

**LEGAL POLICIES REGARDING RELIGIOUS DELICT
IN THE INDONESIAN CRIMINAL CODE****Trinita Yulinda Sirait¹, Eko Soponyono²**

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Abstract

The Indonesian nation consists of ethnic groups consisting of many tribes, races, classes, religions, and cultures that demand Indonesian people. The reality that occurred in the community was found about the contradictions between religious communities who demanded that Indonesia overcome it with formulation policies or which were part of the action through criminal law policies (criminal policy). This research aims to describe the formulation policy regarding religious offenses in Indonesia. normative that puts forward secondary data in the process of finding conclusions Article 156 and Article 156A of the Criminal Code is a state policy to assist with religious fish interest policies that have succeeded in solving the Indonesian nation, protecting the integrity and national defense of the Indonesian nation.

Keywords: *Criminal Code; Legal Policies; Religious Delict*

INTRODUCTION

Indonesia is also known as the Republic of Indonesia. The reason is that Indonesia itself is a state in the form of a unity that consists of many tribes, many races, many groups, many religions, and many cultures.¹ The many differences make the Indonesian people must have mutual respect and respect for these differences to create a harmonious and

peaceful life. Especially in the difference of embracing a religion which becomes a belief in each other's faith in God. The Republic of Indonesia is based on *Pancasila* and the 1945 Constitution.²

Pancasila as a way of life, philosophy of life, and the source of all sources of Indonesian law are very clear about the value of God, which is seen in the first precept that contains: "Godhead

¹ Mirzana, H. A. (2012). Kebijakan Kriminalisasi Delik Penodaan Agama. *Pandecta: Research Law Journal*, 7(2), 147-155, p. 149

² Adare, R. (2013). Delik Penodaan Agama Di Tinjau Dari Sudut Pandang Hukum Pidana Di Indonesia. *Lex et Societatis*, 1(1), 91-101, p. 94

of the Almighty". Bung Karno's speech on June 1, 1945, stated that the first precepts of *Pancasila* meant virtuous deity, cultured deity, and mutual respect. While the 1945 Constitution is the State of Indonesia as a state of law and as the highest constitution in Indonesia also emphasizes the value of divinity can be seen from Article 29 paragraph (1) and paragraph (2) which contains: "The State is based on a Godhead" and "the State guarantees the freedom of each citizen to embrace their respective religions and to worship according to that religion and belief".

The first *sila* in *Pancasila* and the contents of article 29 paragraph (1) and (2) of the 1945 Constitution illustrates that there must be mutual respect between adherents of different religions and beliefs, one of which is in the form of freedom of choice and practice of worship based on religion and beliefs adhered to and does not impose a trust in others. This attitude can also be said as an attitude of tolerance between religious communities. The state is also obliged in terms of guaranteeing freedom for its people to embrace and carry out worship by their religion and beliefs, as a form of protection of human rights. This is confirmed in Article 28 I paragraph (1)

and Article 28 J of the 1945 Constitution.

Tolerance among religious people in *Pancasila* in reality in the community does not work in such away.³ Lack of tolerance between religious communities in real life can be seen in many cases that occur in communities that tarnish religion. Blasphemy of religion can be in the form of insulting each other's religion, defaming a particular religion, even to the point of destroying and destroying a place of worship for a particular religion.⁴ These cases can be said that the Indonesian nation is now a crisis of tolerance towards religion. The crisis of tolerance towards religion must be overcome not without the formulation policy or legislation policy which is part of efforts to tackle crime through criminal law policies (penal policy) aimed at creating social welfare (social welfare).

The formulation stage is the most important stage of the overall policy process for operating laws and regulations (specifically crime prevention), this stage is formulated as the lines of policy and criminalization process and the process of penalization which will be the basis of legality that determines the prohibited acts and can be threatened with criminal

³ Afandi, F. (2010). PAKEM: Salah Satu Upaya Negara dalam Melindungi Agama. *Al-Qanun*, 12(2), 482-508, p. 492

⁴ Adare, R. (2013). *Op.Cit.*, p.99

sanctions, this affects the process of carrying out executions in legal practice. At the formulation stage, there is a criminalization or penalization process. Marc Ancle argues about criminal policy (penal policy) which is a science as well as art which ultimately has a practical goal to enable positive legal regulations to be better formulated and to provide guidance not only to the legislators but also to the courts that apply the laws. Invite and also to the organizer or executor of the court decision.⁵

The problem of religion itself can be elaborated on the efforts of discussing national law in general and reforming criminal law in particular. But so far the criminal act of agama or better known as the religious offense is not specifically regulated in the Criminal Code (WvS). Religious criminal offenses in the Criminal Code / WvS can be seen and interpreted as murder offenses, moral offenses, offensive offenses, fraud and cheating offenses, offenses, and theft. But these offenses do not reach the acts of sin that are prohibited by religion and religious law norms. Religious crime in the new Criminal Code, there is a chapter that regulates specifically with the title

"Criminal Acts Against Religion and Religious Life."

Previous research related to religious crime was Aziz Nurbela in 2013 with the research title "Urgency of Religious Delegations in the Criminal Code (KUHP) as an Effort to Protect Religious Interests" published in *Recidive* Vol. 2 No. 3, the results of this study show the importance of religious criminal offenses in Indonesian criminal law to create a sense of religious security or religious tranquility as a legal interest as well as a public interest for every society that is duly protected.⁶ Previous research related to religious crime is Maria Silvy E. Wangga in 2011 with the research title "Religious Delict in the Perspective of Criminal Law and Its Relationship with Human Rights" published in the *Fair Journal* Vol. 2 No. 3, the results of this study indicate that the application of criminal law against religious offenders must refer to the existing mechanism in the specific provisions of Law Number 1 PNPM in 1965 then religious offenders can be processed according to the provisions of Article 156 of the Criminal Code and to strengthen the position of criminal legislation regarding religious

⁵ Arief, Barda Nawawi, (2005), *Bunga Rampai Kebijakan Hukum Pidana*, (Bandung: PT. Citra Aditya Bakti), p. 21.

⁶ Nurbela, Aziz. (2013). Urgensi Delik Agama Dalam Kitab Undang-Undang Hukum Pidana (KUHP) Sebagai Upaya Melindungi Kepentingan Agama. *Jurnal Recidive*, 2(3), 246-254, p. 246.

offenses in the future The Government and the Indonesian Parliament need to clarify the understanding of blasphemy in the Criminal Code Bill and synchronize the formulation of religious criminal acts that are contrary to the constitution and the Human Rights Law.⁷ Previous research related to religious crime is Melissa A. Crouch in 2012 with the research title "Law and Religion in Indonesia: The Constitutional Court and The Blasphemy Law" published in the *Asian Journal of Comparative Law* Vol. 7 No. 1, the results of this study indicate that criminal acts against religion are caused by religious minorities in a country such as in Indonesia.⁸

In connection with the elaboration above, the main issue under study is the formulation policy on religious offenses in Indonesia.

METHOD

The research in this paper uses a normative juridical approach namely by studying or analyzing secondary data in the form of secondary legal materials by understanding the law as library research,

namely research on secondary data.⁹ Data were analyzed in a qualitative normative way by interpreting and constructing statements contained in documents and legislation. By the use of secondary data used in this study, the data collection is done by collecting, studying and systematically processing library materials and related documents. Secondary data both related to primary, secondary and tertiary legal materials obtained from library materials by taking into account the principles of updating and relevance.

ANALYSIS AND DISCUSSION

Formulation Policy of Religion Crime in KUHP

Religious crime in Indonesia is currently regulated in the Criminal Code (KUHP) or often referred to as *Wetboek van Strafrecht (WvS)* which is a historical legacy from the Netherlands. The religious crime itself as the offense is not specifically regulated in the Criminal Code, there are only a few offenses that can qualify as offenses or religious offenses.

The religious crime itself consists of

⁷ Wangga, Maria Silvy E. Delik Agama Dalam Perspektif Hukum Pidana Dan Kaitannya Dengan HAM. *Jurnal Adil*, 2(3), 336-354, p. 351.

⁸ Crouch, Melissa A. (2012). Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law. *Asian Journal of Comparative Law*. 7(1), 1-46, p. 1

⁹ Soerjono Soekanto dan Sri Mamudji, (1985), *Penelitian Hukum Normatif, Suatu tinjauan singkat*, (Jakarta: Rajawali), p.15.

3 (three) meanings: "offense according to religion", "offense against religion", and "offense relating to religion". These three definitions are further elaborated into several criminal acts which include:¹⁰

- 1) Crimes against groups of people whose attachment to the group is due to religion;
- 2) Criminal acts against religious officers who are carrying out their religious duties or religious duties;
- 3) Criminal acts against groups of people who perform worship according to their religious beliefs;
- 4) Criminal acts against religious instruments, Prophets, Apostles, Scriptures, and others;
- 5) Crimes against buildings or places of worship;
- 6) Criminal acts against religious beliefs that cause people not to believe in their Lord or are encouraged to follow atheism; and
- 7) Defamation of the contents of religious teachings.

The formulation of religious criminal acts in the Criminal Code is regulated in Book II Chapter V on Crimes Against Public Order precisely in Article 156 and Article 156A of the Criminal

Code (which was included in the Criminal Code after the issuance of Law No. 1 / PNPS / 1965 concerning Misuse and \ or Blasphemy of Religion) . This is considered to be very contradictory because religious crimes are acts that violate the values and social norms that live in a society so that they fall into the category of acts that violate the law.

Religious crime can also endanger the public interest or the interests of the community and disturb the stability of national security and defense.¹¹ Therefore, criminal acts against religion are categorized as one of the criminal acts in the Criminal Code and efforts taken to protect the community and are expected to create an atmosphere of community welfare materially and spiritually as a part of social policy.¹²

Initially, the Criminal Code did not regulate offense or religious crime. Religious Crimes arise because of the Law of the Republic of Indonesia No. 1 / PNPS / 1965 concerning Prevention of Abuse and/or Blasphemy of Religion. Article 4 of the said law requires that the provisions contained in Law No. 1 / PNPS / 1965 concerning Prevention of Abuse and/or Blasphemy of Religion (which regulates religious offenses or criminal acts) are

¹⁰ Priyatno, D., & Kristiaan. (2019). *Delik Agama*, (Bandung: Pustaka Reka Cipta), p.21

¹¹ Mirzana, H. A. (2012). *Op.Cit.*, p. 150

¹² Mirzana, H. A. (2012). *Ibid.*, p. 155

included in the Criminal Code (KUHP), especially in the provisions of Article 156A of the Criminal Code.

The inclusion of the provisions of Article 156A of the Criminal Code is a state policy in providing protection for legal interests, especially one's religious sense and as an early preventive effort to avoid conflicts between religious communities that could potentially lead to the disintegration of the Indonesian nation, and endanger the integrity and national defense of the Indonesian nation. Article 156 and Article 156A of KUHP is:

Article 156 : "Whoever publicly declares hostility, hatred or contempt for one or several groups of the Indonesian people, is threatened with a maximum imprisonment of four years or a maximum of three hundred rupiahs. The words of the groups in this article and the following article mean, each section of the people Indonesia, which differs from one or several other parts because of race, country of origin, religion, place of origin, ancestry, nationality or position according to constitutional law".

Article 156A: "Convicted with imprisonment for up to 5 years, whoever deliberately publicly issues or acts: a) which is hostility, abuse or desecration of

a religion that is adopted in Indonesia; b) with the intention that people do not follow any religion, which is based on Godhead."

The Criminal Code does not explain further about this provision. However, if you trace the Law of the Republic of Indonesia Number 1 / PNPS / 1965 regarding Prevention of Abuse and/or Blasphemy of Religion (as the origin of the provisions of Article 156A of the Criminal Code), an explanation can be found as follows: "The purpose of this provision has been sufficiently explained in the general explanation above. How to express feelings or perform actions can be done verbally, in writing or other actions. Letter a, the criminal acts intended here, are those which are solely (essentially) aimed at the intention to antagonize or insult. Thus, written and oral descriptions carried out objectively, *zakelijk* and scientifically about a religion accompanied by an effort to avoid the existence of words or arrangement of words that are hostile or insulting, is not a criminal offense according to this article. Letter b, the person who commits the crime here, besides disturbing the peace of religious people, basically betrayed the first precepts of the State in total, and therefore is in its place, that his actions

were criminally appropriated "

The provisions of Article 156 and Article 156A of the Criminal Code are elaborations of anti-discrimination based on religion and such as to protect minority groups from the majority group. The object protected from this provision is "person" but not in the physical sense, the intention is the sense of honor from someone. An attack on one's self-esteem in a group that will lead to public order is disrupted. So, based on Article 156 of the Criminal Code when giving a statement containing hatred, hostility, or degrading to groups based on religion can be convicted.¹³

When viewed in terms of the material, the provisions of Article 156A of the Criminal Code require direct religious crime in the form of acts of tarnishing or polluting religious teachings or religious means. The elements contained in Article 156A of the Criminal Code are:

1. Whoever

This element refers to legal subjects (people) without exception who are deemed capable of committing criminal acts and accountable for their actions criminally. However, it is necessary to know clearly who is meant by the formula "whoever" in this provision. Therefore, to

explain who is meant by the element "whoever" in this provision will refer to the provisions of Article 55 of the Criminal Code (KUHP). Here are the conditions:¹⁴

Article 55 of the Criminal Code:

- (1) Being convicted as the maker (*dader*) of a criminal offense: *First*: Those who do, who order to do and who take part in doing the action; *Second*: Those who, by giving or promising something, by abusing power or dignity, by violence, threats or misdirection or by giving an opportunity, means or information, deliberately encourage others to do something.
- (2) Only those whose actions are deliberately recommended are taken into account, along with their consequences.

a) Criminal Makers (*Pleger*).

The term *pleger* is derived from *zij die het geit pleger*, namely those who commit criminal acts or acts. *Dader / Pleger* as referred to in the provision of Article 55 of the Criminal Code (KUHP) is every person whose attitude and actions meet all elements mentioned in the formulation of a criminal act

¹³ Priyatno, D., & Kristiaan. (2019). *Op.Cit.*, p. 23

¹⁴ Priyatno, D., & Kristiaan. (2019). *Ibid.*, p. 24-32

(criminal legislation) and this person is a person who commits a criminal offense or in other words, this person is a person who alone has made all elements or elements of a crime a reality. So, the pleger element is a person whose actions have caused consequences that are prohibited by law.

b) *Doenpleger*

Doenpleger in criminal law is often called *middellijk daderschap*. *Doenpleger* in criminal law is divided into 2 (two) legal subjects namely those who order to do (*middelijke dader, doenpleger, auctor intellectuals, manus domina*) and those who are told to do (*onmiddelijke dader, auctor physicus, manus ministra*). In the case of a criminal offender, the perpetrator who commits a crime does not do it himself but uses or orders another person with a record, the person who is told cannot refuse or oppose the will of the person who ordered it to do it. In such a position the person who is told to do only becomes an instrument and the act is fully controlled by the person who ordered it to do it.

c) *Medepleger*

The term "*medepleger*" in Criminal Law is often referred to as "*mededader*" or "*medepleger*" or also called *mededaders-chap*. In the Criminal Code (KUHP) itself, there is no specific definition that explains this. According to *Memorie van Toelichting Wetboek van Strafrecht*, a person who participates in doing (*a mededader*) is a person who has directly participated in carrying out a criminal act that has been threatened with a penalty by law, or has directly participated in an act or take part in committing acts to resolve the crime in question. This *Medepleger*, divided into 2 (two) views: First, the view is subjective with a focus on the inner intentions and attitudes of the participants to participate (*mede dader*); Second, an objective view that focuses on the form of the actions of the perpetrators to participate (*mededader*) where the form of the act must be the same as the formulation of criminal acts in the law (*delicts omschrijving*).

d) *Uitlokker* (Advocacy or persuasion)

Advocacy / *uitlokker* is defined as a person who moves other people (*uitlokker*) to commit a crime by using the means determined by law to commit a crime. Efforts to move other people must be done with certain power and efforts, people who are recommended to commit criminal acts are people who are capable of being accountable for their actions (*itoerekenbaar*) and their methods have been determined limitatively in the law.

Jan Rimmelink gave an opinion that in the construction of the law, the *Uitlokker* was divided into 5 (five) conditions that had to be met, namely:¹⁵

- a. There must be a will to move others to take actions that are prohibited by law;
- b. This act of moving other people is done by means as determined by law;
- c. The decision to desire the other party must be made;
- d. A person who is moved (persuaded or provoked) embodies a plan implanted by a persuader or mobilizer to commit a crime or at least experiments that direction; and;
- e. Persons who are persuaded must be held liable for criminal liability.

This act of moving other people is

¹⁵ Rimmelink, Jan. (2003), *Hukum Pidana*, (Jakarta: PT. Gramedia Pustaka Umum), p. 328.

done by means as determined explicitly by law. The facilities mentioned in Article 55 paragraph (1) of the Penal Code can be explained as follows:

- a. Give something (*Giften*).

"*Giften*" is the plural form of the word "gift" which means gift, so the word "gifted" should be translated with the words "gifts" and it is not necessary that the gifts must be gifts in the form of wages for doing the act recommended.

- b. Promise something (*Beloften*)

"*Beloften*" is the plural form of the word "belofte" which means promise, so the word "beloften" should be translated with the words "promises" which have a very different meaning from the words "agreement".

- c. Abusing power (*Geweld*)

Regarding this, it can be explained that the words "geweld." in Dutch has the meaning as "macht" or "kracht" which means "power" or commonly referred to as "violence".

- d. Misleading

"Misleading" comes from the words "misleiden" which means "tot onjuiste gevolgtrekkingen brengen" or "op een dwaalspoor brengen" which means to make others get the wrong impression or cause misunderstanding to others.

2. Purposeful Elements.

The element "on purpose" in the Criminal Code (KUHP) is not explicitly regulated. To explain what is meant by "willful" will use several doctrines in the science of criminal law. The meaning of intent can be taken from M.v.T. (Memorie van Toelichting) as quoted by Pompe was later quoted again by Moeljatno in his book entitled "Principles of Criminal Law" which defines "intentionality" (*opzet*) as "willing and knowing" (*willens en wetens*).¹⁶ In conclusion, said "deliberately" means to want and know what is done and know the consequences of his actions. In criminal law, there are 2 (two) intentional theories:¹⁷

a. Theory of Will (Wils Theorie).

Simons and Zevenbergen argue the core of deliberate is the will to realize the elements of the offense as contained in the formulation of the law (*wet*).

b. Knowledge Theory or Imagining Theory (Voorstelling Theorie).

Frank argues, intentionally means to imagine the aftermath of an action he does; people can not want results

but can only imagine them. This theory emphasizes what is known or what is imagined by my officer about what will happen when he will do.

In addition, P.A.F. Lamintang and C. Djisman Samosir explained that in the level of criminal law theory, 3 (three) forms of intentionality are known, namely as follows:¹⁸

a. Deliberation as intention (*opzet als oogmerk*). Deliberation as an intention means that the occurrence of a crime or a particular effect is truly an embodiment of the intent or purpose and knowledge of the perpetrator. In full, intentions as intent can be defined by someone said to have *opzet als oogmerk* if that person commits an act intentionally and the act is indeed the goal of his action.

b. Intentional awareness of certainty or intentional with necessity (*opzet bijzekerheids of noodzakelijkheidsbewustzijn*).

Someone is said to have or do an act intentionally as being aware of certainty or intentionally with necessity if the person does an act to achieve a

¹⁶ Moeljatno. (1983), *Azas-Azas Hukum Pidana*, (Jakarta: Bina Aksara), p. 185.

¹⁷ Priyatno, D., & Kristiaan. (2019). *Op.Cit.*, p. 32-34

¹⁸ Lamintang, P.A.F, dan Samosir, C. Djisman. (2010), *Delik-Delik Khusus (Kejahatan Yang Ditunjukkan Terhadap Hak Milik Dan Lain-Lain Hak Milik Yang Timbul Dari Hak Milik)*, (Bandung: Nuansa Aulis), p. 28.

certain goal, but to achieve that goal there have been other consequences that he realized that the consequences would arise if he did his actions.

- c. Intentionally aware of the possibility (*voorwaardelijk opzet* or "*dolus eventualis*"). This type of intent is the extent to which the knowledge or awareness of the perpetrator of the forbidden consequences that may occur from his actions. Put simply, *dolus eventualis* can be defined by the perpetrator having realized that his actions might have other consequences that are not the purpose of his actions, but his conviction of the possibility of the effect does not preclude him from doing his actions and it turns out then that the other consequences are happening. *Dolus eventualis* is divided into 2 (two) conditions, namely as follows: *a*). When the perpetrator has thought of other consequences that have occurred because of his actions and those effects occur; and *b*). In *dolus eventualis* there must be an intentional purpose as an intention so that it is still called "intentional" (not negligent).
3. The public element expresses feelings or acts which are principally hostility, abuse or defamation of a religion that is

adopted in Indonesia, or with the intention that people do not adhere to any religion, which is based on the Godhead of the Almighty.

This element can be broken down into several more elements, namely:¹⁹ 1). Intentionally publicly expressing feelings that are primarily hostile towards a religion that is adopted in Indonesia; 2). Intentionally publicly committing acts that are principally hostile to a religion that is held in Indonesia; 3). Intentionally publicly issues feelings that are principally an abuse of a religion that is adopted in Indonesia; 4). Intentionally publicly commit acts which are principally an abuse of a religion that is adopted in Indonesia; 5). Intentionally publicly expressing feelings which are essentially blasphemous towards a religion that is adopted in Indonesia; and 6). Intentionally publicly committing acts which are essentially desecration of a religion that is held in Indonesia.

Regarding the elements of "acts of abuse" and "issuing feelings or carrying out actions that are principally desecrating to a religion adhered to in Indonesia", one of the criteria (specifically for Islam) can be seen from the fatwa of the Indonesian Ulema Council (MUI) which contains 10

¹⁹ Priyatno, D., & Kristiaan. (2019). *Op.Cit.*, p. 34-36

(ten) criteria that can be used to determine a cult or not or to determine whether an act is an abuse or blasphemy of religion or not. The ten criteria are as follows:

- a) Denying the Five Pillars of Faith and the Five Pillars of Islam;
 - b) Believe in and/or follow the creed that is not by the evidence of Shari'a (Al-Quran and As-Sunnah);
 - c) Believing the revelation after the Koran;
 - d) To deny the authenticity and/or correctness of the contents of the Koran;
 - e) Doing interpretation of the Koran that is not based on the rules of interpretation;
 - f) deny the position of the Prophet's Hadith as a source of Islamic teachings;
 - g) Disparaging and/or demeaning the Prophets and Apostles;
 - h) Denying the Prophet Muhammad as the last Prophet and Apostle;
 - i) Change the principles of worship that have been set sharia; and
 - j) To disbelieve fellow Muslims without the arguments syar'i.
- 1) Intentionally expressing feelings so that people do not follow any religion, which is based on the Godhead; and

- 2) Intentionally committing acts in public so that people do not adhere to any religion, which is based on the Godhead.

With this formulation, many parties and experts who assess the provisions of Article 156A of the Criminal Code (KUHP) do not have a clear clarity and intent and there are no clear and definite benchmarks about what is meant by "hostility, abuse, and blasphemy" so that anyone who expresses his thoughts orally and in public according to his perspective of thinking differs from the perspective of the majority's thinking, that person can at any time be accused of blasphemy, defamation, and defamation of a religion using or based on the provisions of that article.

The provisions of Article 156A cannot be implemented without being preceded by orders and stern warnings to stop the acts referred to in the Joint Ministerial Decree (Minister of Religion, Minister / Attorney General and Minister of the Interior). Regarding this matter, the Supreme Court of the Republic of Indonesia is of the following opinion: "That the provisions of Article 156A of the Criminal Code constitute a criminal offense added to the Criminal Code based on orders from the Law on Prevention of Blasphemy. the

main thing is "hostility", "abuse" or "blasphemy" of a religion that is embraced in Indonesia. Therefore, to implement these provisions, it is necessary to order and warn strongly by Article 2 and Article 3 of the Law on Prevention of Blasphemy in Religion "Button.

As stated, this provision originates from Law Number 1 / PNPS / 1965 concerning Prevention of Abuse and/or Blasphemy of Religion precisely in Article 1 which regulates the prohibition of seeking public support and the prohibition on interpreting a religion. The provisions of Article 1 of Law Number 1 / PNPS / 1965 concerning Prevention of Abuse and / or Blasphemy of Religion reads: "Everyone is deliberately prohibited from publicly telling, advocating or seeking public support to interpret the main religion in Indonesia or to commit religious activities which resemble those of religious activities, interpretations, and activities which deviate from the main points of the teachings of that religion". Based on the explanation, clearly explained several things as follows: "With the words" in public "means what those words usually use in the Criminal Code. The religions embraced by the population in Indonesia are Islam, Christianity, Catholicism, Hinduism, Buddhism and Khong Hu Cu

(Confucius) This is proven in the history of the development of religions in Indonesia. These 6 (six) religions are religions that are embraced by almost the entire population of Indonesia, so they are guaranteed as provided by Article 29 paragraph (2) of the Basic Law, and receive assistance and protection as provided by this article.

For the body/mysticism body, the Government should channel it towards a healthy outlook and the Godhead. This is by MPRS Decree No. II / MPRS / 1960, annex A. Field I, number 6. By the words "religious activities" are meant all kinds of activities that are religious, for example naming a stream as a religion, using terms in carrying out or practicing the teachings of his beliefs or performing his worship and so on. The main points of religious teachings can be known by the Department of Religion which for that has the tools/ways to investigate it".

Based on Article 1 of Law Number 1 / PNPS / 1965 concerning Prevention of Abuse and/or Blasphemy of Religion, it can be drawn that the provisions of the article are essentially prohibited to anyone who deliberately publicly performs the following actions:

a) Tells encourages or seeks general support to make interpretations that

deviate from the main points of religious teachings held in Indonesia; and

b) Tells encourages or seeks general support to carry out religious activities that deviate from the main points of religious teachings that are adhered to and recognized legally in Indonesia.

Everyone who violates and fulfills the elements of the criminal provisions above (Article 156A of the Criminal Code formerly Article 1 of Law Number 1 / PNPS / 1965), according to the provisions of Article 2 paragraph (1) Presidential Decree Number 1 of 1965 regarding Prevention of Abuse and / or Religious Blasphemy, he will be warned and ordered to stop his conduct in a joint decision of the minister of religion, attorney general and the minister of the interior.

Furthermore, the provisions of Article 2 paragraph (2) Presidential Decree Number 1 of 1965 concerning Prevention of Abuse and / or Blasphemy of Religion, regulates that if the violator is an organization or stream of belief, then the organization or flow of trust by the president after being considered by the minister of religion, minister/attorney general and minister of the interior, can be dissolved and declared as a prohibited

organization/sect.

In Presidential Decree Number 1 of 1965 which regulates the Prevention of Abuse and / or Blasphemy of Religion it is also stated that if after the actions outlined above, the perpetrators continue to commit acts that violate the provisions in Article 1 of Law Number 1 / PNPS / 1965 concerning Prevention of Abuse and/or Blasphemy of Religion, the person or members of the management of the organization / stream of belief can be convicted by using the provisions of Article 1 of Law Number 1 / PNPS / 1965 concerning Prevention of Abuse and / or Blasphemy of Religion (now Article 156A of the Law Criminal Law).

Regarding the aforementioned matters, strictly stipulated in the provisions of Article 2 and the provisions of Article 3 of the Presidential Decree of the Republic of Indonesia Number 1 / PNPS of 1965 concerning Prevention of Misuse and/or Blasphemy of Religion which reads as follows:

Article 2 :

- 1) Anyone who violates the provisions in Article 1 is given an order and a strong warning to stop the action in a joint decision of the Minister of Religion, Minister / Attorney General and the Minister of the

Interior.

- 2) If the violation referred to in paragraph (1) is carried out by an organization or a school of trust, the President of the Republic of Indonesia may dissolve the Organization and declare the Organization or School as a prohibited Organization / Flow, one after the President has been considered by the Minister of Religion, the Minister / Attorney General and the Minister of the Interior.

In its explanation, stated clearly: By the personality of Indonesia, then the people or adherents of a flow of trust or members or members of the Organizational Management who violate the prohibition in Article 1, for the beginning, it is felt that sufficient advice is given as necessary. If the deviation is carried out by an organization or adherents of a flow of trust and has a fairly serious effect on a religious community, the President has the authority to dissolve the organization and to declare it an organization or prohibited sect with its consequences (Jo. Article 169 of the Criminal Code).

Article 3: If, after an action by the

Minister of Religion together with the Minister / Attorney General and the Minister of the Interior or by the President of the Republic of Indonesia according to the provisions in Article 2 against people, organizations or beliefs, they continue to violate the provisions in Article 1, then the person, adherent, members and / or members of the Organization's Management concerned from that sect shall be sentenced to imprisonment for up to five years.

In its explanation, stated clearly: The provision of a criminal threat regulated in this article is a follow-up action against the elements who continue to ignore the warning in Article 2. Because the flow of trust usually does not have the form of an organization/association, where it is easy to distinguish who the management is and who its members are, then regarding the flow - the flow of trust, only adherents who continue to carry out violations can be subject to a criminal offense, while the leaders of the flow themselves who stop their activities cannot be prosecuted. Considering the idiotic nature of the criminal acts in this article, the threat of a 5 (five) year criminal sentence is reasonable.

The phrase "in public" in the provisions of this article also basically has reduced the value of the purpose of protecting religious teachings and religious means, because abuse of blasphemy cannot be convicted if not done in public and if the act was not intended "so that people do not adhere to any religion which is based on Godhead ". Therefore, the provisions in this article are unclear and give an ambiguous impression about protecting "religious teachings" or "religious people so that their peace is guaranteed", or both. This is a weakness in policy formulation/legislation.²⁰

The provisions of Article 156A of the Criminal Code (KUHP) still only provide partial problem solving, because the criminal act is directed against religion (to or cause others not to adhere to a religion in Indonesia) and therefore, does not include expressions of feelings intended against prophets, scriptures or religious leaders and religious institutions. Therefore, the provisions of Article 156A of the Criminal Code (KUHP) still require legal construction as used for the provisions of Article 156 of the Criminal Code (KUHP) to deal with statements or

actions directed against the Prophet, the holy book, religious leaders and others. Prophets, holy books, religious leaders and others can not be separated from religion, so negative statements and actions directed against the prophet, the holy book, religious leaders and others must be considered also directed towards religion, as referred to in the provisions of Article 156A of the Criminal Code.

The Criminal Code (KUHP) currently in force also regulates offenses that are at least relevant or relating to religion (relating to religion) and offenses directed against religion (against religion) the offenses concerned with religion are called "*Grabdelikte*" and "*Leinchenfrevel*" and also concerning violations of religious gatherings. the offenses concerned with religion are called "*Grabdelikte*" and "*Leinchenfrevel*" and also concerning violations of religious gatherings. The offenses concerned/related to religion and offenses directed against the religion are strictly regulated in several provisions in the Criminal Code, namely: Article 156, Article 156A, Article 157, Article 175, Article 176, Article 177, Article 178, Article 179, Article 180, Article 503, Article 503 paragraph (1), Article 545, Article 546, Article 547.

Based on the provisions of the

²⁰ Nurdin, N. (2017). Delik Penodaan Agama Islam Di Indonesia. *International Journal Ihya'Ulum al-Din*, 19(1), 129-160, p, 138

Article in the Criminal Code that has been mentioned, it can be classified or classified in the regulation of religious crime or at least the offense concerned or relating to religion in the Criminal Code (KUHP) currently in force is related to the following matters:

1. Expressing feelings of animosity, hatred or contempt of Indonesian people based on religion.
2. Publicly expressing feelings or committing acts of hostility, abuse or blasphemy against religion.
3. Publicly express feelings or commit acts so that people do not follow any religion in Indonesia.
4. Broadcast, exhibit or paste writings or paintings in public, the contents of which contain statements of feelings of hostility, hatred or contempt among or against groups of the Indonesian people, including because of religion.
5. With violence or threats of violence impede religious meetings or ceremonies that are general and that are permitted or hinder the burial ceremony of the body.
6. Interfering with religious meetings or ceremonies that are general and are permitted or interfere with the funeral rites which cause chaos or noise.
7. Laugh at religious officers when carrying out permitted tasks.
8. Insulting objects for worship purposes at the place or at the time of worship.
9. Obstructing or obstructing the entrance or obstructing the transportation of the corpse to the permitted grave.
10. Stain the grave, or intentionally and unlawfully destroy or damage the warning sign at the gravesite.
11. Digging or retrieving bodies or moving or transporting bodies that have been dug up or taken.
12. Make noise near buildings to carry out worship that is permitted.
13. Religious officers who carry out double marriage ceremonies.
14. Stating fortune, forecasting or interpreting dreams.
15. Selling amulets or objects that have supernatural powers.
16. Teaching supernatural science that aims to generate trust if a criminal act does not endanger him.
17. Wearing amulets or magic objects when giving testimony in court under oath.

CONCLUSION

Religious offenses as offenses are not specifically regulated in the Criminal Code, only a few offenses can qualify as

offenses or religious offenses. The formulation of religious criminal acts in the Criminal Code is regulated in Book II Chapter V on Crimes Against Public Order precisely in Article 156 and Article 156A of the Criminal Code (which was included in the Criminal Code after the issuance of Law No. 1 / PNPS / 1965 concerning Misuse and \ or Blasphemy of Religion) . The inclusion of the provisions of Article 156A of the Criminal Code is a state policy in providing protection to legal interests, especially one's religious sense and as an early preventive effort in order to avoid conflicts between religious communities that have the potential to cause division of the Indonesian nation, and endanger the integrity and national defense of the Indonesian nation. The provisions of Article 156 and Article 156A of the Criminal Code are elaborations of anti-discrimination based on religion and such as to protect minority groups from the majority group. The object protected from this provision is "person" but not in the physical sense, the intention is the sense of honor from someone. An attack on one's self-esteem in a group that will lead to public order is disrupted. So, based on Article 156 of the Criminal Code when giving a statement containing hatred, hostility, or degrading

to groups based on religion can be convicted. When viewed in terms of the material, the provisions of Article 156A of the Criminal Code require direct religious crime in the form of acts of tarnishing or polluting religious teachings or religious means. The elements contained in Article 156A of the Criminal Code are elements of whoever, elements with only, and elements in public. The provisions of Article 156A of the Criminal Code (KUHP) still only provide partial problem solving, because the criminal act is directed against religion to or cause others not to adhere to a religion in Indonesia and therefore, does not include expressions of feelings directed towards prophets, holy books or religious leaders and religious institutions. Therefore, the provisions of Article 156A of the Criminal Code (KUHP) still require legal construction as used for the provisions of Article 156 of the Criminal Code (KUHP) to deal with statements or actions directed against the Prophet, the holy book, religious leaders and others.

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