

The Application of the Principle of Justice against the Criminal Acts of Religion Blasphemy

Jayu Praja

Universitas Islam Jakarta, Indonesia

jayupraja83@gmail.com

Abstract

Indonesia is a pluralistic nation. This is because Indonesia consists of so many ethnic groups, languages, and so many religions that lived together even before Indonesia was born. Since the reformation era, there have been many cases of deviation, one of which is the case of blasphemy in various situations such as deviations in religious life. This can damage inter-religious harmony in society. One of the cases that will be analysed by the author in the context of compiling this thesis is case Number 53/Pid/2021/PT.DPS concerning blasphemy. The perpetrator of the crime is Lars Cristensen, a Danish citizen. The criminal act was committed by the perpetrator when he visited Ni Luh Sukerasih's house, then without the permission of the homeowner, the perpetrator committed a criminal act by destroying the place of prayer/pelinggih of the rock watchman belonging to Ni Luh Sukerasih. The act is carried out by kicking the place of prayer / religious guardian of the reef using the right foot which causes the upper part of the place of prayer to fall/collapse. Article IV paragraph 1 of Law no.1 of 1946 concerning criminal law. And the second violates article 156 letter of the Criminal Code. After the trial, the judge decided to jail for 7 years. The purpose of this study was to find out how the results of the trial of case no.32/PID.b/2002/Pn. Regarding the criminal act of blasphemy and how to analyze the elements of the indictment in Article 156 letter of the Criminal Code, the judge decided that the defendant was proven to have committed a crime in public by expressing feelings of hostility, hatred, or contempt for a group of Indonesian people, as stipulated in Article 156 of the Criminal Code.

Keywords

religion blasphemy; criminal acts; justice principle



I. Introduction

Blasphemy is a form of deviant behavior. Blasphemy of religion is also known as insulting religion or blasphemy. Humiliation or blasphemy is a form that violates the law that has been regulated in religion itself. And every human being has his own rights and obligations to choose a religion. However, if humans themselves violate or oppose the religion they believe in or insult other religions, then that is also a form of blasphemy or insulting religion. Whatever the cause is that expressing feelings or actions which in essence can lead to hostility, abuse, or blasphemy against a religion adhered to in Indonesia is very dangerous, damaging, and causing disturbances to the welfare of oneself, one's family, society, nation, and humanity.

Justice is one of the goals of law and every legal subject wants justice. Every legal institution strives to create justice that gives satisfaction to legal subjects. Law as a regulation of human actions by power is said to be valid not only in decisions but also in its implementation following natural law, in other words, the law must be following the nation's ideology as well as protect the people. The consequence of this recognition implies

the existence of judicial institutions because judicial institutions are a requirement for a country that calls itself a state of law.

One of the cases of blasphemy can be seen from the decision of the Denpasar High Court Number 53/Pid/2021/PT. The DPS with the perpetrator of the crime is Lars Cristensen, a Danish citizen. The criminal act was committed by the perpetrator when he visited Ni Luh Sukerasih's house, then without the permission of the homeowner, the perpetrator committed a criminal act by destroying the place of prayer/pelinggih of the rock watchman belonging to Ni Luh Sukerasih. The act is carried out by kicking the place of prayer / religious guardian of the reef using the right foot which causes the upper part of the place of prayer to fall/collapse. The perpetrator then took an umbrella at the prayer place, after that, the perpetrator kicked the bottom of the prayer place until it fell/collapsed. The result of the perpetrator's actions caused the place of prayer to be damaged and could no longer be used for prayer.

For the criminal act committed by the perpetrator, the Panel of Judges at the Denpasar High Court has indicted the perpetrator with imprisonment according to Article 156a of the Criminal Code and the articles in Law Number 8 of 1981 concerning the Criminal Procedure Code as well as other regulations related to crime. imprisonment for 7 (seven) months and stipulates that the defendant remains in custody.

Normatively, crimes against religion, in general, can be grouped into criminal groups related to religion, namely: (1) crimes against groups of people whose attachment to the group is because of religion; (2) criminal acts against religious officers who are carrying out religious duties; (3) criminal acts against groups of people who practice worship according to their religious beliefs; (4) criminal acts against religious equipment, prophets, apostles, holy books, and others; (5) a crime against a building or place of worship; (6) criminal acts against religious beliefs that cause people to not believe in their God or the suggestion to follow atheism; and (7) the criminal act of blasphemy against the content of religious teachings.

In the Criminal Code, it is regulated that religious offenses only include offenses against religion and offenses related to religion, as stated in Article 156, which states "Whoever publicly expresses feelings of hostility, hatred or contempt towards one or several groups Indonesian people, shall be punished by a maximum imprisonment of four years or a maximum fine of four thousand five hundred rupiahs. The word group in this article and the following article means each part of the Indonesian people that is different from one or more parts because of race, country of origin, religion, place of origin, descent, nationality, or position according to constitutional law." Article 156a is often referred to as the article on blasphemy, which can be categorized as an offense against religion. Article 156a is often used as a reference by judges to decide cases of blasphemy. Judging from Presidential Application Number 1 of 1965 concerning the Prevention and/or Blasphemy of Religion which has been used as a legal basis other than the Criminal Code, efforts to crack down on deviant sects only contain a sentence of imprisonment for a maximum of five years.

Article 28E paragraph (1) of the 1945 Constitution states, "Everyone is free to embrace religion and worship according to his religion, choose education and teaching, choose work, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return." Second, it is emphasized in Article 28I paragraph (1) of the 1945 Constitution which states, "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law, is a human right that cannot be reduced under

any circumstances.” The third is emphasized in Chapter XI which emphasizes specifically religion, namely Article 29 paragraph (2) of the 1945 Constitution which states, "The state guarantees the independence of every citizen to embrace their own religion and to worship according to their religion and belief. Law Number 39 of 1999 concerning Human Rights. Meanwhile, blasphemy of religion in Indonesia is regulated in Presidential Decree Number 1/PNPS/1965 concerning Prevention of Abuse and/or Blasphemy of Religion which is then accommodated in the provisions of the Criminal Code (KUHP) Article 156a. The blasphemy article in its application is also used together with provisions in several regulations, including Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions.

An act can be said to have violated the law and can be subject to criminal sanctions, it must meet two elements, namely the existence of an element of a criminal act which in the foreign language is *actus reus*, and the state of the maker's inner nature which in the foreign language is *mens rea*. Error or *schuld* is an element of the maker of the offense, so it includes an element of criminal responsibility which contains the meaning that the maker can reproach for his actions. If the guilt is not proven, it means that the criminal act is not proven, because the judge cannot prove a mistake if he has known beforehand that the criminal act did not exist or was not proven to have been realized by the defendant.

II. Research Method

This research is a type of normative juridical research. Normative juridical research is legal research conducted by examining library materials or secondary data as the basis for research by conducting a search on regulations and literature related to the problem under study. The normative juridical research in this thesis will analyze the application of the principle of justice in the criminal act of blasphemy through the study of the Denpasar High Court Decision Number 53/Pid/2021/PT.DPS.

Sources of data used in normative juridical research are secondary data sourced from primary, secondary, and tertiary legal materials.

a) Primary Legal Materials, are binding legal materials, sourced from:

- 1) The 1945 Constitution of the Republic of Indonesia.
- 2) Law Number 1 of 1946 concerning the Criminal Code.
- 3) Law Number 1/PNPS/1965 concerning Prevention of Abuse and/or Blasphemy of Religion.
- 4) Law Number 39 of 1999 concerning Human Rights.

b) Secondary Legal Materials, are legal materials that provide an explanation of primary legal materials, sourced from books, and scientific journals related to the legal issues studied in this study.

c) Tertiary Legal Materials, are legal materials that provide additional explanation or support for existing data on primary and secondary legal materials. The tertiary legal materials used are legal dictionaries and internet searches related to the legal issues studied in this study.

III. Result and Discussion

3.1 Legislation in the protection of Religious Life in Indonesia

In the first precepts, Pancasila as the basis of the Republic of Indonesia, namely Belief in the One and Only God, contains a religious meaning and at the same time gives meaning to Indonesia as a legal state that must view these two things as a unit that supports each other. The concept of a state of law brings consequences for Indonesia to regulate all orders of community life with the law for the sake of creating order and legal certainty. Regarding religious freedom in Indonesia, the problem that has received attention is the assumption that there are many problematic laws and regulations from the perspective of religious freedom. The problematic laws and regulations are considered to be contrary to the principle of freedom of religion or because they conflict with each other based on their hierarchy. Hierarchically the legislation is from the 1945 Constitution of the Republic of Indonesia, Decrees of the People's Consultative Assembly, Laws/Government Regulations in place of Laws, Government Regulations, and Presidential Regulations. Provincial Regulations, Regency/City Regional Regulations. All of them must be based on the principles of Pancasila values as the ground norm of the Republic of Indonesia.

3.2 Protection of Religious Life According to the 1945 Constitution

The importance of state participation based on Article 29 paragraph (1) of the 1945 Constitution to ensure that the State is based on the One Godhead does not mean that Indonesia is a religious state so that it bases itself on one religion, but that religion is a moral value and an acknowledgment of the conscience of the people of the grace of God Almighty. Almighty, this country exists. Indonesia is a secular country that is not secularistic, which means that it does not base itself on one particular religion or all religions but has a national perspective. Religious affairs are basically a personal matter for each individual but in relation to religious freedom and religious harmony, the state must take the initiative to provide legal protection. A sociological understanding and study of the law, including its enforcement, is a need that demands to be fulfilled at times like today. What is meant by "times like now" is the period of society, in this case, Indonesia is undergoing changes, an era marked by social changes. Likewise in Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia that the State guarantees the independence of each resident to embrace their respective religions and to worship according to their religion and beliefs. Furthermore, in Article 28E paragraph (1) of the 1945 Constitution: Everyone is free to embrace religion and worship according to his religion, choose education and teaching, choose work, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return. Article 28E paragraph (2) of the 1945 Constitution also states that everyone has the right to freedom of belief. In addition, Article 28 I paragraph (1) of the 1945 Constitution also recognizes that the right to religion is a human right that cannot be reduced under any circumstances. Constitutional guarantees on human rights cannot be ignored, neglecting human rights is also neglecting law enforcement.

3.3 Protection of Religious Life According to MPR Decree No. XVII/MPR/1998 concerning Human Rights

Freedom of religion is also regulated in MPR Decree No. XVII/MPR/1998 concerning Human Rights, among others as follows:

- a. MPR Decree No. XVII/MPR/1998 on Human Rights Article 13 everyone is free to embrace their own religion and worship according to their religion and beliefs.

- b. MPR Decree No. XVII/MPR/1998 on Human Rights Article 37 the right to life, the right not to be tortured, the right to freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, the right to not to be prosecuted on the basis of retroactive law is a human right that cannot be reduced under any circumstances (non-derogable)
- c. MPR Decree NO. XVII/MPR/1998 concerning human rights, article 38, everyone has the right to be free from and receive protection against discriminatory treatment.
- a. Protection of Religious Life according to Law Number 39 of 1999 concerning Human Rights.**

In-Law Number 39 of 1999 concerning Human Rights. where human rights have the meaning as explained in Article 1 paragraph (1), namely human rights are a set of rights that are inherent in the nature of human existence as creatures of God Almighty and are His gift that must be respected, upheld, and protected by the State, law, government, and everyone for the sake of honor and protection of human dignity.

In accordance with Law Number 39 of 1999 concerning Human Rights which regulates in Article 22 (1) Everyone is free to embrace their own religion and to worship according to their religion and beliefs. (2) The state guarantees the freedom of everyone to embrace his religion and belief. In Article 4 the right to life, the right not to be tortured, the right to freedom of person, thought, and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equal before the law, and the right not to be prosecuted on the basis of retroactive law. Is a human right that cannot be reduced under any circumstances and by anyone?

b. Protection of Religious Life in accordance with Law no. 1/Pnps/1965, Concerning the Prevention of Abuse and/or Blasphemy of Religion

In Article 1 of Law no. 1/PNPS/1965, it is prohibited for anyone to intentionally publicly tell, recommend or seek public support, to interpret a religion adhered to in Indonesia, or to carry out religious activities that resemble religious activities of that religion. and which activities deviate from the main teachings of the religion. Furthermore, Article 4 of Law no. 1/PNPS/1965 stipulates that, in the Criminal Code, there is a new article which reads as follows, article 156a which reads, "Any person who intentionally publicly expresses feelings or commits an "act: a. which are essentially enmity, abuse or blasphemy against a religion professed in Indonesia; b. with the intention that people do not adhere to any religion, which is based on the belief in the one and only God."

3.4 The legal process for the crime of blasphemy in Denpasar

a. The legal process according to the Criminal Procedure Code

The legal process for the crime of blasphemy is a process carried out from investigation, and investigation to trial in the court of blasphemy cases where in the criminal process, according to the procedural law which is currently regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code. Criminal Procedure Code). Criminal law is an area where the state protects its citizens from crimes or violations committed by citizens of other countries. Indonesian criminal law is subject to the Criminal Code (KUHP). If there is a blasphemy case, it will certainly be processed according to the Criminal Procedure Code (KUHP), with the following stages:

- a. Reports/complaints/arrested
Everyone who experiences/sees/witnesses/becomes a victim of a criminal act can report or make a complaint to the authorized official to take legal action.
- b. Investigation

An investigation is a series of investigators' actions to seek and find an event that is suspected of being a criminal act to determine whether or not an investigation can be carried out according to the method regulated in the Criminal Procedure Code. Investigators are state police officers of the Republic of Indonesia who because they are given certain powers can carry out investigative tasks as regulated in the Criminal Procedure Code.

c. Investigation

After receiving a report, a police officer of the Republic of Indonesia or certain civil servants (PNS) who are specifically authorized by law to carry out an investigation. An investigation is a series of actions by an investigator to seek and collect evidence to make it clear that a crime has occurred and is intended to find a suspect in the crime.

- d. Arresting for the investigation, the investigator on the orders of the investigator is authorized to make arrests based on sufficient preliminary evidence. Being caught in the act is the arrest of a person while committing a crime, or immediately after a while the crime is committed, or a moment later it is called out by the public as the person who did it, or if a moment later an object is found which is strongly suspected to have been used to commit the crime. the crime which shows that he is the perpetrator or has participated in or assisted in committing the crime.
- e. Detention for investigation, prosecution, and examination by a judge, an order for further detention or detention may be made against a person who is strongly suspected of committing a crime and/or trial or providing assistance for a criminal act based on sufficient evidence if it raises concerns that the suspect or defendant will escape, damage or eliminate evidence, or repeat the crime.
- f. Search For the investigation, the investigator may conduct a search of the house or clothing, or body according to the procedures specified in the law. A search warrant is issued by the chairman of the local district court.
- g. Confiscation Confiscation is a series of actions by an investigator to take over and/or keep under his control movable or immovable, tangible or intangible objects for the sake of proof in the investigation, prosecution, and trial.
- h. Legal aid For defense, a suspect or defendant has the right to receive legal assistance, even though he is right as a criminal.
- i. Pre-prosecution and prosecution Public prosecutors are prosecutors who are authorized by this law to carry out prosecutions and carry out judges' decisions. The prosecution is the action of the public prosecutor to delegate a criminal case to the competent district court in matters and according to the method regulated in this law with a request that it be examined or decided by a judge in a court session.
- j. Pretrial Pretrial is the authority of the district court to examine and decide according to the method regulated by law. This trial is presided over by a judge. If at the pretrial stage the suspect is found not guilty, the charge will be null and void. However, if the pretrial only decides whether or not the arrest and detention stage is appropriate, the case will still be processed.
- k. Court hearing After the transfer of documents by the public prosecutor, the case will enter the stage of the court trial. To judge based on the principles of freedom, honesty, and impartiality in court proceedings in matters and according to the method regulated in the Criminal Procedure Code. During the judicial process, the defendant is still considered innocent (presumption of innocence) until a verdict is reached. Analysis of one of the criminal cases that occurred based on the decision of the Temanggung district court which has permanent legal force in the directory of the Supreme Court of the Republic of Indonesia No. 06/Pid .B/2011/PN.TMG where the Temanggung district

court, which adjudicated criminal cases in the first-level judiciary with the usual examination procedure, has sentenced the defendant, Antonius Richmond Bawengan, to a maximum sentence of imprisonment. According to the author, the judge's decision to punish the defendant with a maximum imprisonment of 156 (a) of the Criminal Code (KUHP) is 5 (five) years in prison.

b. Criminal Acts of Decision on Case Number 53/Pid/2021/PT.DPS

Blasphemy acts in Indonesia are regulated through the Presidential Decree No. 1 of 1965 concerning the Prevention of Abuse/Defamation of Religion. The provisions, better known as the PNPS Law No. 1 of 1965 are very brief because it only contains 5 articles.

Criminal acts aimed at blasphemy can be found in the provisions of Articles 156, 156a, and 157 of the Criminal Code. The crime specified in Article 156 of the Criminal Code has the object of population groups, one of which is based on religion. Thus, the expression of feelings of hostility, hatred, or contempt for this group is a crime. This is intended to maintain peace between different religious groups so that public order can be achieved without disturbing the peace. This provision is commensurate with the location of Article 156 which is a Crime against Public Order, in addition, if it is related to the theory of criminal acts against religion, it is included in the Friedensschutz Theorie because this theory views public order/ peace as a legal interest that must be protected.

The crime of blasphemy has been discussed previously in a juridical analysis study of the decision with case number No.69/Pid.B/2012/PN.Spg which aims to determine the suitability of the Public Prosecutor's use of alternative charges in case No.69/Pid.B/2012/PN.Spg with the crime committed and to determine the suitability between the punishment of a lighter sentence than the demands of the Public Prosecutor with the purpose of sentencing.

IV. Conclusion

In the Criminal Code (KUHP), there are offenses categorized as offenses against religion, namely Article 156 of the Criminal Code to regulate someone who intentionally expresses feelings of hostility, hatred, or contempt towards one or several groups of the Indonesian people. After the promulgation of Law no. 1/PNPS/1965 concerning Prevention of Abuse and or Blasphemy of Religion, then Article 156 a. The general explanation that can be seen from the regulation aims to protect the peace of everyone in religion from blasphemy/insult of religion or teachings that do not embrace religion.

In the case of the act of blasphemy with the verdict Number 53/Pid/2021/PT.DPS., the judge decided that the defendant was proven to have committed a crime in public by expressing feelings of hostility, hatred, or contempt towards a group of Indonesian people, as stipulated in Article 156 of the Criminal Code. Some experts state that there is an intended meaning and an implicature, regarding the intention of meaning, there is the intention of every person speaking, it must be deliberately thought of and come out into the production of speech. While implicature is a term of expert knowledge, some utterances are revealed as the meaning is understood, every utterance has a meaning, so the choice of words to become utterances is normal, but if the choice of words that we focus on is a lie, it is clear that it negates the positive meaning, negates the positive meaning, in other words, the word itself is negative.

References

- Arsil, D. Rositawati, M.T Aziezi, N. Syarifah, Z. Abidin. (2018). Penerapan Terhadap Pasal 156A Kitab Undang-Undang Hukum Pidana Tentang Penodaan Agama (Analisis Hukum Dan Hak Asasi Manusia) (Indonesian Institute the Independent Judiciary, Lembaga Kajian dan Advokasi Independensi Peradilan (LeIP).
- Majda El Muhtaj. (2015). Hak Asasi Manusia Dalam Konstitusi Indonesia (Jakarta: :Keencana Predana Media Group).
- Mirza Nasution. (2013). Jaminan Kehidupan Beragama Dalam Konstitusi (Jakarta: Softmedia)
- ‘Mudzakkir, Op..Cit, Hlm. 117.’
- Mudzakkir. (2010). Tindak Pidana Terhadap Agama Dalam Kitab Undang-Undang 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 Indon (Jakarta: Pusat Perencanaan Pembangunan Hukum Nasional Badan Pembinaan Hukum Nasional, Kementerian Hukum dan HAM RI).
- Yahya Ahmad Zein. (2001). Membangun Hukum Indonesia (Jakarta: :Pustaka Prima).