

Criminal Policy to Treat Delices Against Religion and Beliefs Harmony

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Abstract

The protection of the rights to freedom of religion and belief in the constitution aims to create a community life based on morals based on divinity. As a country with a high level of plurality from the aspects of religion and belief, protection of religious harmony and belief is necessary to achieve this goal. Based on the above points of thought, several problems can be formulated, namely how is the current criminal policy in overcoming offenses against religious and belief harmony. And what will the future criminal policy be in overcoming offenses against religious harmony and belief. The method used in this research is a normative juridical approach, where the data used are secondary sources in the form of primary legal materials, secondary legal materials and tertiary legal materials. This research is a descriptive analytical study, namely research to describe the problem, analyze the problem and classify the problem for research purposes which are presented descriptively. The results of this study indicate that the criminal acts formulated in the Criminal Code are very limited, including not protecting beliefs protected by the constitution and there is still a divergence by including religious offenses in the Chapter on



Public Order. In the non-penal policy, the regulations governing religious harmony are still ineffective and the current government is not serious about creating harmony between religious and believers. Future penal efforts can be made by updating the Criminal Code. As an effort to improve, the concept of the Criminal Code can formulate the provisions of offenses by looking at the provisions of offenses contained in the Draft Law on Religious Harmony. In non-penal efforts, the approach is through the formulation and implementation of government programs. Among them are approaches to understanding theology, education, dialogue and conflict resolution.

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Perlindungan atas hak kebebasan beragama dan berkepercayaan dalam konstitusi bertujuan supaya tercipta kehidupan masyarakat yang berlandaskan moral atas dasar ketuhanan. Sebagai negara dengan tingkat pluralitas yang tinggi dari aspek agama dan kepercayaan, maka perlindungan terhadap kerukunan umat beragama dan berkepercayaan mutlak dibutuhkan untuk mencapai tujuan tersebut. Berdasarkan pokok pemikiran di atas, maka dapat dirumuskan beberapa permasalahan, yaitu bagaimanakah kebijakan kriminal saat ini dalam menanggulangi delik-delik terhadap kerukunan umat beragama dan berkepercayaan. Dan bagaimanakah kebijakan kriminal yang akan datang dalam menanggulangi delik-delik terhadap kerukunan umat beragama dan berkepercayaan. Metode yang digunakan dalam penelitian ini adalah pendekatan yuridis normatif, dimana data yang digunakan adalah sumber sekunder berupa bahan hukum primer, bahan hukum sekunder maupun bahan hukum tersier. Adapun penelitian ini merupakan penelitian deskriptif analitis, yaitu penelitian untuk mendeskripsikan masalah, menganalisis masalah dan mengklasifikasi masalah untuk kepentingan penelitian yang disajikan secara deskriptif. Hasil dari penelitian ini bahwa tindak pidana yang dirumuskan dalam KUHP sangatlah terbatas, diantaranya belum melindungi kepercayaan yang dilindungi konstitusi serta masih



terdapat divergensi dengan memasukan delik agama dalam Bab Ketertiban Umum. Dalam kebijakan non penal, regulasi yang mengatur tentang kerukunan umat beragama masih kurang efektif serta pemerintah saat ini tidak serius menciptakan harmonisasi antar umat beragama dan berkepercayaan. Upaya penal yang akan datang dapat dilakukan dengan pembaharuan KUHP. Sebagai upaya penyempurnaan, Konsep KUHP dapat memformulasikan ketentuan delik dengan melihat ketentuan delik yang terdapat dalam RUU Kerukunan Umat Beragama. Dalam upaya non penal, pendekatan melalui penyusunan dan pelaksanaan program pemerintah. Diantaranya dengan pendekatan pemahaman teologi, pendidikan, dialog dan resolusi konflik.

Keywords: Criminal Policy, Harmony, Religious and belief

Preliminary

The first principle of Pancasila states "God Almighty", this foundation becomes the guide for the Indonesian nation to live on the basis of religion and belief. This first precept provides a clear picture that Indonesia is not a secular country (Lindholm 2010: 681).

As for the elaboration, it can be seen that the provisions in the 1945 Constitution Article 28E paragraphs (1) and (2), and Article 29. In particular Article 29 paragraph (1) reads: "The state is based on the One Godhead", while paragraph (2) reads: "The state guarantees the freedom of each resident to embrace his own religion and to worship according to his religion and belief" (UUD 1945).

In this millennium, attention to religion from various points of view is very important, because religious issues have touched sectors of social life, including those related to security and conflict. Contrary to the predictions of the theory of secularization, religion does not just disappear but appears in various forms. In his thesis Samuel Hantington followed by Nazila Ghanea stated that conflict will



inevitably follow the line of civilization based on religion (Ghanea 2010: 3).

Seeing public order in the framework of freedom of religion and belief, the harmony of the people or between people of religion and belief is an important thing to pay attention to. In this case, although harmony is not the final value, without it there will be no public order, as an effort to create security and peace (Puspito 1983: 170).

According to Arifin Assegaf, religion can be a factor in the occurrence of conflict between adherents for several reasons: 1. Exclusiveness of religious leaders and adherents, 2. Closed attitude and mutual suspicion between religions, 3. Excessive linkage to religious symbols, 4 Religion, which was previously a goal turned into a tool, reality became merely wisdom, 5. Political, social and economic conditions (Saleh 2003: 20).

Seeing religious conflicts, there are two views. First, religious conflicts caused by *truth claims* that lead to exclusivity among a certain group. Second, religious conflicts can occur because of the misuse of religion, which is related to exclusivity which can lead to intolerance and hatred so that they can become an estuary for conflict (Elizabeth 2011: 38).

According to Nur Khaliq Ridwan, the occurrence of violent conflicts between religious and religious communities cannot be separated from the role of the State. According to him, the state has been wrong in dealing with plurality in Indonesia, because there is not enough space and existence for religious freedom, as it is known that Indonesia only recognizes 6 (six) religions. Minority groups who wish to express their freedom will be faced with strength, coercion and violence by other, stronger communities (Saleh 2003: 15).

Seeing the various problems above, the potential for conflict is can interfere with the harmony of religious communities is categorized as internal and external potential. Internal potential includes a number of factors are in the teachings of religion itself, as exclusivity



in beliefs and forms of broadcasting that can disturb feelings other religious people. The two external factors, namely potential that conflict comes from outside religion, but takes advantage of religion as media, or vice versa (Kholiludin 2011: 4-10).

In criminal law, the provisions regarding religious offenses are spread out in various laws. In the Criminal Code and Law no. 1 Pnps 1965. As stipulated in Law No.1 Pnps 1965, an article was added, namely Article 156a concerning blasphemy against religion and committing acts so that people do not adhere to religion. As for those related to offenses related to religion or religious life, the Criminal Code is spread among others in Articles 175-181 and Article 503 2nd (Arief 2010: 3-5).

According to Barda Nawawi Arief, the placement of Article 156a in the Criminal Code has divergence, where the article is placed in Chapter V (crimes against public order), whereas when viewed from the textual formulation of the article, the offense is aimed at religion. In addition, religious offenses are contained in laws outside the Criminal Code, namely in the Press Law no. 40 of 1999, in Article 18 (2). Also in the Broadcasting Law no. 32 of 2002, namely Article 57 jo.36 (6) and Article 58 jo. 46 (3). 20 As for the offense of trust, it has not been regulated in the provisions of the criminal law (Arief 2010: 5).

Trust-related policies have a legal umbrella as stated in Law No. 8 of 1985 concerning Community Organization and Law No. 3 of 2006 concerning Population Administration. Furthermore, in the explanation section of the Law of the Republic of Indonesia no. 20 1982 Article 39, paragraph 2 b which states that there must be prevention and control of the growth of the community and cult disease that can lead to a split or a threat to the unity and integrity of the nation (Compilation Regulation Legislation for Religious Harmony Life: 2007).

Various regulations related to belief apparently still have disparities in justice. On the other hand, belief is recognized for its freedom in the 1945 Constitution, but on the other hand, belief is considered the



main cause of social conflict that needs to be monitored and investigated. As with the protection of religion, belief must also receive the same portion, so that a new criminal policy must be formulated with regard to dealing with offenses against belief.

In an effort to create harmony among religious and belief communities as well as protection for religious adherents and believers, a new formulation is needed in overcoming offenses against the harmony of the religious and belief community.

Criminal Policy in Criminal Law Reform

The criminal policy in this discussion is basically a policy in dealing with criminal acts against the harmony of religious and religious communities. Including the prevention of various forms of actions that have the potential to cause conflict between religious and belief communities (Arief 2009: 11).

The definition of criminal policy / politics according to Marc Ancel, as quoted by Barda Nawawi Arief, is formulated as "the rational organization of the control of crime by society", which is a rational effort by society in tackling crime. Sudarto put forward three meanings regarding criminal policy, namely the narrow meaning, the broadest meaning and the broadest. In a narrow sense, criminal politics is described as a whole of principles and methods, which form the basis of reactions to violations of the law in the form of a crime.

Policies or efforts to combat crime, in essence an integral part of efforts to protect the public (social defense) and efforts to achieve public welfare (social welfare). Therefore, the aim of the criminal policy is the protection of society for the welfare of society. With so it can be said that the political criminal is essentially an integral part of the social political dai, which is to achieve social welfare. The criminal policy itself is divided into two, namely using the penal and non-penal approaches (Arief 2010: 5). According to Sudarto, implementing criminal law politics is meaningful hold elections to achieve statutory results criminal which is best in the sense that it fulfills the



requirements of justice and power to use. In another opportunity he stated, that to carry out criminal law politics means efforts to realize regulations criminal legislation in accordance with the circumstances and situation in a time and for the future (Suedarto 1983: 20).

Penal Policy and Non-Penal Current to Treat Delices Against Religion and Belief Harmony

Penal Policy

a. In the Criminal Code (KUHP)

The formulation of criminal acts against religious and belief harmony in the Criminal Code is part of the religious offense. As Oemar Senoadji in a symposium with the theme "The Influence of Culture and Religion on Criminal Law" in Bali in 1975, as followed by Barda Nawawi Arief, which basically provides the basis for the theory of religious offenses into three parts. 1) The theory of protection of religion 2) The theory of protection of religious feelings 3) The theory of protection of "peace between religious communities" (Arief 2010: 1-2).

Seeing the theoretical formulation above, in the Criminal Code, the formulation of religious offenses is contained in Articles 156, 156a, 157, Articles 175-181 and Article 503 2nd. Particularly for Article 156a, initially it was not included in the Criminal Code, but is a formulation of Article 4 in Law No. 1 PNPS in 1965 which was later included in the Criminal Code. all the formulations of these articles are included in Chapter IV on Public Order.

Subsequently there was a difference in opinion, where Oemar Senoadji included the offense of Article 156-157 (insulting a religious group / adherent; known as "*group libel*") as part of the offense against religion as referred to in sub-2. On the other hand, according to Barda Nawawi Arief, Articles 156-157 are not included in sub-2, because groups / groups are not identical with religion.



In particular, the offense against religion is contained in KHUP Article 156a which reads "To be punished with a maximum imprisonment of five years whoever deliberately publicly expresses feelings or commits acts of enmity, abuse, or blasphemy against a religion adhered to in Indonesia" (Government of the Republic of Indonesia 1964: Article 156a).

The article above has generated a lot of controversy, especially in relation to the purpose of religious abuse or blasphemy. In this case, the protected object has no certainty in considering who has the right to claim that a religion is tarnished or abused. According to Rumadi, the term blasphemy of religion is actually very abstract, so it is often misused by certain groups, especially mainstream groups, to accuse other groups of defaming religion (Rumadi 2007: 61).

Article 156 reads:

"Anyone who publicly expresses feelings of hostility, hatred or contempt for a group or several groups of the Indonesian people, shall be punished by a maximum imprisonment of four years or a maximum fine of four thousand and five hundred rupiahs. The words of class in this article and the following articles mean each part of the Indonesian people that is different from one or several other parts because of race, country of origin, religion, place, origin, descent, nationality or position according to constitutional law. "

In the article above, what constitutes an element of offense is to express feelings of hostility, hatred or contempt for one or several Indonesian groups. In this case the person or group where that person is protected. More than that, because the offense is feelings of enmity, hatred or humiliation, which is committed in public, the Article also protects religious feelings / feelings from religious people, which in the end the protection aims to protect the public interest (religious harmony).

Article 175: By force or by threat of violence obstructs a public and permitted religious gathering, or a permitted religious ceremony, or the funeral ceremony of the body. Article 176:



disturbing a public and permitted religious gathering, or a permitted religious ceremony or funeral ceremony, by causing confusion or noise. Article 177: Laughing at a religious officer in carrying out his duties and insulting objects for the purpose of worship at the place or at the time of worship. Article 178: Obstructing or obstructing the entrance, or transporting the corpse to the permitted grave. Article 179: desecrating graves, or deliberately and illegally destroying or destroying warning signs at the grave site. Article 180: excavating or retrieving bodies or removing or transporting bodies that have been excavated or taken. Article 181: bury, hide his death or birth. Article 503 paragraph (2): makes noise near a building to carry out permitted worship or for court proceedings, at a time of worship or a session.

In the policy of using penal means, the Criminal Code currently has a divergence in the placement of articles related to religion and religious harmony, namely the placing of religious offenses in the Chapter on Public Order. Apart from that, the Criminal Code does not regulate problems related to beliefs and insults against God, prophets, holy books or other belief systems. The KUHP also does not regulate the problem of converting to religions and the issue of religious broadcasting against people who are already religious.

In the matter of punishment, articles relating to religion and religious harmony still use a single criminal system so that it has a weakness where imprisonment is always prioritized.

- b. In Law No. 1 PNPS 1965
Conditions offense against religious harmony and belief contained in Article 1:

"Everyone is prohibited from deliberately publicly telling, recommending or seeking public support, to interpret a religion adhered to in Indonesia or carry out religious activities that resemble the religious activities of that religion, which interpretations and activities deviate from the subject matter. the main religious teachings."



According to the expert witness Edward OS Hiariej, in the Constitutional Court's decision, he explained that in practice law enforcement Law no. 1 PNPS 1965 is always used to judge someone's thoughts and beliefs. This is contrary to the postulate *cogitationis poenam nemo scoresitur*, which means that a person cannot be punished for what is on his mind or something that is believed/ believed. Furthermore, in various literatures, the principle of legality in criminal law must adhere to the *lex praevia, lex certa, lex scripta and lex stricta* (Constitutional Court Decision Number 140 / PUU-VII / 2009 concerning the Review of Law No.1 PNPS of 1956).

Furthermore, the problem in the formulation of the article above is that it does not determine whether the act is a crime (crime) or not. Even though in Article 4 it has been determined that the act is a crime, because it is included in Chapter IV of the Criminal Code, it is different from Article 4, where in Article 1 the action does not yet know the nature of the act, so according to the researcher so that the act is clear, the qualifications of the offense must be determined, so that it does not cause juridical problems.

- c. In Law No. 40 of 1999 concerning the Press
Article 18 reads:

“Press companies that violate the provisions of Article 5 paragraph (1) and paragraph (2) and Article 13 will be subject to a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). As for Article 5 paragraph (1) and paragraph (2), it reads: (1) The national press is obliged to report events and opinions with respect to religious norms and a sense of public morality as well as the presumption of innocence. (2) The press is obliged to serve the Right of Reply. Article 13 reads: Press companies are prohibited from posting advertisements: a. which results in degrading a religion's dignity and / or disturbing the harmony of life among religious communities, as well as against the sense of public morality;”

In the provisions of Article 5, the elements of a criminal act are: Paragraph (1): "the obligation to report events and



opinions with respect to religious norms and the sense of public morality and the presumption of innocence."

Problems in the formulation of the Press Law offense, as in the language in *Focused Group Discussion* (FGD) the first "Criminalization Privacy and Freedom of the Press" is located on the task of the press and freedom, with the restriction that is contained in the penal provisions.

As there is in his consideration, that freedom of the press is a form of people's sovereignty, and is an important element in creating a democratic society, nation and state, so that the freedom to express thoughts and opinions as stated in Article 28 of the 1945 Constitution must be guaranteed.

As for the existence of criminalization with the limitations contained in Article 18 of the Press Law, it has reduced objectivity in carrying out its duties as a social institution and a vehicle for mass communication carrying out journalistic duties. More than that, the press also serves as social control, where bad facts in the field must be disclosed.

In Law No. 40 of 1999 concerning Press, the problem of formulating criminal acts lies in not determining the qualifications of offenses. As for the issue of criminal liability, this law does not regulate provisions regarding corporations as legal subjects. In the matter of criminal formulation, this law uses a single criminal system, namely fines. If it is seen from the very large number, the penalty in lieu of a fine of only 6 months in prison is illogical.

d. In Law No. 32 of 2002 concerning Broadcasting

The criminal elements related to harmony of religious and belief communities are as follows: Article 36 paragraph (5): broadcasting is prohibited from confronting ethnicity, religion, race and between groups. Article 36 paragraph (6): broadcasts are prohibited from mocking, degrading, harassing and/or ignoring



religious values, Indonesian human dignity, or damaging international relations.

In criminal liability, according to the researcher, with the above offense, there will be difficulties in determining article 55 of the Criminal Code. In the structure of a broadcasting institution, of course, there is an editor in chief, a person in charge for the rubric and a managing editor. The performance of these three components is unitary, namely interdependence, which is in the form of a hierarchy of instructions. More than that, usually the business owner has the authority to determine the theme of the news and determine the content.

In the provisions of press offenses, responsibility is borne by the perpetrator on the basis of "whoever". Usually the perpetrator in direct broadcasting is the reporter, whereas structurally the reporter himself gets instructions and is responsible to the person in charge of the rubric, then he is responsible to the editor in chief.

As in the Press Law, the problem in the formulation of criminal offenses lies in the not-determined qualifying offense. Furthermore, this law also does not regulate provisions on corporate punishment.

Non-Penal Policy

As is well known, the Indonesian nation has diversity in ethnicity, language, customs and religions. With this diversity, it is actually a treasure to be grateful for and has the potential to bring the Indonesian nation forward. However, if this potential cannot be managed properly, then this potential can become the seed of conflict that threatens the unity of Indonesia. (Ministry of Religion, *Compilation of Laws and Regulations on Religious Life*, Jakarta: Ministry of Religion, Republic of Indonesia, Research and Development Agency and Training Center for Religious Life Research and Development, 2007).



Non-penal policies in regulation are contained in several administrative regulations which can be seen in the Compilation of Laws and Regulations on Harmony of Religious People of the Ministry of Religion of the Republic of Indonesia. As for the compilation, the laws and regulations relating to the harmony of religions and beliefs are divided into 4 (four) categories, namely: 1) The existence of religious organizations and religious institutions. 2) Broadcasting religion and religious personnel. 3) Guidelines for the establishment and use of places of worship. 4) Relations between religions in the field of education, marriage, burial and ceremonies for religious holidays.

In a non penal policy in social policy as contained in the Term Development Plan (RPJMN) 2020 - 2024 that is associated with mental revolution, tolerance, religious harmony and conflict. Program priority mental revolution in the field of education in the form of strengthening religious education, religious tolerance values and manners.

Programs in the field of education or regulations related to socio-religious life do not involve followers of faith. The ministry that oversees the six official religions has characterized acts of discrimination committed by the government. As the priority program in order to strengthen religious moderation does not include followers of belief. Although basically the program is very relevant in order to strengthen tolerance, harmony and social harmony.

Policies related to conflict management are played by police and local government actors. The program launched is in the form of conflict management training for members of the police. The local government is an important actor in the development of apparatus and community resources in handling social conflicts.

There are several weaknesses, including the ineffective role of the government as facilitator and mediator in conflict resolution. The government does not yet have the capacity and professionalism to respond to conflicts, is not transparent and has not involved community participation in determining public policies to be



implemented in certain areas. Lack of coordination and lack of mutual trust between government agencies as well as between government and civil society in creating a peaceful situation has resulted in ineffective conflict resolution.

At the National Medium Term Development Plan (RPJMN) 2020-2024, the weaknesses found in the absence of provisions which set of harmony and harmony s ation among religions and faiths. The absence of equality between religion and belief is against the philosophy of Pancasila and the provisions of the 1945 Constitution.

The Upcoming Criminal Policy to Treat Delices Against Religious Harmony and belief

Penal Policy

a. In the RKUHP

In the penal policy, as contained in the Concept of Criminal Code 2019, a special chapter entitled "Criminal Actions Against Religion and Religious Life" Articles 304-309 has been included.

Article 304 - Every person in public who expresses feelings or commits an act of enmity or blasphemy against the religion adopted in Indonesia shall be punished with imprisonment of up to 5 (five) years or a maximum fine of category V.

Article 305 - (1) Any person who broadcasts, shows, affixes writings or pictures, or shows a recording, including disseminating it through information technology facilities containing the Crime as referred to in Article 304, with the intention that the contents of the writing, picture or recording are known or more. It is known that the public is sentenced to imprisonment of 5 (five) years or a maximum fine of category V. (2) If any person as referred to in paragraph (1) commits the said act in carrying out his profession and at that time it has not passed 2 (two) years since the sentencing decision which has obtained permanent legal force for committing the same criminal act, then he may be sentenced to addition in the form of revocation of rights as referred to in Article 86 letter f.

Article 306 - Any person who publicly incites in any form with



the intention of negating a person's belief in any religion practiced in Indonesia shall be punished with imprisonment of up to 4 (four) years or a maximum fine of category IV.

Article 307- (1) Any person who with Violence or Threats of Violence disturbs, obstructs, or dissolves a religious meeting shall be punished with imprisonment of up to 2 (two) years or a maximum fine of category III. (2) Any person who with Violence or Threats of Violence disturbs, obstructs, or disbands a person who is performing religious services or ceremonies shall be punished with imprisonment of up to 5 (five) years or a maximum fine of category V. (3) Anyone who makes noise near the building where the worship is held while the worship is in progress shall be subject to a maximum fine of category I.

Article 308 - Any person who publicly commits insult to a person who is running or leading an organization of worship shall be punished with imprisonment of up to 2 (two) years or a maximum fine of category III.

Article 309 - Any person who defiles or illegally damages or burns the building of places of worship or objects used for worship, shall be punished with imprisonment of up to 5 (five) years or a maximum fine of category V.

The basis for the formulation is as follows (Arief 2010: 10):

1. In carrying out the reform of the Penal Code in addition to pay attention to the demands of modernization in order to be taken into account also the influence culture and religions to criminal law which is in line with national criminal politics.
2. In considering the influences of culture and religion in creating a criminal law, required the determination of offenses and offenses religion that is to do with religion and customs offenses.
3. The ideal basis is Pancasila, while constitutionally the 1945 Constitution (Article 29) in conjunction with TAP MPR No. IV / MPR / 1973 (principle of life in balance)
4. the formation of religious offenses is given priority to the basis of "*religionsschutztheorie*" where religion is seen as a legal interest that must be protected. Accordingly therefore religious offense needs to be set in a separate chapter, where the chapters provides protection against: God, the word and its



nature, religion: Prophets, Scriptures, religious institutions, the teachings of religious worship and places of worship or other holy places.

5. About the limitations of religious offenses and offenses relating to religion, then the relationship nya with the influence of religion on criminal law, there are two forms of the offense, namely: First, religious offenses which endanger or constitute a direct attack on religion. Second, offenses related to religion which do not directly constitute a danger or attack on religion and religious life.

A religious offense is one whose *opzet* is aimed at religion, while an offense related to religion is an offense whose *opzet* is aimed at religious life (Sianturi 1983: 288). The theories used in determining criminal acts against religion and religious life are the theory of religious protection (*religionsschutz-theorie*), the theory of protection of religious feelings (*gefühlsschutz-theorie*) and the theory of protecting peace / peace of religious people (*friedensschutz-theorie*).

According to Barda Nawawi Arif, apart from the above considerations, a separate chapter on religious offenses in the concept of the Criminal Code is also based on a comparative study. Quite a few foreign KUHP also contain a separate chapter regarding religious offenses. (Arief 2010: 10)

In contrast to Barda Nawawi Arief's view, according to Rumadi, criminal law should not be directed to protect religion. Because basically the existence of religion does not need protection from anyone, including the State. State protection in the form of laws is ultimately aimed at protecting religious adherents. There are several considerations for conducting a review of the articles on the articles of blasphemy in the Draft Criminal Code, including (Rumadi 2007: 80-81):

1. These articles are more oriented to protect and protect religion. protect religious freedom. What is needed in this



- case is to protect the collateral individual freedom in religion and belief is not to protect religion;
2. Article of multi-interpretation religious articles, judges usually only follow the majority vote, so that there is potential for the suppression of non-religious understandings by the mainstream;
 3. The definition of religion only includes religions recognized by the State, not local beliefs. As a result, insulting the local beliefs of indigenous peoples is not considered blasphemy;
 4. The definition of perpetrator and victim is not clear. Is there a crime against religion? Because basically if someone commits a religious crime, basically it is not a crime against religion but against religious people;
 5. The articles of blasphemy can be included in another article, in the Draft Criminal Code on insulting a group of the population, Articles 286-287 as for the full sound:

Article 286 - Anyone who publicly insults one or several groups of the Indonesian population based on race, nationality, ethnicity, skin color and religion, or against groups based on sex, age, mental or physical disabilities, shall be punished with imprisonment at the maximum. 1 (one) year or a maximum fine of Category II.

Article 287- (1) Anyone who broadcasts, shows, or attaches writing or pictures so that it is visible to the public or plays a recording so that it is heard by the public, which contains a statement of feelings of hostility with the intention that the contents are known or better known by the public, to one or several groups of the Indonesian population. which can be determined based on race, nationality, ethnicity, skin color, and religion, or against groups that can be determined based on gender, age, mental disabilities or physical disabilities resulting in violence against people or property, shall be punished with imprisonment of a maximum 4 (four) years or a maximum fine of Category IV. (2) If the perpetrator of the criminal offense as referred to in paragraph (1) commits the act in carrying out his profession and at that time it has not been more than 2 (two) years since the sentencing decision has obtained permanent legal force for committing the same criminal act, then it may be subject to additional punishment in the form of revocation of rights as referred to in Article 91 paragraph (1) letter g.



6. Furthermore, with article 345 of the Draft Criminal Code concerning incitement to eliminate belief in religion, it needs deeper attention. The article criminalizes those who incite others in front of the public for no religion and encourage religious conversion.

In inflammatory words, there are actually multiple interpretations, because the person who is preaching can be said to be inciting to someone who feels his belief is being threatened. So that the criminalization is not only by inciting words but also by threats or coercion.

According to researchers, in criminalizing an act as a religious offense, it can refer to the theory of religious offenses and comparative criminal law. In this theory, the issue of protection of religion and religious life has been regulated. As related to the interpretation of religion, the government has been giving the authority to the institutions (MUI, KWI, PGI, WALUBI, PHDI and MATAKIN) in providing objective assessment of religious understanding, as consideration of the judge in making decisions.

In criminal responsibility, in the concept of the Criminal Code there have been developments, particularly developments in the principle of no crime without any mistakes (no punishment without guilt).

In criminal and sentencing, the conditions of sentencing late according to the concept of balance monodualistik contrast between the interests of the community and individual interests. Therefore, the terms of sentencing based on two principles that fundamental namely the principle of legality and the principle of fault.

In addition to affirming the two principles above, the concept also added by preceding chapter sentencing late to formulate the article on "The purpose of the criminal prosecution and sentencing guidelines".



b. In the Draft Law on Religious Harmony

The KUB Bill was formulated by the Balitbang of the Ministry of Religion of the Republic of Indonesia, based on the Law. No. 25 of 2000 concerning the National Development program (Propenas 2000-2004), particularly in the field of religion and the field of law which emphasizes the need for efforts to formulate the RUU KUB. This is important, because it has become a development program in the field of religion, as stated in section IV of Law no. 25 of 2000, which reads "Proposing a bill on religious harmony by involving all elements of society". (Jamil 2008: 80)

In its development, a Draft Bill on Religious Harmony has been drafted which defines religion as religion and belief in one God. Article 1 paragraph 1 reads: "Religion is the religion and belief followed by the population of Indonesia". when the law determines religion, it actually includes belief in one and only god. Such formulation is not contained in the Criminal Code and the Criminal Code Bill.

Apart from that, it has also determined the formulation of religious offenses which are broader formulations than those contained in the Concept of Criminal Code 2019. Listed in CHAPTER VIII regarding prohibitions (actions that are made offenses), in Articles 44-48. The details are as follows:

Art 44- To ensure the harmony of religious communities, everyone is prohibited from:

- a. Using spoken or written words and / or behavior that threatens people of other religions;
- b. Printing and publishing writings and / pictures that insult and threaten people of other religions;
- c. Performing public performances with words and / or behavior that are not in accordance with the appropriateness of the teachings of other religions; or
- d. Distribute, show, and play recordings, whether in the form of images or sounds that are offensive, threatening, and not in accordance with the appropriateness of the teachings of other religions.



Art 45 - Everyone is prohibited from disseminating the teachings of a religion to a person or group of people who have embraced or followers of other religions;

- a. Discrediting other religions;
- b. Regarding the truest religious teachings;
- c. Spread deviant teachings;
- d. Causing feelings of hostility between religious communities; and
- e. Generating feelings of hatred towards people of other religions.

Art 46 - Every person in disseminating his religion is prohibited from being carried out by:

- a. using persuasion with or without giving of goods, money, clothing, food or drink, medication, medicines and any other forms of giving so that people or groups of people who have embraced / adhered to another religion convert and embrace / adhere to the broadcast religion;
- b. distributing pamphlets, magazines, newsletters, books and other forms of publishing goods, prints to people or groups of people who have embraced / adhered to other religions; and
- c. make door-to-door visits to people who have embraced / adhered to other religions.

Article 47 - Everyone is prohibited from deliberately publicly telling, recommending, or seeking public support, to interpret a religion adhered to in Indonesia or carry out religious activities that resemble the religious activities of that religion, interpretations and activities that deviate from the subject matter. the main religious teachings.

Article 48 - Everyone is prohibited from gathering or mobilizing other people in the name of religion to carry out actions that damage public order and / or security.

Looking at the provisions of the article above, there are several points that the researcher considers quite logical, however, it is possible that they have the potential to cause polemic due to multiple interpretations. Which is contained in Article 45 in which the element is prohibited is broadcast (distribution) religion is addressed to people or groups of people who have embraced or



other faiths, to discriminate other religions and considers the most correct religious teachings and spreading deviant teachings.

Like all religions, which always broadcast the truth of their religion, broadcasting that considers their teachings to be the truest is a necessity. In this case, including measuring the element of discrediting, it will be difficult. Because of the problems of religion is a problem of interpretation of scriptures, which contained therein paragraph - paragraph that states that religion is absolute and the other wrong.

As an effort to improve and renew the Concept of the Criminal Code 1019, the formulation contained in the RUU KUB, the researcher put it into the Concept of the Criminal Code.

Non-Penal Policy

In the upcoming non-penal policy, the handling of offenses against religious and belief harmony can be approached with theological and sociological approaches which include; theological approach, nationalism, education and dialogue between religious and believers. Apart from that it can be approached with conflict resolution and Alternative Dispute Resolution (ADR).

a. Theological and Sociological Approaches

In understanding the social function of religion for society, sociologists of religion place religion as a social glue that glues antagonistic potentials between individuals or as a social opium that suppresses conflicts of interest between groups that tend to be antagonistic. In this case, religion is seen as having a function of social cohesion. Judging from other functions, religion has a function as an institution of social control foremost in social relations (Turner 2006: 189).

According to Didin Nurul Rosidin as quoted by Muhsin Jamil, religion has an ambivalent function. On the one hand, it functions as a *social comment* that can bring together individuals and groups who have different ethnic



backgrounds, languages and socio-economic classes. On the other hand, religion can also be a significant factor for the emergence of social conflict with extraordinary implications, because it involves the innermost side of human emotions (Jamil 2007: 179).

Even though religion has the potential to create conflict, according to Abdul Qadir, conflict caused by differences in religion and religious understanding is very ironic. Because in religion there are many teachings to lead to mutual tolerance between one another (Saleh 2003: 20).

Seeing religious conflicts with a theological approach, there are two views. First, religious conflicts caused by *truth claims* that lead to exclusivity among a certain group. Second, religious conflicts can occur because of the misuse of religion, which is related to exclusivity which can lead to intolerance and hatred so that they can become an estuary for conflict (Elizabeth 2011: 38).

Indonesia as a Pancasila State with Unity in Diversity, an understanding of plurality becomes a necessity in maintaining unity and unity. All groups and groups are expected to accept the differences that have become the identity of this nation. This concept is fundamentally a reference for the creation of religious harmony and belief.

From a logical point of view, according to Mukti Ali, as followed by Muhsin Jamil and Jabali to see pluralism, it must be approached with an agree on difference approach (agree this disagreement), this view believes that his religion is the best and right, even though it does not deny that there are other truths that exist. adopted by others. In other religions there are similarities and differences. This understanding can be a capital for mutual understanding and tolerance between religious communities (Jabali 2002: 33).



Apart from understanding plurality, the nationalist approach can also create harmony and strengthen national unity and integrity. This understanding of nationalism gives the view that as the people of Indonesia, all of them are one and inseparable unity. As stated in the motto "Bhineka Tunggal Ika." "

In order to foster the value of nationalism, it can be started by understanding the values of local wisdom. In this case, customs and tolerance and tolerance have existed since ancient times, where it has become the basis of the indigenous culture of Indonesian society that prioritizes harmony, for example the tradition of Rumah Beteng in Kalimantan and the customs of Pela and Mapulus in Sulawesi. (Ahmad 2010: 8)

In order to cultivate the tolerant values above, in addition to the approach of nationalism, the educational approach is very important. Currently, not many educational institutions teach the importance of respecting differences and tolerance. On the other hand, religious teaching has been normative, dogmatic in nature, and only thinks about the truth personally (Hanafi 2001: 14 – 15).

According to Ainurrofiq Dawam, that in order to provide a pluralism or multicultural education orientation framework, a basic value orientation of multiculturalism is needed, namely: 1) human orientation. 2) Mutual orientation. 3) welfare orientation. 4) Proportional orientation. 5) Orientation recognizes plurality and heterogeneity. 6) Anti-hegemony and anti-domination orientation (Dawam 2003: 104-105).

b. Conflict Resolution Approaches

According point Suwariyati mentioned that there are four things that often triggers conflicts and internal religious communities in Yogyakarta, namely: (1) establishment of houses of worship; (2) religious broadcasting; (3) burial; (4) commemoration of religious holidays . (Sumariyati 2001: 172-175). Meanwhile, according to Muhith A. Karim et al.,



Mentioned five factors of religious dissonance, namely: (1) the construction of houses of worship; (2) religious broadcasting; (3) internal religious problems; (4) blasphemy against religion; (5) splinter flow activities (Karim 2001: 241-243).

In an effort to control the potential for conflict above, regulatory models are needed with reference to the multi-ethnic State, Tubagus Arif as followed by Muhsin Jamil explains as follows (Jamil 2007: 71) :

1. partition, namely strict separation between one ethnicity and another. This model is rarely used and this is possible if an ethnicity really lives apart from the line of democracy of the State;
2. domination model, namely one ethnic domination over another ethnicity, usually through violence or discriminatory action. This model is based on the assumption of violence as an alternative to end further violence;
3. through the process of assimilation, which is the subtle and advanced form of the second model that is done naturally.
4. through a consolidated model, this model recognizes every difference and tries to harmonize each of these differences.

According to Galtung as quoted by Muhsin Jamil, there are 3 strategies in conflict resolution (Jamil 2007: 72):

1. peace keeping (security operations) involving security forces and the military, where they are needed to reduce conflict and avoid conflict transmission to other groups;
2. peace building, which is a strategy or effort to restore a destructive situation due to violence that occurs as a result of conflict by building a communication bridge between the parties involved in the conflict;



3. peace making is an effort to negotiate between groups that have different interests. There are several methods that can be chosen in this negotiation stage, including violence or conventional legal channels. If these efforts do not produce results, then an Alternative Dispute Resolution (ADR) can be carried out in the form of conflict resolution by directly leading to the main problem, even though it is legally illegal.

Closing

In connection with the renewal of criminal law, the government should immediately ratify the Draft Criminal Code as a law. This is inseparable from the urgency of criminal law in responding to community developments, especially those related to overcoming offenses against religious harmony and belief. Apart from that, considering the Criminal Code as the parent system in criminal law in Indonesia, the ratification is important to integrate criminal rules outside the Criminal Code.

In relation to the non-penal approach in tackling offenses against religious harmony and belief, evaluation must always be carried out. In this case, several approaches can be taken or approached with theological and sociological approaches which include; theological approach, nationalism, education and dialogue between people of religions and beliefs. In addition, it can also be approached with conflict resolution and Alternative Dispute Resolution (ADR). []



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