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PHILOSOPHY OF ARTICLES' ESTABLISHMENT OF RELIGION BLASPHEMY FOR CRIMINAL CODE (KUHP) IN INDONESIA

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ABSTRAK

This research is motivated by the existence of several problems in Indonesia related to blasphemy of religion, a lot of people and even public figures are considered as blasphemers of religion. This blasphemy incident greatly grabbed public attention and was horrendous and heated, thus triggering new problems in the community. The formulation of the problem in this study includes 1) what is the philosophical basis for the formation of blasphemy regulations in the Criminal Code?; 2) What are the rules for offenses against religion in the future, while the objectives of this study include 1) to understand and describe the philosophical basis for the formation of blasphemy rules in the Criminal Code; 2) to find out the rules for the offense of insulting religion in the future. The type of research used in this research is normative juridical research with a literature study that can examine and compose applicable legal regulations, as well as normative legal research based on legal sources in the form of statutory regulations, policies and stipulations, courts, contracts, agreements, contracts, legal theory, and expert opinion. This study uses a statutory approach (state approach). The technique of collecting legal materials is done by using the library study method. The legal entity analysis technique used is descriptive qualitative. The results in this study include the philosophical basis for the formation of blasphemy rules in the Criminal Code for blasphemy crimes due to the failure of religious development, weak law enforcement, the emergence of defenders of religious blasphemy, further strengthening the emergence of various crimes of blasphemy of religion, offenses against religion in the future as a form of effort. prevention of blasphemy crimes. Efforts that can be made are by presenting a forum for dialogue between religious communities and believers as well as various sects that try to make new interpretations of an existing religion.

KEY WORDS

History of article formation, application of law, purpose of article formation.

Indonesia is a country which consists of elements of society and various descents, cultures, religions, ethnicities, races, languages and professions, in other words, Indonesia is a country that has a pluralistic and multi-religious society. Pancasila as the state ideology in its first precept which reads "Belief in One Supreme God," which means that everyone has the right to choose and determine their own religion and beliefs, and not to impose beliefs and religions on each other. This means that Indonesia has established itself as a religious state but has the aim of mutual respect for one another's beliefs. Oemar Seno Adji "However, our State of Law is based on Pancasila, which is not a State of Religion, based on "Einheit" between State and Religion and which does not adhere to "separation" within sharp and strict boundaries, as adopted by Western countries and Socialist countries that even include criminal sanctions on the principle of "separation".¹

Regarding freedom of religion and worship, this is also repeated in "Law No. 39 of 1999 concerning Human Rights, namely in Article 22 (1) which reads: Everyone is free to embrace his own religion and to worship according to his religion and belief. alone, without any coercion from anyone. Related to insults to "religious groups (groups of people based on religion)", and objects of worship purposes related to religious gatherings/ceremonies and funerals, corpses, graves, religious officials, and making noise at places of worship or when

¹ *Jurnal Arti Penting UU No. 1/PNPS/1965 Bagi Kebebasan Beragama, oleh Hwian Christanto, Fakultas Hukum Universitas Surabaya. Vol.6 No. 1 April 2013.*



worship is performed. It was not until 1965 that the Indonesian government during the old order issued a presidential decree number 1/PNPS 1965 concerning the prevention of religious abuse and/or blasphemy. The presidential decree number 1/PNPS in 1965 was issued by Soekarno to accommodate requests from Islamic organizations that wanted to ban religious beliefs. They think that the flow of belief can tarnish the religion in Indonesia. Sukarno's decision was summarized into Article 156a of the Criminal Code (KUHP).

In addition, this elaboration is also contained in Law number 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights. The above rules have explained that freedom in embracing religion is one of the most basic rights among other human rights, because the freedom to embrace religion comes from the dignity of human position as a creature created by God. So it is obligatory for the state to guarantee the freedom of each individual to adhere to and believe in the beliefs of each individual to perform rituals of worship based on his beliefs and beliefs, the government in this case provides guarantees for religious freedom in Indonesia. People have been free to embrace a certain religion; do not be disturbed by the beliefs held by others. Not trusting other people's beliefs is both a freedom and a necessity.

The importance of changing or improving article 156a in the Criminal Code (KUHP), with the main purpose of this improvement being none other than to provide a sense of security and legal certainty to religious adherents. With the many problems as well as legal issues and debates regarding Article 156a and there is a vagueness of norms in it, the changes contained in the RKUHP article on blasphemy can provide a sense of security and are expected to be more effective in resolving the problem of blasphemy, because basically the birth of an article on blasphemy. none other than having the aim of protecting beliefs and maintaining harmony between religious communities, so that the government feels it is very necessary to make improvements to article 156a in the hope that the problem of blasphemy of religion both fellow believers or interfaith from the description above it can be concluded that religion and all its religious instruments are of interest the law is big, therefore it takes rules regarding beliefs and related to religious matters. The formulation of the research problem includes; 1) What is the Philosophical Basis for the Establishment of the Rules for Blasphemy in the Criminal Code?; 2) What are the Rules for Insults Against Religion in the Future?, and the objectives of this research are; 1) To understand what is the philosophical basis for the establishment of blasphemy regulations in the Criminal Code (KUHP); 2) To Find Out How The Rules of Insulting Offenses Against Religion in the Future.

This research is based on the Pustaka theory which is taken from the definition of criminal acts presented by Satochid Kartanegara (1955:4) regarding the first part of criminal law, KBB (21 December 2021), Soesilo regarding the main points of criminal law, general regulations and special offenses (1991:11), Moeljatno regarding the principles of criminal law (2002:62). Then the theory of the criminal act of blasphemy from Marpaung (2007:9), Pulton et al (2012:44), and Arief (2010:1). Furthermore, the theory of criminal law reform was presented by Andi (2015: 247), Arief (1994: 48).

METHODS OF RESEARCH

The object of the problem studied in this study is to describe and find legal facts related to blasphemy contained in Article 156a of the Criminal Code (KUHP). This normative juridical research focuses on literature study, which means studying and examining the existing and applicable legal rules. Normative legal research (legal research) is usually "only" a research study, which is based on sources of legal material in the form of legislation, policies and court decisions, contracts, agreements, contracts, legal theory, and the opinions of scholars also referred to as library research or document study.²

The approach in this study uses the statute approach, which is an approach that is carried out by examining the laws and regulations related. The technique of collecting legal materials is carried out by the library research method³. The legal material analysis technique

² Bambang Waluyo, "Penulisan Hukum Dalam Teori," Sinar Grafika, Jakarta, 1996, hlm. 13.

³ Bambang Waluyo, *Penelitian Hukum Dalam Praktik*, Jakarta: Sinar Grafika, 2002, hlm. 18.



used in this study is qualitative, which is a descriptive data analysis method that refers to a particular problem and is then linked to the opinions of legal experts.

RESULTS AND DISCUSSION

Freedom to embrace a religion or belief and to worship according to one's religion or belief is a personal rule (*forum internum*) while order and peace in living together is an interpersonal rule (*forum externum*).⁴ Therefore, it takes the rule of law in the form of regulations to regulate society for the sake of creating welfare and social order because humans will not be able to live only by personal rules without being regulated also by interpersonal rules, including the rules and freedom of religion.

The blasphemy law is an instrument of criminal law currently in effect (*ius constitutum*) to punish blasphemy crimes in Indonesia. The general explanation of the law explains that the law is issued based on the consideration that there are sects/organizations of public belief that are contrary to religious teachings. Many of the teachings in these religious sects/organizations lead to things that violate the law, divide national unity and tarnish religion. In fact, these sects/organizations eventually multiply and develop in a direction that endangers the existing religions.

Based on Article 156a of the Criminal Code (KUHP), the abuse and/or blasphemy of religion in Indonesia can be criminalized against such acts. Criminalization is defined as a process in which certain actions are considered by the community or community groups as actions that can be punished. So, violation of these rules is considered a crime and the state can impose a criminal. Thus, religious interests which were originally private interests or private rules turned into public interests or interpersonal rules and furthermore became social norms. This blasphemy article is an instrument of criminal law currently in effect (*ius constitutum*) to punish the crime of blasphemy in Indonesia. The historical juridical basis of the Presidential Decree of the Republic of Indonesia Number 1/PNPS 1965 Concerning the Prevention of Abuse and/or Blasphemy of Religion has clearly stated that the provisions of Article 4 which re-accommodates Article 156a of the Criminal Code (KUHP) in addition to aiming to protect the Indonesian people from the influence of not embracing religious teachings that have the value of God Almighty, is also intended to threaten with criminal all forms of hostility towards a religion adhered to by the Indonesian nation.

The application of religious offenses can be seen from court decisions, there are three types of judge decisions used to try someone, namely acquittal, acquittal, and sentencing.⁵ All decisions are based on the results of deliberation based on the indictment with a number of evidences at trial. In examining and adjudicating cases, judges are free to use evidence and are free to make judgments. Judges are freed to believe in what type of punishment was handed down, but are required to give a fair decision in the community. A judge is able to give a sense of justice to the demands of society. In other words, the decision must meet the demands and expectations of others.

It should be noted that the religions to be protected in this law are the explanation of Article 1 of Law No. 1 Pnps 1965 which states that the religions embraced by the Indonesian population are Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism.. Because these 6 (six) religions are religions that are embraced by almost the entire population of Indonesia. So the essence of what is prohibited according to Article 1 of Law No. 1 Pnps 1965 is that it is prohibited to interpret and carry out religious activities that deviate from the main teachings of that religion, in other words to prevent deviations or deviations from the teachings from occurring. Religious teachings that have been considered as the main teachings by the scholars of the religion concerned.

Efforts to reform the criminal law are the field of criminal law politics. As stated that politically and culturally, the implementation of the Criminal Code (KUHP) in Indonesia is actually irresponsible. Although various changes and adjustments have been made to the

⁴ Purnadi Purbacaraka and Soerjono Soekanto, *Perihal Kaidah Hukum*, Bandung: Penerbit Alumni, 1982, hlm.16.

⁵ M. Yahya Harahap, 2009, *Pembahasan Permasalahan and Penerapan KUHP, Penyidikan and Penuntutan, cet VII*, Sinar Grafika, Jakarta, hal.347.



Criminal Code (KUHP), this does not make the effort to be referred to as an effort to reform the criminal law in the true sense and have a national character. This affirmation is due to the changes to the Criminal Code (KUHP) not only replacing *Wetboek van Strafrecht (WvS)* into the Criminal Code (KUHP) as a product of the nation itself. Criminal law reform must touch philosophical aspects, namely changes or orientations towards principles up to the stage of the values that underlie them. One of them needs to consider the factor of inter-religious harmony. In addition, according to the author, the policy of criminalizing the act of broadcasting/spreading religion to other people who are already religious can also consider the theoretical basis or conceptual background of thought regarding the need to criminalize religious offenses.

CONCLUSION

The philosophical basis for the formation of blasphemy regulations in the Criminal Code The crime of blasphemy is caused by a person's lack of understanding about a religion coupled with a lack of understanding regarding freedom of opinion and expression. In addition, the failure of religious development, weak law enforcement, the emergence of defenders of religious blasphemy, further strengthen the emergence of various crimes of blasphemy.

The offense of insulting religion in the future is a form of effort to prevent the crime of blasphemy. Preemptive efforts are carried out by internalizing and understanding the main points of religious teachings, freedom of expression and opinion and their limits. Efforts that can be made are by presenting a forum for dialogue between religious communities and believers as well as various sects that try to make new interpretations of an existing religion.

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