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Philosophical and Historical Foundations of the Establishment of Blasphemy Articles in the Criminal Code (KUHP)

Landasan Filosofis dan Historis Pembentukan Pasal Penistaan Agama dalam Kitab Undang-Undang Hukum Pidana (KUHP)

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Abstract

Penelitian Pasal 156a dalam Kitab Undang-Undang Hukum Pidana (KUHP) merupakan landasan hukum terkait penistaan agama di Indonesia, yang bertujuan menjaga harmoni keberagaman. Penelitian ini bertujuan untuk mengkaji filosofi pembentukan pasal tersebut, dengan menelusuri landasan yuridis, historis, dan sosiologis yang melatarbelakangi keberadaannya. Metode penelitian yang digunakan adalah pendekatan yuridis normatif dengan analisis terhadap dokumen hukum, yurisprudensi Mahkamah Agung, serta ketetapan No. 1/PNPS/1965 tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama. Hasil penelitian menunjukkan bahwa Pasal 156a memiliki akar dari British Indian Penal Code dan diadopsi melalui pengaruh yurisprudensi, kemudian ditegaskan pada era Presiden Soekarno untuk merespons dinamika sosial dan tuntutan organisasi Islam konservatif terhadap ajaran kepercayaan yang dianggap menyimpang. Pasal ini mencerminkan kebutuhan untuk melindungi agama-agama yang diakui negara dari potensi penodaan, meskipun penggunaannya sering menuai perdebatan terkait kebebasan beragama dan ekspresi. Kesimpulannya, pembentukan Pasal 156a adalah upaya legislasi untuk menyeimbangkan hak asasi manusia dengan stabilitas sosial dalam konteks pluralitas agama di Indonesia dan dari sanalah muncul Undang-undang Penodaan Agama serta awal mula pasal 156a disisipkan dalam susunan Kitab Undang-undang Hukum Pidana (KUHP).

Keywords: *Dinamika Sosial Keagamaan; Pembentukan Hukum; Penistaan Agama*

Abstract

Research Article 156a in the Criminal Code (KUHP) is a legal basis related to blasphemy in Indonesia, which aims to maintain harmony of diversity. This study aims to examine

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the philosophy of the formation of the article, by tracing the juridical, historical and sociological foundations behind its existence. The research method used is a normative juridical approach by analyzing legal documents, Supreme Court jurisprudence, and Decree No. 1/PNPS/1965 on the Prevention of Abuse and/or Blasphemy of Religion. The results show that Article 156a has roots in the British Indian Penal Code and was adopted through the influence of jurisprudence, then affirmed in the era of President Soekarno to respond to social dynamics and demands of conservative Islamic organizations against belief teachings that are considered deviant. The article reflects the need to protect state-recognized religions from potential blasphemy, although its use is often debated in relation to freedom of religion and expression. In conclusion, the establishment of Article 156a was a legislative effort to balance human rights with social stability in the context of religious plurality in Indonesia, from which emerged the blasphemy law and the beginning of Article 156a's inclusion in the composition of the Criminal Code (KUHP).

Keywords: Socio-religious Dynamics; Law Formation; Defamation of Religion

Introduction

Article 156a of the Criminal Code is the legal instrument that regulates blasphemy in Indonesia. In a pluralistic society, social friction often occurs, especially related to religion. Therefore, the law is needed to maintain harmony and overcome intolerant attitudes.² Presidential Decree No. 1/PNPS/1965 became the basis for the birth of this article, responding to the demands of conservative Islamic organizations who were worried about the spread of beliefs that were considered deviant.³ In addition, this article aims to protect state-recognized religions from potential insults that could trigger horizontal conflict. In Indonesia, inter-religious harmony is a top priority to maintain national stability. The implementation of Article 156a also reflects the state's efforts to build tolerance, although it often raises debates regarding freedom of expression. With a philosophical foundation rooted in Pancasila and the constitution, this article shows the state's approach that emphasizes religious harmony as an important element in creating public order.

Article 156a of the Criminal Code was adopted from the British Indian Penal Code which prohibits statements of hatred or hostility towards religion (Van Winkle, 2012). The Soekarno government accommodated people's concerns about mysticism and cults, such as Sunda Wiwitan, by issuing Presidential Decree No. 1/PNPS/1965 to avoid

² Barda Nawawi Arief, *Delik Agama dan Penghinaan Tuhan (Blasphemy) di Indonesia dan Perbandingan Berbagai Negara* (Semarang: Badan Penerbit, Universitas Diponegoro, 2011), 4.

³ Republik Indonesia, "Undang-Undang No. 1/PNPS/1965 tentang Pencegahan, Penyalahgunaan, dan/atau Penodaan Agama,," 1965.

conflict.⁴ This regulation stipulated the protection of six official religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism, and restricted the misuse of religion in the context of criminal law. The main findings show that Article 156a is not just a legal instrument, but a preventive effort to maintain social harmony in a pluralist society. In its implementation, this article often becomes a tool to control religious expressions that are considered deviant.⁵ In addition, this article provides a strong legal basis for the state to address divisions due to religious-based hate speech, especially in the context of increasing sectarian conflicts. The application of Article 156a also illustrates the state's response to diversity challenges, although it is often criticized for its potential to curb free speech. As such, it plays an important role in creating a stable social order amid Indonesia's religious plurality.

The importance of Article 156a lies in its role as a regulator of relations between religious communities to avoid conflicts that can divide unity.⁶ Indonesian law, as emphasized in Pancasila and Article 29 of the 1945 Constitution, upholds the One True God. However, freedom of religion is also regulated to ensure that every citizen is free to practice their faith without interference from other parties.⁷ This article is important in the context of Indonesia's multicultural society, where different beliefs have the potential to cause social friction. With the existence of Article 156a, the state provides limits to maintain the balance between individual freedom and collective responsibility in ensuring harmony. This reflects the philosophy that freedom of religion must be accompanied by respect for the rights of others, so that conflicts rooted in intolerance can be prevented early on. The role of this article is increasingly significant in the face of modern social dynamics that often challenge the values of diversity and tolerance.⁸

Article 156a has been criticized for its perceived restriction of religious freedom. On the other hand, countries with different legal approaches, such as Japan, have more

⁴ Bani Syarif Maula, "Religious Freedom in Indonesia: Between Upholding Constitutional Provisions and Complying with Social Considerations," *Journal of Indonesian Islam* 7, no. 2 (1 Desember 2013): 385, <https://doi.org/10.15642/JIIS.2013.7.2.383-403>.

⁵ Amnesty International, "Indonesia: Prosecuting Beliefs: Indonesia's Blasphemy Laws," Refworld, 2014, 23, <https://www.refworld.org/reference/countryrep/amnesty/2014/en/102371>.

⁶ Heiner Bielefeldt, "Freedom of Religion or Belief—A Human Right under Pressure," *Oxford Journal of Law and Religion* 1, no. 1 (1 April 2012): 16, <https://doi.org/10.1093/ojlr/rwr018>.

⁷ Republik Indonesia, "Pasal 22 ayat (1) Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia (HAM) menyatakan bahwa setiap orang bebas memeluk agama dan beribadat menurut agamanya," 1999.

⁸ Al Makin, "Not a Religious State: A study of three Indonesian religious leaders on the relation of state and religion," *Journal Indonesia and the Malay Word* 46, no. 135 (4 Mei 2018): 96, <https://doi.org/10.1080/13639811.2017.1380279>.

pragmatic policies in regulating the relationship between religion and the state.⁹ However, Indonesia, as a country that does not separate religion from the state, sees the need for this article to maintain harmony.¹⁰ Criticism of this article arises because its application is often considered biased against minority groups or certain beliefs that are considered to deviate from the majority religion. Nevertheless, the government asserts that this article aims to prevent conflicts that could threaten national stability and maintain harmony amid religious plurality. Unlike secular states, Indonesia views religion as an important element in social life, so regulations such as Article 156a are important instruments to maintain social order. This policy reflects the great challenge faced in balancing the protection of religious rights and the control of potential social friction.

Article 156a of the Criminal Code is a reflection of the legal need to maintain social stability in Indonesia's pluralist society. Although controversial, this article remains relevant in regulating religious expressions that have the potential to divide society. This article functions as a preventive instrument that aims to protect religious diversity and maintain social harmony. In the context of Indonesia's multicultural society, this article is also an important legal basis to anticipate acts of intolerance that can trigger horizontal conflicts. Although there are many criticisms of its application, the existence of Article 156a reflects the state's commitment to balancing religious freedom with the obligation to maintain public order. Therefore, this article is not only historically relevant, but also important in facing modern challenges related to diversity and tolerance in Indonesia.

Considering the context of religious diversity in Indonesia, Article 156a of the Criminal Code is an important instrument in maintaining social harmony amidst plurality. Although controversy often arises regarding the potential of this article to curb freedom of expression, its role as a legal fence to protect society from religious-based hate speech cannot be ignored. In a pluralistic society like Indonesia, where social friction can easily be triggered by differences in beliefs, the presence of Article 156a provides a mechanism that balances between individual freedom and collective

⁹ Andrew B. Van Winkle, "Separation of Religion and State in Japan: A Pragmatic Interpretation of Article 20 and 89 of the Japanese Constitution," *Pacific Rim Law & Policy Journal Association* 21, no. 2 (2012): 368, <https://heinonline.org/HOL/Page?handle=hein.journals/pacrimlp21&id=375&div=&collection=>.

¹⁰ M. Zainuddin, "Plurality of Religion: Future Challenges of Religion and Democracy in Indonesia," *Journal of Indonesian Islam* 9, no. 2 (2015): 152, <http://jiis.uinsby.ac.id/index.php/JIIs/article/view/217>.

responsibility. Therefore, this study aims to analyze the philosophy and foundation of the article in order to understand its relevance and contribution in creating a stable social order in Indonesia.

Method

The research method used in this study is normative legal research method with juridical, historical, and sociological approaches. The juridical approach is used to analyze the legal basis for the establishment of Article 156a in the Criminal Code (KUHP), including a study of the jurisprudence of the Supreme Court and the relevance of the provision in the context of national law.¹¹ The historical approach is used to trace the origins of the article, which is rooted in the British Indian Penal Code, as well as the socio-political dynamics behind the issuance of Presidential Decree No. 1/PNPS/1965.

A sociological approach is applied to relate the effect of this article on the life of a plural and diverse society, as well as how the views of certain groups of society, especially conservative Muslims, influence the formation of this provision. Data was collected through a desk study, with reference to primary legal documents such as legislation and jurisprudence, as well as secondary documents such as scientific journal articles, research reports, and related literature.

The relevance of this method is intended to describe holistically how the philosophy of the formation of Article 156a was not only based on legislative needs but also on the social dynamics that developed in the era of the formation of the article. The emphasis on the harmony of diversity and the protection of recognized religions is a key point in this research.

Result and Discussion

Philosophical Basis for the Formation of Blasphemy Articles in the Criminal Code (KUHP).

Philosophical thinking is based on reality-based thinking that is rational in nature, generally the philosophical foundation is based on empirical facts that occur but begins with abstract thinking, one example is the relationship between the state and its people. Some experts with the individualistic school of thought understand the state only as the guardian of individual rights. There is also a different opinion, namely socialism, which tends to view that the state must take part in all aspects of state life. From this abstract view, the values contained in the thought can also be drawn, including the intent and

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta, Kencana, 2011 (Jakarta: Kencana, 2011), 2.

purpose of the establishment of Article 156a on blasphemy in Indonesia. This philosophical foundation emphasizes that the law does not only function to protect individual rights, but also to maintain harmony in social life. In the context of pluralistic Indonesia, this philosophy is an important basis for regulating interfaith relations and avoiding social conflicts that have the potential to undermine national unity. Therefore, the establishment of Article 156a is part of the state's efforts to protect social stability through a preventive and corrective legal approach.

Philosophical Basis and Political Configuration of the Establishment of Article 156a of the Criminal Code

Before researchers further explore the intent of the law, the author will first look at the political configuration at the time of the formation of Article 156a. Political configuration according to Mahfud MD is an effort to see political tendencies towards law so that it can be said whether a regulation (law) is determinant of politics or vice versa.¹²

The formation of Law No. 1/PNPS/1965 was motivated by the political atmosphere of law at that time, namely the period of national legal development which was in two policy choices: continuing to apply pluralism realism or creating a more integrated national legal policy. Soetadyo emphasized that legal policy during this period was based on socio-juridical and political-ideological considerations. This is reflected in the existence of two subperiods with different constitutions, namely the 1950-1959 subperiod under the direction of the 1950 Provisional Constitution and the 1959-1966 subperiod under the direction of the 1945 Constitution.¹³

Furthermore, researchers will uncover the political will of those in power at the time. Law No. 1/PNPS/1965 was initially rejected by the Constitutional Court through Decision No. 140/PUU-VII/2009. The verdict strengthened the constitutionally valid basis for the law. The formation of the law was based on two main reasons, namely:

1. State security and national revolution are linked to the prevention of religious abuse or blasphemy.
2. Safeguarding revolution and public order.

¹² Mahfud MD, *Politik Hukum di Indonesia*, Cetakan ke 5 (Jakarta: Raja Grafindo Persada, 2012), 1.

¹³ Hwian Christianto, "Arti Penting Undang-Undang NO. 1/PNPS/1965 Bagi Kebebasan Beragama," *Jurnal Yudisial* 6, no. 1 (11 Maret 2013): 9, <https://doi.org/10.29123/jy.v6i1.115>.

In addition, the formation of this law was also influenced by the rising political tensions during the guided democracy era. The government at that time faced great challenges in maintaining national stability due to the growing differences in ideologies and beliefs. With a strong political foundation, the law was designed to strengthen state control over sensitive religious issues and maintain social harmony amidst the diversity of Indonesian society.

The Importance of Blasphemy Offenses in Social Stability

The formation of Law No.1/PNPS/1965/1965 and Article 156a of the Criminal Code (KUHP), where there are 2 sub-periods that become the basis of different constitutions, namely the 1950-1959 sub-period under the direction of the 1950 temporary law and the 1959-1966 sub-period under the direction of the 1945 Constitution. The PNPS Law itself was born in the sub-period between 1959-1966 which was under the direction of the 1945 Constitution, but at that time there were irregularities from the establishment of a democratic system which at that time was led by President Soekarno who issued a Presidential Decree on July 5, 1959 through Presidential Decree No. 150 of 1959.

In the decree, there are 2 reasons underlying the formation of the decree, namely, first, the security of the state and the national revolution related to the prevention of misuse or blasphemy of religion, and second, the security of the revolution and public peace. From this philosophy, the existence of article 156a of the Criminal Code is a *conditio sine qua non* or action, or an indispensable and important condition or element. In other words, at that time the article must exist in the legal life of the country. In this case, it is interesting in the explanation of the number 2 PNPS, which considers that the cults or organizations of mysticism, belief, can cause things that violate the law and divide national unity, and desecrate religion. Therefore, through article 4 of Law No. 1/PNPS/1965, 156a of the Criminal Code was created and inserted into the Criminal Code.¹⁴

Furthermore, in 1967 the Supreme Court of the Republic of Indonesia issued a circular letter in which the circular letter contained "to all heads of high courts and state courts to increase the punishment for perpetrators of blasphemy or blasphemy. The circular letter was issued because of the many incidents of blasphemy and blasphemy

¹⁴ Dwidja Priyatno, Kristian, dan Ahmad Hunaeni Zulkarnaen, *Delik Agama : dalam KUHP dan Rancangan KUHP Indonesia dan Telaah Perbandingan Hukum dengan KUHP Inggris, Belanda, Malaysia, Thailand, Singapura, Jerman, Prancis, Kanada, Latvia dan Finlandia* (Bandung: Pustaka Reka Cipta, 2019), 37.

and so it became the answer to the inclusion of article 156a into the Criminal Code. Basically, in Article 15a, the object of focus that is protected from this provision is "person" but the object that is protected is not physical, but the sense of honor that exists in that person. Harassment of the self-esteem of people who are members of a group based on religion which can lead to disruption of public order. in this article, the focus is on the consequences that can be caused, so the hate speech against a group will be subject to punishment based on the provisions of Article 156a of the Criminal Code. In the explanation of this article.

Basically, the formulation of religious offenses or criminal acts in the Criminal Code (KUHP), the Dutch heritage of which until now is regulated in Book II Chapter V on Crimes Against Public Interest precisely regulated in Article 156 and Article 156A of the Criminal Code (KUHP). This religious offense is included in the Criminal Code (KUHP) into a group of crimes or criminal acts that disturb public order because religious offenses or criminal acts are generally considered contrary or can be categorized as acts that violate social values so that they must be categorized as unlawful acts.

In addition, Religious Crimes are also often seen as very dangerous and endanger the public interest as well as the interests of the community and disrupt the stability of national security and defense. For this reason, crimes in religious crimes are categorized as crimes against public order. To strive for these crimes then anticipate them and for the welfare of the community, at the beginning of the religious offense is not contained in the Criminal Code (KUHP), which is currently in force in it does not regulate religious offenses or criminal acts. religious offenses in the Criminal Code (KUHP) only appeared after the publication of Law No. 1 / PNPS / 1965, concerning the Prevention of Abuse and Blasphemy of Religion.

Both provisions contained in Article 156 and Article 156A of the Criminal Code appear to be an elaboration of the principle of anti-discrimination (especially anti-discrimination based on religion) and are regulated solely to protect minority groups from the arbitrariness of the majority group. Related to the provisions of article 156 and article 156A of the Criminal Code.

Oemar Seno Adji in his book entitled "Herzening, compensation, bribery, the development of offense", explains that if viewed in terms of material or implementation, the provisions of Article 156 of the Criminal Code (KUHP) require the protection of

"population groups" or in other words, it can be said that the provisions of this article require the protection of "people" both against the person including groups that are recognized as legitimate according to state law, as well as because of groups that are recognized as legitimate according to state law, as well as because of the group according to his "religion". Thus, the term "group" in this article (and subsequent articles in the Law of the Republic of Indonesia Number 1/PNPS/1965 on the prevention of misuse and/or blasphemy of religion) is every part of the Indonesian people that is different from one or several other parts because of race, country of origin, religion, place of origin, descent, nationality or position according to constitutional law.

Indonesia itself uses rules regarding crimes against religion or in other words blasphemy and tends to apply Religionsschutz-theory because the purpose of the regulation contained in Law Number 1/PNPS/1965 is to secure the legal interests of the religion adhered to in Indonesia Oemar Seno Adji also emphasizes the importance of the rule of "blasphemy" considering that "Indonesia with Pancasila with the precept of God Almighty as the prima causa, does not have an "afweer" against attacks on words mocking God".¹⁵

Soedarto explained the conditions at that time with many cases of blasphemy such as the Qur'an being torn up and stomped on, the Prophet Muhammad being said to be a "lying prophet", priests being insulted for not marrying, ketoprak with the title "Pope Gandrung" and the emergence of small kebathinan sects calling themselves religions but whose religious practices greatly deviate from existing religious rules.¹⁶ The blasphemy offense rules in Law No. 1/PNPS/1965 should exist but must be further refined with formulations that are in accordance with the nature of the Almighty Godly State. The emergence of a theory based on philosophical thinking is no exception to the theory of religious protection, this idea emerged in the early 20th century which was followed up through the Presidential Decree of 5 uli 1959 through KEPRES No. 150/1959.

Basically, the problem of religion is basically the personal affairs of each individual but in relation to freedom of religion and religious harmony in the sense that the state must take the initiative to provide legal protection for its citizens in the context of religion, in line with Rundini's opinion "in the context of National Resilience, freedom

¹⁵ Oemar Seno Adji, *Herziening-Ganti Rugi, Suap, Perkembangan Delik*, Cetakan Kedua (Jakarta: Erlangga, 1984), 297.

¹⁶ Soedarto, *Hukum Pidana dan Perkembangan Masyarakat: Kajian terhadap Pembaharuan Hukum Pidana* (Bandung: Sinar Baru, 1983), 78.

of religion is indeed carried out based on religious attitudes so that the role of the government is only to provide services and assistance so that the implementation of worship of its adherents can be guaranteed properly, safely and peacefully without interfering with internal religious issues including beliefs, understanding and religious teachings." Oemar Seno Adi explained 3 (three) views on the importance of religious protection.¹⁷

1. **Friedensschutz theory**, views "der religiosce interkon fessionelle Feriede" as a legal interest that must be protected;
2. **Gefühlsschutz-theorie** which seeks to protect the sense of security as "das heiligste Innenleben der Gesammtheit", as proposed by Binding, and
3. **Religionsschutz-theory**, proposed by Kohler and Kahl, which sees Religion as a legal interest that must be secured by the State based on "das Kulturgut der Religion und der ungeheuren Idealismus, der ihr fürreine grösse Menge von Menschen hervorgeht."

Of the 3 (three) theories described by Oemar Seno Adji, Indonesia in understanding the theory tends to use or apply the Religionsschutz-theory because the theory is in line with the regulatory objectives of Law No. 1/PNPS/1965 to secure the legal interests of the religion adhered to in Indonesia. In this case, Oemar Seno Adji also emphasizes the importance of the "blasphemy" rule considering that "Indonesia with Pancasila with the precept of God Almighty as the prima causa, does not have an "afweer" against the attack of mocking words against God".

Soedarto explained the conditions at that time with many cases of blasphemy such as the Qur'an being torn up and trampled on, the Prophet Muhammad being said to be a "lying prophet", priests being insulted for not marrying, ketoprak with the title "Pope Gandrung" and the emergence of small kebathinan sects that implanted themselves as religions but their religious practices greatly deviated from existing religious rules. From these explanations and explanations, there should be rules that regulate and overshadow so that there is no friction and conflict between religious communities in Indonesia from these cases, Law No.1 / PNPS / 1965 was born with refined words that are in line with the nature of the country that has the Almighty God, besides that it is also contained in Law No. 6 of 1969 with the intention that the material contained in Law No. 1 / PNPS / 1965 needs to be stated in the law with the intention of making the necessary improvements.

¹⁷ Christianto, "Arti Pentiing Undang-Undang NO. 1/PNPS/1965 Bagi Kebebasan Beragama," 8.

The Pancasila state with the main principle of the Almighty God and which states, among others, that freedom of religion is one of the most basic rights among human rights, because freedom of religion is directly sourced to human dignity as a creature of God. Can justify the creation of religious offenses in the field of criminal law to be united in a separate chapter in the Criminal Code.

A systematic Religious Offenses can be held by holding a rubricising according to offenses related to Religion (relating, concerning) and Religion-related offenses include what is called "Grabdelikte" and "leichen-frevel dsn regarding offenses against religious gatherings, all of which are placed in articles 178-181 of the Criminal Code, which contains "Grabdelikte" and "leichen-frevel" then Articles 156 and 156 a of the Criminal Code contain offenses against Religion and the so-called "blasphemy, (blasphemie). The offenses against Religion, which are then incarnated in articles 156 and then article 156 a of the Criminal Code, and live within the Criminal Code after 1965, relate to limitations on the freedom to express opinions, issue statements or perform actions that are considered blasphemous against a religious group (article 156 of the Criminal Code) which is different from other groups because the religion itself is the object of such statements.

Literally such criminal statements limit themselves to the religious group, to the adherents of the religion, so that in Anglo-Saxon law they can be reprised as "group libel" and then in article 156 a "religion" itself, not the group, against which the statements are directed, it thus does not yet cover the statements directed, it is thus against the prophet as "founder" of the religion, which is stated in the "Draft covenant on the freedom of information" against the holy book, against religious leaders and religious institutions. Also not covered by it are statements that defile the Asma tuhan, which in other countries is called "Godslastering", gotteslasterung" in their laws that do not yet have.

Although legislatively the provisions that we do not find in article 156 and article 156 a of the Criminal Code (KUHP), are not formulated into these two articles, legal science and jurisprudence have provided assistance by stating that the group and its religion are essentially inseparable from the Prophet, the holy book, religious leaders, religious institutions and others, while the godslastering can be included in it additionally.

Criticisms and Challenges in the Application of Article 156a of the Criminal Code

Many parties consider that the provisions in Article 156a of the Criminal Code (KUHP) lack clarity and have uncertain intentions and unclear benchmarks about what is meant by "hostility, abuse and desecration". So that it can make people interpret it differently, or what is often called multi-interpretation.

The provisions of Article 156a cannot be applied without being preceded by an order and a strong warning to stop the action as referred to in the Joint Decree of 3 Ministers (Minister of Religion, Minister / Attorney General and Minister of Home Affairs). In relation to this, the Supreme Court of the Republic of Indonesia is of the following opinion "that the provision of Article 156a of the Criminal Code is a criminal offense that is added to the Blasphemy. The formulation of Article 156A of the Criminal Code (KUHP) "a quo" which means that it regulates criminal offenses in acts that are basically "hostility", misuse "or "blasphemy" against a religion adhered to in Indonesia. therefore, to apply these provisions, it is previously necessary to order and stern warning in accordance with article 2 and article 3 of the Law on Prevention of blasphemy.¹⁸

With the aim that problems concerning religion and beliefs do not experience discrimination or humiliation because a country like Indonesia in which there are various ethnicities, races, religions has a risk that is vulnerable to violence or friction related to beliefs, therefore the state in this case must have a legal product that has strong coercion in order to create peace and a sense of comfort for every citizen who has a belief in order to carry out his beliefs peacefully without having to think about disturbances. So that the harmony and order to be achieved in Law No. 1/PNPS/1965 on the Prevention of Abuse and / or Blasphemy of Religion, as well as Article 156a contained in the Criminal Code (KUHP) the rules are formed to have the same goal of protecting religion itself and religious life in Indonesia. However, in the period of implementation and application of article 156a often gets the spotlight because there are some experts who argue that the article is irrelevant and the meaning of the article is very dangerous because it has elements that can ensnare anyone, in Indonesia itself there are several cases that are legally completed and not legally completed with article 156a.

Cases Relating to Blasphemy

However, since the enactment of the regulation on blasphemy there have been several cases, based on research by the Setara Institute, from 1965 to 2017 there were 97

¹⁸ Priyatno, Kristian, dan Zulkarnaen, *Delik Agama*, 41.

cases of blasphemy. Blasphemy cases that occurred before the reformation were only 9 cases, but after the reformation era took place in the period 1998, the number of blasphemy cases increased to 88 cases. However, the most desecrated religious group is Islam with 88 cases, while blasphemy against Christianity is only 4 cases, Catholicism 3 cases, and Hinduism 2 cases.¹⁹

The case that has become the center of attention in recent years is the case of the former Governor of DKI Jakarta, Basuki Tjahaja Purnama (Ahok), which began when a video circulated in cyberspace on October 6, 2016 containing his speech in the Thousand Islands. The speech took place on September 27, 2016 when Ahok was on a working visit. In his speech, Ahok said that he did not force people to vote for him in the 2017 regional elections by quoting Surah AlMaidah 51. The content of the speech in question during the working visit was "It could be in your little heart, you can't vote for me because you were lied to using Surah Al Maidah 51 and so on. That is your right. If you feel that you can't vote for me because you are afraid of going to hell, being fooled, that's okay, because this is your personal call. This program (providing capital for grouper cultivation) will continue. So you don't have to feel bad because your conscience can't vote for Ahok".²⁰

Where this case gets a lot of comments not least from the Indonesian Ulema Council (MUI) also took a stance on Ahok's statement that alludes to Surah Al-Maidah 51. The religious stance was issued on October 11, 2016. The complete contents of MUI's religious stance are as follows:²¹

1. Al-Quran surah al-Maidah verse 51 explicitly contains the prohibition of making Jews and Christians as leaders. This verse is one of the arguments for the prohibition of making non-Muslims as leaders.
2. Scholars are obliged to convey the contents of surah al-Maidah verse 51 to Muslims that electing Muslim leaders is obligatory.

¹⁹ Dipna Videlia Putsanra, "Setara: Jumlah Kasus Penistaan Agama Membengkak Usai Reformasi," *tirto.id*, 21 September 2018, <https://tirto.id/setara-jumlah-kasus-penistaan-agama-membengkak-usai-reformasi-c1j6>.

²⁰ *merdeka.com*, "Kasus penistaan agama oleh Ahok hingga dibui 2 tahun," *merdeka.com*, 30 Desember 2017, <https://www.merdeka.com/peristiwa/kasus-penistaan-agama-oleh-ahok-hingga-dibui-2-tahun.html>.

²¹ *muidigital*, "Pendapat dan Sikap Keagamaan MUI terkait Pernyataan Basuki Tjahaja Purnama," *Majelis Ulama Indonesia* (blog), 20 Februari 2017, <https://mirror.mui.or.id/berita/10590/pendapat-dan-sikap-keagamaan-mui-terkait-pernyataan-basuki-tjahaja-purnama/>.

3. Every Muslim must believe in the truth of surah alMaidah verse 51 as a guide in choosing a leader.
4. Stating that the content of surah al-Maidah verse 51 which contains the prohibition of making Jews and Christians as leaders is a lie, the law is haram and includes desecration of the Al-Quran.
5. Stating lies against scholars who convey the argument of surah al-Maidah verse 51 about the prohibition of making non-Muslims as leaders is an insult to scholars and Muslims.

In that case Basuki Tjahaja Purnama (Ahok) was declared legally blasphemy against one of those contained in the Qur'an, namely Surah al-maidah verse 51, and by the judge sentenced to 2 (two) years in prison and violated article 156a. In another case, namely the case of Ust Abdul Somad, who in the content of his talk mentioned the symbol of the cross symbol in Christianity, which is inhabited by pagan genies, because of the statue hanging there, as well as the symbol of the Indonesian Red Cross (PMI) in the ambulance, it is also a pagan symbol, this then provoked a reaction from one of the mass organizations calling itself the Meo Brigade reporting Ust Abdul Somad to the East Nusa Tenggara Police regarding alleged blasphemy against religious symbols, namely the cross.²² This case was not legally completed because it was declared not strong evidence so that this case could not be continued.

However, if it is based on the wording of Article 156a "Article 156a which reads "Shall be punished with a maximum imprisonment of 5 years, whoever intentionally in public expresses feelings or commits acts: (a) which basically has hostility, or insult to one of the beliefs believed in Indonesia. (b). with the intention that people do not adhere to any religion based on the One True God."²³ If taken from the definition of the article, it is clear that in his lecture Ust Abdul Somad has blasphemed other religions where the lecture explains about the cross, which according to him, the above statement is included in the elements of Article 156a and should be followed up with the article. But in fact the case has not been resolved until now. So that changes are needed to the

²² Novi Yanti, Alya Nur, dan Anisatul Afifa, "Analisis Framing Pemberitaan Kasus Dugaan Penistaan Agama Ustadz Abdul Somad Dalam Kompas TV," *Communicology: Jurnal Ilmu Komunikasi* 7, no. 2 (27 Desember 2019): 224, <https://doi.org/10.21009/Communicology.012.08>.

²³ Republik Indonesia, "Pasal 156a Kitab Undang-Undang Hukum Pidana (KUHP) mengatur tentang penodaan agama.," 1965.

regulations on religious offenses so that the above cases do not recur because matters relating to belief are sensitive issues in a country with pluralism like Indonesia.

Relevance and Implications of Article 156a for Religious Life in Indonesia

Article 156a remains relevant to maintaining harmony amid Indonesia's religious plurality. Although it has come under scrutiny, this article was designed to protect religious freedom and prevent horizontal conflicts that could disrupt national stability. The Pancasila state, with its precepts of Belief in One God, makes the protection of religion an integral part of building an inclusive and just law.²⁴

This article serves not only as a legal tool, but also as a reminder of the importance of harmony in religious life. In a society comprised of various ethnicities, races and religions, such as Indonesia, religion-based conflicts can quickly trigger widespread divisions. Therefore, Article 156a becomes an important instrument in preventing these divisions by providing legal sanctions against acts that blaspheme religion.²⁵

However, the application of this article also presents challenges, particularly in relation to the potential for multiple interpretations that could lead to bias in its implementation. Criticisms that arise are often related to how this article can be used to limit freedom of expression, especially in the context of criticism of certain religions or beliefs.²⁶ Nevertheless, the existence of this article is still considered important as a state effort to maintain harmony between religious communities.

As a way forward, adjustments or reforms to this article are needed to ensure that its implementation not only protects freedom of religion, but also respects the rights of individuals to express opinions. Thus, Article 156a can remain relevant and effective in building a peaceful and harmonious religious life in Indonesia.²⁷

²⁴ Lonna Yohanes Lengkong dan Tomson Situmeang, "Makna Delik Penodaan Agama Dalam Pasal 156a KUHP Dan Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP," *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 9, no. 4 (1 Desember 2023): 220, <https://doi.org/10.29210/o20232682>.

²⁵ Kresna Adi Prasetyo dan Ridwan Arifin, "Analisis Hukum Pidana Mengenai Tindak Pidana Penistaan Agama Di Indonesia," *Gorontalo Law Review* 2, no. 1 (30 April 2019): 5, <https://doi.org/10.32662/golrev.v2i1.461>.

²⁶ Dian Dian Andriasari, "Kritik Terhadap Penerapan Pasal 156a Kuhp Ditinjau Dari Perspektif Kehidupan Demokrasi Di Indonesia," *Veritas et Justitia* 3, no. 2 (26 Desember 2017): 273, <https://doi.org/10.25123/vej.v3i2.2688>.

²⁷ Lukman Ainul Yaqin, "Makna Bahasa Hukum Frasa Penodaan Agama Dalam Pasal 156a KUHP" (PhD Thesis, Surabaya, Universitas 17 Agustus 1945 Surabaya, 2020), 31, <http://repository.untag-sby.ac.id/4626/>.

Conclusion

Article 156a of the Criminal Code, based on the political configuration and legal philosophy at the time of its establishment, remains relevant as an instrument to maintain social stability and inter-religious harmony in Indonesia. Despite facing criticism related to its multiple interpretations and potential misuse, this article has the main objective of protecting religious diversity from the threat of blasphemy that can trigger horizontal conflicts. In a pluralistic society like Indonesia, the role of Article 156a involves not only regulating the law but also promoting religious harmony and tolerance. However, challenges in its implementation indicate the need for reform to ensure that this article does not violate freedom of expression and remains relevant to the dynamics of religious life in the modern era. The reform of this article is expected to create legal justice that is inclusive and in line with the principle of God Almighty as mandated by Pancasila and the 1945 Constitution. As part of national legal development, Article 156a must continue to be evaluated to ensure its effectiveness in regulating religious life in the midst of growing social dynamics. Adjustments in legal formulation can provide further clarity to avoid multiple interpretations and improve fairness in its application. In addition, education to the public about the importance of tolerance and religious freedom needs to be improved so that the preventive function of this article can run optimally. Thus, Article 156a does not only act as a criminal regulation, but also as a tool to build a solid and sustainable foundation of interfaith harmony.

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