

## Research Article

# Defending Religion Based Concept of the Criminal Code

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The purpose of this study is to examine and analyze whether the act of defending religion can be considered a criminal act, and whether the reason for the abolition of criminal acts can be applied to every act in the context of defending religion. The type of legal research used is normative law research or library law research, which involves analyzing legal problems through legislation, literature, and case studies. The findings of this legal research provide answers to the two problem formulations. The first problem formulation pertains to whether the act of defending religion can be classified as a crime. The answer is that it can be considered a crime when the act of defending religion is carried out using methods that violate applicable laws and regulations. In other words, if the act of defending religion involves illegal actions or contravenes established laws, it can be deemed a criminal act. However, if the act of defending religion adheres to existing legal regulations, it may not be categorized as a crime. The second problem formulation addresses whether the act of defending religion can be justified based on the reason for the abolition of a crime. It is important to note that each case of defending religion is conducted consciously and based on the will of the person involved. Therefore, the elements required for the reason for the abolition of a crime may not occur in cases of acts of defending religion.

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## 1. Introduction

Religion and law already have historical relationship[1] Claimed by (some) Muslims as "religious values" that are considered sacred and religious and defended desperately even to the point of being willing to commit violence and various crimes against humanity are basically "cultural values" of a secular and profane nature. Because all of this is the result of the interpretation and reconstruction of the thinking of individual elites (such as clerics and fuqaha or experts of Islamic Law) as well as historical products of the humanitarian and societal experiences of Muslims when they intersect with the

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surrounding socio-political-cultural facts. Therefore, again, it is not religion but rather the interpretation of religion that is often the source of the trigger and dismantling of the various violence and acts of intolerance perpetrated by a number of radical-conservative religious groups in society. A new problem arises that is contrary to the beliefs of a religious believer with the laws in force in the State in which the perpetrator lived and grew up. Especially in Indonesia, whose principle is based on the Jakarta charter, namely the one true godhead but still what applies is a general principle, namely Indonesia is a state of law not a state based on religion. In this State every color of the State is guaranteed its human rights to be exercised, both in worship, expressing opinions and other human rights that are constitutionally regulated and must be respected. Nonetheless, the Indonesian constitution guarantees the protection, respect, and realization of human rights.[2]

In the last 10 years, there have been actions that injure differences that after a period of time can coexist peacefully in Indonesia. There have been several 'esktrim' Islamic groups that carry out acts that this group considers to be an act of defending religion in a repressive way. We often hear the reason, or rather the claim, of a number of "extreme Islamist" groups when carrying out acts of violence (whether physical, cultural, or symbolic violence) against various religious groups outside of them (both non-Muslims and Muslims themselves) are in defense of the religion (Islam) or in defense of the Holy Book (Qur'an). And even more "phenomenal" again, for the sake of defending God (Allah Almighty).

This ethnicity made the researcher interested in researching how our normative law accommodates recessive actions like this in order to defend religion, thus the researcher decided to raise the title of t as follows DEFENDING RELIGION BASED CONCEPT OF THE CRIMINAL CODE

## 1.1. Issues

1. Can an act of defending religion qualify as a criminal act in the construction of criminal law?
2. Can the reason for defending religion qualify as a reason for the abolition of a criminal offence?

## 1.2. Literature Reviews

1. Reza Ferdianto [1], LAW ENFORCEMENT ANALYSIS OF CRIMINAL ACTS OF INSULTING A RELIGION THROUGH SOCIAL MEDIA (Study Verdict Number: 391/Pid.Sus/2016/PN. Kl). The issues raised in this thesis are:
  2. How is law enforcement against cases of insulting a religion through social media ?
    - i. Why do perpetrators participate in cases of insulting a religion through social media not being carried out by law enforcement?

Results of his research: Law enforcement of criminal acts of religious insults through social media. Perpetrators are punished under the provisions of Article 45 paragraph (2) of the ITE Act. The criminal act of religious insult committed by the perpetrator is a crime that is very troubling to the community. Made aware of reports from the community The police immediately moved to make an arrest. Based on the evidence and actions committed by the perpetrator, he has fulfilled the provisions of Article 156a of the Criminal Code and Article 45 paragraph (2) of the ITE Law. The enforcement of the law that is carried out cannot identify the elements of the perpetrator participating in criminal acts in cases of religious insults through social media. The limitations of investigators in conducting investigations are due to the difficulty of presenting witnesses at the time of the crime. In addition, those involved in participating in cases of religious insults through social media have fled. So the public prosecutor can only prosecute one perpetrator in his indictment. .

The fundamental difference with the thesis above with the author's work in this thesis is in mr. Reza's thesis specifically about how law enforcement against religious insulters is carried out specifically in the social media while the author discusses the impact that arises after there is an act of blasphemy, whether it is applied in the social media or not so that the scope of discussion is wider and more thorough.

(a) Muhammad Amin [3], ANALYSIS OF BLASPHEMY IN SUPREME COURT DECISION NO 1787/K/PID/2012, in this thesis research the formulation of the problem is:

1. Have the considerations and decisions of the judges in the judgment of case No. 1787/K/PID/2012 provided a sense of justice?
2. Can the criminal conviction of the perpetrators of blasphemy in the judgment of case No.

1787/K/PID/2012 resolve the conflict between Sunni Shia in Sampang?

The result of his research is that: material law has stated unequivocally about the basis of the charges that are the charges of the public prosecutor, but in outlining the defendant's actions into section 156a it is not appropriate and seems hasty. The judge did not interpret the elements in article 156 properly so that only two elements, of which the second element must be explained again into the four forms of criminal acts contained in the second element. The philosophical aspect of sentencing, the imposition of criminal law against the accused for four years is not commensurate or efficient with the legal acts committed by the defendant, because judging from the actions committed by the defendant has made suffering not only individuals but a number of people who are not a few. From a social point of view, sipelaku has not shown positive social to the community because it does not take warnings from the sunni community who have long been uneasy about its teachings. In addition, the harm caused is not only expressly but also impliedly coupled with the role of the defendant as a kyai who should know that the acts he does, namely indicting or conveying teachings that are different from the teachings of society in general, will cause disturbances in the public interest or disturb the peace of religious people. From the aspect of legal reasoning, the steps of the judge in identifying, qualifying and finally concluding so as to give birth to a verdict are in accordance with the steps of legal reasoning and on the result of the verdict.

A very basic difference with the research yang the researcher is careful with the thesis written by the father of muhammad is that the person concerned conducted a judgment study of the Supreme Court where the direction of his blasphemy was not in the act of defending religion arising from blasphemy but in the case there was a connection because it had cause and effect.

## 2. Methodology

The research method that I used to compile this research is to take an inventory of regulations that are correlated with the cases I researched and at the same time look for several cases of sexual violence that have entered the realm of the courts and assess the sentencing of the defendants considering that we recently had a special regulation regarding violence completely sexual, we called it Yuridic Empric method.

### 3. Findings And Discussion

#### 1. Acts of Defending a Religion That Can Be Qualified as a Criminal Removal

For some of us defending religion is an obligation of sharia, then whether someone who practices sharia is punished by law in Indonesia just because they defend the sharia of their religion, ironically it may be for some people who think so, but it is good for us to look deeper into the attitude of a Muslim when his religious sharia is insulted there are such acts that are worth doing and for example until there is a criminal act, can we apply the reason criminal eraser. The author will start as follows:

##### (a) Insults of Islam and Its Punishment

The attitude and character of "insulting" or "menistakan" is the morals of the enemies of Allah Azza wa Jalla who became the morals of the infidels and munafiqins. Therefore, Allah Azza wa Jalla explains his skan clearly to Rasulullah Sallallahu 'alaihi wa sallam and his Companions in many verses and events. In the life history of Rasûlullâh Sallallahu 'alaihi wa sallam once occurred in the events of the Tabuk war, the munafikins insulted the Companions of Radhiyallahu anhum. Rasulullah Sallallahu 'alaihi wa sallam as the most affectionate man at that time did not forgive and did not accept the uzur of the insulters, not even seeing the reason for them at all who claimed to do it just play and joke. He Sallallahu 'alaihi wa sallam recited the revelation that descended from the heavens enshrined in the Qur'an, the Word of Allah Azza wa Jalla :

*And if you ask them (about what they're doing), of course they'll answer: "Actually, we're just joking and playing around". Say: "Is it with Allah, His verses and His Rasûl that you are always making fun of?". You don't have to apologize, because you are an infidel after faith. If We affix a class of you (because they are torah), we will undoubtedly disrespect the (other) class because they are the ones who always sin. [At- Taubah/9:66]*

The Clerics therefore include deeds of insulting Allâh Azza wa Jalla , the scriptures and His prophet in the disobedience of the faith. Shaikhul Islam Ibn Taimiyah rahimahullah said that insulted God, the scriptures and His Messenger are pagans that make the perpetrators infidels after the faith. [2]

##### Types of Insults of Islam

Islam generally divides human beings into three groups: infidels, hypocrites and Muslims. All these types of people are so likely to commit desecration and contempt of religion that it is necessary to know the types and punishments of religious insults based on the following divisions:

i. **Insults of Islam from among the Infidels:** The unbelievers sometimes *disbelieve harbi* and sometimes *disbeliever al-'Ahd* (who is bound by the covenant). The division of this type of infidels ever as conveyed by Abdullah bin Abbas Radhiyalahu anhu in his statement, "Formerly the polytheists were divided into two groups before the Prophet Shallallahu 'alaihi wa sallam and the Muslims. Among them is a group called *ahlul harb*, Prophet Shallallahu 'alaihi wa sallam fighting them and they are fighting He Shallallahu 'alaihi wa sallam. There is a group called *ahlul 'ahd*, the Prophet Shallallahu 'alaihi wa sallam does not fight them, and they do not fight the Youthu Shallallahu 'alaihi wa sallam. [4]

*The harbi* infidels are the infidels whom Allah commands to fight, as Allah Azza wa Jalla said :

*O believers! Fight the unbelievers around you, and let them find violence from you, and know that Allah and those who are God-fearing. [At-Taubah/9:123]*

If an *infidel harbi* preaches Islam, puts Allah Azza wa Jalla and his Messenger to rest or puts a verse from the Qur'an to rest, then he is fought and killed unless he converts to Islam. This is based on the words of Allah Azza wa Jalla :

*And fight them, until there is no slander, and the religion is only for Allâh. If they stop (from being hostile to you), then there will be no enmity, except against the sects. [al-Baqarah/2:193]*

Imam Ibnul Qayyim explains this verse by stating that Allah Azza wa Jalla ordered to fight them until they stopped doing the causes of slander i.e. shirk. Allah Azza wa Jalla also explains that there is no enmity except to the *zhalim* people. A person who deliberately insults and antagonizes the religion of Islam means not to stop (from obscurity), so fighting it is mandatory when able and killing him when able to punish it is mandatory. The insulter of this religion was a *zhalim* so enmity was imposed. (*Ahlidz Dzimmah, ...*)

As for the covenant-bound infidels, they are divided into three types;

**First:** Kafir *dzimmy*, i.e. infidels who pay *jizyah* (tribute) collected annually in return for their stay in the land of the Muslims.

**Second:** Kafir *mu'ahad*, i.e. the infidels who have reached an agreement between them and the Muslims not to fight within the agreed period of time.

**Third:** Kafir *musta'man*, i.e. infidels who get security guarantees from Muslims or some Muslims.

Any infidel of these three kinds of infidels who dares to convert to Islam, put Allah Azza wa Jalla and His Messenger to rest, then the covenant that has occurred becomes void and halal his blood and property to the Islamic government. This is the opinion of the majority of Clerics except the Hanafiyah school. Imam al-Qurthubi rahimahullah stated, "The majority of Scholars hold that *a dzimmiy infidel* who insults, denounces or demeans the position of the Prophet Sallallahu 'alaihi wa sallam orifies Him with something that is the teaching of their kufur, then he is killed, because we do not provide protection for such. Abu Hanifah and Ats-Tsauri and his followers of the Kufah scholars differed and argued that they were not killed, for the shirk they committed was greater than all of that. But still they were given the punishment of *ta'zir*. (Al-Jâmi' li Ahkâmil Qur'ân, .... )

The majority of Scholars postulate with the words of Allâh Azza wa Jalla :

*How can there be a covenant from the side of Allâh and His Messenger with the polyryrians, except those whom you have entered into a covenant near the Masjidil haram, so as long as they are straight against you, let you be straight against them. Indeed, Allâh loves the God-fearing. How can they have a covenant with allâh and His Messenger with the musyirikin, when they have a victory over you, they do not maintain a relationship of kinship with you, nor do they heed the covenant. They please you with their mouth, while their hearts refuse. And most of them are disobedient. They exchanged the signs of Allâh for a small price, and they prevented the people from the way of Allah. Indeed, it is what they do. They do not preserve the relationship with the mu'min people, and do not heed the covenant. And it is they who go beyond the limits. If they repent, establish the sholat and reap the zakat, then they are your brothers of faith. And We explained the signs for the people who know. If they break their oaths after they have promised, and they revil your religion, then fight over the leaders of the unbelievers, for they are the ones whom they cannot keep their promise, that they may cease. [at-Taubah/9:9-12]*

Shaikhul Islam rahimahullah explained, "If ahlu dzimmah puts islam to rest then he is the leader of the creed, so it is obligatory to fight as Allah Ta'ala says: *then fight the leaders of the infidels*, (at- Taubah/9:12) so that there is no more covenant with him; for we covenant not to appear in the manner of interfering with religion and to distort it. So it is true that all who put our religion to rest after a covenant demands that the person not do so that he is the leader of the savagery with whom there is no covenant with him so is obliged to kill him with the nash of the verse[4]Imam asy-Syâfi'i rahimahullah after explaining the conditions written in the agreement for the dzimmah expert stated: It is also required that one of them if it says about the Prophet Sallallahu 'alaihi wa sallam

, the Qur'an or Islam with something inappropriate to say, then disappear the covenant of Allâh then the responsibility of the Amir mukminin and the whole muslims and cancel all forms of security given to him as well as halal for Amir mukminin property and his soul as is the lawfulness of the treasures and blood of the infidels of harbi.[5]

#### i. Insults of Islam from among the Hypocrites or Zindiq

The Clerics widely used the term Zindiq to name the hypocrite That is to hide the futility in his beliefs and to reveal faith in his words. (Al- Asqalani, Ibn Hajar, fathul bari) therefore imam Ibnul Qayyim defined zindiq with the people who appeared islamic and followed the Apostles and hid in his mind the animosity and enmity towards Allâh Azza wa Jalla and his apostles. They are hypocrites and they are at the bottom of hell. [6]

When it occurs from among these hypocrites the attitude and act of insulting and menistakan Allâh Azza wa Jalla , Rasul his Shallallahu 'alaihi wa sallam and religion, then his ruling in the Islamic Shari'a is killed when it is revealed, for it is already nifaq l'tiqad who brings out one person from Islam.

This is based on sharia postulates including:

Firman Allah Azza wa Jalla :

*They (those hypocrites) swear by (the name of) Allâh, that they did not say (anything that hurts you). Indeed, they have uttered the word paganism, and have become infidels after Islam, and desire what they cannot achieve; and they did not reproach (Allâh and His Messenger), except because Allâh Azza wa Jalla and His Messenger had bestowed His gifts upon them. So if they repent, it is better for them, and if they turn away, undoubtedly Allâh Azza wa Jalla will bless them with a poignant doom in the world and in the hereafter; and they have no protectors and no (nor) helpers on the face of the earth. [at-Taubah/9:74]*

Shaikhul Islam rahimahullah stated,"It contains the argument that it is hypocritical not to repent of Allah Azza wa Jalla adzab in the world and akherat.[7], [8]

Adzab in the world that Allah Azza wa Jalla threatens to the hypocrites is murder when it manifests hatred towards Islam and Muslims that are in his heart. , [9]

Firman Allah Azza wa Jalla :

*Indeed, if there are no stopping hypocrites, those who are diseased in their hearts and those who spread false news in Medina (from hurting you), we will undoubtedly command you (to fight) them, then they*

*will not become your neighbors (in Medina) but in a short time, in a state of neglect.' Wherever they were found, they were captured and killed as violently as possible. As*



*the sunnah of Allâh Azza wa Jalla prevails over those who have been before (you), and you will never find any change in the sunnah of Allah. [Al-Ahzâb/33:60-62] .*

In this verse Allâh Azza wa Jalla explains that hypocrites will be displaced wherever they are. Wherever they are found, they will be arrested and killed by their innocence.[10]

The story of Hathib bin Abi Bal'atah Radhiyallahu anhu and is in his :

*Umar said: Truly He has betrayed Allâh Azza wa Jalla and His Messenger n and the believers, so let Me cut off his neck. Then He Sallallahu 'alaihi wa sallam said: O Umar! You don't know, maybe Allâh Azza wa Jalla looked at ahlu Badr and said: BBERamAllâh you at will, truly you have got Heaven. Then both eyes of Umar z shed tears and said: Allâh Azza wa Jalla and His apostle knew better. (Muttafaqun 'Alaihi)*

In other histories:

### **3.1. 'Umar said: O Messenger of Allah, let me strike the neck of this hypocrite.**

*Umar said: O Rasûlullâh! Let me cut off this munafiq's neck.*

Shaikhul Islam rahimahullah said, "This shows that killing hypocrites without being asked for taubat is something that has been mandated. For the Prophet Sallallahu 'alaihi wa sallam did not deny Umar Radhiyallahu anhu in the killing of hypocrites, but He Sallallahu 'alaihi wa sallam replied that hathib was not a hypocrite, but he belonged to ahlu Badr who sudah got forgiveness from Allah Azza wa Jalla. If a hypocrite reveals a kenifakan that has been confirmed to be kenifakan then be a person who is kosher in blood. [11]

#### **i. Insults of Islam from Among Muslims**

A Muslim who has uttered two sentences of the creed, fulfilled islamic obligations and believed that he could be an infidel after embracing Islam and apostasy, if he violated the islamic barriers, both in the form of words, and deeds, such as putting Islam to rest.

Shaikhul Islam rahimahullah said, "Blasphemy if Muslim, then becomes an infidel and is killed without any dissent on him. This is the madzhab of the four priests and the others. Among the scholars who recited this ijma' was Ishâq ibn Rahuyah and besides. [12]

Whereas al-Qâdhi 'iyâdh rahimahullah said, There is no caliphate that the detractor of Allâh Azza wa Jalla from among the muslims is a halal infidel of his blood, then al-Qâdhi iyâdh rahimahullah distorts the realization ofimam Mâlik rahimahullah: Whoever put Allâh Azza wa Jalla from the Muslims, was killed without being asked for a torah.

Imam Malik rahimahullah said: Who of a muslim or infidel who denounces the Messenger of Allaah 'alaihi wa sallam or other than the prophet is killed and is not asked for taubat.

As for Imam Ahmad rahimahullah, beliau said in the hambal chronicle: All who denounce the Prophet Sallallahu 'alaihi wa sallam or put him to rest whether he is a Muslim or an infidel must be killed. [13]

The clear laws above cannot simply be applied by individual Muslims who do so. To apply this to a particular individual requires sincerity, freedom from lust, mere zeal and heresy methods and must be punished with manhaj salaf.

Shaykh Muhammad ibn Shâlih al-Utsaimin rahimahullah said, "It is obligatory for a man to be devoted to Allâh Azza wa Jalla in all sentences, so as not to be hasty in convicting him especially in the conviction of an infidel (Takfir) who begins as a person who has jealousy and zeal to do so without thinking long and slowly. Whereas a person if convicting someone else's infidel and that person is not so will return to the person who convicted. The paganization of a person has many legal consequences. Likewise it is obligatory not to be timid in convicting the infidels of the person whom Allâh and His Messengers have infidelized. But it is obligatory to distinguish between the law in a particular person and the common law. [14]

Thus Ahlussunnah distinguishes the general law of the deed from the legal verdict for a particular person. Therefore Shaikhul Islam rahimahulllah said, "No man should convict another person of the muslims with infidels even if he is wrong or wrong until he is upheld hujjah on him and explained the basis of his hujjah. Who has muslims with confidence then does not disappear with doubts even does not disappear until the erection of hujjah and the loss of his syubhat.

Shaikh Muhammad ibn Abdil Wahâb rahimahullah said, "The issue of infidel convictions against certain persons (Takfir Mu'ayyan) is a well-known problem. To say a word whose law to utter such words is a

holiness, so it is said: Whoever declares these words is infidel. But the individual who declared it was not punished with an infidel until he was erected on it was hujjah who made the infidel leave him.

The Ulama require two conditions in convicting infidels of Muslimseor ang that must exist , namely:

- A. There is a clear and unequivocal evidence that a word or act or belief includes disbelief in the Islamic Shari'a,

- B. The establishment of hujjah in such Muslims or by other expressions that precisely the application of the law to a particular individual with perfection of conditions and the loss of legal barriers.
- C. Diantara the basis is the word of Allah Azza wa Jalla:

*And We will not preach until We send an apostle. [Al-Isra'17:15]*

Shaykh Muhammad al-Amin asy-Syinqithi rahimahullah said that the textual meaning of this glorious verse is that Allâh Azza wa Jalla did not worship a creature in the world and in the akherat until Allâh Azza wa Jalla sent the Apostle to remind and warn, then disobeyed the Apostle and continued to endure in his futility and his happiness after the warning and enforcement of the hujjah. [15]

Whereas Shaikhul Islam rahimahullah states that the Qur'an and Sunnah have shown that Allâh Azza wa Jalla did not preach anyone except after the delivery of the apostolic treatise. Whoever has not reached him at all is not dedicated at all and who gets to him in general without some of his details then is not dizdab except according to the denial of the already erected apostolic hujjah to him. [16]

Therefore imam Ibnul Qayyim rahimahullah said, "Verily hujjah Allâh Azza wa Jalla has been erected upon His servants by sending the Apostle and the passing down of the scriptures and the delivery of them to him. Also coupled with the ease of knowing it whether the servant knows it or not knows it. All who have been made easy to know all the commandments and prohibitions of Allah Azza wa Jalla then do not really fulfill and do not know him then telah upright hujjah atyasnya. Allah does not afflict a person except setah the erection of hujjah. If Allah punishes him for a sin then punishes him with hujjah for his zhaliman. [17]

From this it can be inferred that Allah Azza wa Jalla did not worship a servant except after being given a warning and the establishment of hujjah.

Shaykh Muhammad ibn Abdil Wahâb rahimahullah said, "If a particular person is not sentenced to an infidel except after the establishment of hujjah upon him, then the intention is not to understand *the kalamullah* and sunnah of His Messenger as is the quality of understanding of Abu Bakr Radhiyallahu anhu, but it is sufficient when it comes to him *kalamullah* and His messenger and there is nothing that can be used as an excuse or udzur then he is an infidel. As the infidels have all been erected upon them hujjah with the Qur'an, though Allâh Azza wa Jalla said:

*And among them there are those who listen to your (readings), when We have put a cover over their hearts (so that they do not) understand it and (We put) a blockage in his ear. [Al-An'am/6:25].*

And the words of Allah Azza wa Jalla :

*Indeed, the beasts who are as bad as allâh are deaf and deaf who do not understand anything. [Al- Anfal/8:22].*

Thus it is clear that there is no conviction of an infidel a Muslim who commits infamy until the erection of the hujjah and the loss of all the barriers to its paganism.

The explanation above is deliberately stated by the author that in the Islamic religion which recently often attracts attention with various activities / actions that seem repressive and full of violence because based on the teachings of sharia the Islamic religion has clearly explained how the actions of a Muslim heretic religion, the content of the teachings, Allah and His Messenger are insulted by others, surely some Muslims consider it reasonable or may support actions that in the name of defending religion.

At the same time, a Muslim must submit to the teachings of his religion by taking strict measures when his religion is insulted and at the same time violates the positive laws in force in Indonesia. This is an ironic condition because a person who wants to obey alone must break the law in the country he lives in. Whereas in *terms and conditions* muslims there is an obligation to obey and obey the legitimate government. This is in accordance with the hadith of the Messenger of Allah : *"I will you to remain devout to Allah 'azza wa jalla, keep listening and ta'at even though the one who commands you is a servant sahaya (slave)".* (HR. Abu David and At Tirmidzi, Hadith of Hasan shahih).

In different hadiths the apostle also explained:

*"Later after me there will be a leader who does not get my guidance (in science, pen) and does not perform my sunnah (in charity, pen). There will be in their midst those whose hearts are the hearts of the devil, but whose bodies are human bodies. "I said, "O Messenger of Allah, what should I do if I encounter such an age?"*

*He said, "Listen and ta'at your leaders, though they torture your backs and take your treasures. Keep listening and obeying them."* (HR. Muslim no. 1847. See explanation of this hadith in *Muroqotul Mafatih Syarh Misykah Al Mashobih, 15/343, Maktabah Syamilah*)

Whereas torturing the back and taking property without any cause justified by shari'a—without hesitation anymore—includes maksiat. One should not say to the leader, "I will not obey you until you obey your Rabb." This kind of words are forbidden. Even a person is obliged to obey them (the leader) even if they are disobedient to his Rabb.

As for if they command us to be devoted to God, then we are forbidden to hear and obey them. Because rabb our leader and our Rabb (the people) are one that is Allah

Ta'ala therefore obliged to ta'at to Him. If they command the maksiat then there is no obligation to hear and obeyat.

There is an interesting sentence from Ibn Qayyim Al Jauziyah rahimahullah says:

"Indeed, among the wisdom of Allah SWT in His decision to choose kings, leaders and protectors of mankind is the same as the deeds of his people, even the deeds of the people seem to be a reflection of their leaders and rulers. If the people are straight, then will be straight also their ruler. If the people are fair, then it will be fair for their ruler. However, if the people do zholim, then their ruler will follow the zholim. If it appears to be a fraud in the midst of the people, then so will this happen to their leader. If the people reject the rights of God and refuse to fulfill them, then the leaders also refuse to exercise the rights of the people and refuse to apply them. If in muamalah the people take something from the weak, then their leader will take away rights that are not his right from his people and will burden them with a heavy duty. Everything that the people take from the weak will be taken by their leader from them by force. [16]

Thus every charitable deed of the people will be reflected in the practice of their rulers. Based on the wisdom of God, an evil and vile leader is only appointed as the people do. When the early days of Islam were the best, so were the leaders at that time. When the people start to break down, then their leaders will also be damaged. Thus, based on the wisdom of Allah, if in our day it is led by leaders such as Mu'awiyah, Umar bin Abdul Azis, let alone led by Abu Bakr and Umar, then of course our leader is in accordance with our circumstances. Likewise, the leader of the people before

us will be in accordance with the conditions of the people at that time. Each of these two things is a consequence and guidance of the wisdom of Allah Ta'ala."

During the reign of 'Ali ibn Abi Tholib radhiyallahu 'anhu there was someone who asked him, "Why in your time there were many quarrels and slander (calamities), while in the time of the Prophet sallallahu 'alaihi wa sallam there were no?

Ali replied: "For in the time of the Prophet sallallahu 'alaihi wa sallam who became his people were me and other companions. Whereas in my day the people were you.

The order to stay away from bloodshed is more important to do than to make a defense that gives birth to greater prosperity, especially since this is contrary to the positive law in force in Indonesia. This is appropriate as explained to We pay attention to the obligation to hear and obey the ruler. Because, if we do not obey them, there will be chaos, bloodshed and casualties on muslims. Remember that the blood of the muslims is nobler than the destruction of this world. The Prophet sallallahu 'alaihi wa sallam said : "*The destruction of this world is less (the sin) than the killing of a Muslim.*" (HR. Tirmidzi)

Allah *Ta'ala* said: "Whoever kills a man, not because that person (kills) another person, or not because he makes mischief on the face of the earth, then it is as if he has killed man entirely." (QS. Al Ma'idah [5] : 32)

Now we can witness those who rebelled to the ruler. They only led to bloodshed and many of the innocent Muslims became victims.

It is mandatory and best to hear and obey the government. namun does not mean that there is no *amar ma'ruf nahi mungkar*. It remains but must be done according to the method established by this noble syariat.

Trying to untangle from one of the cases that had occurred involving the FPI that occurred on November 01, 2004, at that time it was the month of Ramadan and a number of FPI members went berserk at a number of cafes that remained open when Muslims were again fasting, they committed acts of destroying some of the facilities of some of the cafes that were there and messed up the contents of the café, because the owner of the café is not in the place.

The author wants to elaborate in detail what crimes have been committed by these mass organizations in one activity, raging in public places, making noise, damaging facilities that do not belong to them and spreading fear of the surrounding community who see the activities carried out by the FPI.

The incident that the author mentioned is not only once it happened, but several times it happened and this was also recorded neatly digitally when we find out about what is the activity of this FPI, the most cases are cases that are setipe / similar so that if the author relates to the reason for criminal removal, which is its application to the criteria of acriminal removal weld based onthe law P idana is divided into 2 (two), namely the common criminal removal reasons and the special criminal removal reasons:

- A. The common criminal removal reason is the reason for criminal removal that applies to each offense in general as referred to in articles 44, 48 to 51 of the Criminal Code which are closely related to the mental health of the criminal offender;
- B. The specific reason for criminal removal is a reason that only applies to certain offenses that are closely related to individual criminal acts from protecting criminal offenders, committing defamation in public, such as article 166 of the Criminal Code, Article 221 paragraph 2 and Article 310 paragraph (3).

Applied to the act of defending Religion that occurs a lot is to justify anarchist actions, full of violence and do not humanize people so it is natural that so far there is no

record of there is not a single case in the country that is in the name of defending religion but is determined by the origin of criminal removal in the process of punishing it , when the repressive measures carried out by this mass organization there are no coercive conditions, emergencies or the need for a defense that exceeds the limit on an event where these things are a condition for the establishment of criminal removal reasons in a legal case, this is reasonable because legally positive and legally there is nothing justifying the non-repressiveness, violence, destruction, deprivation of the rights of other countries for safe and orderly conditions because all there are provisions and conditions of enactment and cannot be exercised simply because of the interests of a class of people who feel their rights as citizens are interfered with by others. It may be that we are witnessing an act that is against

religious law, but being subject to and complying with government regulations is an attitude that must be carried out and also in this case the government has provided the means / procedures that are in accordance with the provisions of the applicable law not with no violence, which will inevitably cause greater chaos. When we see/hear or anything related to insults/desecrations against religion do not commit acts alone, report to the authorities/authorities to take further action.

### 3.2. Prospects for Religious Crimes in the Draft Criminal Code (RKUHP)

The act of defending religion will always arise as long as Blasphemy is included in the crime of violence against religion continues to occur and this is a bad thing because religion teaches noble values, where religion is responsible for the morals and deeds of the perpetrators. Marl Juergensmeyer stated: (Marl Juergensmeyer, 1992) : *“Violence has always been endemic to religion. Images of destruction and death are evoked by some of religion’s most popular symbols, and religious wars have left through history a trail of blood. The savage martyrdom of Hussain in Shiite Islam, the crucifixion of Jesus in Christianity, the sacrifice of Guru Tegh Bahadur in Sikhism, the bloody conquest in the Hebrew Bible, the terrible battles in the Hindu epics, and the religious wars attested to in Sinhalese Buddhist chronicles indicate that in virtually every tradition images of violence occupy as central a place as portrayals of non-violence.”*

In his statement, Juergensmeyer considered that the main source of conflict and violence in the world is religion. : [18] Although the author does not fully agree with this statement but the facts say more.

The renewal of criminal law through the drafting of a new Criminal Code must be placed in the context of national law development. This should first be seen as an attempt to *design a* national legal system. Even if we must open ourselves in accordance with the demands of advances in science, technology and democratization, but the national legal system must come from our own culture, so that it is unique to Indonesian personality. According to Baharuddin Lopa, "our national legal system is not a hundred prosensions the same as the *rule of law* system which prioritizes the protection of individual interests and nor is it like a *socialist legality* system that prioritizes the interests of the state too much".

Based on this, it is not appropriate if the RKUHP is only studied based on Western legal principles, but must be placed as an effort by the nation's children to build their own legal system. Thus, although it must be

recognized the universality of democratic values, it cannot be separated from the Indonesian context, including when examining the legal development process. [19]

Based on this, according to the author, there are various "controversies" raised by the public against the RKUHP, due to differences in the perspectives used. If the bill is viewed in the perspective of *the rule of law* of a liberal society, then there are indeed a number of provisions that can be viewed as entering one's private sphere too deeply or injuring the values of democratization and freedom. In fact, this would be seen the opposite if these provisions were seen as a "new system" drafted in the bill. The prohibition of certain acts that fall into the category of crimes against religion and religious life should not be viewed from a liberal perspective. Of course, this must be seen in the social and cultural context of Indonesian religious society, which places religion and religious life (regardless of religion) as the basis for rejecting self-development and the environment. The preparation of the RKUHP is not only based on an effort to formulate norms that have grown, developed and maintained by Indonesian society. It is also believed that there is a need to "shape the direction of society" through legal reform. The law therefore has the disposition of determining the direction of development of society, from real (real) conditions to expected conditions (ideal). As a result, the renewal of criminal law through the Criminal Code, is not merely seen as an attempt to actualize the criminal code of colonial heritage, with creation, taste and karsa of a national nature, but further than that. If experts state "criminal law is a mirror of the civilization of a nation", then Indonesian criminal law through the RKUHP is intended as such, as well as "a tool for achieving the goals of the Indonesian nation".

The formulation of "criminal acts against religion and religious life" directs the formation of a society to exercise the right to practice religious life to the extent that it does



not tarnish the sanctity of its own religion or the religion of others. Similar deliberations contained in the Criminal Code must be corrected in accordance with today's Indonesia. This, obviously, is not based on the Western *rule of law* system or *socialist legality*.

In addition, the renewal of criminal law as part of the development of national law, not merely replacing *Wetboek van Strafrecht* (WvS) with a new Criminal Code that better reflects the identity of the Indonesian nation, but covers a wider scale. In short, the renewal of the (criminal) law is not just about renewing the existing law, thus changing it from "colonial clothes" to "national clothes". But further than that the renewal of the (criminal) law means replacing the existing with a better one. Therefore, the way of seeing this cannot be solely done on the

"text" of the Draft Criminal Code (RKUHP), but must also examine the various backgrounds of thinking that develop and the atmosphere of spirituality that arises in the process of its formulation.

#### 1. Reflections on the Placement of Criminal Acts against Religion and Religious Life in the Criminal Code.

In the beginning there was no "Crime against Religion and Religious Life" specifically regulated in the Criminal Code. It's just that there are several formulations of delik that can be viewed as "crimes against religious life", namely in Articles 175, 176 and 177 of the Criminal Code. Meanwhile, Article 156a of the Criminal Code, which contains a preliminary formulation of "crimes against religion" is an "amendment article" inserted based on the Presidential Decree of the Republic of Indonesia No. 1 of 1965 concerning the Prevention of Abuse and/or Blasphemy. At that time the Presidential Decree (Penpres) was a legal product equivalent to a law, which is now known as a Government Regulation in Lieu of Law (Perpu), so that the introspection of this in the Criminal Code reflected the actual needs of the Indonesian people. Both Article 156a of the Criminal Code and Articles 175, 176 and 177 of the Criminal Code are the deliberations contained in Chapter V on "Crimes Against Public Order". When crimes against religion and religious life are placed in the chapter on crimes against public order, then basically "religion" or "religious life" is not the main interest to be protected by criminal law. But it is a ban on these acts because it has the potential to disrupt public order. Meanwhile, in the criminal code, this crime is placed in a separate chapter. Thus, "religion" and "religious life" are seen as separate legal objects, which are of special interest to the nation and therefore require their own protection with criminal threats.

Based on this, there are developments that make fundamental changes from the Criminal Code to the Criminal Code, especially in looking at acts that "menista" a religion

or various worship activities carried out by its adherents. The bill places "religion" as a fundament of the nation's life, so blasphemy against it is seen as a despicable act and therefore criminally threatened. Flexibility in carrying out "religious life" for the Indonesian nation is a basic right, so any disturbance to it must be eliminated. A religious Indonesian society causes the maintenance of such a lifestyle to be absolutely necessary. This is in line with Hatta's view that interprets the precepts of the One True Godhead, not only about mutual respect between followers of different religions, but religious life becomes a fundament and determines the direction of national development.

### 1. Update on the Formulation of the Criminal Act of Contempt of Religion

In the Criminal Code this "crime against religion" is formulated: "Whoever deliberately in public expresses feelings or commits acts that are essentially hostile, abusive or blasphemous towards a religion adhered to in Indonesia".

Presidential Decree No. 1 of 1965 gave very general restrictions on this delik. It is stated in its explanation that the act is "merely (essentially) demonstrated by the intention to antagonize or insult, thus, the written and oral descriptions made objectively, *Zakelijk* and scientifically concerning a religious matter accompanied by an attempt to avoid the existence of words or arrangements of words of an adversarial or insulting nature, are not criminal offences under this article".

If you look closely, the formulation of this offense is focused on banning three main acts, namely "antagonizing", "abusing" or "desecrating" religion. But the explanation only emphasizes two deeds, namely "hostile" and "insulting". According to the author, it is not clear exactly what is meant by "hostile" or "expressing feelings of hostility" here. Considering that the word "enemy" in the Criminal Code mainly means "opponent of war" (Article 96 paragraph (2) of the Criminal Code or "other countries that are at war with the state of the Republic of Indonesia" (Article 106 of the Criminal Code) or "rebels" (Article 96 paragraph (1) of the Criminal Code), so these words are deleted in the Criminal Code. Similarly, the case with doubtful "abuse" can be objectively determined its intent. Meanwhile, the word "insult" or "insult" actually appears as a more concrete term in this regard. As it is known "contempt" has become *mala in se* everywhere, and is defined generally in the contempt article (Article 310 of the Criminal Code or Article 529 of the Criminal Code). If "contempt" of a person or institution of the state or the president has become a despot, it is certainly more "religion" and "religious symbols". Moreover, according to the author the formulation of the act of "bringing out feelings" is still a "too general" formulation. Similarly the word "essential deed", which also does not specify

with "certainty" what is actually prohibited. Perhaps this is mainly the reason why in the RKUHP, in addition to such a general formulation, the formulation of the offense is also more detailed and concreted, namely by using the words "mocking", "desecrating", or "demeaning". In addition, considering that "religion" is an abstract "legal object", in the RKUHP it is also affirmed the object of "religious humiliation", that is, by using words such as "the majesty of God", "word (God)", "His nature", "apostle", "scripture", "religious teachings", or "religious worship". In the event that the criminal act of insulting religion is committed by means of printing or recording, the crime is aggravated

as specified in Article 344 paragraph (1) of the Criminal Code. This restraint is commonly used in criminal law as adopted in the Criminal Code, and is still maintained in the criminal code.

#### 1. Update of the Formulation of the Criminal Act of Incitement to Negate Religious Beliefs

The Penal Code mentions criminal acts formulated as follows: "Whoever deliberately in public expresses feelings or commits acts with the intention that people do not adhere to any religion, which presupposes the Almighty Godhead". In the Explanation of Presidential Decree No. 1 of 1965, the meaning of this article is determined that "the person committing the crime here, in addition to disturbing the peace of the religious person, basically betrays the first precept of the State in total, and therefore it is in its place, that the act is punished accordingly". In the RKUHP the word "to express feelings or to do deeds" is concretized into an act of "incitement". The act of "incitement" is also *mala in se*, which is formulated in Article 160 of the Criminal Code or 288 to 290 of the Criminal Code. Objections can actually be raised against the formulation of the core part (*bestanddeel*) of "religion adopted in Indonesia" whose meaning is narrower than the element of "any religion" contained in the Criminal Code. The author himself argues that the formulation of the Criminal Code is more appropriate than the RKUHP with regard to this matter, considering that legal protection of "religion" should not be limited solely to religions that have adherents in Indonesia.

#### 1. Update on Criminal Acts of Disruption to the Implementation of Religious Worship and Activities

Article 175 of the Penal Code specifies that: "Whoever by force or threat of violence obstructs a public and permitted religious gathering, or permitted religious ceremony, or a ceremony for the burial of the body, shall be punished with imprisonment for not more than one year and four months" In the Criminal Code it is placed in a criminal offence

against religious life. In this case, criminalization was expanded to include a ban on acts that "interfere with, hinder, unlawfully disperse by violent means or threats of violence" worship activities. This deliberation is seen as in line and indispensable for manifesting Article 29 of the 1945 Constitution, which guarantees the freedom to practice religious worship. Disturbances in a concrete sense such as "making a rowdy near a place of worship while worship is in progress" are punishable by a separate criminal offence. In line with this the provisions of Article 176 of the Criminal Code. The words "allowed" are completely removed, because religious activities do not require permission at all, as long as they are carried out in places or houses of worship. In addition, to maintain the honor of religious believers or religious leaders, it is also threatened with the criminal act of "mocking" people who are carrying out

worship or religious officers who are carrying out their duties. The word "mocking" is a new terminology that needs further explanation, so that it can be distinguished from "insult". Even so the term "mocking" is much more concrete in its despicable nature than the term "laugh" used in Article 177 of the Criminal Code.

#### 1. Criminal Act of destruction of Places of Worship

Article 348 of the RKUHP is a *lex specialis* of Article 646 of the RKUHP concerning the destruction of public infrastructure. In this case it is determined that: "Any person who desecrates or unlawfully damages or burns the building of a place of worship or an object used for worship, shall be punished with imprisonment for a maximum of 5 (five) years or a fine of not more than Category IV."

Objections can be raised about the word "desecrating", which actually falls into a criminal offence against religion by adding "places and/or houses of worship" as "religious symbols" in Article 343 of the Criminal Code. Moreover, the criminal threat in Article 348 should be more severe than Article 646, to give its specificity.

Based on the above, the bill has made changes that lead to the "concretization" and "objectification" of criminal acts against religion, so that the principles of *lex certa* and *lex stricta* are really taken into account. These thoughts that "worry" become a form of dismantling or limiting the right to express opinions, thoughts or ideas, become irrelevant when considering the explanation of Presidential Decree No. 1 of 1965, which states "written and oral descriptions carried out objectively, *Zakelijk* and scientifically regarding a religious thing accompanied by an attempt to avoid the existence of words or arrangements of words of an adversarial or insulting nature, is not a criminal offence". Moreover, according to the bill, which is based on more advanced thinking about respect for religious rights protected by the Constitution.

Penulis argues that clear, detailed and preventive arrangements are the answer to the increasing number of Criminal acts against religion that occur so that the act of defending a repressive religion by a group of people can be avoided or even eliminated.

## 4. Conclusion And Recommendations

### 4.1. Conclusion

From the elaboration and analysis carried out by the author in the previous chapters, the author can conclude that:

1. (a) The act of defending religion can be classified as a criminal act / act if it meets the criminal element of each act. So that the author concludes that each act of defending religion cannot be generally but must be analyzed based on the case, because the case of religious defense acts committed by those who report Ahok cases is different from the act of defending religion committed by one of who use elements of violence in order to "defend religion", and these cases have also been explained by the author on the previous chapter that in the punishment of any act in order to defend religion can be done by conducting a case-by-case analysis because not all acts of defending religion can be categorized as criminal acts.
- (b) The act of defending religion for every agama believer is mandatory. This includes the act of defending the religion which in Islam is mandatory but obedient to the government (*ulil Amri*) is mandatory, even the loss of one life is better than the destruction of a country due to disobedience to the legitimate government. One form of obedience to the leader despite the leadership of the *zholim* though. In other words, we can do acts of defending religion but through procedures and methods that have been set by the government, so that the reasons for criminal removal cannot be applied in the act of defending religion, this is because the elements of the reasons for criminal erasers are not met.

## 5. Suggestion

1. Conducting Socialization about the concepts and procedures for defending religion to the public about the forms and types of acts of defending religion that can be done by every citizen.

2. New articles in the bill that discuss the Act of criminal Law against religion that have a more detailed content and can accommodate every condition that may arise can be immediately announced in 2019, so that it can guarantee the comfort of each religious person in exercising his religious rights without having to worry about his religion being harassed /insulted by others and conflicts horizontally and vertically can be avoided.

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