



BLASPHEMY OF RELIGION IN ISLAMIC LAW (Study of Juridical Analysis in Indonesia)

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Abstract

The purpose of the formulation of Islamic law is to maintain five main things, namely: religion, soul, mind, honor, lineage and property. Blasphemy of religion is a criminal act that threatens religious tolerance in society. Ibn al-Mundzir said that the majority of scholars agreed that the punishment for insulting the Prophet was death. Imam Malik bin Anas and the scholars of Medina are of the opinion that when the insulter is onedzimmah member, also sentenced to death, this is also in line with the opinion of Imam Ahmad bin Hambal. Insulting religion in Islamic law is called the termsabb al-diin. Blasphemy against the religion of Islam is denouncing or insulting the Koran and hadith, leaving or ignoring what is contained in both, and turning away from the laws contained in the Koran and hadith. So anyone who insults religion, such as teaching heretical sects or claiming to have received revelations or claiming to be a prophet, is of course very much against the true teachings of Islam. From the description of this paper, it can be concluded that Islamic law has not regulated in detail how the categories of religious blasphemy, as well as the sanctions, are. But it can be understood that, according to some scholars, those who fall into the category of religious blasphemy which are sentenced to death are insulting the Koran, hadith and claiming to be a Prophet. As for blasphemy in another category, maybe it can be included in that categoryjarimah ta'zir, so that judges are given the opportunity and freedom to decide cases with ijtihad based on various considerations, also taking into account the situation and conditions that are developing today.

Keywords: Juridical Analysis, Blasphemy of Religion, Islamic Law

INTRODUCTION

The law on blasphemy in Indonesia is established based on laws, presidential decrees and ministerial regulations. Article 156 (a) of the Criminal Code states that anyone who intentionally publicly expresses feelings or commits an act that is hostile, abuses, or desecrates a religion that

is adhered to in Indonesia or with the intention that people do not adhere to any religion (Murtadho, 2015). Those who violate this article will be sentenced to a maximum of five years in prison.

President Soekarno's decree implemented by President Soeharto, namely Presidential Decree No. 1/PNPS/1965 concerning Prevention of Religious Abuse and/or Blasphemy. Article 1 of the decree prohibits "distorted interpretation" of religious teachings and gives the president the right to disband organizations that practice heretical teachings. Article 29 of the Constitution of the Republic of Indonesia states that the State of Indonesia is based on Belief in the One and Only God, and the Constitution does not specify which God to be worshiped.

In January 2006, the Ministry of Religion granted official status to six religions: Islam, Catholicism, Protestantism, Buddhism, Hinduism and Confucianism (Mudzhar, 2010). On December 9, 2006, the House of Representatives passed a new civil registration law requiring citizens to list one of six official religions on their KTP (U.S. State Department, 2009).

This paper will only describe the blasphemy law, the discussion of which includes: blasphemy in positive law, blasphemy in Islamic law, cases of blasphemy in Indonesia and juridical analysis of the blasphemy law in Islamic law.

METHODS

Research is an activity to search, record, formulate and analyze to compile a report (Ishaq, 2017). The approach used in this study is a normative juridical research approach, by identifying legal issues that develop in society, studying the application of (normative) law in society, reviewing the opinions of relevant legal experts and analyzing cases in documents document to clarify the results of the writing and then review the practical aspects and academic aspects of legal scholarship in writing the law. This writing also refers directly to statutory regulations (law in book)

Based on the research approach above, normative juridical is by studying or analyzing secondary data in the form of secondary legal materials by understanding law as a set of regulations or positive norms in the statutory system that regulates this research problem. So the research conducted is a type of library research, namely research on secondary data.

After all the data is collected, then the data is analyzed. To draw conclusions from a study, it must be based on the results of processing and must be in harmony with the types of existing data (Ali, 2021). In this data analysis method the author uses a method that is qualitative data analysis.

RESULTS AND DISCUSSION

Blasphemy Of Religion In Positive Law

According to the language, the word "disgraceful" comes from the syllable "disgraceful". Some use the word reproach. The words insult and reproach are synonyms. "contempt" which

means despicable, low, reproach, stain (Laden, 2010). As for "religion" in Indonesia Dictionary is a system or principle of belief in God or also referred to by the names of gods or other names with devotional teachings and obligations related to these beliefs (Nasional, 2008).

According to Koentjaraningrat, religion is a system consisting of four components: First, Religious emotions that cause humans to behave religiously. Second, a belief system that contains all human beliefs and images about the attributes of God, the existence of the unseen world, as well as all the values, norms and teachings of the religion concerned. Third, a system of rites and ceremonies which is a human effort to find a relationship with God, gods or spirits that inhabit the unseen realm. Fourth, the people or social unit that adheres to the belief system is the second component, and those who carry out the system of rites and ceremonies are the third component (Koentjaraningrat, 1994).

In the Criminal Code, the definition of religious blasphemy itself is not explained in detail, but in another book it is explained that the definition of blasphemy is an intentional attack on the honor or good name of another person or a group, both orally and in writing with the intention of being known by many people (Sholihin et al., 2022).

In the Criminal Code there is a prohibition on religious blasphemy. Article 156 (a) targets any person who deliberately in public expresses feelings or commits an act that is hostile, abuses, or desecrates a religion that is adhered to in Indonesia or with the intention that people do not adhere to any religion. The penalty for violating Article 156 (a) is imprisonment for a maximum of five years.

According to Barda Nawawi Arief, religious crimes can be grouped into 3 categories, namely: First, a crime according to religion. Second, a crime against religion. Third, criminal acts related to religion or religious life (Zanuar, 2020).

Furthermore, Nawawi Arief argues that religious offenses in the sense of criminal acts "according to religion", can include actions which, according to applicable law, are criminal acts and from a religious perspective are also prohibited acts, or other actions which are not criminal acts. according to applicable law but seen from a religious point of view it is a prohibited or disgraceful act.

In the "Research Report on the Effect of Religion on Criminal Law", three types of theories can be used as the basis for the formation of these offenses, which are as follows:

1. peacekeeping theory, namely the theory that views public order or peace as a legal interest that must be protected.
2. Emotional protection theory, is a theory that wants to protect the sense of religion.
3. Protection of Religion Theory, namely the theory that views religion as a legal interest that must be protected (Praja & Syihabuddin, 1982) Article 156 (a) stipulates five elements of the criminal act of blasphemy, namely: anyone who deliberately publicly expresses feelings or

commits an act that is hostile and abuses or desecrates a religion that is adhered to in Indonesia. Here are the details:

Whoever; Sudarto is of the opinion that the first element of a crime is the act of a person and basically it is a human being who commits a crime. The word "whoever" means a person (Sudarto, 1990: 50). Deliberately; in the broadest sense, namely, the inner relationship between the creator of the act that is reprehensible to the maker (criminal liability). This inner relationship can be intentional, the Criminal Code does not provide a definition of "intentionally". To be able to know the meaning of "intentionally" can be taken from Memorandum of Teolichting, which means "deliberately" by wanting and knowing what to do. A person who does something intentionally can be divided into 3 patterns of mental attitude that show the level or form of the intention, namely: First, intentional as intent. Second, Willingness with conscious certainty. Third, intentionality with awareness of the possibility (Sudarto & Sudarto, 1990).

In public; Limits in public based on the arrest of 9 June 1941 outlined by W.A.M. Cremers in his book "Law Book of Criminal Court" as follows: "An insult is committed in public, if it occurs in a place open for public visits and everyone can hear it." (Syihabudin, 1982).

Express feelings or perform actions; Actions that are prohibited in Article 156 (a) of the Criminal Code can be carried out by the perpetrator, either orally, in writing, or by deed.

Is hostile and abuses or desecrates a religion that is adhered to in Indonesia; religion in Article 156 (a) according to Law Number 1/PNPS of 1965 is one of the religions: Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism. The sentence "blasphemy of a religion" is interpreted as direct insult to religion both orally and in writing, regardless of whether it will endanger public order or not (Praja & Syihabuddin, 1982).

According to (Apriyani, 2021) that criminal sanctions in the Criminal Code are reactive in an act, while action sanctions are more anticipatory towards the perpetrators of the act. A criminal sanction is a sanction that must fulfill two conditions or objectives, as follows;

1. Criminal is imposed on the imposition of suffering on the person concerned.
2. The punishment must be a statement of reproach for the actions of the perpetrator (Apriyani, 2021) With regard to the rules for blasphemy, the sanctions imposed are imprisonment as a criminal sanction by causing the offender to suffer, the sanction for blasphemy is regulated in Article 2 of Law Number 1/PNPS/1965 in conjunction with Law No. 5/1965 and Article 156(a) of the Criminal Code. Article 2 of Law Number 1/PNPS/1965 states that:

Paragraph (1): "Anyone who violates the provisions referred to in Article 1 is given an order and a strong warning to stop his actions in a Joint Decree of the Minister of Religion, Minister/Attorney General and Minister of Home Affairs." Paragraph (2): "If the violation referred to in paragraph (1) is committed by an organization or a belief system, then the President of the Republic of Indonesia can dissolve that organization and declare the organization or sect as a prohibited organization or sect, one way or another after the President has received consideration from Minister of Religion, Minister/Attorney General and Minister of Foreign Affairs." Paragraph

(3): "If after taking action by the Minister of Religion together with the Minister/Attorney General and the Minister of Home Affairs or by the President of the Republic of Indonesia according to the provisions of Article 2 against a person, organization or belief system, they still continue to violate the provisions in Article 1, then people, adherents, members and or members of the management of the organization concerned from that sect shall be punished with imprisonment for a maximum of five years. Paragraph (4): "Anyone who intentionally publicly expresses feelings or commits an act is punished with imprisonment for a maximum of five years: a. Which in essence is hostile, abuses or desecrates a religion that is adhered to in Indonesia, b. With the intention that people do not adhere to any religion based on Belief in the One Supreme God.

Juridical Analysis Of Blasphemy In Islamic Law

From the point of view of Islamic law, insulting religion according to Sayyid Sabiq in (Mintarsih & Mahdami, 2021) is called the terms *sabb al-diin*. He further said that insulting the religion of Islam is denouncing or insulting the Koran and hadith, leaving or ignoring what is contained in both, and turning away from the laws contained in the Koran and hadith.

Religious blasphemy is a crime that falls into the realm of ethnic, religious, racial and intergroup (SARA) issues. This is very sensitive, especially in Indonesia which has various tribes, languages, traditions and religions. People who insult religion, be it through speech, writing, posting, status updates or actions done intentionally, either directly or indirectly, can be included in the category of criminal acts of blasphemy.

In Islamic teachings, it is ordered to respect each other and it is forbidden to insult other religions, because if a Muslim insults a god that is believed by others to be God other than Allah. It is feared that there will be reciprocal revenge by insulting the God of other religions too, maybe even going beyond the limits.

In Islam, religious blasphemy sometimes occurs because it is triggered by teachings that deviate from the guidance of the Koran and hadith, namely by making, following, believing in and practicing deviant teachings such as heretical sects for example. Related to this matter, the Indonesian Ulema Council (MUI) at a national working meeting in 2007 has determined the criteria for religious sects that are considered heretical, among which are:

1. Denying one of the five pillars of Islam and the sixth pillar of faith.
2. Believing and or following beliefs that do not conform to *syar'i* evidence.
3. Believing in revelation after the Koran.
4. Denying the authenticity or truth of the contents of the Koran.
5. Doing interpretation of the Koran that is not based on the rules of interpretation.
6. Denying the position of the Prophet's hadith as a source of the Prophet's teachings.
7. Insulting, harassing or degrading the Prophets and Messengers.
8. Denying Prophet Muhammad SAW as the last Prophet and Messenger.

9. Changing, adding or reducing the principles of worship that have been established by shari'ah, such as obligatory prayers not five times a day and going on Hajj not to the House of God.

10. Disbelieving fellow Muslims without syar'i evidence (Amin, 2008)

The scholars agree that a Muslim who insults the Koran is conscious and knows he has committed insults against the Koran, then he is considered an apostate and deserves the death penalty. One of the great scholars al-Syafi'iyah, yakni Imam al-Nawawi dalam Kitabal-Majmu' said:

"The scholars agree that anyone who insults the Qur'an or something from the Qur'an, or a manuscript, or throws it in a place of dirt, or denies something that comes from the Qur'an, whether it is in the form of law or information, or denies something that has been established by the Qur'an, or establishes something which the Qur'an has denied, or doubts something about it, while he knows it, then he has disbelieved (Iswati et al., 2020)

According to Islamic teachings, the punishment for apostasy is the death penalty, and this is based on the consensus of scholars, as mentioned by Ibn Hazm and Ibn al-Mundzir. Ibn al-Mundzir said:

"The scholars have agreed that if a servant (Muslim) apostates, then he has been asked to repent, but he does not repent, then he is sentenced to death. I am not aware of any difference of opinion on this matter." (Muhammad bin Ibrahim Ibn al-Mundzir, 1420: 174).

Non-Muslims who insult the Koran are also subject to the death penalty, equated with the punishment of Muslims who insult the Koran. This is based on Islamic state law (Caliphate) in which the position of Muslims and non-Muslims is equal before Islamic law. Shaykh 'Ali bin Nayyif al-Syahud said:

"When one of the Ahli Dzimma commits one of the crimes that fall under the category of hudud, such as adultery, accusing adultery, stealing, or robbery, then he is punished with the punishment that has been set for those crimes, their situation in that regard is the same as the situation Muslims." (Ali bin Nayyif al-Syahud, <https://www.kutub-pdf.net>, book: 36).

Ibnu Qayyim al-Jauziyyah has explained in detail in his Book "Ahkam Ahli Al-Dzimma", that the majority of scholars, namely the Maliki, Syafi'i and Hambali Schools agree that, if someone from dzimma member commits blasphemy against the religion of Islam, then the agreement is void as a citizen and deserves the death penalty (bin Abi & Qayyim, n.d.) 1418: 1356-1376) However, it should be understood here that only those entitled to sentence death Caliph or its representative in the country Caliphate Even so, after the verification process was carried out in court and the court asked the convict to repent or re-enter Islam, but the convict did not want to repent (Wizarat, 1404: 194)

Meanwhile, there have been a number of cases of blasphemy that have occurred in Indonesia, including the following:

1. On January 2, 2009, the Central Jakarta District Court sentenced Lia Eden, also known as Lia Aminuddin, for blasphemy. The court ruled that Eden was proven to have spread his religious teachings, namely Salamullah. He was sentenced to 2 years and 6 months in prison.

2. On May 6 2010, the court sentenced Bakri Abdullah to 1 year in prison for blasphemy. He claims to be a prophet, according to his confession he visited heaven in 1975 and 1997.
3. T. Abdul Fattah was found guilty of blasphemy in 2015, so that the Panel of Judges at the Banda Aceh District Court was sentenced to 4 years in prison. His residence became the basis for spreading the teachings of the Millata Abraham Community (Komar). One of his teaching materials relates to the Messiah or Ahmad Musadeq as the savior and believes in the Messiah as the messenger of God. This is considered to be a violation of the rules in Islam that the Prophet Muhammad is the last prophet who brought the message from Allah SWT (Nurdin, 2017).
4. In May 2017, Basuki Tjahaja Purnama, known as Ahok, then the Governor of Jakarta, delivered a controversial speech while explaining the government's project in the Thousand Islands. He quoted one of the holy verses of the Koran. Then his political opponents considered the speech to be within the realm of the law on blasphemy, so Ahok was reported to the police. He was later found guilty of blasphemy by the North Jakarta District Court, and was sentenced to 2 years in prison (Setijadi, 2017).
5. In August 2018, the Medan District Court sentenced Meiliana, a resident of Tanjung Balai, to 1 year and 6 months in prison for blasphemy. The judge decided that the person concerned had violated Article 156 (a) because he complained about the volume of the sound of the call to prayer reverberating near his house.
6. On November 18 2019, Sukmawati Soekarnoputri was reported for alleged blasphemy regarding her statement comparing the first President of the Republic of Indonesia, Soekarno with the Prophet Muhammad. The YLBHI Advocacy Chair stated that the blasphemy article should no longer be used to report a person, including the Sukmawati case, because the Constitutional Court itself in its decision 140/2010 stated that Law 1/PNPS/1965 was problematic. So that the Constitutional Court recommended to the DPR and the government to revise this article (Setiawan, 2019).

Ustadz Abdul Somad (UAS) was reported to Bareskrim Polri, for commenting on the cross because it was considered offensive to Christians. Trisakti University Criminal Law Lecturer, Abdul Fickar Hadjar, deemed the UAS lecture not a crime. The reason is that religious teachings, which are subjective in nature, are internal consumption, so they cannot be brought to the realm of law, because it is tantamount to adjudicating a teaching. The criminal law judges people's actions, not thoughts or teachings. Teachings of values that are subjective become internal consumption, and it is not permissible and unwise to convey them in an open forum (Briantika, 2019).

The purpose of the formulation of Islamic law is to maintain five main things, namely: religion, soul, mind, honor, lineage and property. These five things must always be maintained if you want the safety of the world and the hereafter (Muhammad Amin Suma, 2001: 107) Blasphemy of religion is a criminal act that threatens religious tolerance in society. Therefore, Islamic

teachings strictly prohibit criminal acts of blasphemy and provide severe punishment for the perpetrators. In Islam, religion is highly respected so that anyone who insults religion or insults the Koran while in a conscious state, then they deserve the death penalty. Anyone who insults the Prophet, whether Muslim or non-Muslim, must be sentenced to death. Ibn al-Mundzir said, *jumhur scholars agreed that, the punishment for insulting the Prophet was death (Muhammad bin Ibrahim Ibn al-Mundzir, 722)*

The description recognizes this, namely someone who insults the Prophet, if he is a Muslim then he is considered an infidel and then sentenced to death, there is no difference of opinion in this matter, and it is the opinion of the four madhhab priests. Imam Malik bin Anas and the scholars of Medina are of the opinion that if the insult is someone of the *zimmah* member, was also sentenced to death, this is also in line with the opinion of Imam Ahmad bin Hambal and hadith experts (Ahmad bin 'Abd al-Salam bin Taimiyah, 2014: 12).

Related to punishment *ta'zir* for blasphemers of religion, when viewed from the target law enforced, it can be broken down into several types, including the following:

1. 'Uqubat al-Qatl (Death sentence); Hanafiyah think, it can be divided into *ulm* amri to apply the death penalty *asta'zir* infingers whose kind is threatened with capital punishment, if finger is done repeatedly.
2. 'Uqubat al-Jild (Flogging); punishment is beating with a whip or something like that. The tool used is a whip or stick.
3. 'Uqubat al-Habs (Prison Sentence); the punishment does not imprison the perpetrator in a narrow place, but detains the perpetrator and prevents him from carrying out legal actions.
4. 'Uqubat al-Taghrib (Penalty of Isolation); punishment had imposed on criminal *shirabah*. Even if it's a punishment had, but in practice it is applied also as a punishment *ta'zir*.
5. Seizing Property; the punishment does not mean taking the perpetrator's property to be given to the judge or the state, but only holding it temporarily. If the culprit cannot be expected to repent, then the judge can call center it is for the benefit of the community.
6. Fines; The punishment can stand alone or in combination with other punishments. The judge must look at various aspects related to finger, actors, situations, and conditions of perpetrators (Ahmad Wardi Muslih, 2005: 267).

Ta'zir is a punishment whose shape and size are not determined by *advice'*, not as the case had whose punishment has been determined. However, related to *ta'zir*, *advice'* giving freedom to the government or the state to determine the form and measure of punishment that is suitable for the criminal act committed by the perpetrator and to provide a deterrent effect, of course by considering the situation and condition of the person concerned, including taking into account time and the development of the times (Wahbah al-Zuhaili, 259)

A judge who sentences a criminal sentence to a defendant must consider matters relating to the sentence, be it in terms of aggravating cases or from a mitigating side (Muhammad Anwar, 1998: 90). jurisprudence rules which mentions:

"The treatment of the imam (leader) towards his people is adapted to the welfare." ("Abd al-Rahman al-Suyuthi, 1403: 121).

The judge is given the right to choose the sentence *ta'zir* which according to his opinion can educate the perpetrators, improve, and preserve society. The judge can also give more than one sentence, it can aggravate or lighten the sentence, when the sentence has two limitations. Also he can delay the execution of the sentence, if according to him it is enough to educate, improve and prevent the person concerned.

CONCLUSION

The purpose of the formulation of Islamic law is to maintain five main things, namely: religion, soul, mind, honor, lineage and property. Blasphemy of religion is a criminal act that threatens religious tolerance in society. The majority of scholars agree that the punishment for blaspheming the Prophet is death. Imam Malik bin Anas and the scholars of Medina are of the opinion that when the insulter is *onedzimmah* member, also sentenced to death, this is also in line with the opinion of Imam Ahmad bin Hambal.

Insulting religion in Islamic law is called the terms *sabb al-diin*. Blasphemy against the religion of Islam is denouncing or insulting the Koran and hadith, leaving or ignoring what is contained in both, and turning away from the laws contained in the Koran and hadith. So anyone who insults religion, such as teaching heretical sects or claiming to have received revelations or claiming to be a prophet, is of course very much against the true teachings of Islam.

Islamic law has not yet regulated in detail how the categories of religious blasphemy, as well as the sanctions. But it can be understood that those who fall into the category of religious blasphemy which are sentenced to death according to some scholars, are insulting the Koran, hadith and claiming to be a Prophet. As for blasphemy in another category, maybe it can be included in that category *jarimah ta'zir*, so that the judges are given the opportunity and freedom to decide cases with *ijtihad* based on various considerations, also taking into account the situation and conditions that are developing today.

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