

A Critical Examination of Blasphemy Offenses in the Criminal Code and Law No. 1 of 2023

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Abstract

The Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana, or KUHP) represents a legal system devised with the objective of regulating conduct during the nation's formation and of aligning the objectives set forth by the Indonesian government. The objective of this study is to examine the definition of blasphemy as set forth in Article 300 of the New Criminal Code and Article 156A of the Criminal Code. This research employs a juridical-normative approach and descriptive writing technique to collect and analyze relevant legal materials, such as legislation. The findings of this study indicate that the definition of blasphemy as set forth in Article 156A of the Criminal Code is invalid and that its provisions are not aligned with the prevailing circumstances. It is imperative that the new KUHP definition of a religious criminal offense in criminal law be subjected to careful consideration, as it is the duty of the state to safeguard the freedom of religion and belief of its citizens.

Kata Kunci : Blasphemy offense; Criminal law; Freedom of religion; Law

I. Introduction

The diverse identity of the Indonesian nation is based on the principles of Pancasila. The sustainability of a nation also depends on the basic principles adopted by Pancasila. The first principle, Belief in the One Almighty God, is the basis for recognizing the existence of the One Almighty God, which is the teaching of all religions and beliefs in Indonesian culture.¹

Indonesia is home to six major religions, including Islam, Confucianism, Buddhism, Hinduism, Protestantism, and Catholicism. Theological differences in Indonesia do not result in conflict, on the contrary, these differences contribute to harmony between religious communities. Recognition and acceptance of religious differences are very important to instill tolerance, respect, and constructive communication skills in the younger generation. Educational institutions can be an important part of developing tolerance and respect for religious differences in maintaining basic values as human beings.²

Religion has an influence on the lives of individuals, both in the private and public spheres. This is what causes many challenges in maintaining tolerance between religious communities. In maintaining religious harmony, there are several things that need to be considered, such as the principles of belief, the legal obligations of its adherents, and the sociological values that shape human behavior.³

Article 28E Paragraphs 1 and 2 of 1945 Constitution regulated religious freedom in Indonesia:⁴

¹ Erianto, VO (2023). Kebebasan Beragama dalam Perspektif Hukum Positif Indonesia. *Jurnal Kawruh Abiyasa*, 3 (2), 139–146. <https://www.jurnalkawruh.id/index.php/kwa/article/view/66/46>

² Sihalo, HSS (2021). Perbandingan Asas Legalitas Kitab Undang-Undang Hukum Pidana (KUHP) dan Hukum Islam. *Jurnal Hukum Republik*, 21 (2), 1–14. <https://doi.org/https://doi.org/10.31849/respublica.v21i2.8315>

³ Septiani, R. (2017). Tindak Pidana Penistaan Agama Perspektif Hukum Islam Dan Hukum Positif Indonesia. *Syariah: Jurnal Hukum Dan Pemikiran*, 17 (1), 17.

⁴ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. (2020). Dalam *Sekretariat Jenderal MPR RI* (Edisi ke-19). https://www.mpr.go.id/img/sosialisasi/file/1610334013_file_mpr.pdf

- (1) Every person is free to embrace a religion and to worship according to his religion, to choose education and teaching, to choose a job, to choose citizenship, to choose a place of residence in the territory of the state and to leave it, and to return.
- (2) Every person shall have the right to freedom of belief, expression of thought and attitude, in accordance with his/her conscience.

The provisions on religious freedom in the 1945 Constitution should be a guarantee against all forms of discrimination Indonesian citizens. However, the implementation of this constitutional provision is not easy. The persistence of religious extremism and intolerance in Indonesian society is a significant challenge to the realization of these constitutional rights.⁵

Basuki Tjahaja Purnama or better known as Ahok who served as Governor of DKI Jakarta for the 2014-2017 period was charged with blasphemy for referring to verse 51 of the Al-Ma'idah letter which was considered to demean the Qur'an when giving his speech in the Kepulauan Seribu. Rizieq Shihab, the former leader of the Islamic Defenders Front (FPI) was also reported to the police on charges of blasphemy, violating Pancasila, and inciting Bhinneka Tunggal Ika at his daughter's wedding in 2020. In addition, there have been several cases of Holywings employees who were considered to have abused religion in beverage advertisements. Examples of cases of blasphemy that have occurred in Indonesia can happen to anyone who meets the criteria to be prosecuted criminally.⁶

Article 156 A of the Criminal Code has a broad definition of blasphemy, which leads to misuse and unclear interpretation. The regulation must also be clear, easy to understand, consistent, and acceptable to everyone. The definition of blasphemy in the Criminal Code is very important to be discussed further comprehensively in accordance with the criminal law standards that have been set because of the many advantages and disadvantages in its regulation and implementation.⁷ The regulation on blasphemy is also based on Presidential Regulation Number 1 of 1965 concerning the Prevention, Abuse, and/or Blasphemy of Religion, which includes Article 156A in the Criminal Code. The regulation was formed in response to several mystical teachings and beliefs that were considered heretical and contrary to the religious beliefs of the Indonesian people.⁸ Based on this, this article will discuss further the analysis of the article on blasphemy.

II. Research Method

The writing method used in this study is the normative research method, namely research on legal systematics and comparison. The approach used is the legislative approach with primary and secondary data. Primary data was obtained from Article 156A of the Criminal Code, Law No. 1 of 2023, Law No. 1/PNPS/1965. Secondary data was obtained from various articles and journals on relevant laws.⁹ The data that has been collected will be analyzed qualitatively. The focus of this study is the legal consequences of the crime of blasphemy. The purpose of this study is to determine the similarities and differences in the components of each legal system in Law No. 1 of 2023 and Article 156A of the Criminal Code also, to find out how both regulate crimes in the crime of blasphemy.

⁵ Hatta, M., & Zulfan, H. (2021). Kejahatan Penistaan Agama Dan Khususnya Hukumnya. *Al-Adl: Jurnal Hukum* , 13 (2), 342. <https://ojs.uniska-bjm.ac.id/index.php/aldli/article/download/4532/2946>

⁶ Wardana, KA (2022). Kebebasan Beragama Sebagai Hak Asasi Manusia Di Indonesia: Pertentangan Universalisme Dan Relativisme Budaya. *Jurnal Hukum Progresif* , 10 (1), 63–75. https://ejournal.undip.ac.id/index.php/hukum_progresif/article/view/41004

⁷ Fahrudin, AY, Ardiansyah, & Ajie, BW (2024). Hukum Pidana dan Konflik Agama: Menganalisis Kasus Penistaan Agama dan Dampak Sosialnya. *Humaniora: Jurnal Hukum Dan Ilmu Sosial* , 1 (4), 116–123. <https://doi.org/https://doi.org/10.37010/hmr.v1i4.32>

⁸ Halili. (2021). UU No 1/PNPS/1965 dan Tafsir Pembatasan Kebebasan Beragama/Berkeyakinan di Indonesia. *Jurnal Hak Asasi Manusia* , 11 (11), 95–114. <https://jurnalham.komnasham.go.id/index.php/jurnalasasi/article/view/89/83>

⁹ Rifa'i, IJ, Purwoto, A., Ramadhani, M., Muksalmina, Rusydi, MT, Harahap, NK, Mardiyanto, I., Churniawan, E., Junaedi, M., Agustiwi, A., Saragih, GM, Bariah, C., & Surasa, A. (2023). *Metodologi Penelitian Hukum* (A. Iftitah (ed.)). PT. Sada Kurnia Pustaka.

III. Result and Discussion

In the Indonesian Criminal Code, there is no definition for blasphemy or religious violation. However, there are several violations that can be categorized as religious violations so that the term "religious violation" has many meanings. These interpretations can be interpreted as violations against religion, violations based on religion, and violations related to religion.¹⁰

The term "violation of religion" is used to describe actions or behaviors that are considered unacceptable according to the teachings of a particular religion. Religious violations are determined by religious authorities while also determining the appropriate punishment for the perpetrators. When a society or organization carries out certain behaviors that are detrimental to religion, it is considered a violation of religion. Religious violations are a category of criminal offenses that can be carried out by religious officials. These acts are considered offensive because they use religious teachings for certain purposes that are contrary to religious teachings, resulting in disruption of public order. For example, blasphemy is a violation of the law that is contrary to religious teachings.¹¹

The legal basis for the crime of blasphemy in the Criminal Code is the first principle of Pancasila, namely the One Almighty God. Article 29 paragraph (2) of the 1945 Constitution also states that the state is based on the One Almighty God. Therefore, the regulation of the crime of blasphemy in the Criminal Code adheres to the theory of Protection of Religious Order, which prioritizes public order and public interest.¹²

Article 156A of the Criminal Code states the normative rules on blasphemy:

"Shall be punished with a maximum imprisonment of 5 years, whoever deliberately in public expresses feelings or performs actions:

- (1) Which is basically hostile, abusive or blasphemous against a religion adhered to in Indonesia
- (2) With the intention that people will not adhere to any religion, which is based on the One True God."

This article is an amendment to Presidential Regulation Number 1/PNPS of 1965 issued during the Orde Lama era which regulates the prevention and prosecution of abuse and blasphemy of religion. This provision is based on the large number of religious organizations that teach religious teachings that are contrary to the religions recognized by Indonesia. These organizations can cause abuse and blasphemy of religion, encourage violations of the law, and exacerbate national divisions.¹³ After independence, this law was created in line with the development of Indonesian politics until 1966, when factors originating from the Indonesian Communist Party also influenced politics.

KH. Saifudin Zuhri, the Minister of Religion at that time, issued Presidential Decree Number 1/PNPS/1965. He argued that the decision was necessary because of PKI's political agitation which was considered an attempt to discredit religious organizations and spread atheism. He also mentioned other factors, such as the spirit of communism in China and Vietnam. Finally, because of all that, he emphasized that as the main leader of the Revolution, President Soekarno was the one who was given the authority to implement the regulation.¹⁴ Maintaining the progress of the nation, state, society, and the value of the

¹⁰ Rumagit, RBX, Aling, DF, & Mokorimban, MAT (2023). Tinjauan Yuridis Mengenai Delik Penodaan Agama dalam Peraturan Perundang-Undangan. *Lex Administratum: Jurnal Fakultas Hukum Unsrat*, 6 (5), 1–11. <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/50895/43899>

¹¹ Akbar, IA (2019). Dinamika Kasus Penistaan Agama Di Indonesia (Polemik Pemaknaan Ayat-Ayat Penistaan Dan UU Penodaan Agama). *Qof*, 3 (1), 89–105. <https://jurnalfuda.iainkediri.ac.id/index.php/qof/article/download/234/181/551>

¹² Ritonga, BZ, & Ohoiwutun, YAT (2021). Tindak Pidana Penodaan Agama di Indonesia (Kajian Kasus Syiah Sampang dan Gafatar Aceh). *IDJ: Jurnal Interdisipliner Hukum, Ilmu Sosial dan Humaniora*, 2 (1), 28–43. <https://doi.org/https://doi.org/10.19184/ijl.v2i1.24420>

¹³ Lengkong, LY, & Situmeang, T. (2023). Makna Delik Penodaan Agama dalam Pasal 156A KUHP dan Undang-Undang No. 1 tahun 2023 tentang KUHP. *JPPI: Jurnal Penelitian Pendidikan Indonesia*, 9 (4), 118–126. <https://jurnal.iicet.org/index.php/jppi/article/download/2682/1815>

¹⁴ Lala, A. (2017). Analisis Tindak Pidana Penistaan Agama dan Sanksi Bagi Pelaku Perspektif Hukum Positif di Indonesia. *Literasi Sintaks: Jurnal Ilmiah Indonesia*, 2 (3), 6–18. <https://www.jurnal.syntaxliterate.co.id/index.php/syntax-literate/article/download/337/462/>

revolution is the goal of Law Number 1/PNPS/1965. In addition, this law also prevents blasphemy which is considered a threat to the revolution. The government is responsible for maintaining the stability of the state and defending the rights of the people, such as the freedom to embrace religion or belief according to their choice.¹⁵

Blasphemy is regulated in Article 156 A of the Criminal Code to protect long-standing religious beliefs in Indonesia from opposing religious movements and organizations.¹⁶ However, Law No. 1/PNPS/1965 nor Article 156 A provides a comprehensive explanation of the elements of the crime. "Expressing feelings", 'committing acts', 'hostility', 'insults', and 'blasphemy' are the elements that are explicitly stated. Literally, anyone who speaks or writes in public and expresses their opinion, especially if the opinion is different or contradicts the opinion of most people, can be charged with the crime of blasphemy.¹⁷

Presidential Decree Number 1/PNPS/1965 prevents abuse of religion "Everyone is prohibited from intentionally publicly stating, advocating, or seeking public support, to interpret a religion practiced in Indonesia or to carry out religious activities that resemble religious activities of that religion, the interpretation and activities of which deviate from the main teachings of that religion."¹⁸ Thus, it is clear that "interpreting a religion practiced in Indonesia that resembles religious activities, the interpretation and activities of which deviate from the main teachings of that religion."¹⁹ This shows that the religious principles of the Indonesian state are protected by this article.

Article 156A of the Criminal Code stipulates criminal penalties for anyone who publicly expresses feelings or carries out actions that are hostile, harassing, or blasphemous towards a religion recognized in Indonesia. The Criminal Code defines the offense of blasphemy as follows:²⁰

1. Expressing hatred, hostility, insults against groups in Indonesian society based on their religion.
2. Expressing feelings or committing acts of hostility, insults against a religion, or so that other people do not embrace a religion in Indonesia.
3. Broadcasting, displaying, posting writings or paintings in public that contain statements of hostility, hatred, and insults against religion.
4. With violence or threats of violence obstructing a permitted religious meeting or ceremony or obstructing a funeral ceremony.
5. Laughing at religious officials who are carrying out their duties, insulting religious objects, blocking entrance to a place of worship, making a commotion near a permitted place of worship.
6. Deliberately and unlawfully desecrating/damaging warning signs at a cemetery.
7. Fortune-telling, fortune-telling, trading in amulets or objects that have supernatural powers, teaching black magic that aims to create new beliefs.
8. Wearing amulets or magical objects while giving testimony in court under oath.

¹⁵ Gede Widhiana Suarda, I., Azizah, A., & Fahrudin, A. (2023). Kebijakan Penerapan Tindak Pidana Penistaan Agama Di Indonesia. *JHPIS: Jurnal Hukum, Politik Dan Ilmu Sosial* , 2 (2), 224–242. <https://doi.org/https://doi.org/10.55606/jhps.v2i2.1642>

¹⁶ Manik, VLB, Tamba, IN, Ibrahim, M., & PA, RBB (2024). Kebijakan Hukum Pidana dalam Menanggulangi Tindak Pidana Penistaan Agama melalui Media Sosial. *Jurnal Ilmu Hukum* , 1 (2), 6–9. <https://doi.org/https://doi.org/10.62017/syariah.v1i2.204>

¹⁷ Dahri, M. (2017). Tindak Pidana Penodaan Agama di Indonesia: Tinjauan Pengaturan Perundang-Undangan dan Konsep Hukum Islam. *Jurnal Hukum Islam* , 1 (2), 57–71. <https://jurnal.uinsu.ac.id/index.php/attafahum/article/download/958/751>

¹⁸ Adnan, I. (2023). Kebijakan Penal Dan Non Penal Pemerintah Dalam Penanggulangan Tindak Pidana Penodaan Agama Di Indonesia. *Fitua: Jurnal Studi Islam* , 4 (2), 160–180. <https://doi.org/https://doi.org/10.47625/fitua.v4i2.510>

¹⁹ Kurniawati, RD, & Zuraidah. (2021). Perbuatan Membela Agama Menurut Konsep Kitab Undang-Undang Hukum Pidana (KUHP). *Anggapan Hukum: Fakultas Hukum Universitas Majalengka* , 3 (1), 1–18. <https://doi.org/https://doi.org/10.31949/jpl.v3i1.980>

²⁰ Bernard, M., & Tobing, PL (2023). Penerapan Pasal 156A KUHP sebagai Delik Penodaan Agama. *Literasi Sintaks: Jurnal Ilmiah Indonesia* , 4 (1), 1–23. <https://doi.org/https://doi.org/10.36418/syntax-literate.v8i9.13550>

All religions adhere to the principle of not insulting or degrading other people's beliefs. Many factors cause the phenomenon of blasphemy. Among them, the absence of religious guidance provided by the leaders of mass organizations to the community, or the guidance provided is not on target and has not touched the hearts and minds of the community. In addition, the ease with which society is influenced by deviant sects is one of the factors causing blasphemy. This is due to the minimal attention of mass organization leaders to the community.²¹

Furthermore, Article 2 of Presidential Decree No. 1/PNPS/1965 regulates acts that violate Article 1 concerning Prevention and Abuse and/or Blasphemy:

- (1) The Attorney General, Minister of Home Affairs, and Minister of Religion jointly issue a stern warning to the perpetrator to immediately stop his actions.
- (2) If the perpetrator is a member of an association or cult, the President, with the approval of the Attorney General, Minister of Home Affairs, and Minister of Religion, may dissolve the association.
- (3) The administrators of the association are also threatened with a maximum prison sentence of five years.

In other words, violations of Presidential Regulation Number 1/PNPS/1965 concerning Prevention and Abuse and/or Blasphemy of Religion will result in serious legal consequences. In accordance with the Theory of Protection of Religious Order which prioritizes public order and the interests of society, Article 156A of the Criminal Code regulates blasphemy as stated in Book II Chapter V concerning Crimes against Public Order. Therefore, the Criminal Code uses these theories as a basis for regulating this criminal act.²² This criminal act is contrary to religion and public order, so it can result in criminal prosecution if it harms the public interest because this regulation upholds public interests and order, which indirectly defends religion.²³

Most people assume that changes in values threaten established norms. The majority group will try to uphold the applicable norms to create an ideal society that adheres to the values that influence these norms. This is the social order that is to be achieved, namely the creation of a society that respects and protects each other. According to Article 156A of the Criminal Code, words or actions that threaten public order are a violation of respect for religious adherents.²⁴ Therefore, it is important to consider statements or actions directed at holy books, religious teachers, the Prophet (as the giver of religious teachings), and so on. Perhaps, as defined in Article 156A of the Criminal Code, it is basically inseparable from religion. This will raise the question of whether words, taunts, or insults directed at God Almighty are also included in this definition.²⁵

In Law Number 1 of 2023, the crime of blasphemy is regulated as one of the criminal acts formulated with a controversial crime by issuing statements containing elements of hatred, hostility, or blasphemy against the religion embraced by the people of Indonesia. Incitement against religion and beliefs embraced in Indonesia is prohibited, because Indonesia is a country that embraces beliefs and religions that regulate and guarantee the lives of its citizens. The right to religion is a fundamental human right and cannot be reduced under any circumstances. Thus, every citizen has the right to freedom of religion or belief, and to worship according to their religion and beliefs.²⁶ Special Chapter VII of State Gazette Number 1 of 2023

²¹ Prasetyo, KA, & Arifin, R. (2019). Analisis Hukum Pidana Mengenai Tindak Pidana Penistaan Agama Di Indonesia. *Tinjauan Hukum Gorontalo*, 2 (1), 1–12. <https://jurnal.unigo.ac.id/index.php/golrev/article/download/461/315>

²² Nida, NZDS, Hidayatullah, & Susilowati, H. (2018). Tinjauan Yuridis terhadap Putusan hakim dalam Tindak Pidana Penodaan Agama (Studi Putusan Nomor 1537/Pid.B/2016/PN.Jkt.Utr). *Jurnal Suara Keadilan*, 4 (1), 1–23. <https://jurnal.umk.ac.id/index.php/SK/article/view/3216/1582>

²³ Ritonga, BZ, & Ohoiwutun, YAT (2021). Tindak Pidana Penodaan Agama di Indonesia (Kajian Kasus Syiah Sampang dan Gafatar Aceh). *IDJ: Jurnal Interdisipliner Hukum, Ilmu Sosial dan Humaniora*, 2 (1), 28–43. <https://doi.org/https://doi.org/10.19184/ijl.v2i1.24420>

²⁴ Basuki. (2023). Konsistensi Penerapan Sanksi Pidana Terhadap Pelaku Penista Agama Di Indonesia. *Jurnal Ilmiah Global Education*, 4 (1), 28–40. <https://doi.org/https://doi.org/10.55681/jige.v4i1.537>

²⁵ Syarif, M. (2023). Penistaan Agama dalam Hukum Islam (Studi Analisis Yuridis di Indonesia). *Nizam: Jurnal Islampedia*, 2 (1), 1–10. <https://journal.bengkuluinstitute.com/index.php/islampedia/article/view/131/182>

²⁶ Mazaya, M., & Michael, T. (2024). Penerapan Sanksi Pelaku Tindak Pidana Penodaan Agama Berdasarkan

concerning the Criminal Code (also known as the New Criminal Code) which was enacted by Law Number 1 of 2023 on January 2, 2023, contains Articles 300 to 305 which discuss the definition of the crime of blasphemy. The first part of this two-part chapter discusses crimes directed against religion, beliefs, and the practice of religion or beliefs.

However, in accordance with Article 624 of the New Criminal Code, law enforcement only begins three years after its enactment. Therefore, the current Criminal Code will remain in effect for three years.²⁷ Article 300 of the New Criminal Code which discusses Part One concerning Criminal Acts against Religion and Belief states:

“Every person in public who:

(a) Commits an act that is hostile in nature;

(b) Expresses hatred or hostility; or

(c) Incites to commit hostility, violence, or discrimination against religion, beliefs of other people, groups or groups on the basis of religion or beliefs in Indonesia, shall be punished with imprisonment of up to 3 years or a maximum fine of category IV.”

Article 300 of the Criminal Code defines “expressing hatred or hostility towards the religion and beliefs of others”, which is the same as Article 156A of the same code. However, the two articles are not exactly the same. To illustrate, Article 156A of the Criminal Code states that the offense is committed “with the intention that people do not adhere to any religion which is based on the One True God.”²⁸

The standard outlined in the New Penal Code is broader, covering not only expressing hatred or hostility towards religion and belief, but also motivating the perpetrator to commit hostility or violence, discrimination against a religion, group or religion. This is in contrast to Article 300 of the New Penal Code, which stipulates that the grounds for committing a criminal offense are not limited. The penalties stipulated under the New Penal Code differ from those under the current Article 156A, which allows for prison sentences ranging from three years’ imprisonment to lesser penalties. However, the five-year prison sentence for current crimes, both under Article 156A and the future Article 300, remains in place.

In addition, the maximum category IV fine is Rp 200,000,000.00 (two hundred million rupiah), according to Article 7 Paragraph 1 Letter d of the New Criminal Code. Compared to Article 156A of the KUHP, Article 300 of the New Criminal Code expands the types of actions and allows for additional criminal penalties.

IV. Conclusion

Article 156A of the Criminal Code is often used in the investigation, prosecution and trial of criminal acts of abuse, blasphemy or blasphemy of religion. However, Article 156A of Presidential Regulation No. 1/PNPS/1965 on the Prevention and Abuse and/or Blasphemy of Religion is often read out of context. In other words, its use in blasphemy trials has deviated from its purpose, raising legal issues relating to criminal law. As stated in Article 156A of the Criminal Code and Article 300 of the New Criminal Code, law No. 1 of 2023, which will come into effect in three years, will help prevent misunderstandings about the meaning of crimes against religion or belief.

Undang-Undang No 1 Tahun 2023. *Doktrin: Jurnal Dunia Ilmu Hukum Dan Politik* , 2 (1), 66–80. <https://doi.org/https://doi.org/10.59581/doktrin.v2i1.1890>

²⁷ Lengkong, LY, & Situmeang, T. (2023). Makna Delik Penodaan Agama dalam Pasal 156A KUHP dan Undang-Undang No. 1 tahun 2023 tentang KUHP. *JPPi: Jurnal Penelitian Pendidikan Indonesia* , 9 (4), 118–126. <https://jurnal.iicet.org/index.php/jppi/article/download/2682/1815>

²⁸ Azed, AB, dan Sarbaini. (2022). Kebijakan Kriminal Penanggulangan Kejahatan Penistaan Agama. *Legalitas: Jurnal Hukum* , 14 (1), 122–134. <http://legalitas.unbari.ac.id/index.php/Legalitas/article/view/319/231>

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