu. Penelitian ini bersifat deskriptif kualitatif dengan menggunakan pendekatan yuridis normatif. Untuk mendapatkan data dalam melihat persoalan yang dibahas, penulis menggunakan metode penelitian yuridis normatif melalui studi kepustakaan dengan menggunakan data sekunder. Hasil penelitian menunjukkan jenis penistaan dan penodaan agama meliputi semua jenis tindakan menjelek-jelekan yang ditujukan langsung terhadap agama yang dianut baik secara lisan maupun tulisan, terlepas apakah hal itu akan membahayakan ketertiban umum atau tidak, dengan tujuan agar orang tidak menganut agama tertentu. Dalam ranah hukum pidana, kasus penodaan agama merupakan bentuk peristiwa pidana murni yang pelakunya dapat diberikan sanksi hukum. Sanksi hukum bagi pelakunya menurut Kitab Undang-Undang Hukum Pidana dapat dipidana selama 5 (lima) tahun penjara.

**Kata kunci:** penistaan agama, perbuatan pidana

## Introduction

Indonesia can be said to be a religious country, even though it is not a country of religion. This is because almost all of the Indonesian population adheres to a certain religion/belief despite the religion/beliefs embraced by one group to another being different. The constitution guarantees all citizens to be free to choose, believe and worship according to their respective beliefs without any coercion from various parties, including from the state.

Five major religions in Indonesia are generally embraced by the population, and, at the same time officially recognized by the state, namely Islam, Catholicism, Protestantism, Hinduism, and Buddhism. Apart from these religions, many other religions/beliefs are also embraced by the population, such as Judaism, Confucianism, and many other faiths sourced from the cultural values of the community.

Unfortunately, the number of religions sometimes creates friction between adherents. This is logical because the adherents associate and communicate with each other which causes friction. The friction begins with certain statements/actions that disturb the feelings of the religious adherents who are attacked and then trigger offense, hatred, and anger. In fact, as a nation that loves peace, every citizen of Indonesia should develop a spirit of tolerance and mutual respect for one another while trying their best to avoid religious conflicts that can damage national unity and integrity.

Indeed, blasphemy cases are not new in Indonesia. According to Halili Hasan, a researcher at the Setara Institute, during 1965-2017 there were 97 cases of blasphemy, of which 76 cases were resolved through trial and the rest were out of court or non-judicial. Among the cases, he added, Islam became the religion that was most desecrated with 88 cases. Meanwhile, Christianity has 4 cases, Catholicism has 3 cases and Hinduism has 2 cases.<sup>1</sup> Among some cases of blasphemy/

---

<sup>1</sup> <https://inanegeriku.com/2021/12/22/kasus-penistaan-agama-bagaimana-penanganan-hukumnya/> accessed on August 31, 2020.

desecration that befell Muslims are those committed by Lia Aminudin,<sup>2</sup> Abdus Salam,<sup>3</sup> Soni Sumarno,<sup>4</sup> Reza Hazuwen,<sup>5</sup> Martinus Gulo,<sup>6</sup> and others.<sup>7</sup>

Cases of blasphemy in Indonesian society are flourishing due to some factors. The first factor is the rapid development of science/information technology that makes it easier for people to carry out various kinds of activities, both positive and negative activities. Sometimes activities on social media that are carried out do not pay attention to existing legal rules and norms. For example, recording various events or activities carried out, without thinking about the consequences that will arise in the future. Cases of insulting religion go viral not forever because the perpetrators upload certain content to the internet, but it can also happen because of the actions of other people who spread information related to insults of religion committed by others so that people know that someone has insulted a certain religion.<sup>8</sup>

The second factor is the failure in religious development. Religion functions as a medium to regulate human life to be good, peaceful, and respectful of each other. No religion teaches its people to harass or demean other people's beliefs or religions. Therefore, it can be ascertained that the occurrence of a criminal act of blasphemy does not originate from religious teachings but because religious people lack guidance from their religious leaders or leaders. The leaders of community organizations

---

<sup>2</sup> Lia Aminuddin is the founder and leader of the Lia Eden sect, which mixes Islamic teachings with the teachings of other religions.

<sup>3</sup> Abdusalam is the founder and leader of the Gafatar school who makes interpretations and practices that deviate from the teachings of Islam.

<sup>4</sup> Soni Sumarno has committed an act that is considered to violate Article 45A Junto Article 28 of Law No. 19 of 2016.

<sup>5</sup> Reza Hazuwen is the maker of the word Allah in Christmas ornaments and, through his social media accounts, has insulted the Prophet Muhammad and Muslims when saying Takbir.

<sup>6</sup> Martinus Gulo is the perpetrator of the crime of insulting the Prophet Muhammad and Muslims through his social media accounts. Read: Kresna Adi Prasetyo and Ridwan Arifin, 'Analisis Hukum Pidana Mengenai Tindak Pidana Penistaan Agama Di Indonesia', *Gorontalo Law Review*, 2.1 (2019), 3.

<sup>7</sup> <https://www.idntimes.com/news/indonesia/vanny-rahman/ahok-hingga-meliana-ini-daftar-17-orang-yang-divonis-menista-agama> accessed on August 30, 2020.

<sup>8</sup> Gede Agastia Erlandi, 'Penyelesaian Perkara Tindak Pidana Terkait Penghinaan Agama', *Jurist-Diction*, vol 1, 2 (2018), p. 538.

and socio-political organizations with a religious spirit must admit that they have failed in developing their ummah or members. Serious training may have been carried out but may not have been successful, or perhaps the worship or religious activities carried out have not touched the hearts of their followers.<sup>9</sup>

Several researchers have studied the phenomenon of religious blasphemy in Indonesia from various perspectives and approach: Among others are Mulki Ulumuddin through his research entitled "Criminal Accountability of Offenders for Blasphemy of Religion in Social Media" and Rina Septiani through her research entitled "Criminal Acts of Blasphemy of Religion with the Perspective of Islamic Law and Indonesian Positive Law". Mulki found that there are obstacles to imposing criminal sanctions on perpetrators of blasphemy through social media. These constraints include: (i). An assessment that article 28 paragraph 2 of Law Number 11 of 2008 concerning Information and Electronic Transactions is contrary to article 28E paragraph 3 of the 1945 Constitution concerning freedom of expression. (ii) Difficulty in finding perpetrators of blasphemy on social networks. (iii) Difficulty in proving the perpetrators of blasphemy on social networks (iv). Lack of knowledge of investigators in terms of technology and electronic information. Meanwhile, Rina Septiani's research concludes that the criminal act of blasphemy in positive law can be analogous to *jarimah riddah* (apostasy) in Islamic law and can be punished according to the punishment of *riddah*.

This study differs from the previous studies as it focuses on the rule of law for perpetrators of blasphemy in the Indonesian criminal justice system, particularly on the types and criteria for actions that can be classified as criminal acts of religious blasphemy.

---

<sup>9</sup> I Farida., Faktor-Faktor yang Mempengaruhi Terjadinya Penodaan Agama di Indonesia Serta Upaya Penanganannya. *CAKRAWALA GALUH* vol. 2.2, (2012). pp. 89-94. See also Kresna Adi Prasetyo dan Ridwan Arifin, Analisis Hukum Pidana Mengenai Tindak Pidana Penistaan Agama di Indonesia, *Gorontalo Law Review*, Vol 2 No. 1-April 2019, p. 5.

## Method

This research is a literature study using a normative juridical approach. The data used are in the form of information and descriptions both obtained from primary legal sources (laws and regulations) and secondary legal materials (consisting of journals and books as well as other materials relevant to the problems studied). The data/information that has been collected is then processed and analyzed to get a conclusion.

## Law and Justice

Justice is one of the benchmarks for assessing the success of a rule of law in realizing a balance between the interests of individuals and community groups. The justice in question, as well as to be achieved, is justice that belongs to everyone in all stages of the law enforcement process.<sup>10</sup> Because the law is a human guide to rational moral values, it must be fair in all its respects.<sup>11</sup>

Law is necessary for the life of society to realize four basic interests, namely: the existence of a balance aimed at the interests of individuals and society; the implementation and fulfillment of the rights of individuals and community groups; maintaining the balance of life in society; social conflict is prevented, even if there is a conflict it can be resolved immediately.<sup>12</sup> Behind the relationship between law and society in a country, the law has a mission to create a just and prosperous society. Justice and welfare are the pillars of national stability. If these two things are realized in society, then the law can be used as a guide in protecting and providing a sense of security and comfort in society. All of that can be realized if everyone consistently upholds the existing law.

---

<sup>10</sup> Hamid Awaludin, *Mengadili Akal Sehat* (Jakarta: Cahaya Timur, 2008). p. 53

<sup>11</sup> Bernar L Tanya and et al, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi* (Yogyakarta: Genta Publishing, 2010). p. 40.

<sup>12</sup> Mokhammad Najih and Soimin, *Pengantar Hukum Indonesia* (Malang: Setara Press, 2012). p. 2.

Social justice is a basic need that must be pursued by every individual or community, all socio-political forces, governmental or non-governmental institutions, wherever they are. Social justice is not limited to the aspect of the distance between the poor and the rich, the poor and the rich, or between the North and the South.<sup>13</sup> Unfortunately, in the current context, or democracy as it is today, the issue of justice is often confused. Many rules are very abstract or even tautological in nature that cannot be used as a guide by themselves. No one who can see the rules printed on paper can conclude or predict what the judges' next decision will be.<sup>14</sup>

The success or failure of law enforcement against criminals will depend on good criminal law regulations and good law enforcement. Good legal material coupled with a control function on the performance of law enforcement officers is very necessary so that the existing criminal justice system can run well. This is because legal issues are problems that will always be faced by every society. Where there is society, there is law, and vice versa, because law and society always go hand in hand.

It has been mentioned above that law enforcement must be able to accommodate all the interests of the community in creating a just law. Law enforcement, including all components of the justice system, must work according to their functions and duties to create a good legal order. They, with all existing legal products, must continuously carry out the law well and improve the bad ways of law enforcement so that all existing legal issues can be resolved properly and thoroughly. They must work by always prioritizing integrity and professionalism to realize legal justice in society.

Law enforcement is a conscious effort made to achieve justice everyone needs. When law enforcement is carried out properly, the law will run effectively so that people feel the existence of legal

---

<sup>13</sup> Rajni Kothari, *Principled World Politics The Challenge of Normative International Relation* (New York: Rowman & Littlefield Publisher, 2000). p. 98.

<sup>14</sup> Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu Sosial, The Legal System A Social Science Perspective*, V (Bandung: Penerbit Nusa Media, 2013). p. 55.

protection.<sup>15</sup> However, it must be acknowledged that there are still many unresolved legal problems; Not to mention the added legal problems caused by social developments or changing times.<sup>16</sup>

To overcome the existing various legal problems, the existence of a judicial system that will carry out the law properly is very necessary. Legal products that have been made must be able to function and be implemented to achieve a sense of justice in society. If the judicial system can run the law well, then of course all legal issues will not arise in people's lives.

Law enforcement is a process, activity, or work so that the law is upright and can achieve justice.<sup>17</sup> Policies or efforts to overcome crime are essentially an integral part of efforts to achieve community protection.<sup>18</sup> Because the law is needed by the community, the community must obey the law, and not commit acts against the law. A person who commits an act that is against the law will be punished. Conversely, for people who do not commit an act against the law, then their life is peaceful, serene, and comfortable.

The Indonesian criminal justice system proceeds through three basic components; *First*, the substance; which is a result of the statutory system, such as Law Number 8 of 1981 which replaced the Het Herziene Inlandsch Reglement (HIR). This product contains a series of systematic provisions to provide direction or instructions to law enforcement officials in carrying out their daily tasks. *Second*, is the structure, namely the institutions in the legal system consisting of the police, prosecutors, courts, and correctional institutions. *Third*, is the culture. The culture is the driving force or fuel of the criminal justice

---

<sup>15</sup> Kurnia Mauludin and Dini Dewi Heniarti, 'Penegakan Hukum Pendanaan Terorisme Ditinjau dari Undang-Undang Nomor 9 Tahun 2013 Tentang Pencegahan dan Pemberantasan Tindak Pidana Terorisme', in *Prosiding Ilmu Hukum SPeSIA*, 2, 2016, II, 589.

<sup>16</sup> Bintatar Sinaga, 'Pembangunan Hukum Menuju Tinggi Landas', *Harian Angkatan Bersenjata*, 2 February 1989.

<sup>17</sup> Jimly Assidiqi, *Pembangunan Hukum dan Penegakan Hukum di Indonesia* (Jakarta: Mahkamah Konstitusi, 2006). p. 23.

<sup>18</sup> Zainab Ompu Jainah, *Kapita Selekta Hukum Pidana* (Tangerang: Tira Smart, 2018). p. 66.

system that guides how the system will be empowered.<sup>19</sup>

If someone commits an act that is against the law, then the act is equated with a crime. The act in the form of a crime is contrary to the applicable law and has the potential to be harmful or can cause chaos, discomfort, and even threaten human life. The community rejects such acts and denounces them and gives punishment to the perpetrators. Criminal sanctions are made to protect the public and prevent the emergence of brutal retaliation from those who are victims of such unlawful acts.<sup>20</sup>

In the Indonesian criminal law system, there are several terms related to prohibited and non-prohibited acts.<sup>21</sup> However, as Tongat explained, the nature of prohibited/unlawful acts is not always formally formulated as a crime by statutory provisions. As long as it is judged as an inappropriate attitude or act, contrary to the values that grow in society, then the act can be declared as an act against the law. So, with this perspective, all the values that exist and develop in society can be used as a source of positive law.<sup>22</sup>

Furthermore, even though an act has been formally formulated in the law, if the act is considered by people as an act that does not conflict with living values, then the act must be declared as an act that is not against the law (not a criminal act). In this context, the values that live in a society not only function as a source of law but also can be used to negate the unlawful nature of an act that has been formally formulated as a crime in the law.<sup>23</sup>

---

<sup>19</sup> Anthon F Sasanto, *Wajah Peradilan Kita: Konstruksi Sosial Tentang Penyimpangan, Mekanisme Kontrol dan Akuntabilitas Peradilan Pidana* (Bandung: Refika Aditama, 2004). p. 76.

<sup>20</sup> Fitri Wahyuni, 'Hukuman Kebiri Terhadap Pelaku Tindak Pidana Pemerkosaan Anak dan Kaitannya Dengan Hak Asasi Manusia', *Jurnal Hukum Dan Peradilan*, 6.2 (2017), 287.

<sup>21</sup> Endang Jumali, *Rekonstruksi Sanksi Hukum Pidana Korupsi di Indonesia* (Jakarta: Penerbit PT. Saadah Pustaka Mandiri, 2016).

<sup>22</sup> Tongat, *Dasar-Dasar Hukum Pidana Indonesia dalam Perspektif Pembaharuan* (Malang: UMM Press, 2008). p.115.

<sup>23</sup> Tongat, *Dasar-Dasar Hukum Pidana Indonesia...*, (Malang: UMM Press, 2008)



## Blasphemy Crime in Indonesia and its Handling Efforts

Blasphemy cases against religion are an act that not only hurts and destroys the beliefs of a particular religion but also creates a sense of offense, hatred, or hostility to certain individuals and/or community groups and can cause divisions between religious communities.<sup>24</sup> This crime can be classified into three categories; *First*, Blasphemy against religion. An act is considered blasphemy against religion if its main purpose is to be hostile or insulting to a religion professed in Indonesia. The act of expressing feelings or committing acts includes all acts in the form of mocking, tarnishing, or demeaning religion, apostles, prophets, holy books, religious teachings, or religious worship, all of which are carried out intentionally. *Second*, Disrupting the implementation of worship and religious activities, such as trying to hinder or unlawfully disperse employing violence or threats of violence against worshipers carrying out worship, religious ceremonies, or religious gatherings; Included in this type is ridiculing people who are carrying out worship or mocking religious officials who are carrying out their duties. *Third*, Destroying places of worship, namely desecrating or unlawfully destroying or burning buildings or objects used for worship. Blasphemy against religion is included in the category of crime because it has the potential not only to cause offense, hatred, or hostility to certain individuals and/or community groups but also to hurt and damage the beliefs of a particular religion, and cause divisions between religious communities.<sup>25</sup> Blasphemy against religion can occur through verbal, written statements or certain actions that are carried out intentionally and can have negative legal consequences.

In the Indonesian legal system, blasphemy/insulting of religion is regulated in Article 156 of the Criminal Code (KUHP), which reads: *Any person who intentionally publicly expresses feelings or commits an act:*

---

<sup>24</sup> Muhammad Dahri, 'Tindak Pidana Penodaan Agama di Indonesia: Tinjauan Pengaturan Perundang-Undangan dan Konsep Hukum Islam', *AT-TAFAHUM: Journal of Islamic Law*, 1.2 (2017), 57–58.

<sup>25</sup> Muhammad Dahri, 'Tindak Pidana Penodaan Agama di Indonesia...', *AT-TAFAHUM: Journal of Islamic Law*, 1.2 (2017).

*a. Which in essence is hostile, abuses or desecrates a religion professed in Indonesia: b. With the intention that people do not adhere to any religion, which is based on the One Godhead.*

Based on this rule, the perpetrator of an act of insult/blasphemy against a new religion can be found guilty when all the elements of a criminal act as stipulated in Article 156a letter b of the Criminal Code which includes: *First*, that the perpetrator has intentionally expressed feelings or acted as intended in Article 156a of the Criminal Code; *Second*, that the perpetrator knows the feelings he gives off or the actions he commits occur in public; *Third*, the nature of the act contains hostility, abuse or blasphemy against a religion adhered to in Indonesia; *Fourth*, the perpetrators have wanted people not to follow any religion that is based on the belief in the One Supreme God.<sup>26</sup>

In the case of blasphemy, the perpetrator can be charged with a maximum of five years in prison. However, before someone is charged with blasphemy, it must first be proven whether the person concerned is guilty or not. So here there must be a very clear and clear intention of someone to insult and demean religion and do it in public. A person who is indicated to have committed an act of blasphemy against religion is then given a warning first, before proceeding to the realm of law.<sup>27</sup> This step is taken to prevent the entry of someone's report without being supported by strong evidence.

The issue of blasphemy has always been a very long debate, especially concerning the application of the law as part of law enforcement policies and countermeasures in Indonesia. So far, as stated by Muhammad Dahri, the handling of cases of blasphemy in Indonesia seems less serious and not optimal. Many parties, especially among Muslims, even view that the handling of cases of blasphemy in Indonesia tends to be selective and discriminatory so that it is not following the provisions

---

<sup>26</sup> Muhammad Dahri, 'Tindak Pidana Penodaan Agama di Indonesia...', *AT-TAFAHUM: Journal of Islamic Law*, 1.2 (2017).

<sup>27</sup> Nazar Nurdin, 'Delik Penodaan Agama Islam di Indonesia', *International Journal Ihya' Ulum Al-Din*, 19.1 (2017), p. 134.

of the 1945 Constitution Article 29 paragraph (2).<sup>28</sup> This phenomenon occurs generally because the legal provisions governing this crime still contain some ambiguity. In certain cases, there is still confusion about what exactly is meant by the term "blasphemy/insult to religion", who is the object of the act of desecration/insult, is it only limited to God, apostles, and religious teachings, or it includes figures and/or adherents religion, also, whether the act must be carried out directly or through other media. Questions like this do not get an explanation from the law.

It has been mentioned above that one of the criminal elements that must exist, and which must be proven by the judge, is that the perpetrator committed the act intentionally. There are no criminal events that occur by chance or outside the principle of cause and effect. Every criminal event that occurs is always preceded by a series of actions (deeds).<sup>29</sup> Deliberation is knowledge which is a relationship between one's mind or mind with the actions he does. Intentional (*dolus*) has a closer psychological relationship to an action (forbidden) than negligence (*culpa*). That is why the criminal threat for an offense committed intentionally will be much heavier than an offense committed by negligence.<sup>30</sup>

In the case of blasphemy/insulting against religion, intentionality is defined as wanting and realizing that one's actions will have consequences. So here there must be a very clear intention from someone to insult and demean a religion and his actions have real consequences in social life in the form of disruption of national stability and torn tolerance between religious communities. In addition to observing the impact arising from acts of blasphemy, law enforcers, then, must also pay attention to how the reactions and conditions of tolerance in the religious life of the community are caused by the emergence of these blasphemous acts.

---

<sup>28</sup> Muhammad Dahri.

<sup>29</sup> Ahmad Sofian, *Ajaran Kausalitas Hukum Pidana* (Jakarta: Prenadamedia Group, 2018). p. 45

<sup>30</sup> S.R Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya* (Jakarta: Alumni Ahaem Petehahem, 1996). p. 163.

Furthermore, someone who does something intentionally (with intention) can be divided into 3 (three) forms of mental attitude, which at the same time show the level of intentionality. First, intentional intent (*opzet als oogmerk*) to achieve a goal (*dolus directus*). In other words, the perpetrator intended to cause the prohibited result. Second, conscious intention (*opzet met zekerheids bewustzijn or noodzakelijkheid bewustzijn*). In this case, the perpetrator is aware that his actions will have certain undesirable consequences but are a must to achieve the goal. Third, intentional with conscious possibility (*dolus eventualis or voorwaardelijk-opzet*). An example of this case is the case of Sukmawati who compared the Prophet Muhammad with Soekarno in the context of the struggle for independence in the early 20th century. Sukmawati should have realized that her actions, even though it was claimed that there was no intention of harassing the Prophet, would result in something unwanted, namely hurting the religious feelings of the Muslim people.<sup>31</sup>

In judging an act including blasphemy against religion or not, sometimes judges encounter difficulties. This is due to differences in interpretation in assessing which acts are blasphemy and which are not. To overcome this difficulty, judges usually involve expert witnesses. So here, the role and contribution of expert witnesses is very large and important as well as being a guide for law enforcement in providing interpretations related to acts that are categorized as acts of blasphemy.

In the case of blasphemy, the expert witness is placed as someone who has good knowledge in the field of religion. Armed with the knowledge he has, the expert witness will assess whether an act is an act of religious blasphemy or not. The expert witness will explain in detail before the court the problems that exist in a case that occurs. When the expert witnesses do not carefully provide information, therein lies the weakness in expert testimony. This often happens because, in

---

<sup>31</sup> Ahmad Khozinudin, 'Menyoal Dalih Tidak Ada Niat dalam Kasus Penodaan Agama oleh Sukmawati', *Lembaga Bantuan Hukum Pelita Umat*, 18 November 2019.

practice, sometimes the expert witnesses presented are not competent in their fields, even law enforcement officers sometimes do not pay attention to the background of an expert being presented. Whereas, the expert witnesses who have the ability and competency in their fields will be the determining factor in the evidentiary process as well as determine whether a defendant can be sentenced or not based on the provisions of formal and material criminal law.

Turning to the term 'in public'. The words 'in public', although for certain offenses are often used in the Criminal Code, do not explain what the phrase means. Hoge Raad, in one of his arrests, has decided among other things: "An act of violating decency in public is an act, whether committed in a public place in the sense of a place that can be visited by everyone, or an act, which, although not carried out in a public place, but can be seen from a public place. Against this ambiguity, Apriandi MS suggested that the words in public in Article 156a should be explained. For example; before one or more people, whether they are of the same religion or not. Likewise, the sentence "blasphemy against a religion" is explained in another article, or given an interpretation as "direct blasphemy against religion", either verbally or in writing, regardless of whether it will endanger public order or not.<sup>32</sup>

Another difficulty in formulating a criminal offense for religious blasphemy is the object of the act. Article 156 of the Criminal Code does not completely refer to the religion that is the object of the act. As clearly stated in Article 156 of the Criminal Code, the objects of the crime of religious blasphemy are those who are called population groups whose differences are based on religion. In other words, according to the article, the object of this act is human/the followers. However, if examined more deeply, the object of the religious offense can also mean religion itself; This is because the actions are aimed directly at the religion adhered to by certain groups of people with the aim that

---

<sup>32</sup> Afriandi MS, 'Analisis Hukum Pidana Terhadap Tindak Pidana Penistaan Agama di Aceh', *Jurnal Penelitian Hukum De Jure*, 17.1 (2017), 9.

people do not adhere to any religion, including religions based on the belief in the One Supreme God. This is in line with Mudzakir's opinion emphasizing that what Article 156a wants to protect is religion itself. Religion, according to this article, needs to be protected from the possible actions of people who can demean and defame religious symbols such as God, the Prophet, the Holy Book, and so on. However, because religion "cannot speak", this article can also be interpreted to protect religious adherents.<sup>33</sup> Almost similar to the view above, Juhaya S. Praja and Ahmad Syihabuddin stated that article 156a of the Criminal Code is not intended to protect certain groups, but what is protected is the holy book. If viewed from the point of view of the legal objectives or "spirit of law" religious offenses in the Indonesian state legal system and then compared with Islamic law, religion is a primary interest that must be protected by law.<sup>34</sup>

Another problem that may arise in the trial process is the form of punishment. As is understood, the provisions regarding blasphemy in positive law in Indonesia are not only regulated in Article 156a of the Criminal Code but are also regulated in Article 28 (2) of the electronic information and transaction law. This law specifically regulates acts called hate speech, namely intentionally spreading information that can cause hatred or hostility. Statements of hostility, hatred, and contempt for this group include crimes that are punishable by punishment according to Article 156a of the Criminal Code, the perpetrators can be subject to criminal threats for 5 years. (five) years in prison. The threat of 5 (five) years is because the perpetrator conveys a feeling of hostility towards one of the existing beliefs. Anyone who commits an unlawful act in the form of blasphemy on purpose will be subject to sanctions under the provisions above. The threat of punishment in this article is indeed

---

<sup>33</sup> Mudzakir, *Tindak Pidana Terhadap Agama dalam Kitab Undangundang Pidana (KUHP) dan Undang-Undang Nomor 1/Pnps/1965 Tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama (Kajian Terhadap Praktek Penegakan Hukum dan Prospek Pengaturannya dalam Hukum Positif Indonesia)* (Jakarta: Pusat Perencanaan Pembangunan Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia, 2010). p. 7.

<sup>34</sup> Juhaya S Praja, *Delik Agama dalam Hukum Pidana di Indonesia* (Bandung: Angkasa, 2007). p. 90

severe because those who are attacked in this act are certain individuals or groups based on ethnicity, race, and even religion. Moreover, when carrying out these actions there is the ability to be responsible for the perpetrator which is a fundamental principle in criminal law.<sup>35</sup> The problem now is whether the perpetrator will be punished as stipulated in article 156a with a threat of 5 years in prison or article 28 of the ITE Law with a threat of 6 years in prison and or a maximum fine of IDR 1 billion. punishment for one type of activity but the legal threat is different.

Such are some of the ambiguities in the rule of law regarding crimes against religion; ambiguity must obtain clarity so that legal certainty can be realized.

## Conclusion

Based on the description above, it can be concluded that an act can be classified as a criminal act of blasphemy and blasphemy if the main purpose is to antagonize or insult a religion/belief held in Indonesia. The form of these actions can be in the form of intentionally ridiculing, desecrating, or degrading religion, scriptures, religious teachings, or religious worship, including interfering with the implementation of worship and religious activities, such as by trying to hinder or unlawfully disperse employing violence or threats of violence against people, worshipers, or unlawfully destroying or burning buildings where worship or objects used for worship. Perpetrators of this crime can be subject to a maximum penalty of six years in prison, which is imposed after it has been proven that the perpetrator intends to insult and demean a certain religion adhered to by a person or group of people in Indonesia.

## Bibliography

Assidiqi, Jimly, *Pembangunan Hukum dan Penegakan Hukum di Indonesia*. Jakarta: Mahkamah Konstitusi, 2006.

---

<sup>35</sup> Roni Wiyanto, *Asas-Asas Hukum Pidana di Indonesia* (Bandung: Mandar Maju, 2012). p. 96.

- Awaludin, Hamid, *Mengadili Akal Sehat*. Jakarta: Cahaya Timur, 2008.
- Dahri, Muhammad, 'Tindak Pidana Penodaan Agama di Indonesia: Tinjauan Pengaturan Perundang-Undangan dan Konsep Hukum Islam', *AT-TAFAHUM: Journal of Islamic Law*, 1.2 (2017), 57–58.
- Erlandi, Gede Agastia, 'Penyelesaian Perkara Tindak Pidana Terkait Penghinaan Agama', *Jurist-Diction*, 1.2 (2018), 538.
- Farida, I, 'Faktor-Faktor Yang Mempengaruhi Terjadinya Penodaan Agama di Indonesia Serta Upaya Penanganannya.', *CAKRAWALA GALUH*, 2.2 (2012), 89–94.
- Friedman, Lawrence M., *Sistem Hukum Perspektif Ilmu Sosial, The Legal System A Social Science Perspective*, V. Bandung: Penerbit Nusa Media, 2013.
- Jainah, Zainab Ompu, *Kapita Selekta Hukum Pidana*. Tangerang: Tira Smart, 2018.
- Jumali, Endang, *Rekonstruksi Sanksi Hukum Pidana Korupsi di Indonesia*. Jakarta: Penerbit PT. Saadah Pustaka Mandiri, 2016.
- Khozinudin, Ahmad, 'Menyoal Dalih Tidak Ada Niat dalam Kasus Penodaan Agama oleh Sukmawati', *Lembaga Bantuan Hukum Pelita Umat*, 18 November 2019.
- Kothari, Rajni, *Principled World Politics The Challenge of Normative International Relation*. New York: Rowman & Littlefield Publisher, 2000.
- Mauludin, Hary Kurnia, and Dini Dewi Heniarti, 'Penegakan Hukum Pendanaan Terorisme Ditinjau dari Undang-Undang Nomor 9 Tahun 2013 Tentang Pencegahan dan Pemberantasan Tindak Pidana Terorisme', in *Prosiding Ilmu Hukum SPeSIA*, 2, 2016, II, 589.
- MS, Afriandi, 'Analisis Hukum Pidana Terhadap Tindak Pidana Penistaan Agama di Aceh', *Jurnal Penelitian Hukum De Jure*, 17.1 (2017), 9.
- Mudzakkir, *Tindak Pidana Terhadap Agama dalam Kitab Undangundang Pidana (KUHP) dan Undang-Undang Nomor 1/PNPS/1965 Tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama (Kajian Terhadap Praktek Penegakan Hukum dan Prospek Pengaturannya dalam Hukum Positif Indonesia)*. Jakarta: Pusat Perencanaan Pembangunan



- Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Hak Asasi Manusia, 2010.
- Najih, Mokhammad, and Soimin, *Pengantar Hukum Indonesia*. Malang: Setara Press, 2012.
- Nurdin, Nazar, 'Delik Penodaan Agama Islam di Indonesia', *International Journal Ihya' Ulum Al-Din*, 19.1 (2017), 134.
- Praja, Juhaya S, *Delik Agama dalam Hukum Pidana di Indonesia*. Bandung: Angkasa, 2007.
- Prasetyo, Kresna Adi, and Ridwan Arifin, 'Analisis Hukum Pidana Mengenai Tindak Pidana Penistaan Agama di Indonesia', *Gorontalo Law Review*, 2.1 (2019), 3.
- Sasanto, Anthon F, *Wajah Peradilan Kita: Konstruksi Sosial Tentang Penyimpangan, Mekanisme Kontrol dan Akuntabilitas Peradilan Pidana*. Bandung: Refika Aditama, 2004.
- Sianturi, S.R, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*. Jakarta: Alumni Ahaem Petehahem, 1996.
- Sinaga, Bintatar, 'Pembangunan Hukum Menuju Tinggal Landas', *Harian Angkatan Bersenjata*, 2 February 1989.
- Sinaulan, Ramlani Lina, *Berfikir Filsafat Menuju Filsafat Ilmu*. Jakarta: Daulat Press, 2017.
- Sofian, Ahmad, *Ajaran Kausalitas Hukum Pidana*. Jakarta: Prenadamedia Group, 2018.
- , *Ajaran Kausalitas Hukum Pidana*. Jakarta: Prenadamedia Group, 2018.
- Tanya, Bernar L, and et al, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*. Yogyakarta: Genta Publishing, 2010.
- Tongat, *Dasar-Dasar Hukum Pidana Indonesia dalam Perspektif Pembaharuan*. Malang: UMM Press, 2008.
- Wahyuni, Fitri, 'Hukuman Kebiri Terhadap Pelaku Tindak Pidana Pemerkosaan Anak dan Kaitannya dengan Hak Asasi Manusia', *Jurnal Hukum dan Peradilan*, 6.2 (2017), 287.
- Wiyanto, Roni, *Asas-Asas Hukum Pidana di Indonesia*. Bandung: Mandar Maju, 2012.

**Online News**

<https://news.detik.com/berita/d-5729445/tentang-muhammad-kece-terjerat-kasus-penistaan-agama-hingga-dianiaya-di-rutan> accessed on 31 August 2020.

<https://inanegeriku.com/2021/12/22/kasus-penistaan-agama-bagaimana-penangan-an-hukumnya/>, accessed on 31 August 2020.

<https://www.idntimes.com/news/indonesia/vanny-rahman/ahok-hingga-meliana-ini-daftar-17-orang-yang-divonis-menista-agama> accessed on August 30, 2020.