

THE EFFECTIVENESS OF LEGAL ENFORCEMENT ON BLESPEMNY OF RELIGION IN CIREBON POLICE AREAS

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ABSTRACT

Account posts belonging to the chief of DPD National Democratic Party Cirebon District Sukryadi, S.E. was reported by the Radar Cirebon Daily Newspaper by the title "**MENJADI PEMIMPIN JANGAN TAKUT SAMA ALLAH, APALAGI TAKUT SAMA UNDANG-UNDANG, KALAU SAYA DIPERCAYA JADI BUPATI RAKYAT SEGALANYA BAGIKU**" (Being a leader do not afraid to Allah, even to law. If I am trusted to become Regent, the people is everything for me)

The above article has become viral in various social and electronic media. Moreover, it has made anxious Muslims in Cirebon in particular and West Java in general. It was finally reported to the Cirebon Police in 2017 by a number of Cirebon Islamic Mass Organizations led by H. Sugiyono, S.T. But unfortunately this reporting did not lead to a court, so that legal certainty for Reporting Parties and Reported Parties becomes unclear, Legal Supremacy could not be felt by the public.

In the case referred to the Cirebon Police Investigator through SP2HP clearly stated that the first was Not Enough Proof, the second Fatwa of the Cirebon Regency MUI was not included in blasphemy so that this case the investigation could not be followed up to the investigation.

From the reasons presented by the Cirebon Police Investigator through the SP2HP, it invited various questions for the Author. This is where the author was interested in conducting research in this field. The problems discussed are how the effectiveness of law enforcement against blasphemy crime in the jurisdiction of the Cirebon district police.

The research method used was juridical approach, it was used to obtain primary and secondary data and both data were analyzed qualitatively which also were compiled logically, systematically and juridically.

Based on the results of research in handling criminal cases of blasphemy in the jurisdiction of the district police of Cirebon was less than optimal. It was hoped that in the future, law enforcement must be in accordance with the Criminal Code and the existing legislation.

Keywords: Convey the truth even though it is bitter

A. INTRODUCTION

The State has regulated and granted freedom to embrace the religion, it is Human Rights as regulated in Article 29 paragraph (1) and (2) of the 1945 Constitution which reads "(1) The State is based on the Almighty God and (2) The State guarantees the independence of every citizen to embrace their respective religions and to worship according to their religion and belief. "¹

The problem of belief in a religious teaching is the business of the heart of every human being and cannot be intervened by anyone. Religion is a system of teachings about God, where adherents carry out ritual, moral or social actions on the basis of the rules/teachings, but changing, adding/or eliminating religious teachings that already exist in Indonesia, is not a human right that must be respected and protected, because it is an act of despising a religion or blasphemy of religion.

Denial or desecration of Islam has taken place since the reveal of the Qur'an and continues until now. Desecration of religious teachings is a matter/activity that harasses sacred teachings in one religion, especially Islam.

As happened in the Cirebon Police Law area, the blasphemy/insult to Islam which was allegedly committed by the Chairman of the Cirebon Regency DPRD Honorary Board and the Nasdem Party DPD. He wrote in his facebook, namely "Being a leader do not afraid to Allah, even to law. If I am trusted to become Regent, the people is everything for me. Accounts belonging to Cirebon Regency DPRD Members have been reported by the Radar Cirebon Daily Newspaper. "²

With the viral account owned by Sukaryadi Wawu reported in various newspapers, it made him anxious and felt furious that Muslims made it, not a few respondents through his friendship in FB (facebook) gave arguments and blasphemies addressed to him. Cirebon went viral at that time, in order to prevent the vigilante actions of the Cirebon Muslim Community, one of the residents of Kejuden Village, Depok subdistrict Cirebon District, H. SUGIYONO, S.T. reported on the actions of individual members of the council at the Cirebon Police Station accompanied by a number of NGOs and the Lawyer, then received a Report Receipt, LP:B/282/VII/2017/Res Crb dated 06 July 2017 BY Cirebon Police Station.

Furthermore, the District Police conducted a series of investigative actions to find out an event that was allegedly a criminal act in order to determine whether or not an

¹ Tim Redaksi Pustaka Baru Press, 2014, UUD 1945 amandemen IV tanggal 10 Agustus 2002, PT. Pustaka Baru, Yogyakarta, hal. 77

² Surat Kabar Harian Radar Cirebon, Selasa. tanggal 04 Juli 2017, hal. 1-7

investigation could be conducted in the manner regulated in the Law. Because the state is a state of law as stated in article 27 paragraph (1) of the 1945 Constitution "All citizens together with their position in law and government and must uphold the law and government with no exception".³ This means that the State of Indonesia is a law-based country (*Rechtstaat*) in carrying out any actions must be based on law and legally accountable not based on power (*Machstaat*). Likewise, in the process of law enforcement in the Republic of Indonesia is regulated in Law No. 8 of 1981, about the Criminal Procedure Code "KUHAP.

In the Criminal Procedure Code also contains several principles such as equal treatment of each person before the law by not making a difference treatment "Equalitu before The Law".

Other criminal principles, everyone who is suspected, arrested, detained, prosecuted and or confronted before a court, must be considered innocent until a court decision declares his wrongdoing and obtains the legal force remains "Presumption of Innocence".⁴

However, sometimes the implementation of the rule of law is still not maximized, even though our country is a rule of law. Thus the Indonesian government should be limited in its actions by the provisions of the constitutional provisions, but the constitution must be the basis or guidance of the state. Blasphemy of religion carried out by members of the Cirebon Regency DPRD in the jurisdiction of the Cirebon police station JL. Dewi Sartika No.1 Sumber Cirebon Regency.

One of the questions is the matter of applying the Articles and the Law as a basis for determining the threat of criminal penalties. An example of a criminal blasphemy perpetrator committed by a member of the Cirebon Regency DPRD may be subject to Law No. 1/PNPS/1965 in conjunction with Article 156 a KUHP "Sentenced to imprisonment for 5 years. Anyone who deliberately publicly issues feelings or acts that are essentially hostile, misuse, or desecration of a religion that is followed in Indonesia, "Article 28 paragraph (2) of Law No. 11 year 2008 concerning Information and Electronic Transactions "Every person intentionally and without rights distributes information intended to cause hatred or hostility of individuals and/or certain groups of people based on ethnicity, religion, race and class (SARA) ⁵. The background of the legal research was the alleged blasphemy case handled by the Cirebon Police. The researcher concluded that the reason presented by the Cirebon Police Investigator through the Notice of Progress Results Progress (SP2HP) dated December 15,

³ tim redaksi pustaka baru.2014, UUD'45, pustaka baru press,yogyakarta.hall 1

⁴ Ibid

⁵ UU NO. 11 Tahun 2008 Tentang ITE, Penerbit Pustaka Mahardika ,hal. 44.

2017 Number: B / 754 / XII / 2017 / Sat Reskrim to the complainant and his attorney, the contents of which explained as follows: "The Investigation Process cannot followed up to the Inquisition because there is insufficient evidence and based on the Fatwa of the Cirebon Regency Indonesian Ulema Council insists that it is not included in blasphemy.

In the opinion of the researchers, the reason presented by Cirebon Police investigators was not based on legal arguments but the reasons presented were subjective reasons for using assumptions. The example that makes the basis of an investigation unable to proceed to the investigation is insufficient evidence. While in the opinion of the author the first evidence has been fulfilled as described in Article 184 paragraph (1) of the Republic of Indonesia Law Number: 6 year 1981 Concerning the Criminal Procedure Code referred to as valid evidence is the magic statement, expert information, letters, instructions and information of the defendant, and based on the Chief of Police Regulation "PERKAP Number: 14 of 2012 concerning Criminal Investigation Management, mention the initial evidence, if we look at the type and hierarchy of regulations, as stated in Article 7 paragraph (1) of Law Number 10 of 2004 jo Article 7 paragraph (1) Law Number 12 of 2011 concerning Establishment of Legislation, the Fatwa of the Cirebon District Indonesian Ulema Council is not known and is not a positive law. whereas the position of the Indonesian Ulema Council in the Indonesian state administration is actually in the intra-constitutional structure element, because the Indonesian Ulema Council is an Ulema organization that has duties and functions for the empowerment of the community / Muslims, meaning that the Indonesian Ulema Council is an organization that is in society, not an institution state property and present the country, the legalization of the Fatwa of the Indonesian Ulema Council cannot and cannot force it to be obeyed by all Muslims. Therefore it is questionable whether it is in accordance with legal mechanisms and procedures carried out by Cirebon Police investigators in enforcing laws related to blasphemy of Religion in the Republic of Indonesia, especially in the jurisdiction of the Cirebon Police Station.

According to the existing system in the Republic of Indonesia law enforcement consists of four law enforcers commonly called *catur wangsa* namely "Police, Prosecutors, Judges and Lawyers as stated in Law Number 18 year 2003 concerning Advocates and based on Article 13 of the Indonesian National Police Law Number 2 year 2002 concerning the National Police of the Republic of Indonesia has their respective duties and functions. In general, the duties and authority of the Indonesian National Police as Article 13 of the Republic of Indonesia Law Number 2 of 2002 concerning the Indonesian National Police are:

- a. Maintain community security and order
- b. Enforcement
- c. Providing protection, protection and service to the community.⁶

In accordance with Article 1 paragraph (1) of Law Number 18 Year 2003 concerning Advocates, the duty of an advocate is that people have the profession of providing legal services, both inside and outside the court that fulfill the requirements under the provisions of the Law.⁷ While the Prosecutor is an official who is authorized by this Act to act as a public prosecutor and carry out a court decision that has obtained permanent legal force as explained in Article 1 paragraph (1) of Law Number 5 of 1991 concerning the Prosecutor's Office of the Republic of Indonesia, while the Judge is assigned.⁸

Hopefully, this research becomes a study and analysis of the Positive Legal aspects of the Law that apply in Indonesia at this time or the actual law that applies (*Ius Constitutum*) and the Law that is expected to apply to the future community or the future law that we desire (*Ius Constituendum*).⁹

B. Research Methods

The term "research method" consists of two words, namely the word "method" and the word "research". The word "method" according to its etymology (the origin of the word) is a combination of two words namely "meta" which means going to, though, following after and "hodos" which means road, way, direction, so that the understanding of the method according to its etymology is the way to, so understanding the method is a scientific activity related to a way of working (systematic) to understand a subject or object of research, as an effort to find answers that can be accounted for scientifically and including its validity.¹⁰

Whereas the word "research" comes from the English word research, re which means return and search which means search so that the understanding of research according to etymology is search again. According to Tuckman, research is a systematic effort to find scientific answers to a problem. Systematic means to follow certain procedures or steps. The scientific answer is the formulation of generalization knowledge, both in the form of theory, principles both abstract and concrete which are formulated through the primary tool, namely

⁶ Undang undang No. 2 Tahun 2002 Tentang Kepolisian Republik Indonesia hal. 4

⁷ Himpunan Peraturan tentang Yayasan, Jaminan fidusia, Jabatan Notaris, Advokat, 2013, Penerbit PT. Tamita Utama hal. 300

⁸ AA.Oka Mahendra, 1993, Undang undang Kejaksaan Republik Indonesia, Jakarta, Penerbit Pustaka Sinar Harapan, hal. 71

⁹ Mochtar Kusumaatmaja, B. Arief Sidharta, 2000, Pengantar Ilmu Hukum, Bandung, Penerbit, PT Alumni, hal 1.

¹⁰ Ruslan, Rosdy. Public research methods. PT Raja Grafindo Persada, Surabaya, 2003, p24

empirical and analysis. The research itself works on the basis of assumptions, techniques and methods.¹¹

The method applied is the method of approach applied in this study is juridical empirical, this approach examines the normative/juridical concept, its implementation is a decision on the crime of blasphemy in accordance with the applicable legislation and its implementation.

In order to obtain data in this study, data collection techniques are needed to obtain primary data and secondary data, both of which will be analyzed, data collection techniques that will be obtained in this study are:

1. Library Research

This data were obtained by studying the reference book, namely in the form of books, papers, theses, dissertations and the results of previous studies. But the material has relevance to the problem that the author carefully.

2. Field Research.

It is data collection technique by means of researchers observing directly the symptoms studied and systematically recording and also conducting interviews with the community and police.

As for the field research that the author did examination the problem of the application of criminal sanctions against the crime of blasphemy by using interview techniques. The interviews were conducted based on the interview questions based on the framework of the questions that had been prepared and presented by the respondents to obtain data.

Data Analysis Techniques Data analysis techniques used in this study are qualitative Definition of qualitative analysis is a method of selection that produces descriptive analysis data and analyzes it by treating "what the respondent stated in writing or verbally and also the real behavior that is researched and studied in full". The author obtains data from the respondent in writing and verbally and is then collected to be subsequently analyzed qualitatively. The next step is to find out the relationship with the existing data and arranged logically, systematically and juridically.

¹¹ Jonathan, sarwono, metode penelitin kuantitatif dan kualitatif, Graha ilmu, jogjakarta, 2006 hal 15.

C. Research Results and Discussion

1. Research Results

In this study primary data were collected to find out "The extent of the effectiveness of law enforcement against criminal blasphemy in the jurisdiction of the Cirebon police station" through the distribution of questionnaires to 65 respondents who were the research sample. In this descriptive analysis, the respondent's data is explained through a single table. Respondent data in this study is needed to know the background of respondents who can be used as input to explain the results obtained from the study. The research process and questionnaire dissemination conducted by researchers were from June 3 to July 1.

The conclusion of the respondents' answers from the 13 questioners, it can be analyzed that is clearly very inappropriate as a Muslim and also as Chair of the Honorary Council of the Cirebon Regency DPRD to say such a sentence. It is as if he did not believe in the existence of Allah SWT and the sentence contains an invitation to all people not to fear Allah and this Law is very dangerous to the people of religious cloud. Likewise, the Fatwa of the Cirebon Regency MUI has clearly blamed Sukaryadi's remarks according to the Cirebon Regency MUI. "The statement should not be spoken by a Muslim, let alone a leader knows a potential leader, because semantically the phrase can lead to apostasy.

2. Discussion

Legal considerations and/or obstacles faced by the Cirebon Police in this case the Investigator has concluded through the Letter of Notification of Progress of Investigation (SP2HP) dated 15 December 2017 Number: B / 754 / XII / 2017 / Sat Reskrim signed by the REZA Criminal Investigation Unit ARIFIAN, SH, S.IK. In essence, Reporting Number: LP B / 282 / VII / 2017 / JABAR / RES CRB dated July 6, 2017 Regarding Blasphemy of Religion after an investigation cannot be followed up to the Investigation due to the Case:

- a. Not enough evidence
- b. The Fatwa of the MUI of Cirebon Regency was not included in the Blasphemy of Religion

While according to the legal opinion of the researcher is not in accordance with the Cirebon District Police, the reason presented by the Cirebon Police via the Investigation Notification Letter (SP2HP) dated December 15, 2017 Number: B/754/XII/2017/Sat Reskrim to the Reporting Party has no legal certainty both the Reporting Party and The Reported Party

and this case become biased with no end to the base. For this reason the researcher concluded, among others:

Whereas the reasons presented by the Investigator based on SP2HP Number: B/754/XII/2017/Sat Reskrim dated December 15, 2017, at the first point stated not enough evidence. So Reporting Number: LP.B/282/VII/2017/JABAR/RES CRB dated July 6, 2017 on behalf of the reporter H. Sugiyono Regarding Blasphemy of Religion cannot be followed up to the investigation.

Conclusion

A. Summary

The conclusions obtained by the author are:

1. It should refer to the Criminal Procedure Code and the existing laws and regulations, and the Fatwa of the Cirebon Regency MUI should not be used as a legal basis for cases of blasphemy. If the Investigator has a case conviction, the problem is that there is no criminal element and there is insufficient evidence and/or the article is a criminal offense. Then SP3 can be issued as explained in Article 7 paragraph (1) letter i and Article 109 paragraph (2) KUHAP.
2. To fulfill Article 1 number 21 PERKAP No. 14 of 2012 concerning Management of Criminal Investigations Regarding Title Case must present the Reporting Party and the Reported Party to be maintained by Independency.

B. Suggestions

In the context of law enforcement in the field of criminal law in the Cirebon region, the following matters are specifically needed:

1. For proof of case, it must refer to Article 184 of the Criminal Code, which is about valid evidence.
2. In the case of an investigator, the investigator should present the reporter because the case title is a series of investigations or part of the integrated criminal process and system.
3. The MUI fatwa is not included in the hierarchy of the formation of legislation and is a positive law that has forced power in the form of sanctions to those who do not comply with it as the law must be obeyed by all components of the nation without exception.

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Undang-Undang No 2 Tahun 2002 Tentang Kepolisian Republik Indonesia, hal

C. Articles/Journals/Newspaper

Surat Kabar Harian Radar Cirebon , Selasa tanggal 4 juli 2017, hal 1-7.