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## **Urgency of Legal Protection for Religious Scholars in Articles on Blasphemy from the Perspectives of Criminology and Victimology**

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### **Abstract**

The urgency lies in the ambiguous definition, which allows this article to be interpreted in various ways and potentially forces anyone into the realm of criminal law. This is found in Article 156a, which states that anyone who deliberately expresses sentiments or performs acts essentially hostile, abusive, or blasphemous against a religion practiced in Indonesia shall be punished with imprisonment for a maximum of 5 years in public. The phrase "in public" is the subject of debate and could render the article ambiguous, allowing it to be used to target anyone desired to fulfill the criteria. The purpose of this research is to prevent the continued use of this ambiguous article for personal or group interests, and to stop the criminalization of speakers using this provision.

**Keywords:** Protection, Blasphemy, Criminology, Progressive Law, Legal Studies

### **Introduction**

As a country founded on Pancasila and the 1945 Constitution, Indonesia places religion in a very important and high position and role, as Indonesia has a very high level of tolerance. Based on philosophical reasons, namely in the 1945 Constitution of the Republic of Indonesia, Articles 28E and 29 state:

Article 28E: "Every person is free to embrace religion and worship according to their religion, choose education and teaching, choose employment, choose citizenship, choose a place of residence within the territory of the state and leave it and have the right to return." While in its second clause it states: "Every person has the right to freedom of belief, express thoughts and attitudes, in accordance with their conscience."

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In Article 29 of the 1945 Constitution, it states that the state is based on the One and Only God and its second clause guarantees the freedom of every citizen to embrace their respective religions and to worship according to their religion and beliefs.

In both articles, freedom of religion and its practice are guaranteed and regulated by law and protected by law. The freedom to embrace religion and practice worship and beliefs is a personal matter to attain peace in life and within the state. In the life of the state, we are required to live together even though we may have different religions (Siddik, 2022).

This is intended so that no religion is forced upon followers of other religions because the law already regulates and guarantees religious freedom. Although the state guarantees freedom of religion, there are currently many cases where a Kyai or an ustad is considered to blaspheme against other religions while preaching to his own congregation, even though it should be known that the Ustad holds religious lectures within the scope of his own place of worship and among his followers.

It is not uncommon for these religious scholars to engage in question-and-answer sessions with their students regarding personal life or issues of faith in their religion and beliefs. In these question-and-answer sessions, these scholars often base their answers on the Quran and Hadith. However, many people often consider these scholars intolerant of other religions if their answers do not align with their own desires (Indrayanti & Saraswati, 2022).

Ustadz Abdul Somad often receives unpleasant treatment and is considered intolerant of other religions, even though Ustadz Abdul Somad answers based on his knowledge of the Quran and Hadith.

The existence of the flexible blasphemy law poses a barrier to the formation of social mechanisms within society. The abundance of reports against religious scholars or others conducting religious sermons is deemed intolerant due to the broad interpretation of the law, which fosters concerns with differing meanings (Pratiwi, 2021).

The ambiguous definition allows this law to be interpreted in various ways and can coerce anyone. This is evident in Article 156a, which states that anyone who intentionally, in public, expresses sentiments or engages in acts fundamentally hostile, abusive, or blasphemous towards a religion practiced in Indonesia, shall be punished with imprisonment for a maximum of 5 years.

The vague norm displayed here is in public, which can be interpreted as being in front of two or more people. It becomes problematic when a preacher, an ustad, or a certain religious figure discusses the beliefs of others in front of their own congregation, thus providing definitions and explanations that leave room for anyone to interpret as they please.

The law, which is expected to safeguard and ensure order in society, has metamorphosed into a tool to disrupt the harmony among fellow citizens or society (Crouch, 2012). This is extremely dangerous because the diverse population of Indonesia with varied religious and cultural backgrounds has a significant chance of violating this provision, thus turning the

comfort of expressing opinions into something terrifying due to the ambiguous blasphemy law (Lintang et al., 2021).

Therefore, this flexible article should be promptly reviewed and analyzed so as to minimize the number of religious figures reported to the authorities, which could harm many people. Specific definitions need to be established so that the concept of blasphemy itself can provide justice to the community in line with the intended goal of legal certainty (Hasani & Halili, 2022).

## **Literature Review**

### ***Legal Protection***

Legal protection is providing shelter to the human rights violated by others, and this protection is given to society so that they can enjoy all the rights provided by the law, or in other words, legal protection is various legal efforts that must be provided by law enforcement officials to provide a sense of security, both mentally and physically, from disturbances and various threats from any party.

According to Setiono, Legal Protection is actions or efforts to protect society from arbitrary actions by authorities that are not in accordance with the law, to achieve order and tranquility thus enabling humans to enjoy their dignity as humans.

According to Muchsin, Legal Protection is an activity to protect individuals by harmonizing the values or principles embodied in attitudes and actions in creating order in human interaction.

Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection of crime victims as part of community protection, can be realized in various forms, such as restitution, compensation, medical services, and legal assistance.

According to the Big Indonesian Dictionary (KBBI), legal protection is a place of refuge, an act of protecting. The linguistic meaning of the word protection has similarities in elements, namely the act of protecting and the ways of protecting. Thus, the word protecting from certain parties using certain methods.

According to Muchsin, Legal Protection is something that protects legal subjects through applicable laws and enforced with a sanction. Legal protection can be distinguished into two types:

1. Preventive Legal Protection provided by the government with the aim of preventing before violations occur. This is found in legislation with the intention of preventing a violation and providing guidelines or limits in fulfilling an obligation.
2. Repressive Legal Protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given when a dispute has occurred or a violation has been committed.

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According to Philipus M. Hadjon, Legal Protection is the protection of dignity and recognition of human rights possessed by legal subjects based on legal provisions against arbitrariness.

According to Satjipto Raharjo, Legal Protection is providing shelter to human rights violated by others, and this protection is given to society so that they can enjoy all the rights provided by the law.

### ***Blasphemy***

Blasphemy has been occurring since the descent of the Quran and has continued until now. Insulting religious teachings is an act that disturbs the sacred teachings within a religion. Blasphemy has become the hottest topic of discussion in Indonesian society. This poses challenges for the Police, MUI (Indonesian Ulema Council), even the Government, and the people as the problems faced by Muslims in this country become increasingly complex. Unrestricted freedom, misinterpreted due to reforms, has given rise to various attitudes and behaviors that deviate far from the true religious norms.

Juridically, blasphemy is part of religious offenses which are indeed regulated in the Indonesian Criminal Code (KUHP). This regulation aims to ensure that Indonesia, a multi-religious, multi-ethnic, and multi-racial country, can avoid divisive issues, one of which is conflicts among religious communities.

In the Indonesian Criminal Code, there is actually no specific chapter that regulates religious offenses. However, there are several offenses that can actually be categorized as religious offenses. The term "religious offenses" itself includes several meanings: (a) offenses according to religion; (b) offenses against religion; (c) offenses related to religion.

Adami Chazawi, a criminal law expert, stated that crimes related to religious insult can be categorized into 4 (four) types: (1) insults against certain religions in Indonesia (Article 156a); (2) insults against religious officials carrying out their duties (Article 177 number 1); (3) insults regarding objects for worship purposes (Article 177 number 2); (4) causing disturbances near places of worship during worship (Article 503).

The article often referred to as the blasphemy article is Article 156a of the Indonesian Criminal Code. It is worth noting that Article 156a of the Indonesian Criminal Code does not actually originate from the Dutch *Wetboek van Strafrecht* (WvS), but it stems from Presidential Decree Number 1 of 1965 concerning the Prevention of Misuse and/or Blasphemy of Religion (Penpres No.1/1965).

Presidential Decree No.1/1965, in Article 4, states: "Anyone who intentionally, in public, expresses feelings or commits acts: (a) which fundamentally contain hostility, misuse, or blasphemy against a religion adhered to in Indonesia; (b) with the intention that people do not adopt any religion whatsoever, which relies on the Supreme God, shall be punished with imprisonment for a maximum of five years."

One of the important functions of criminal law is to provide legitimacy for the state's repressive actions against individuals or groups of people who engage in actions that threaten,

endanger, and harm public interests. However, in its implementation, government policies regarding religion always provoke pros and cons. This is because religious groups in Indonesia have aspirations that not only differ but also contradict each other, even within the internal structure of religious groups.

Constitutionally, Article 29 paragraphs 1 and 2 guarantee that every citizen can practice their religion and worship according to their respective beliefs. Philosophically and constitutionally, it is clear that the state guarantees every citizen to practice their religion and worship according to their beliefs. So, it is clearly stated from a constitutional legal perspective.

## **Research Method**

The type of research that the researcher will use will be Normative legal research. This normative legal research will examine library materials, which are secondary materials. This research focuses on the study of positive legal norms in the form of legislation.

For the problem approach, the researcher will use a statutory approach, which will be used to examine the issues raised in accordance with the existing legal issues.

The technique used in collecting the necessary legal materials for this writing is the literature technique. Literature review is done by recording and understanding the content of each information obtained from primary legal materials and secondary legal materials sequentially and systematically according to the problem.

The analysis technique used in this research includes descriptive technique, systematic technique, and argumentation technique. Descriptive technique means describing what will be done to a condition or position, both legal and non-legal propositions. The purpose of this technique is to provide a comprehensive description of the issues in this research to obtain formal truth.

## **Result/Findings**

### **1. The urgency of legal protection for an ustad ensnared by Article 156a, while the ustad preaches in front of his own congregation.**

Religious diversity in Indonesia is a reflection of Human Rights, the freedom granted by the government to embrace the believed and trusted religion. The Indonesian population consists of various religions and different beliefs. However, the largest religious adherents in Indonesia are Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism.

The freedom to practice a particular religion in Indonesia is guaranteed and protected by the state. According to Mahfud M.D, Indonesia is a nation with a religious belief system that protects all adherents of particular religions without discriminating against the size of their respective religious communities. Therefore, the state has a constitutional obligation (Constitutional Obligation / Judicial Review) to maintain religious harmony among the people in Indonesia.

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The freedom of religion is already regulated in the 1945 Constitution Article 28e which states: "every person is free to embrace religion and worship according to his religion, choose education and teaching, choose a job, choose citizenship, choose a residence in the territory of the state and leave it and have the right to return. While in clause 2 it states Every person has the right to freedom of belief, express thoughts and attitudes, in accordance with his conscience" In this case, every individual is given the freedom to choose or embrace religion and worship according to his religion so that Indonesia has diversity in religion.

The freedom of expression of individual thoughts must indeed be expressed cautiously to avoid discomfort to others. However, in this case, every individual embraces a religion according to their belief so that everyone can prove it according to the rules set in their religion. For example, an ustad who preaches in front of a congregation, whereas in this case, the ustad or kyai conducts religious lectures within the scope of the place of worship with his own students. There is questioning between the ustad and his students about their beliefs and convictions, to which the ustad or kyai answers based on hadith and the Quran.

However, many people often use the answers from the ustad if someone disagrees with their desires, thus considered intolerant towards other religions, while the ustad or kyai answers questions according to the rules they believe in, namely the Quran and hadith. In this case, the ustad or kyai preach in front of the congregation where the students of the ustad and kyai are present.

In the Indonesian Penal Code, there is an article regarding blasphemy, namely Article 156a, "Punishable by imprisonment for a maximum of 5 years for anyone who deliberately, in public, expresses feelings or commits acts that fundamentally involve hostility and misuse against a religion practiced in Indonesia." This article is intended so that everyone who embraces their beliefs and convictions should not deliberately commit acts that are hostile to other religions.

The Presidential Decision is Law Number 1 PNPS/1965 concerning the Prevention of Misuse and/or Blasphemy of Religion, which broadens the understanding of blasphemy prohibited in "Deviant Interpretation" of a religious teaching. Blasphemy against religion directly, whether spoken or written, can endanger public order.

In Article 156a of the Indonesian Penal Code which states, "Punishable by imprisonment for a maximum of 5 years for anyone who deliberately, in public, expresses feelings or commits acts that fundamentally involve hostility and misuse against a religion practiced in Indonesia," there is an ambiguous definition in the phrase "in public," leading to multiple interpretations of the sentence. Can an ustad or kyai who delivers a religious lecture in his congregation be considered as blaspheming against religion? Meanwhile, the ustad or kyai preaches according to the rules he believes in, namely the Quran and hadith.

The phrase "in public" contains multiple meanings, leading to vague norms in Article 156a of the Indonesian Penal Code; "in public" can be interpreted as in front of people, which can be done by one or more individuals. In the Indonesian Dictionary, "in public" is defined as in front of many people. The definition of "in public" in Law Number 9 of 1998

Concerning Freedom of Expression in Public, in Article 1, states, "In public means in front of many people or individuals, including in places accessible and visible to everyone."

According to R Soesilo in the Indonesian Penal Code, the elements in Article 156a of the Penal Code that are said to be "in public" are when a place can be seen by many people and can also be visited. According to Drs. PAF Lamintang S.H., in the formulation of the punishment in Article 156a of the Penal Code, "in public" cannot be interpreted as the feelings or actions of the perpetrator performed in public places, but only the feelings or actions of the perpetrator can be heard and seen by the public. Therefore, it can be concluded that in the elements of Article 156a of the Penal Code regarding "in public," the first element is an open place or a public place, the second element is visible to the public, and the third element is an intentional act known to the public.

In this case, an ustad or kyai who lectures in front of his congregation, namely his own students, is not in a public place or an open place, where the first element does not correspond to the legal facts. Also, in the second element, which can be seen by the public, legally speaking, it is only seen by the ustad's or kyai's congregation, and the third element, an intentional act known to the public, in this case, the kyai or ustad does not exhibit intentional behavior to be known to the public in giving answers; the ustad or kyai answers questions according to the rules of the Quran and hadith, as per his belief.

To ensure the rights to freedom of others and to meet justice in accordance with considerations of security and public order in a democratic society, protection for ustad or kyai is necessary when giving a lecture in their congregation.

## **2. A criminological and victimological review of blasphemy laws**

In Indonesia, its diversity has led to many problems in terms of economics, social issues, politics, and the freedom to practice religion according to one's beliefs and convictions. Issues involving religion frequently arise due to discrepancies between what one desires. The criminalization of religious scholars also occurs frequently, where scholars are considered to preach intolerant beliefs towards other religions (Channing et al., 2023).

Religious scholars who preach in a congregation, where there may be a student asking questions related to their personal life, often answer based on their beliefs or convictions, namely the Quran and hadith. Many people use scholars' answers and if they don't match their desires, they consider the scholars' responses intolerant towards other religions. Regarding blasphemy, which is considered a crime, it can be viewed from the perspectives of criminology and victimology (Olson, 2023).

Criminology is a scientific discipline that studies crime, where one of its discussions concerns criminal etiology. In criminology, there are four factors that drive individuals to commit criminal acts (Catello, 2023).

Firstly, the economic factor. W.A. Bonger, a criminologist, suggests that the economic factor is the strongest motivator for someone to commit a crime, emphasizing what he calls "Subjektive Nahrungschwerung" (unemployment). In legal terms, economic factors are not

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considered because it's only when someone disagrees with the scholars' answers and accuses them of intolerance towards other religions.

The second factor is the social environment of the perpetrator. M. Torttier, in his study, suggests that "in crimes committed by small groups (2-4 people), it reflects the personalities of each individual, even though collective decisions may differ when faced individually. This indicates that groups can commit crimes, but if only one member is present, they may refrain from doing so." In this case, it is done by only one person who is present in the congregation, providing answers based on existing rules according to the beliefs and convictions of the people in the congregation.

Thirdly, the location where the crime can be carried out, even when the victim provides the opportunity. However, if a place doesn't allow the commission of a crime, the perpetrator may reconsider their intent to commit a crime. Based on Article 156a of the Criminal Code, which states that "Anyone who intentionally, in public, expresses feelings or commits acts that fundamentally constitute hostility or misuse towards a religion practiced in Indonesia shall be punished with imprisonment for a maximum of 5 years." In this case, "in public" refers to a place, but in legal practice, a scholar only preaches in a congregation, namely the students of that scholar.

Fourthly, imitating crimes in other areas (including the role of the media), the high use of social media that facilitates communication, resulting in many people abusing the functions of social media. It should be noted that in social media content, saying a word is not wrong but requires careful consideration to avoid multiple interpretations of a word. Freedom of religion is often abused on social media, where social media is considered highly effective in spreading religious teachings and promoting peace for all people, but it is misused by certain individuals to spread hatred, intolerance, and discrimination against other religions.

Based on the factors contributing to the legal facts that occur in society regarding a scholar who gives lectures in a congregation, and whose opinions are considered intolerant towards other religions, this can also be seen from the perspective of victimology, which is the science of victims, where one of its studies is to find the causes of victimization.

A scholar who preaches in front of his congregation already possesses excellent oratory skills with the knowledge he possesses, providing lectures that are easily understood by the congregation using clear and firm words.

A scholar, as a good speaker, must have a foundation and evidence in their speech. Here, Aristotle outlines the three proofs according to his rhetorical theory:

- a. Logos, or what is called logic. This proof means that a speaker must have arguments that can be accepted rationally and are conclusions drawn from existing facts.
- b. Ethos, or what is called ethics. To strengthen the persuasive level of rhetorical arguments presented by the speaker, the speaker must have good credibility. There are three sources used as references for good credibility.



Having good credibility means having intelligence in delivering lectures so that the congregation trusts and believes that what is conveyed is true according to the existing rules. This includes the good and honest attitude of the scholar, as well as the good intentions of the scholar to provide answers to his congregation in accordance with their regulations and beliefs.

- c. Pathos, or what is known as emotion. Rhetoric that is capable of stirring public emotions will certainly persuade the public to act according to their emotions. Some examples of emotions according to Aristotle commonly utilized in rhetoric are anger, love, fear, shame, annoyance, and admiration. It is important to emphasize that every action taken by the public after listening to rhetoric will vary according to the emotions felt by the public at that time. Different emotions will result in different actions.

During the delivery of a sermon, an ustad must control his emotions in preaching because each person will have a different opinion on how the ustad delivers his sermon. However, in this case, the ustad preaching is only to the congregation, where those who listen to his sermon are only congregants, not in the public arena. There needs to be tolerance among fellow believers to prevent differences in understanding.

## **Conclusion**

In the context of protection and blasphemy laws, there is a debate involving legal, social, and cultural factors in Indonesia. Article 156a of the Criminal Code (KUHP) has been the focus of attention due to its ambiguous definition of "in Public," which has sparked controversy and diverse interpretations. This opens up opportunities for legal abuse and the criminalization of individuals, especially religious preachers.

Criminology becomes relevant in analyzing this phenomenon by exploring the motivations and factors driving criminal behavior and its impact on society. The issue of blasphemy is not just a legal matter but also encompasses psychological, social, and cultural aspects that influence individual behavior and societal responses.

In this context, the protection of freedom of religion and expression is essential. It is important to avoid the misuse of the law for personal or group interests and to ensure that legal regulations are not used to suppress or criminalize individuals who are simply practicing their religious teachings. There needs to be an awareness of the importance of tolerance among religious communities and respect for freedom of expression, without sacrificing peace and harmony in society.

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