

# Legal Protection Against Cases of Blasphemy: An Analysis of Legal, Ethical, and Social Impact Aspects In the Context of Freedom Speech

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Info Articles	Abstract
<p><b>Article History</b>            Received : 2019-07-05            Revised: 2019-07-16            Published: 2019-07-30</p> <p><b>Keywords:</b>  <i>Blasphemy, The 1945 Constitution, The Criminal Code, Tolerance, Media, Legal Consequences.</i></p>	<p>The purpose of this study is to analyze the regulation and implementation of Criminal Law regarding the crime of blasphemy. The research method used in this study is a normative research method, namely. legal research, which is carried out to study the laws and regulations that apply to a particular legal problem. The results of this study indicate that Indonesia is a country that recognizes the existence of religion and divinity, therefore the first principle of Pancasila and the preamble to the 1945 Constitution of the Republic of Indonesia expressly state the recognition of divinity in different religions and beliefs. Therefore, everyone must adhere to a certain religious and belief system that is believed to be true. However, every religious community is obliged to maintain harmony between religious communities both in carrying out their religious worship and in implementing the laws they believe in. One of the actions that often causes conflict between religious communities is blasphemy. With the development of information and communication technology (informatics), satire against religion in various virtual media is widely spread both on social media and news media. In order to maintain harmony among religious communities, the government strictly implements the anti-blasphemy law based on various laws and regulations such as the Criminal Code and Law Number 11 of 2016 concerning amendments to Law Number 19 of 2008. Therefore, perpetrators of blasphemy who commit religious acts face the legal consequences of their actions.</p>

## I. INTRODUCTION

Indonesia is a country of law according to the constitution Article 1 (3) of the 1945 Constitution of the Republic of Indonesia which states that "Indonesia is a country of law" This means that all actions of citizens and the government are in accordance with the highest government regulations. Peace and prosperity of society can be realized if the state guarantees and protects victims of violations of the law by irresponsible people to answer because cases of blasphemy are always present and involve every member of society, even if the society itself does not want the crime to occur. Indonesian society is a pluralistic and structured society because of the diversity of tribes, religions and cultures, this diversity is certainly also taken into account in various interesting places. If these interests are disturbed

or even harm any party, then it also requires the role of law that regulates these different interests to create trust, justice and welfare for society. With the existence of a pluralistic society, social life There are always quarrels between Indonesians, tribes, religions, races and cultures.

Tolerance among communities is essential for maintaining harmony and unity. However, recently, it has become a problem in Indonesian society, referring to the increase in hate speech or insults that violate human dignity. Such hate speech or blasphemy aims to discriminate against, isolate, and incite cultural, ethnic, racial, and even religious communities.

The role of law as a tool of regulation and social control is crucial in processing hate speech and insults, taking into account justice, expediency, and legal certainty, so that the unity

and integrity of the Unitary State of the Republic of Indonesia (NKRI) remains intact and undisturbed. Religion is a sensitive subject, so incidents can occur. Blasphemy is often contested and emphasized in society.

The crime of blasphemy is regulated in Article 156 a (KUHP). Article 156a of the Criminal Code: "Anyone who intentionally in public expresses feelings or commits acts that are hostile, abusive, or blasphemous towards a religion practiced in Indonesia shall be punished with a maximum of five years' imprisonment." The case of blasphemy committed by a YouTuber in Medan, Budi Simamora, was sentenced to 1 year in prison by the panel of judges at the Medan District Court. In the verdict, Rudi was proven to have violated the verdict of Article 28 paragraph 2 in conjunction with Article 45a paragraph 2 of Law number 19 of 2016 concerning information and electronic transactions (ITE).

## II. RESEARCH METHODS

A research method is a process or procedure specifically chosen to address the problem posed in a study. The research method used is a qualitative one, with the statute approach being the applicable laws and regulations, and the case approach being cases or events occurring in society.

## III. RESULTS AND DISCUSSION

### A. Regulations on Blasphemy in the Indonesian Criminal Code

Indonesia as a state based on Pancasila law clearly offers the opportunity for the government to pay attention to and control religion in Indonesia. Because Pancasila, which is the foundation of Indonesian religious life, has found the first value of the first principle, namely: Belief in the One and Only God. Freedom of religion, we see the provisions in Article 28d paragraph 1, Article 28e paragraphs 1 and 2, Article 28 I paragraph 1, Article 29, Article 2 of the 1945

Constitution. The rules for freedom of religion are regulated in more detail in the Human Rights Law Number 39 of 1999 and the International Ratification Law No. 12 of 2005 on the Convention on Civil and Political Rights (International Convention on Civil and Political Rights civil and political). Freedom of religion in Indonesia is regulated by the Indonesian people, which is a nation consisting of many tribes, religions, descents, and so on. However, every freedom always has limits, for example: regulated in Article 28 J (1) and (2) of the 1945 Constitution, Second Amendment. This law has been in effect in Indonesia since 1945. (Asfinawati, Muhammad Isnur, Febi Yonesta, 2018)

This law states that Article 1 specifies the religions adopted by the Indonesian people. The explanation of the article does not specifically prohibit different religions or beliefs. The law emphasizes the recognition of only six religions. The constitution prohibits interpretations or actions that deviate from the basic teachings of religion. The existence of the law can be definitively guaranteed as a determining factor in the existence and strengthening of faith. In this case, the terms official religion and unofficial religion are used to refer to religions not recognized in Indonesia.

With the limitation of recognition of these six religions, it influences the formation of national religious institutions. The authority of these official religious institutions is as follows: the authority to interpret the correct religious teachings and including resolving disputes related to beliefs and religion. These official religious institutions also complement each other. The organizational structure of the Religious Affairs section in Indonesia. This law has been in effect in Indonesia since 1945.

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Religion The authority of the official religious institutions is as follows the authority to interpret the correct religious teachings and includes resolving disputes related to beliefs and religions. These official religious institutions also complement the organizational structure of the Religion section in Indonesia. Restrictions on the recognition of six religions have an impact on the formation of the government against official state religious institutions, such as the Indonesian Ulema Council (MUI), the Indonesian Bishops' Conference (KWI), the Communion of Indonesian Churches (PGI), the Indonesian Buddhist Representative (Walubi), the Indonesian Hindu Dharma (Parisada), and the Supreme Council of Confucianism (Matakin). The authority of these official institutions is as the authority holder to interpret the correct religious teachings and includes resolving disputes that occur within their respective beliefs and religions.

These official religious institutions also complement the organizational structure of the Ministry of Religion in Indonesia.<sup>1</sup> The Relationship between Article 1 and Article 4 of Law No. 1/PNPS/1965 or Article 156A of the Criminal Code Typically, Articles 1 and 4 of Law Number 1/Pnps/1965 have different operational methods. For comparison, Articles 1 and 4 of the Law are intended to contain the following functional elements:

1. Article 1

- 1) Everyone;

- 2) Intentionally;
- 3) In public;
- 4) Speaking, defending or seeking public support;
- 5) Interpretation of religions practiced in indonesia; or
- 6) Carry out religious activities that are similar to religious activities;
- 7) Which interpretations and activities deviate from the main teachings of that religion. (ey kanter & sr sianturi, 2002)

2. Article 4 or Article 156 a of the Criminal Code

- 1) Everyone;
- 2) Intentionally;
- 3) In public;
- 4) Express emotions; or
- 5) Take action
- 6) Which is hateful, offensive or mocks the religions practiced in indonesia;
- 7) That people may not adhere to any religion, which is based on the one almighty god

From this comparison it is clear that the activity regulated as long as 1 regulates the interpretation or practice of deviant religion, whereas operating under Article 4 or Article 156 a of the Criminal Code involves hostility, abuse of religion or blasphemy and an act designed to prevent people from joining any religion based on the Almighty God. This article explains that anyone who expresses feelings in front of others by issuing words that offend religion, there is a law that regulates it: Referring to Law Number 1 / PNPS / 1965, the explanation regarding the meaning of these elements. The characteristics of this crime are as follows:

- a. The element "in public" is generally interpreted as a word in the Criminal Code, the Constitutional Court decision explains that the phrase "previously public" is a phrase that is also used in the formulation of Article 156a of the Criminal

- Code, other crimes of the Criminal Code, including Article 156 of the Criminal Code, Article 156(1) of the Criminal Code and Article 160 of the Criminal Code, Article 162 of the Criminal Code and Article 170 of the Criminal Code. This point of view refers to the view of R. Soesilo in his book entitled "KUHP (KUHP) and its comments comments", namely a place where the audience is or where the audience is heard", in a public place and many people or many audiences" and "where the public can see it".
- b. The element of "intentional" is limited (substantially) to the expressed purpose of opposing or offending. Objective and scientific descriptions are applied in writing or speaking a religion that implies an effort to refrain from words or placement of words that are hateful or offensive.
  - c. The element of "expressing or acting based on feelings" is verbally, in writing or otherwise. (Hasan Masri & Team, 2008)
  - d. "Hostile elements", unexplained (considered sufficiently clear)
    1. and only explains the existence of actions that have aggressive goals
  - e. the element of "abuse of trust" has no explanation (which is considered clear).
  - f. The element of "blasphemy" is not explained and is only explained as an action that shows an intention to offend.
  - g. The elements of "religion" embraced in Indonesia include Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism (Konhucu). The explanation in Article 1 also states that other religions, such as Judaism, Zaeaputrianism, Shintoism and Taoism are prohibited in Indonesia. They received full guarantees based on Article 29 paragraph (2) of the 1945 Constitution before any

amendments and were permitted to exist as long as they did not damage the provisions of this regulation or other provisions of legislation.

- h. The element of "intention" of people not adhering to any religion. There is no explanation and the author only mentions that it disturbs the peace of religious communities, basically betraying the First Principle, Pancasila as a whole.

The subjective elements of a criminal act are as follows:

- a. Intentional or unintentional.
- b. the purpose or form of the experiment, as referred to in Article 53 paragraph 1 of the Criminal Code.
- c. There are various types of intent, for example in crimes of theft, fraud, extortion, forgery and many more.
- d. Plan ahead or *voorbedachte Raad* so it is found in, for example. The offense of murder under Article 340 of the Criminal Code.
- e. Feelings of fear or anxiety, such as those found in oneself, are formulated as a crime based on Article 308 of the Criminal Code. (Ida Farida, SH, MH, 2012)

#### **B. Criminal Sanctions for Blasphemy According to the Indonesian Criminal Code**

The blasphemy law is the current criminal law (*ius constitutum*) that punishes blasphemy in Indonesia. The general explanation of the law explains that the law was issued based on aspects that arise from opposing sects or general religious organizations with religious education.

There are many teachings in these sects or religious organizations that cause problems of violation, divide national unity and defame religion. In fact, the sects or organizations are disappearing, multiplying and developing in a direction that threatens existing religions. The implementation of the blasphemy law has

received criticism from different perspectives, believing that this law is no longer in existence, it can be more effectively applied in today's social life. Profanity often contains unclear and difficult to define words, making it vulnerable to misunderstanding and excessive misapplication. Section 1 of the Blasphemy Law and its Explanation states "Body or school of spiritual knowledge. (Big Indonesian Dictionary, 2002)

The government is trying to direct it to a healthy vision and the Almighty God is one" It is known in theory that elements are needed to ensure. This can be handled in the criminal justice system. In criminal practice, the elements are known, namely. objective elements and subjective elements. The meaning is an activity that is prohibited due to certain circumstances or problems, while the subjective elements include the author's fault and responsibility skills. Regarding the objective and subjective elements, Lamintang in his book Principles of Indonesian Criminal Law states that the subjective element is an element that is internally "within oneself". Relating to criminal acts or actions, namely, everything that is in his heart, as long as it meets the elements. This goal is an element related to the situation, namely the interior of the circumstances in which according to the author the action must be carried out. 1.

SanctionsCriminal.

Sanctions are usually a means of coercing someone into complying with standards. Sanctions for violating religious norms, for example: Criminals will be punished in hell. Society fears that violating norms of decency can result in sanctions, which could result in humiliating treatment, and so on. Sanctions against the standard group are entirely dependent on individual awareness, so that the function of this sanction as a coercive tool becomes stronger depending on "awareness. Based on Article 156 a of the Criminal Code, statements of feelings of hostility, abuse or blasphemy of a religion can be

criminalized, without involving oneself in the issue of whether such statements can disturb the peace of religious people and therefore endanger or disturb public order.

Article 156a of the Criminal Code prohibits criminal acts committed in public in front of non-religious people. Therefore, Article 156a of the Criminal Code defines criminal acts, whether spoken or committed in front of religious or non-religious people, or in front of both. Ultimately, its status is a crime against public order. Criminal sanctions in the Criminal Code are actually reactive, while the consequences of these activities are more anticipatory for the participants. (Lawrence M Friedman, 1977)

Criminal sanctions are sanctions that must be enforced on the condition that the punishment is imposed for the suffering of the person concerned. The punishment must be a punishment for the criminal's actions. Law enforcement is meaningless if not followed by sanctions. Therefore, almost every provision contains criminal language that ends with the threat of punishment. Sanctions for blasphemy are regulated in Article 2 of Law Number 1 of 1965 concerning the Prevention of Abuse and Blasphemy of Religion and Article 156 a.

The criminal law is stated at the beginning of the article and at the end, framing the crime. Crimes against religion and religious life, as well as deviant sects, are punishable by imprisonment. Indonesia is a nation comprised of diverse ethnicities, languages, customs, and religions. One form of diversity in Indonesia is the existence of more than one religion practiced by its citizens. (M Syarfi'ie, 2011)

The diversity of religions embraced by this society is limited by the existence of religions that are officially recognized by all religious beliefs embraced by a very large society or at least recognize all beliefs that develop in society. The occurrence of deviations or blasphemy of religion in society will result in conflict and greatly affect

the stability of the social environment of society. If we look at the law, it is the implementation of criminal justice which is intended as an effort to eradicate the crime of rational criminal law enforcement to realize a sense of justice and power. The implementation of the Criminal Code must go through several stages as a rational effort or process that is consciously designed to achieve a certain thing which is a series of actions that are not included in those arising from values that lead to crime and punishment. Criminal enforcement is an effort to make the law run, act or work which is carried out specifically as an executive action of criminal law. (PAFLamintang, 2011)

### **C. Effective efforts to prevent religious blasphemy**

Effectiveness refers to achieving the right goal, selecting the right goal from among several options, or selecting a method and determining a choice from among several other options. Achievement can be defined as measuring success in achieving a predetermined goal. The general definition of performance indicates the extent to which predetermined goals have been achieved. This aligns with the definition of effectiveness, which measures the extent to which a goal has been achieved. The desired outcome occurs because it produces the desired result.

Effectiveness is something that has consequences, produces results, and the success of an effort or action. In this case, its effectiveness can be seen from the achievement of specific educational objectives related to the laws that have been promulgated, whether the effectiveness of efforts to achieve the objectives set by the law is in accordance with the law or not the necessary needs. Law Number 1 of 1964 of 1965 concerning Religious Harmony and Prevention of Abuse or Blasphemy of Religion is a regulation that is intended and is part of the state or government's efforts to advance religious harmony, prevent religious clashes and maintain peace. can be disturbed by the polarization of

opposing interests and conflicts in society due to the spread of deviant religious beliefs.

The effectiveness of a law is closely linked to the issue of law enforcement. Law enforcement can be viewed in terms of factors that may influence it. These factors have a neutral meaning. These factors are:

- a. The legal factors themselves (regulations)
- b. Law enforcement factors
- c. Facilities or infrastructure factors
- d. Community factors
- e. Cultural factors

These five factors are interrelated because they are the core of law enforcement and also serve as a benchmark for its effectiveness. Therefore, if we refer to the Ahmadi case that occurred recently, it will result in the ineffectiveness of maintaining interfaith harmony under the Blasphemy Law. (Review of Law No. 8 of 1981)

#### **1. The legal factor itself (regulations)**

In a material sense, regulations here mean regulations, namely written regulations that apply generally and are made by central or regional legal authorities. In the creation of these regulations, the principle is that these regulations have a positive impact, namely that these regulations achieve their objectives in such a way that they are effective. One problem that often arises in these regulations is the unclear wording used in the wording of several articles. Regarding the wording is too broad interpretation, or inaccurate translation from a foreign language, or because of the circumstances that existed when the regulation was made. Thus, interference with law enforcement arising from these regulations can be caused by unclear meaning of the words of the regulation, thus causing confusion in its interpretation and application.

Laws and regulations concerning interfaith harmony should serve as instruments of social control, protecting citizens from conditions that hinder interfaith harmony. However, some terms

still have broad meanings (which are open to multiple interpretations). This is evident when religious issues arise, both internal (between Islam and Ahmadiyah) and interfaith (for example, the frequent problems surrounding the construction of places of worship).

## 2. Law enforcement factors

The term "law enforcement" is broad in scope, encompassing individuals directly and indirectly involved in law enforcement. In this study, law enforcement refers only to groups directly connected to law enforcement agencies concerned with enforcing laws and regulations, including the government, represented by prosecutors, and the police, as law enforcement agencies.

As a tool of social engineering, this law is expected to direct police officers to pay greater attention to the administration of justice, particularly in cases of religious violence, both within and between religious communities. However, in reality, some roles should be carried out effectively, as was done by the Cikeusiku security forces.

Violence against Ahmadiyah is a crime, and law enforcement must act decisively. However, what happened on the ground was that churches were abandoned due to anger and uncontrollability, resulting in casualties. If the police had acted, in this case, the unpleasant incident might not have occurred. Reactions to the problems facing Indonesia are often conflicting. When the state, as represented by its machinery, is perceived as incapable of properly enforcing existing laws, people feel empowered to do whatever they want and express their opinions regarding the 4,444 different religious opinions and beliefs. This often leads to conflicts involving violence, as violent activity is considered part of the criminal activities of citizens or society because it results in casualties. (Soerjono Soekanto, 2002)

## 3. Facilities or infrastructure factors

It's impossible for law enforcement agencies to operate smoothly without specific resources or tools. These resources or facilities include trained and experienced personnel, good organization, adequate equipment, adequate funding, and so on. Without these resources, it's impossible for law enforcement agencies to achieve their goals. In terms of facilities and infrastructure, Indonesia now has an organization that addresses all religions. The Center for Interfaith Harmony (PKUB) is under the Ministry of Religious Affairs and has a vision of organizing peaceful and harmonious religious affairs.

Harmony of life and mission to create a conducive atmosphere for the life of religious communities, creating relationships between religious communities, religious meetings with the government, establishing a joint secretariat for religious harmony, religious meetings with the government, establishing a joint secretariat for religious harmony, practicing harmonious friendship throughout Indonesia, creating a communication forum between religious communities throughout Indonesia, building a KUB social network, carrying out mediation of religious leaders in conflict areas, providing information on religious harmony, restoring post-conflict areas. Implementing religious policies or programs in society, comparative studies of religious leaders with world religious centers, developing multicultural awareness among ustadz, socializing religious harmony among the younger generation and students through santri.

FKUB can be empowered as a facilitator to resolve issues related to interfaith harmony that can be a bridge to interfaith harmony in any region, but so far the role of FKUB is still not clearly visible, this is evident from the many existing problems referring to interfaith harmony, especially the establishment of places of worship. FKUB cannot carry out its duties properly, because the community does not receive

information about the existence of FKUB in their area.

#### 4. Social factors

Community factors refer to antecedent factors, namely regulations, law enforcement, and facilities. Law enforcement strives to achieve peace in society, although the community can influence the law. Indeed, the community plays a significant role in the implementation of Law Number 1/PNPS/1965 concerning the Prevention of Abuse or Blasphemy of Religion (the Blasphemy Law), which is particularly relevant to interfaith harmony in Indonesia.

However, the influence of society on harmony is a very important factor, intolerance factors are divided into six groups, namely:

- a. Religious organizations
- b. Community groups
- c. Individual
- d. The perpetrator was not identified
- e. Community groups contain elements that claim to be student groups
- f. Political parties

#### 5. Cultural factors

Cultural factors that are truly integrated with social factors are deliberately distinguished because the debate raises questions about the value system that is at the core of spiritual or immaterial culture. As a system (or subsystem of society), law encompasses structure, matter, and culture. 12 Structure includes the system's container, namely the form, including for example the series of formal legal institutions, the relationships between these institutions, rights and obligations, and so on. Content includes the content of legal regulations regarding the police and debt collectors, as well as the wording and methods of implementation. A legal culture (system) essentially contains values that are abstract understandings of what is considered bad (and therefore avoided).

These values are usually a pair of values that reflect two extreme conditions that must be

reconciled. That is the main topic of the Article discussing cultural factors. These values are the values of order and peace. The value of order is usually referred to as love and discipline, while the value of peace is more about freedom. In matters relating to religious harmony, the value of order must be achieved in a way that Law Number 1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy of Religion (Blasphemy Law) creates legal order in society, which must be enforced, followed and implemented according to the wishes of the law's drafters. (The Liang Gie et al., Encyclopedia of Administration 6th Edition, 1998)

## IV. CONCLUSION AND SUGGESTIONS

### A. Conclusion

The provisions of the blasphemy article of the Criminal Code contain criminal acts that are classified as crimes against religion, namely. Article 156 of the Criminal Code regulates a person who intentionally expresses hostility, hatred, or insults against one or more Indonesian ethnic groups. After the enactment of Law Number 1/PNPS/1965 concerning the Prevention of Abuse and Blasphemy of Religion, Law Number, Article 156a was added to the Criminal Code. A general explanation can be seen from this order which aims to protect all religious peace from blasphemy/insults against religion or teachings that do not care about religion. Factors causing blasphemy include the diversity of religions and cultures in Indonesia, including modes of transportation; Base is considered as one of the triggers of harassment or blasphemy of religion.

Various efforts have been made by the authorized police apparatus in three ways, namely prevention, action, and action, namely preventive action is a preventive regime that involves the parties authorized to handle it, for example. MUI, BAKORPAKEM, PDHI, WALUBI, GPI. Suppression is a form of prevention that involves the police and also the prosecutor's office

and other police parties, so that the crime of blasphemy can be prevented properly in accordance with the current applicable laws and the imposition of criminal penalties for blasphemy.

### B. Suggestion

The Indonesian legislature must immediately revise the provisions of the Article on blasphemy, particularly the general penalty of Article 156a of the Criminal Code, which states that expressing hostility, hatred, or insult in a public place is not a crime. A group of Indonesians. The wording of this provision must clarify its interpretation and narrow its scope so that its meaning becomes clearer to the public. In prosecuting religious crimes, the provisions of the Criminal Code must regulate in detail the characteristics of religious crimes as crimes that harm the interests of the wider community, which plays an important role in the life of the nation and state.

Efforts to eradicate crimes against religion can be promoted effectively by providing fair trials and legal certainty for every plaintiff so that everyone feels that there is legal defense for those who are less fortunate.

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