

Religious Blasphemy in Criminal Law Perspective

Anugerah¹, Zudan Arief Fakrulloh²
{anugerahsaddam@gmail.com}

Universitas Borobudur, Jakarta, Indonesia¹²

Abstract. This paper examines the issue of religious blasphemy that is rife in the public sphere from the perspective of criminal law. By using normative legal research on what are the causes and how to overcome the crime of blasphemy in Indonesia and how to regulate the crime of blasphemy in Indonesia. Legal arrangements for the crime of blasphemy in Indonesian laws and regulations are in the Criminal Code, the Draft Criminal Code, and other regulations stipulated by religious institutions.

Keywords: Religion; Law; Criminal; Blasphemy

1 Introduction

Criminal regulation is public regulation. Criminal regulation is partitioned into two, specifically, material criminal regulation and formal criminal regulation. Material criminal regulation directs what the wrongdoing incorporates, the perpetrator, and the sanctions or punishments for the criminal acts that have been committed. Material criminal law is regulated in the Criminal Code (KUHP). While formal criminal law regulates the implementation of material criminal law, formal criminal law regulations have been ratified and there are criminal procedural punishments (KUHP). Criminal law contains strict prohibitions and orders. The subject matter of criminal law in the context of the protection of legal objects or interests is the observance of prohibitions and orders formulated in-laws and regulations by the party to whom the criminal provisions are addressed.[1] Criminal law is the law that regulates violations and crimes against the public interest, from these actions there are sanctions such as imprisonment, fines, and even the death penalty.[2]

Criminal law provides a special guarantee against it, namely, "acts which are threatened with a punishment in the form of torture". Criminal is punishment in the form of torture, it is a privilege and the most important element contained in criminal law. We all know that the law is coercive and can be enforced and that coercion applies to perpetrators of criminal acts to compensate and receive punishment to create justice and legal order, all of these things must be carried out to maintain balance in society. This includes cases of blasphemy and blasphemy.[3]

The government guarantees freedom of religion, but in recent years there have been problems related to religion and belief, namely the emergence of various religious sects or sects that differ greatly in religious teachings and understandings recognized by the government. In this paper, we will study further about blasphemy in the perspective of criminal law.

2 Research Methods

The examination means to uncover reality in an orderly, systemic, and predictable way. Through the examination cycle, investigation and development of the information that has been gathered and handled are done.[4] Because the scope of this research is in the discipline of Legal Science, this research is part of the Legal Research literature, namely by "how to examine library materials or what is called Normative Legal Research".[5]

3 Results and Discussion

Blasphemy comes from two words namely blasphemy and religion. Religion itself is a belief system in God, the relationship between humans and God, while according to the Big Indonesian Dictionary, it is stated that religion is a system and principle of belief in the existence of a god or gods. Blasphemy according to the Big Indonesian Dictionary has a basic word, namely blasphemy which has the meaning of contempt, gap, or low that blasphemy can be concluded that blasphemy is harassment, humiliation, and demeaning. From this statement, it can be concluded that blasphemy has the meaning of an attempt to harass, insult or demean something that is believed by someone, either in the form of actions or words [6].

In the Criminal Code on blasphemy, it is not clearly explained, but in other books, there is an explanation that blasphemy is a deliberate attack on the good name and honor of a person or group to make it known to the wider community. To create a sense of comfort and order in society, therefore we need a law that can maintain, guarantee and protect the human rights of every individual or group. These rights include the right to feel comfortable and peaceful in carrying out worship or religious activities. It aims to create a conducive situation in society so that it can create tranquility while worshipping (serious).

Initially, the Criminal Code regarding blasphemy was only about criminal acts related to religion, meaning that it contained all actions and words that could disturb the peace of a person or group in worship. Then there is a new article, namely Article 156a which contains a sentence of imprisonment for a maximum of five years, whoever purposefully openly communicates sentiments or activities which are basically threatening, misuse, or impiety against a religion affirmed in Indonesia, with the expectation that individuals nor does he stick to any religion that depends on the faith in One Supreme God (Article 156a of the Criminal Code).

A person can be said to have committed blasphemy if he is an adult and is not mentally handicapped, he deliberately makes a statement both in speech and in writing with the aim of demeaning or insulting and conveying this to the general public that refers to a person's religion or belief, including matters relating to religion. that a person believes in, such as scriptures, gods, and prophets.[3]

Blasphemy is a combination of the words blasphemy and religion. Religion according to Koentjaraningrat is defined as a system composed of four elements, namely: religious emotion, belief system, rite system, and people or social unity. All of these elements are interrelated and fully integrated. Meanwhile, the Big Indonesian Dictionary states that religion is a system and principle of belief in the existence of a God or God, while the word blasphemy according to the KBBI has the basic word blasphemy which means contempt, reproach, or low so that blasphemy can be interpreted as humiliation, harassment, and humiliation. From the series of explanations above, it can be said that blasphemy is an attempt to demean, harass, or demean something that is believed to be the principle of one's belief either in words or actions.

The definition of blasphemy in the Criminal Code is not clearly explained, but in another book, it is explained that the meaning of blasphemy is a deliberate attack on the good name and honor of another person or group, either verbally or in writing intending to make it known to the wider community. There are criminal activities related to religion which can be divided into 3 (three) criteria, namely [6] :

1. Crime according to religion, which includes everything that is prohibited by religion, even though state law does not classify such acts as prohibited acts. In this case, it is generally explained in the holy book of his religion. Such as killing, adultery, or stealing.
2. Criminal acts against religion, include actions and/or words that intersect or aim to demean the Majesty and glory of God, His Word and Nature, Prophets/Apostles, religious activities, Religious Institutions, Scripture, places of worship, and so on.
3. Crimes related to religion or religious life, include all words or actions that can disturb the peace and comfort of individuals or groups in carrying out their religious activities.

As described in the previous description, to create a sense of comfort and order in society, a legal umbrella is needed to guarantee and/or protect every individual or group of their human rights. This includes the right to feel comfortable in carrying out religious activities (worship) as set out in Article 28E paragraphs 1 and 2.

In the Criminal Code, religious crimes initially only cover the points of criminal acts that are related to religion or religious life (criterion point 3). However, Article 156a was added to the Criminal Code based on Article 4 of Law Number 1/Pnps/1965, then the notion of a crime against religion (point 2) was also included in the Criminal Code.

In addition to Article 156a of the Criminal Code above, Article 1 of Law Number 1/Pnps/1965 also regulates matters relating to criminal acts related to religion, but are not integrated with the Criminal Code. The essence of article 1 itself is that each individual is prohibited from intentionally publicly disclosing, advocating, and/or seeking general support to carry out an interpretation of the main religion in Indonesia or to complete strict exercises that are like the exercises of that religion. furthermore, which exercises go amiss from the primary lessons of the religione, it is explained about the prohibited acts.

I understood in-depth, that article 1 above clearly prohibits individuals or groups from carrying out additional interpretations of the teachings of a religion, including doing exercises that look like the exercises of an existing religion. However, this rule can only be punished if it has received an order or warning to stop the act based on the Decree of the 3 Ministers (Minister of Religion, Attorney General, and Minister of Home Affairs). This refers to Article 3 of Law Number 1/Pnps/1965. The essence of article 3 itself is; if, after the actions taken by the Minister of Religion and the Minister/Prosecutor General and the Minister of Home Affairs or by the President of the Republic of Indonesia according to the rules contained in article 2 against a person, organization or belief, they still violate the rules in article 1, then the person, adherent, members and/or management of the organization concerned will be sentenced to a maximum of five years.

Sutoyo explained that criminal offenses regarding religion are divided into two, namely: violations and/or criminal acts directed at a religion (against) and violations and/or crimes related/related to religion (relating, concerning). In general, most people mention religious crimes with the connotations mentioned in point 1 above, namely actions or statements that are carried out to attack religion. This is a violation and/or criminal act which is defined in a narrow sense. Meanwhile, criminal acts in a broad sense include criminal acts at these two points. Criminal acts and/or violations directed at a religion (against) are described in Articles 156, 156a, and 157 of the Criminal Code.[3]

The essence of Article 156 of the Criminal Code is that whoever publicly expresses and/or communicates sensations of antagonism, disdain, or hatred for one or a few gatherings or potentially gatherings of Indonesian individuals, is threatened with a most extreme detainment of four years or a fine of as much as 4 years. -a maximum of four thousand five hundred rupiahs. The word group or group in this article is defined as part of the Indonesian people who have differences in terms of religion, place and/or country of origin, race, descent, nationality, or position according to constitutional law. [7]

In the article, it is explained that the violations and/or criminal acts in question are solely directed at individuals or groups who have the desire to be hostile or insulting to certain groups, one of which is religion. So that this article can be used as a reference to ensnare perpetrators of criminal acts of blasphemy in a general but not specific sense because in this article religion is equated with other groups such as race, country of origin, descent, nationality, or position. So that the article is not enough to solve problems related to religion because the article does not explain specifically the elements of blasphemy. It was only after the enactment of Law No. 1/PNPS/1965 concerning the Prevention, Abuse, and/or Blasphemy of Religion, that the Criminal Code was added to Article 156a. [8]

The essence of 165a is; shall be condemned to a greatest detainment of five years for whoever deliberately freely communicates his sentiments or commits a demonstration: Which basically contains antagonism, misuse, or impiety against a religion that exists in Indonesia; With the point that individuals stick to no religion to have the premise or joints of the One Godhead. The article above explains the elements that specifically regulate blasphemy so that until now Article 156a has always been used as a reference in resolving and deciding cases concerning blasphemy.

There are 2 (two) important elements in Article 156a of the Criminal Code above, namely the element of whoever and the element intentionally. The element of whoever is an explanation of a legal subject who is considered capable and capable of being responsible for all his actions while the element of intention is an explanation that all the actions and words in question are carried out with full awareness and intentional. If viewed from the material contained in Article 156a above, this article does require a direct form of religious blasphemy, namely tarnishing the teachings of a religion and facilities that support religious activities.

However, there are still things that are not clear so it has the potential to cause debate in determining whether an act or statement is included in the form of blasphemy or not. This ambiguity can be seen from the use of the phrase "in public" in Article 156a. The use of sentences in public can reduce this essence, because blasphemy cannot be criminalized as long as it is not committed in public and if the act is not intended to commit blasphemy.

The essence of the form and scope of the criminal act of blasphemy is described in the draft of the 2005 Criminal Code Bill which is regulated separately in Chapter VII concerning Crimes Against Religion and Religious Life: Insulting of a religion, which is broken down into expressing feelings and/or taking action which contains an element of contempt for a religion adhered to in Indonesia (Art. 341); insulting the majesty of God, His word and attributes (Cs. 342); tarnish, ridicule, and/or demean a religion, apostle, prophet, holy books, religious teachings, and/or religious worship (Art. 343); broadcasting offense against Article 341 or 342 (Art. 344).

Disruption of the organization of worship and/or religious activity, consisting of hindering, disturbing, and/or violating the law in the form of disbandment via violence and/or threats of violence against the congregation who is carrying out worship, religious ceremony, and/or religious gathering (Cs. 346(1)); make a commotion near the worship building when the worship process is in progress (Art. 346 (2)); in public ridicule people who are worshipping or ridicule

religious officials who are carrying out their duties (Art. 347). Destruction of places of worship, namely desecrating and/or unlawfully destroying or burning buildings for places of worship or objects that exist and are used for worship purposes (Art. 348).

4 Conclusion

Legal arrangements for the crime of blasphemy in the laws and regulations in Indonesia are contained in the Criminal Code (Book of Criminal Law), UUTE (Electronic Transaction Law). From the existence of a criminal act of blasphemy, it must have an impact that is felt by all people, impacts like this are what are feared because they can spark divisions in Indonesia, the impacts that occur are the emergence of suspicion between religious communities and people who do not participate in the problem of blasphemy. religion too. The determination of the criminal act of blasphemy in the Criminal Code (KUHP) is included in the group of insulting crimes because blasphemy here contains insults, harassing, belittling of religion and this can disrupt public order.

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