

BLASPHEMY AS A CRIMINAL OFFENSE: LEGAL TRANSFORMATION IN INDONESIA FROM COLONIAL ERA TO MODERN

Abu Rokhmad^{1*}, Saifudin², Sunandar³, Nazar Nurdin⁴

^{1,2,4}Universitas Islam Negeri Walisongo Semarang, Indonesia

³Lembaga Studi Sosial dan Agama Semarang, Indonesia

Citation (ASA):

Rokhmad, Abu., Saifudin, Saifudin., Sunandar, Sunandar., and Nurdin, Nazar. 2024. "Blasphemy as a Criminal Offense: Legal Transformation in Indonesia from Colonial Era to Modern." *Walisongo Law Review (Walrev)*, 6(1), 13-28. doi:<https://doi.org/10.21580/walrev.2024.6.1.22667>

Copyright © 2024 Walisongo Law Review (Walrev)

Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution-ShareAlike 4.0 International License.



Abstract: This paper was written to answer three important questions, namely knowing the narrative trend and the transformation model for blasphemy offenses in Indonesian legislation. Religious offenses are the only state instrument to crackdown on perpetrators of blasphemy. The implementation of the blasphemy offense in practice has been criticized, especially in relation to human rights violations. The results of this study confirm three things, firstly, religious offenses were first regulated through a Circular Letter of the Supreme Court in 1964 and PNPS Number 1 1965 which were designed to prevent the deviation of religious teachings and to protect religious peace. Blasphemy offenses were included in the Criminal Code in the New Order, then strengthened in the Reformation Era by incorporating blasphemy offenses into Law No. 11 of 2008. Second, the transformation of religious offenses stems from the British code applied in India, adopted by the Dutch colonial government and used in the region. Dutch East Indies because there are many similarities in cultural diversity between India and Indonesia. Third, the conception of religious offenses in KUHP makes religious blasphemy the basis for criminal acts. Religion is not the only element of a crime, but as an element that is an important part of a crime. Implementation of the guarantee of freedom of religion is indeed not easy to do because of differences in the definition of religion and freedom of religion; different definitions of human rights; and differences in the meaning of human rights protection.

Tulisan ini ditulis untuk menjawab tiga pertanyaan penting, yakni mengetahui tren narasi dan model transformasi tindak pidana penodaan agama dalam peraturan perundang-undangan di Indonesia. Delik agama merupakan satu-satunya instrumen negara untuk menindak pelaku penodaan agama. Penerapan tindak pidana penodaan agama dalam praktiknya banyak menuai kritik, terutama terkait dengan pelanggaran hak asasi manusia. Hasil penelitian ini

¹ Coresponding Author: Saifudin (saifudin@walisongo.ac.id), Universitas Islam Negeri Walisongo Semarang, Indonesia

menegaskan tiga hal, pertama, delik keagamaan pertama kali diatur melalui Surat Edaran Mahkamah Agung tahun 1964 dan PNPS Nomor 1 Tahun 1965 yang dirancang untuk mencegah penyimpangan ajaran agama dan menjaga ketentraman umat beragama. Delik penodaan agama dimasukkan dalam KUHP pada masa Orde Baru, kemudian diperkuat pada Era Reformasi dengan memasukkan delik penodaan agama ke dalam Undang-Undang Nomor 11 Tahun 2008. Kedua, transformasi delik keagamaan bermula dari KUHP Inggris yang diterapkan di India. Pemerintah kolonial Belanda dan digunakan di wilayah tersebut. Hindia Belanda karena banyak kesamaan keanekaragaman budaya antara India dan Indonesia. Ketiga, konsepsi delik agama dalam KUHP menjadikan penodaan agama sebagai dasar tindak pidana. Agama bukan satu-satunya unsur suatu kejahatan, namun sebagai unsur yang menjadi bagian penting dalam suatu kejahatan. Implementasi jaminan kebebasan beragama memang tidak mudah dilakukan karena adanya perbedaan definisi agama dan kebebasan beragama; definisi hak asasi manusia yang berbeda; dan perbedaan makna perlindungan hak asasi manusia

Keywords: blasphemy; religious offense; transformation.

INTRODUCTION

The blasphemy crime is an instrument for dealing with issues related to religion. This offense is part of legal scholarship that regulates humans to prevent themselves from committing crimes in the field of religious life. In the Criminal Code (KUHP), blasphemy offenses are categorized as offenses against public order. This offense is an article of hate speech (*haatzaaï artikelen*) which was not formulated in *Het Wetboek van Strafrecht voor Nederlandsch Indië* (Ned.WvS). This offense was adopted by the Dutch colonial government from the British colonial government in India, which was originally intended as an insult to the government (Andi Hamzah 1994; Hiariej 2014; Moeljatno 1987).

In its development, the offense of hate speech is maintained in Indonesia even though many countries have started to abolish it. The hate speech offense then transformed according to changing times and conditions in society. In *Ned.Wvs*, the offense of hate speech is found in articles 154-155. This offense is still maintained in the Criminal Code of 1946. Then, in 1965, the statement of hatred was devoted to religion through concerning the prevention and blasphemy of religion via Determination of the Presiden of the Republic Number 1/PNPS/1965 (PNPS). This PNPS mandates that one of the articles in the regulation is included in the Criminal Law Regulations. Therefore, finally, Article 156 of the Criminal Code was changed to 156 and 156a (Nurdin 2017).

After entering the Criminal Code, the article was used routinely to teach a 'lesson' for someone suspected of insulting or blaspheming the religion of the Indonesian people. In 1965-2000, there were 10 cases of blasphemy that were decided by the court. Then in 2000-2011, the number of cases increased to 37 cases. In another editorial, in 2004-2008 there

were 19 cases of blasphemy with the highest number of cases in 2006 as many as 7 cases. In 2009-2010, there were 17 cases of blasphemy. Melissa noted that during at least 1998-2011, the blasphemy law had tried 120 people, with the defendants being leaders of 'deviant' religious sects, religious minorities and Christians (Akbar 2019; Crouch 2012; Faiz 2014).

Post-reform, when technological developments progressed, religious offenses were transformed into the Electronic Information and Transactions Law through articles 27 and 28. The implementation of this ITE offense made cases with religious backgrounds increased after the reform era. According to Nurdin, in 2011-2015, the number of cases tried in trials through articles of the Criminal Code and the ITE Law aimed at the Islamic religion has amounted to 28 cases. Setara noted that in 1999-2017, there were 88 cases of blasphemy. Of these, 76 cases were resolved through trial, while the remaining 12 cases were resolved outside the legal route (Crouch 2021; Nurdin 2016). Meanwhile, in the latest developments, spanning the years 2017-2021, the number of blasphemy cases brought to trial has reached 72 cases, both through the KUHP article and the ITE article. The number of cases that continues to increase is certainly a small part of cases with religious backgrounds that do not reach the courts or end out of court.

The differences in the application of religious offenses during the Old Order, New Order and Reformation eras clearly had different philosophical bases, thus bringing different consequences in society. The New Order era, which was marked by the establishment of courts in the regions and in regencies/cities, did not reduce the government's bad image which stated that the judiciary was still under executive power (Crouch 2021). During the New Order era, a religious offense was applied, namely Article 156a of the Criminal Code. The number of religious offenses can increase if it accommodates articles related to violations of corpses, religious ceremonies or activities or laughing at religious officials, as well as other articles (Arief 2011). Meanwhile, the Reformation Era was marked by changes in the general justice system and the emergence of special courts, including religious governance in Indonesia. Courts are institutionally increasingly independent because they are separated from the area of executive power. However, there are three legacies of religious governance from the New Order, namely the limited recognition of religious diversity, the expanded meaning of harmony to control over certain religious expressions and the Islamization of national regulations (Bagir 2018; Royani 2021). During the Reformation era, the offenses threatened to transform were not only articles 156a, but also articles that ensnared religious expression in cyber media. The ITE offense does not only ensnare religious blasphemy, but also extends to ethnicity, race and inter-groups. As a result of the application of ITE offenses, the number of cases related to religion continues to increase.

One of the post-reform characteristics is the emergence of religion-based violence and intolerance. According to Rumadi, minority groups have always been victims of violence. The majority of Indonesian people are tolerant but tend to be intolerant of minority groups. The main problem is that Islamic intellectualism is not friendly to minority groups, and this is an attitude inherited from the sects in Islam which is characterized by hostility and mutual

neglect. The main problem is not limited to differences in interpretation, but there is a political problem (Rumadi 2020). This certainly further emphasizes that although the right to religion is a human right that is personal in nature, its implementation is much different when it is brought to the realm of law. According to Rokhmad, many cases brought to court were proven to have committed serious violations. The impact of delegation to the court has an impact on suspicion, tension between groups, persecution and social violence (Rokhmad 2019, 2021). Conflicts between community groups are increasingly open. If this condition is ignored, the state may be considered weak in maintaining and protecting the basic rights of religious adherents, especially religious minorities.

The increasing number of religious offenses is certainly in line with the development of the condition of the community. The state feels the need to provide instruments in the form of offenses to maintain the security and tranquility of the community. According to Mudzakir, religious offenses often cause prejudice and controversy because offenses are in religion and the state. The area of religion is limited to the content of the teachings including their meaning (Mudzakir 2011). Meanwhile, the territory of the state is outside religion and is in contact with the public. The instrument of religious offense is indeed important, but its implementation in the field needs to be monitored on an ongoing basis so as not to leave further conflicts.

The state is indeed fixing the offense so that it can be used properly. Religious offenses are regulated to be able to accurately ensnare someone suspected of committing a crime against religion. According to Topo Santoso, religious offenses need to be transformed so as not to leave conflict, so the government is trying to eliminate the phrases of blasphemy or hostility. In order for religious offenses to be used properly, it is necessary to have the right meaning of blasphemy or blasphemy against religion. For example, the meaning of blasphemy is symbolized in the event of insulting God, his character, the holy book, demeaning the prophet/apostle (article 304 R-KUHP 2019). If there is a public religious expression related to the event, then accountability can be asked, both verbal and written expressions. The meaning of these phrases is one of the keys to the application of religious offenses.

The transformation of religious offenses is deemed important to be adapted to modern life with the spirit of Pancasila. This transformation of religious offenses should not be ignored by old documents, but should still be considered and adapted to the conditions of modern society. Dutch legal narratives were changed to become independent state narratives. According to Hiariej, one form of the narrative of independence is to no longer use the principle of retaliation in imposing sanctions. Punishment must be able to pay attention to the subject (perpetrator), but the object (deed) in a fair manner (Hiariej 2014). The narrative of an independent state is to use the offense not as a tool of social order, but to make the subject acceptable in society. The transformation of religious offenses is very important to ensure human rights as well as to prevent the community from social conflicts. According to Riyanto, the Criminal Code which is the basis for sentencing needs to be changed because it does not reflect legal developments in an independent country. The Criminal Code or

Wetboek van Strafrecht voor Nederlandsch Indië (WvS) was adopted into Law Number 1 of 1946 concerning the Regulation of Criminal Law. The reform of the Criminal Code to conform to the narrative of independence since 1958 and the most recent was carried out in 2015 with the concept of Book 1 on the general rules for the application of criminal law in Indonesia and Book 2 on criminal acts. Changes to the Criminal Code have been made little by little since the enactment of 1918. New offenses such as recording of conversations without permission, cyber, computer offenses, wiretapping and other crucial issues have not been included in the Criminal Code, including the crucial issue of religious offenses. The transformation of religious offenses in the Criminal Code is almost final, but the government has delayed its ratification because there is still resistance from the community.

The transformation of religious offenses is not just a social phenomenon or phenomenon, but a cultural phenomenon. As a cultural phenomenon, legal issues must be viewed from a cultural concept, namely the concept of reality associated with values that must be accommodated by law. Therefore, this research will focus on the transformation of religious offenses in Indonesian legal legislation, which will be viewed from the normative and sociological frameworks.

Research Method

This research is legal research with normative approach. The normative approach is used to see the historical frame of religious offenses in the Old Order, New Order and Reform Era. The data of this research comes partly from the field (*field research*) and the other part is library material. Meanwhile, literature research was conducted by examining the material for religious offenses (PNPS Law, Criminal Code, ITE Law, KUHP and its attachments). The literature also examines court decisions related to religious offenses.

RESULT AND DISCUSSION

Religion Crime

The definition of religion in terms of precision is difficult to interpret. We always talk about religion, but it will be a little difficult to formulate a definition of religion. The definition of religion according to one expert is different from another. Thus, the specific meaning of religion is difficult to formulate. According to Taylor in Abdul Kholik, religion is the belief in the existence of spiritual beings. From this argument, the definition of religion is not limited to an easy matter because it involves things that are abstract and sometimes beyond the reach of human reason. The definition of religion that is difficult to define precisely makes the meaning of religion defined from the behavior of religious people. For example, Eliade defines a religious person as a person who is aware of the main difference between sacred and ordinary things, and prioritizes sacred rites (Chalik 2017; Utama 2013). Nevertheless, the meaning of religion can be found in three forms: namely the definition of religion from the word 'religion'; religion from the word '*din*'; religion from the word 'religion'.

The meaning of religion from the word religion comes from Sanskrit from the words *a* and *gam* which means not chaotic (orderly), not going or staying in place. Religion is also interpreted as a text or scripture, because religion must have a holy book.

The definition of religion from the word 'din' means a law or law (Semitic), control, subjugate, obey, debt and custom (Arabic). *Din* can be defined as sharia, namely the rules and laws prescribed by God to humans. *Din* which corresponds to *millah* means binding, or religion is intended to unite all its adherents and bind them to a close bond for the foundation of development. *Religion* is interpreted as believing in things that are spiritual in nature (Taylor), a whole whose parts rely on others, consisting of belief, worship connected with things that are sacred, binding its followers in a church community (Durkheim), pattern beliefs, emotional attitudes and practices that a group of people use to solve ultimate of human life. Meanwhile, religion defined by the Ministry of Religion is a way of life with belief in God Almighty guided by the holy book and led by a prophet. Therefore, a religion must have elements as a way of life, teach belief in God Almighty, have a holy book, be led by a prophet or apostle. Meanwhile, according to Mukti Ali, religion is belief in God Almighty and the law revealed to His messengers for the happiness of life in this world and the hereafter. Therefore, the characteristics of religion are believing in one God, having holy books, having prophets/apostles, and having their own laws for the lives of their adherents, which regulate orders or prohibitions and instructions. Apparently, the religious categorization of both the Ministry of Religion and Mukti Ali reflects the philosophy of religions in Indonesia.

A criminal act or offense is a criminal act. Moeljatno defines a criminal act as an act that is contrary to the order and order required by law. A criminal act is the same as an act that violates the law. Criminal acts, in their development, continue to grow, one of which is criminal acts against religion, or what is more often heard with the term blasphemy. The term blasphemy against the name of God. In a broad sense, it can be interpreted as blasphemy against things that are considered sacred by a religious belief. The general form is spoken and written, which contains content of opposition to the Godhead against an established religion. Blasphemy comes from Ancient Greek (*blasphemein*), Middle English (*blasphemen*), Old French (*blafemer*), Latin (*blasphemare*) meaning to damage reputation (*blasptein* and *pheme*) (Moeljatno 1987; Rumadi 2012). If referring to the definition of Article 156a of the Criminal Code, blasphemy is defined as an act by issuing feelings of hostility, abuse or blasphemy of religion. Other names for blasphemy are blasphemy, deviation, insults to the spread of hatred. Article 156a of the Criminal Code is an independent article, so it can be applied immediately. The elements of article 156a are enmity, abuse or blasphemy of religion. According to Ritonga, the meaning of the word does not have a standard interpretation. That is, the grammatical interpretation of the elements of 'hostility, abuse or blasphemy of religion' is the authority of the judge (Nurdin 2016; Ritonga 2021).

While the blasphemy verdict in Banda Aceh, the characteristic of blasphemy was carried out by insulting or demeaning the symbol of the bearer of Islam, namely the Prophet

Muhammad. The two decisions agreed that blaspheming religion is an outward act that intentionally vilifies, insults religious figures, religious symbols, houses of worship. The act is not in accordance with religious orders, and the practice is the implication of what is believed. In another editorial, blasphemy is a form of defamation indirectly through the identification of defamation in the regulations in the Netherlands, where a crime must be accompanied by an insulted person or group. (Van Noorloos 2014) To ensnare the perpetrators, the public prosecutor must be able to prove the existence of *mens rea* or malicious intent or intentionality. According to Mudzakir, *mens rea* in cases of blasphemy is generally difficult to prove. Because of this, the regulation of blasphemy in various countries has begun to be abolished because it is considered not to reflect the spirit of the modern state. Both England and the Netherlands revoked the article. Thus, in the case of religious offenses, the punishment of the perpetrators of blasphemy, or the perpetrators of any criminal acts, cannot be generalized into the same decision

Protection of Religion

Religion is the basic foundation of the state. The Indonesian state guarantees that its people embrace religion and worship their respective gods. The founders of the nation with a collective consciousness acknowledged the existence of the Almighty, which was built from a belief rooted in true religious knowledge, which could be tested and proven by the rules of logic. This belief is the ontological basis of humans as citizens of the nation as creatures of God. Divine values become the axis and policy in decision making (Hidayat 2018). Soekarno in the BPUPKI meeting stated that Indonesia is a country where every member of the community can worship God in a freeway. All religions practice the teachings of their respective religions. Indonesia is a god country. God Almighty accommodates various religions and beliefs. The YME Godhead is Indonesia's philosophy of life.

Indonesia as a State of Godhead places the moral foundation of religion above the state and government. The state of Godhead ensures the existence of unity based on religion. Therefore, the first principle of Pancasila cannot be separated from religion. Religion plays an important role in shaping the nation's character. But not a few who use religious interpretations to harm other religions. The actions of a certain person or group are not in line with the main teachings of the religion. This condition triggers conflict between religious adherents, thus endangering religion, society and the state. The state then regulates regulations that limit insults to religion and its adherents. Regulations regarding religion are intended to protect religion from the actions of a person or group that demeans religious symbols. According to Rumadi, religion and its symbols such as God, holy books, places of worship need to be protected because they cannot defend themselves (Rumadi 2007). Protection of religion can only be done by its adherents. Religious people will be offended if religious symbols are demeaned by both adherents and followers of other religions. Regulations related to religion are actually a form of protection for religion as well as adherents of its religion. Theoretically, religious offenses are categorized into several things.

First, offenses or religious crimes are seen from the perspective of religion. Offenses include all acts which according to law are offenses and from a religious perspective are categorized as prohibited and despicable acts. For example, the act of inviting others not to adhere to religious beliefs. Second, offense against religion. The offense is related to the birth of a person who is considered insulting or blaspheming something that is sacred to religion. This offense is intended as a protection against religion from acts that insult religious symbols. Third, offenses related to religious adherents and the lives of religious people. This offense contains actions that are not directly related to religion but involve the lives of religious people. This is like the act of obstructing a corpse at a funeral, and so on (Arief 2011).

In another similar theory, Seno Adji divides religious offenses into three categories, namely the theory of religious protection; the theory of protection of religious feelings; and the theory of protecting peace or religious peace (Senoadji 1976). The theory of religious protection sees religion as an object (legal interest) that is protected by the state through drafted regulations. The theory of protection of religious feelings secures religious feelings/feelings of religious people as legal interests that need to be protected. The theory of protecting peace emphasizes the creation of public order from adherents of the prevailing religion. Therefore, the legal interest that is protected is the peace of religious people among their adherents.

Defamation of religion generally takes words or sentences that are contrary to the long-practiced divine teachings. Blasphemy in a number of countries around the world is legally prohibited. Likewise in the traditions of the Abrahamic Religions. Religious offenses in its development are categorized into three theories. First, the direct blasphemy theory. The first theory emphasizes the importance of blasphemy against religion with a view to protecting religion, doctrine, symbols or other things that are considered sacred from the perspective of religion. Second, the theory of desecration of religious feelings. The second theory tries to protect the feelings of a group of people or religious adherents from being insulted, hurt for their beliefs. This second theory is in feelings so that its tendency can ensnare anyone who is seen as tainting religious feelings, including those who do not intend to hate or laugh at a belief because they are offended by the feelings of others. The third theory, namely the theory that the law has limited religious expression. This theory is based on the fact that the purpose of protecting religion is in line with the interests of protecting morality and public stability. So, the third theory is closely related to the issue of freedom of speech and expression. Protection of religion is embedded in three concepts, namely blasphemy, defamation of religion and hate speech. The three concepts are often used in the name of religious protection, but contain different content and consequences (Rumadi 2017).

The protection of religion through Indonesian regulations is explained in various rules, starting from the 1945 Constitution, the Criminal Code, PNPS 1 of 1945 and the Law on Information and Electronic Transactions. This regulation is the basis for protecting religion. However, Mudzakir argues that religion should not be protected because religion does not need protection from anyone, including the state. Arrangements for the protection

of religion are aimed at religious adherents, not the religion itself. The countries of the world abolished blasphemy on the basis that religion/God does not need protection from the state (Paraswaty 2016).

Analysis of Religious Offenses in the Old Order, New Order and Reformation

The offense of blasphemy in the Old Order era is regulated by the Supreme Court Circular Number: 11 of 1964 and the Decree of the President of the Republic of Indonesia (PNPS) Number 1 of 1965. The circular letter of the Supreme Court is addressed to all Heads of District Courts throughout Indonesia. This instruction is based on the reason that religion is an important element of spiritual education. The circular letter of the Supreme Court was stated in number 516/P/1191/M/1964 dated May 25, 1964. In this PNPS/1/1965 it is explained that religious blasphemy is the act of anyone who intentionally publicly tells, recommends or seeks public support, to interpret a religion adhered to in Indonesia or carry out religious activities that resemble other religious activities. religion from that religion in which the interpretation and religious activities deviate from the main points of that teaching. From this definition, there are three important points that a person's actions can be said to deviate or tarnish religion, namely first is an act that is done intentionally, second is an act that is carried out in public, third is an interpretation or religious activity that deviates from the main teachings of the religion.

The PNPS/1/1965 was established by Soekarno on January 27, 1965, eight months after the issuance of the Circular Letter of the Supreme Court regarding insults to religion. In the explanation of PNPS/1/1965 that the stipulation of this provision is a response to the emergence of many sects or mysticism organizations/community beliefs that are contrary to the main teachings and religious law. These sects or organizations have caused unrest in society and even their existence has deviated in a direction that endangers existing religions. At a certain point their existence also endangers the integrity and unity of the nation and state. In order to anticipate this, in order to realize religious peace and guarantee to perform worship according to their respective religions, this PNPS/1/1965 was established.

The existing inter-religious conflict with religious organizations/schools that occurred at the time of the enactment of the SEMA and PNPS/1/1965 was a conflict between the Javanese Sundanese Religion (ADS) and Islam. This conflict occurred between 1939 and 1964. This conflict was a local conflict that occurred in West Java between ADS and the radical Islamic group followers of DI-TII Kartosuwiryo and Islamic fundamentalist groups who came from recitation places in the Kuningan area pesantren (Tendi 2016). The conflict between ADS and DI-TII Kartosuwiryo occurred because ADS was considered a defector against Islam. Meanwhile, DI-TII is an organization that aspires to establish an Islamic state and because of that they really don't like things that are not Islamic. ADS was considered not to like Islam, so they were attacked by the DI-TII group.

Religious offenses in the New Order era were regulated in the Criminal Code (KUHP). This Criminal Code is included in the Articles of the Criminal Code through

Article 156a. In addition, religious offenses in the PNPS are still suitable for the Indonesian people in accordance with MPR Decree Number XIX/MPRS/1966 and MPR Decree Number XXXIX/MPRS/1968. The regulation of religious offenses in the reform era is contained in Law of the Republic of Indonesia Number 11 of 2008 concerning information and electronic transactions which has been amended by Law of the Republic of Indonesia Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning information and transactions. electronic. This crime against religious offenses based on the ITE Law is punishable by a maximum imprisonment of six years and/or a maximum fine of one billion rupiah.

Analysis of the Transformation Model for Religious Offenses in the Old, New and Reform dan Human Right

The Religion Crime always transform according to the development of society. Weber stated that social changes that occur in people's lives are due to shifts in values that exist in social life. Therefore, social interaction is closely related to human social behavior. Weber said that individual action, subjective meaning, ideal type of individual action type, social stratification, authority type and religious orientation can be used as tools to analyze phenomena in society (Yesmil and Anwar 2008). Weber views law as a collection of norms that are collected and combined by agreement and given a tool as an effort of coercion. Law is a valid rule in a group of people. Law has a substantive rationality when the substance of the law consists of general rules used to deal with real cases. The regulation on crimes against religion is a rule derived from the British code which was first implemented in India. The Dutch colonial government then adopted regulations for religious offenses for use in the Dutch East Indies. The Netherlands used this offense because it was seen that there were similarities in cultural diversity between India and Indonesia. We can say that religious offenses are not adopted from national raw material sources.

Many parties try to argue that religious offenses that are not in line with the 1965 constitution are irrelevant because this law has been tested by history. In 1968, the New Order government tested this regulation along with other regulations originating from the presidential decree. As a result, the PNPS is strengthened into a law, or at least its class is raised.

The concept of religion crime explained in chapter V on crimes against public order, chapter VII on crimes against religion and religious life, chapter XXIV on the crime of theft, and chapter XXXIV on special crimes. Articles that discuss religious offenses are in articles 242, 243, 304, 306, 307, 483, 598, and 599 of the Draft Criminal Code. These articles make religion the basis of criminal acts. Religion is not the only element of a crime, but religion is one of the elements that is an important part of a crime. From the articles mentioned above, which specifically discuss religious offenses are in articles 304, 306 and 307, namely about crimes against religion and crimes against religious life and worship facilities. Chapter V does not explain specifically about religious offenses. This chapter explains about criminal acts in

general, namely crimes against public order. This chapter consists of 7 (seven) sections and 20 (twenty) paragraphs. The first part describes insults to the symbols of the state, government, and population groups, the second part describes incitement and offers to commit a criminal act, the third part explains not reporting or notifying people who want to commit a crime, the fourth part explains about disturbances to order. and public peace, the fifth section describes the use of fake academic certificates or degrees, the sixth section describes criminal acts of licensing, and the seventh section describes disturbances to land, seeds, plants and yards.

Based on the article, religion is not the only point discussed, but religion is a part of the subject along with race, nation, ethnicity, skin color, gender, mental disability or physical disability. Article 242 of the Draft Criminal Code explains that any person who publicly expresses feelings of hostility, hatred, or contempt for one or several groups or groups of the Indonesian population based on race, nationality, ethnicity, skin color, religion, gender, mental disability, or physical disability. The key word in this article that someone's actions can be categorized as a criminal act is an act that is conveyed in public, expressing a sense of hostility, hatred, or contempt for race, nationality, ethnicity, skin color, religion, gender, mental disability, or physical disability. An important element in this act is that it is done in public. If the act is carried out in a private, closed space, not in public, it will not be a crime. Insults, feelings of hostility, hatred of certain religions that are carried out not in public, will not be criminal offenses. Criminal offenses in this section are not only people who express feelings of hostility, hatred, and humiliation, but also the activities of someone who broadcast, display, or paste writings or pictures so that they are visible to the public or listen to recordings so that they can be heard by the public or disseminate by means of information technology. This provision is contained in Article 243 of the Draft Criminal Code, the material of which has adapted to the times by looking at the development of information technology in society.

The criminal act contained in Article 243 provides a more severe sanction when compared to the criminal act in the previous Article 242. The criminal sanction in Article 242 is a maximum imprisonment of three years or a maximum fine of two hundred million rupiah, while the sanction for the criminal act of Article 243 is a maximum imprisonment of four years or a maximum fine of two hundred million rupiah. The criminal sanctions in Law Number 19 of 2016 states that any person who knowingly and without rights distributes information intended to create hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race, and intergroup shall be subject to criminal sanctions with a maximum imprisonment of six years and/or a maximum fine of one billion rupiah.

In contrast to chapter V where religious offenses are only a small part of the discussion, chapter VII specifically describes criminal offenses. Chapter VII describes criminal acts against religion and religious life. There are 2 (two) sections in this chapter where the first part describes crimes against religion and the second part describes crimes against religious life and worship facilities. Articles that explain criminal acts against religion and

religious life are articles 304-309. Crimes against religion are defined as any act or statement of a person in public expressing feelings or committing acts that are hostile or blasphemy against the religion adhered to in Indonesia. Such acts shall be punished with a maximum imprisonment of five years or a maximum fine of five hundred million rupiah. This crime against religion is not only imposed on perpetrators who show a direct sense of religious enmity but can also be imposed on people who disseminate such acts through the media.

Chapter XXIV does not specifically discuss religious offenses as does chapter V. The provisions set forth in this chapter are the crime of theft. This chapter consists of 6 (six) articles, namely articles 482 - 487. The crime regulated in this article is about theft. Articles in that chapter which are related to religious offenses are article 483 point (a). Likewise in chapter XXXIV which includes religious offenses in the category of special crimes. There are 5 (five) things regulated in this chapter, namely the first part regulates serious crimes against human rights, the second part regulates terrorism crimes, the third part regulates corruption, the fourth part regulates money laundering, the fifth part regulates narcotics crime, and the sixth part regulates conspiracy, preparation, trial, and assistance for special crimes. Regarding religious offenses in this chapter, it is explained in the first chapter on serious crimes against human rights. The provisions for religious offenses here are regulated together with provisions for criminal acts against national, racial, ethnic or religious groups. The emphasis of this provision is to regulate serious crimes against human rights. Serious crimes against human rights, in this case, are genocidal activities that destroy or destroy all or part of a national, racial, ethnic or religious group. Activities that fall into the category of genocide are killing group members, activities that cause serious physical or mental suffering to group members, creating living conditions for the group that are calculated to result in physical destruction, in whole or in part, imposing measures aimed at preventing births within the group or forcibly transferring children from one group to another.

Serious crimes against human rights as contained in the article that are related to religion are article 599-point (c) which states that "persecution of groups or associations on the basis of politics, race, nationality, ethnicity, culture, religion, gender or persecution for other discriminatory reasons which has been universally recognized as prohibited under international law, with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years". Here it is clear that persecution or arbitrary actions against a person or group of citizens who are then hurt, harassed or crushed against a certain religion is a serious crime against human rights whose sanction is imprisonment for a minimum of 5 (five) years and a maximum of 15 (five) years. twelve) years. The spirit of human rights in the Draft Criminal Code relating to religious offenses is reflected in every article that describes criminal acts against religion, both general and specific. Articles on religious offenses encourage people to respect each other, tolerate and show a sense of friendship by not disturbing, insulting, belittling followers of other religions. In general, the spirit of protecting human rights related to religious offenses is explained in articles 242 and 243 which are about insults to groups of people in which religion is included. Religious tolerance is highly upheld by not allowing

hostility, hatred, or insult to other religions. If someone is hostile, insulted, or hates and expresses these feelings in public, he or she will be subject to sanctions in the form of imprisonment or fines. This is in line with article 26 paragraph (2) which encourages mutual understanding, tolerance, and friendship among all nations, races and religions.

CONCLUSION

This article can be concluded as follows: first, the offense of blasphemy has been regulated since the Old Order through the Circular Letter of the Supreme Court Number: 11 of 1964 concerning Insults to Religion and the Decree of the President of the Republic of Indonesia Number 1 of 1965 concerning Prevention of Abuse and/or Blasphemy of Religion. From this definition, there are three important points that a person's actions can be said to deviate or tarnish religion, namely first is an act that is done intentionally, second is an act that is carried out in public, third is an interpretation or religious activity that deviates from the main teachings of the religion. Regulation on the prohibition of blasphemy in PNPS/1/1965. In the New Order era, it was regulated in the Criminal Code (KUHP). This Criminal Code is included in the Articles of the Criminal Code through Article 156a. In addition, religious offenses in the PNPS are still suitable for the Indonesian people in accordance with MPR Decree Number XIX/MPRS/1966 and MPR Decree Number XXXIX/MPRS/1968. The regulation of religious offenses in the Reformation era is contained in the Law of the Republic of Indonesia Number 11 of 2008 concerning information and electronic transactions which has been amended by the Law of the Republic of Indonesia Number 19 of 2016 concerning amendments to Law Number 11 of 2008. Related to offenses In this crime there are keywords about blasphemy, namely, there is an element of intent, there is dissemination, thirdly, and there is an intention to cause hatred or hostility.

Second, religious offenses always transform according to the development of society. Law as a collection of norms that are collected and combined by agreement, and given a tool as a coercive effort can be used to maintain order. The transformation of religious offenses comes from the British code which was first implemented in India. The Dutch colonial government then adopted regulations for religious offenses to be used in the Dutch East Indies region because there were many similarities in cultural diversity between India and Indonesia. With this perspective, religious offenses are not adopted from national raw material sources but are still relevant to use today. Many parties try to argue that religious offenses that are not in line with the 1965 constitution are irrelevant because this law has been tested by history. In 1968, the New Order government tested this regulation along with other regulations originating from the presidential decree. As a result, the PNPS has been strengthened into a law, although its implementation is still not perfect. However, this regulation can prevent conflicts between community groups, thus avoiding destruction.

Religious offenses are regulations that try to prevent conflicts in society related to religious issues, then try to bring them into something constructive.

Third, the concept of religious offenses in the Draft Criminal Code is explained in chapters V, VII, XXIV, XXXIV. In the RKUHP, religion is not the only element of a crime, but religion is one of the elements that is an important part of a crime. Based on the article, religion is not the only point that is separated, but religion is a part of the subject along with race, nation, ethnicity, skin color, gender, mental disability or physical disability. The spirit of human rights in the Draft Criminal Code relating to religious offenses is reflected in every article that describes criminal acts against religion, both general and specific. Articles on religious offenses encourage people to respect each other, tolerate and show a sense of friendship by not disturbing, insulting, belittling followers of other religions. Human rights are rights protected by the constitution, along with the rights contained in them such as the right to freedom of religion. Although guaranteed by the constitution, the implementation of the guarantee of religious freedom is not easy to do for several reasons. First, there are differences regarding the definition of religion and freedom of religion. Second, there are different definitions of human rights. Third, there are differences in the meaning of human rights protection. [W]

REFERENCES

- Akbar, Irwan Ahmad. 2019. "Dinamika Kasus Penistaan Agama Di Indonesia." *QOF* 3(1). doi: 10.30762/qof.v3i1.1068.
- Andi Hamzah. 1994. *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta.
- Arief, Barda Nawawi. 2011. *Delik Agama Dan Penghinaan Tuhan (Blasphemy) Di Indonesia Dan Perbandingan Berbagai Negara*. Semarang: Balai Penerbit Universitas Diponegoro.
- Bagir, Zainal Abidin. 2018. "The Politics and Law of Religious Governance." in *Routledge Handbook of Contemporary Indonesia*.
- Chalik, Abdul. 2017. *Filsafat Ilmu: Pendekatan Kajian Keislaman*. Yogyakarta: Arti Bumi Intaran.
- Crouch, Melissa. 2021. "The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Courts in Indonesia." *Constitutional Review* 7(1). doi: 10.31078/consrev711.
- Crouch, Melissa A. 2012. "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law." *Asian Journal of Comparative Law* 7(1). doi: 10.1515/1932-0205.1391.
- Faiz, Pan Muhammad. 2014. "The Blasphemy Law and the Constitutional Court in Constitutional." *Magazine* 87.
- Hiariej, Eddy O. S. 2014. *Prinsip-Prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka.
- Hidayat, Arief. 2018. "Indonesia Negara Berketuhanan." *Mahkamah Konstitusi Republik Indonesia*.
- Moeljatno. 1987. *Hukum Pidana*. Jakarta: Bina Aksara.

- Mudzakkir. 2011. *Tindak Pidana Terhadap Agama Dalam KUHP Dan UU 1/PNPS/1965 Tentang Pencegahan Penyalahgunaan Dan/Atau Penodaan Agama (Kajian Terhadap Praktek Penegakan Hukum Dan Prospek Pengaturannya Dalam Hukum Positif Indonesia*. Jakarta: Badan Pembinaan Hukum Nasional.
- Van Noorloos, Marloes. 2014. "Criminalising Defamation of Religion and Belief." *European Journal of Crime, Criminal Law and Criminal Justice* 22(4). doi: 10.1163/15718174-22042054.
- Nurdin, Nazar. 2016. "Delik Penodaan Agama Islam Di Indonesia (Kajian Atas Putusan Pengadilan Negeri Nomor 80/Pid.B/2015/PN.Bna, Nomor 10/Pid.Sus/2013/PN.Pt Dan Nomor 06/Pid.B/2011/PN.TMG)." Thesis, Universitas Islam Negeri Walisongo, Semarang.
- Nurdin, Nazar. 2017. "Delik Penodaan Agama Islam Di Indonesia." *International Journal Ihya'Ulum al-Din* 19(1):129-60. doi: 10.21580/ihya.18.1.1745.
- Paraswaty, Atika Yuanita. 2016. *Tindak Pidana Terhadap Agama Dan Kehidupan Beragama Dalam RKUHP*. Jakarta: Lembaga Bantuan Hukum Jakarta.
- Ritonga, Binsar Zaroaha. 2021. "Tindak Pidana Penodaan Agama Di Indonesia (Kajian Kasus Syiah Sampang Dan Gafatar Aceh)." *INTERDISCIPLINARY JOURNAL ON LAW, SOCIAL SCIENCES AND HUMANITIES* 2(1). doi: 10.19184/ijl.v2i1.24420.
- Rokhmad, Abu. 2019. "The Sunni-Shia Conflict in Madura Indonesia: Judging Individual Faith as Blasphemy." *Pertanika Journal of Social Sciences and Humanities* 27(3).
- Rokhmad, Abu. 2021. "Institutions and Contributions to Islamic Law in Indonesia's Legal System." *Walisongo Law Review (Walrev)* 3(1):21-44.
- Royani, Yayan Muhammad. 2021. "Criminal Policy to Treat Delices Against Religion and Beliefs Harmony." *Walisongo Law Review (Walrev)* 3(2):135-62. doi: 10.21580/walrev.2021.3.2.8369.
- Rumadi. 2007. *Delik Penodaan Agama Dan Kehidupan Beragama Di Indonesia Dalam KUHP*. Jakarta: The Wahid Institute-TIFA.
- Rumadi. 2020. "Islam and Minority in Indonesia: Muslim's Intolerant to the Heterodox Sects." *International Journal of Psychosocial Rehabilitation* 24(4):2072-97. doi: 10.37200/ijpr/v24i4/pr2020756.
- Rumadi, Rumadi. 2012. "Antara Kebebasan Dan Penodaan Agama: Menimbang Proyek 'Jalan Tengah' Mahkamah Konstitusi RI Tentang UU Penodaan Agama." *JURNAL INDO-ISLAMIKA* 2(2). doi: 10.15408/idi.v2i2.1177.
- Rumadi, Rumadi. 2017. "Hate Speech: Concept and Problem." *Islamic Studies Journal for Social Transformation* (2):130-39. doi: 10.28918/isjoust.v1i2.1156.
- Senoaji, Omar. 1976. *Hukum Acara Pidana Dalam Prospekti*. Jakarta: Erla.
- Tendi, Tendi. 2016. "Islam Dan Agama Lokal Dalam Arus Perubahan Sosial." *Al-Tahrir: Jurnal Pemikiran Islam* 16(1). doi: 10.21154/al-tahrir.v16i1.365.
- Utama, I. Gusti Bagus Rai. 2013. *Filsafat Ilmu Dan Logika*. Bali: Universitas Dhyana Pura.
- Yesmil, Yesmil, and Adang Anwar. 2008. *Pengantar Sosiologi Hukum*. Jakarta: Grasindo.

The Criminal Code of 1946

The Decree of the President of the Republic of Indonesia (PNPS) Number 1 of 1965

Law of the Republic of Indonesia Number 19 of 2016 concerning amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transaction

The Draft Criminal Code of 2019