

The Provision of Subjective Intentional Elements of Religious Blasphemy Crime (Study on the State Court of the North Jakarta, North Jakarta 1537 / PID.B / 2016 / PN.JKT.UTR

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ABSTRACT

Intent is a subjective element in a crime that is attached to the subject or perpetrators of the crime, which means to want and know what he is doing or doing. This study aims to determine the evidence of intentional subjective elements in criminal acts of blasphemy with examples of cases committed by Defendant Ir. Basuki Tjahaja Purnama alias Ahok in the North Jakarta District Court ruling Number 1537 / Pid.B / 2016 / PN.Jkt.Utr and conducted an evaluation of the judge's judgment in proving the intentional element of this case. This type of research is normative legal research. The defendant was charged under article 156a letter a of the Criminal Code and received a guilty verdict with a sentence of 2 (two) years in prison. The author considers that the proof of intentional element in this case has been carried out appropriately because it is grounded in the theory of knowledge that focuses on the knowledge and conditions which include the Defendant when the act was committed.

Keywords: *Proof, Elements of Intent, Blasphemy of Religion*

1. INTRODUCTION

The Unitary State of the Republic of Indonesia is a country that has a wide variety of ethnic, cultural, linguistic and religious diversity. One example of diversity in Indonesia is religious diversity. Religion turned out to be placed in a very important position by the founders of the Indonesian Nation by placing it on the 1st Sila of the Pancasila which reads "Ketuhanan Yang Maha Esa." So it is very appropriate if our country has the motto of *Bhinneka Tunggal Ika* which means that even though we are different but still one. This motto is inherent and continues to be the basis of unity and integrity for our country today. However, if this diversity is not managed properly, it could even produce something that is counter-productive for Indonesia itself for all Indonesian people.

In our Constitution, the 1945 Constitution of the Republic of Indonesia (1945 Constitution) has actually been regulated regarding religious freedom. Article 29 Paragraph (2) of the 1945 Constitution states that the State has the responsibility to guarantee each resident to embrace their respective religions independently, besides the right to worship according

to their religion and according to their beliefs. Then in Article 28E paragraph (1) and the 1945 Constitution the second Amendment states that everyone has the freedom to embrace and worship in accordance with their religion, free to choose education and teaching, free to choose citizenship, free to choose a place to live in an area of the country including leaving it and again. Furthermore, Article 28E paragraph (2) of the 1945 amendment of the second amendment states that everyone has the right and freedom to believe in beliefs, the right to express thoughts and attitudes that are in accordance with his conscience. So from the articles mentioned above it is very clear that religious freedom in Indonesia is highly valued and protected. But that does not mean that freedom has no restrictions at all. This limitation is stipulated in the 1945 Constitution Article 28J paragraph (1) of the second amendment, which states that each person has an obligation to respect the human rights of his fellow people / other people in the life of society, nation and state. Article 28J paragraph (2) states that every person in exercising their rights and freedoms must still comply with existing restrictions in accordance with the provisions of the Act. The rights and freedoms of others must be recognized and respected,

so as to achieve just demands so that they are in accordance with considerations of morality, religious values, security and public order in society.

The limitation is done by inserting a new article, Article 156a into the Criminal Code (KUHP) which regulates blasphemy. According to Barda Nawawi Arief, efforts to deal with crime that are usually carried out through the making of criminal laws are actually an inseparable part of social welfare efforts.¹ Protection of the community can indeed be done with a variety of instruments other than the law, but with criminal law it is hoped that efforts to protect the community can be more effective. The criminal law itself then recognizes the criminal terms as a basis for determining whether a person can be convicted of his actions. According to Moeljatno, the requirement to convict a person is in addition to a criminal act, but the person must be guilty and be responsible.²

One case of blasphemy against religion that occurred in Indonesia is a case that has permanent legal force in case Number: 1537 / Pid.B / 2016 / PN.Jkt Utr with the defendant Ir. Basuki Tjahaja Purnama Alias Ahok with case chronology, namely:

The defendant named Ir. Basuki Tjahaja Purnama Alias Ahok, has a birthplace in Manggar (East Belitung), Ahok was born on June 29, 1966, male, Indonesian, Christian, the work of the Governor of DKI Jakarta to carry out criminal acts of blasphemy with chronology as follows:

On September 27, 2016, Tuesday at 08.30 West Indonesian Time Ahok, as the Governor, visited the Fish Auction Place in Pramuka Island, Thousand Islands, DKI Jakarta accompanied by various DKI officials and DKI DPRD members.

The working visit actually has no correlation with the election to elect the Governor of DKI Jakarta, but because Ahok has been registered as one of the candidates for Governor, Ahok also gave a speech that was considered deliberately containing sentences related to the election of the Governor of DKI, namely concerning the letter of Al- Maidah verse 51. Ahok told the people in the Thousand Islands not to worry if he was not re-elected as Governor, because even though he was not re-elected he would remain in office until October 2017. Although he was not re-elected, he stated that the community still had time to harvest fish with him, and said the program was still ongoing until he finished taking office. Ahok stated that do not believe in people, because maybe it could be in their hearts that they could not choose Ahok because they were lied to using Al-Maidah 51 so they

were afraid to go to hell. Ahok said that there is no need to feel uneasy if you don't choose him but still accept the program, no need to feel indebted because you can die slowly later because of a stroke.

This case is interesting to discuss because alternative charges were used against Ahok, namely article 156a letter a of the Criminal Code and article 156 of the Criminal Code. In its decision the Panel of Judges stated that Ahok was found guilty of blasphemy according to the first alternative indictment of the General Prosecutor's Office. The Public Prosecutor demanded that the defendant be sentenced to 1 (one) year imprisonment with a probation period of 2 (two) years and the judge sentenced him to imprisonment for 2 (two) years. The crime of blasphemy in the above case will be very difficult to prove its intentional element because this crime is only based on someone's words. Aside from being based solely on speech, this case is covered by political spices because the Defendant is a candidate for the Governor of DKI Jakarta for the 2017-2022 period which further adds to the complexity of the case. It is interesting to see how the judge used to prove the element of intent in this case given the complexity of the case. Moving on to this reason, the title of this research was raised "The Provision of Subjective Intentional Elements in Religious Blasphemy Crime (North Jakarta District Court Decision Number 1537 / Pid.B / 2016 / PN.Jkt Utr)".

2. RESEARCH METHODS

There are several types of research method properties. According to Soerjono Soekanto, from the perspective of the purpose of legal research itself there are two types, namely normative legal research and sociological or empirical legal research.³

In this study, the research used was normative legal research. The reason the author chose normative legal research is based on the search for truth to get something that is axiologically a value as a reference or reference to be studied.⁴

The research approach used by the author is the Law approach and case approach. The Law Approach is an approach that is carried out by examining all laws and regulations relating to cases and case approaches by examining related cases related to the issue in North Jakarta District Court Decision Number 1537 / Pid.B / 2016 / PN.Jkt Utr.⁵ Data collection in this study uses secondary data. Secondary data comes from library data which has the aim to solve a legal issue and provide a prescription regarding the source of

¹ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: (Perkembangan Penyusunan Konsep KUHP Baru)*, Cetakan ke-3. (Jakarta: Kencana, 2011), hal.28.

² Sudarto, *Hukum Pidana I Edisi Revisi*, Cetakan ke-4, (Semarang: Penerbit Yayasan Sudarto, 2013), hal.73.

³ Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: University of Indonesia, 2014). Page 50.

⁴ Peter Mahmud Marzuki, *Legal Research Revised Edition*, 8th Edition, (Jakarta: Kencana Prenada Media Group, 2013), Page 33.

⁵ *Ibid.* Page 135

research.⁶ Data collection techniques contained in this study is a literature review. The collection of legal materials is from secondary legal material, which comes from articles, journals, and interviews with several sources. The analysis technique of this research is to use qualitative legal material analysis methods, namely research that emphasizes legal material obtained through various sources of legal materials including books, literature, articles, journals, and North Jakarta District Court Decision Number 1537 / Pid.B / 2016 / PN.Jkt Utr and related laws and regulations.

3. DISCUSSIONS

The criminal justice system in Indonesia which is regulated by the instrument of the Criminal Procedure Code (KUHAP) explains the examination process at the trial. One of the examination processes in a criminal case is proof of the crime itself. The theory used is a proof theory, this theory is an arrangement regarding the elaboration and types of evidence allowed in the trial, and about how to the Panel of Judges to be confident in the trial. The evidence system is a method that contains how the evidence is obtained or allowed to prove, how to use the evidence in court proceedings and the caste sequence of the instrument is also used as a benchmark in making conclusions of all about proving something. Moving on from that theory, to prove the crime we certainly need to prove the elements that are in the crime. The element of crime itself in the sense that the conditions for a crime against someone are divided into monistic and dualistic views, but in fact according to Van Hatum actually in material criminal law the separation of monistic and dualistic flow is not essential. Separation of acts from criminal liability is a way to facilitate the prosecution being carried out. In the case of carrying out evidence at trial, it will be easier for the Judge if it is separated between the act and the responsibility for the act. The court session will usually begin with proof of the existence of a criminal offense, and then whether the criminal act committed can be held accountable for the accused being tried. The principle of no criminal without error explains that the requirement for the conviction of a person is an act that is carried out must have an error in the broad sense of criminal responsibility, this also explains that before arriving at criminal liability there needs to be a criminal act committed. Departing from this thought, it can be said that there must be proof of the act whether it meets the elements of the article before entering into the aspect of criminal liability. Proof of this intentional element requires a theory to be used as a basis for proof. The Panel of Judges uses the intentional understanding of Memorie Van

Toelichting which is the will and know (Willens en Wetens). The Panel of Judges then used the explanation of S.R Sianturi that intentional understanding is to have a broad interpretation covering three gradations of intentions, namely intentions as intentions, intentions with certain awareness or necessity, and intentions as possibilities. If you see the consideration of the Panel of Judges in the Ahok case it can be said that the decision made by the Judge relating to the element of intent is correct. Judges in this case are more inclined to use knowledge theory (voorstellingstheorie). The theory of knowledge / imagining / prejudice (voorstellingstheorie) states that the intentions of the maker can only be addressed to his actions because in fact someone can only imagine the consequences, unable to will. In its consideration the Judge did not try to explain that the actions carried out by the Defendant and their consequences was a calculated will, especially aspects of the consequences. If the Judge tries to explain the aspect of the consequences, it will certainly be difficult to prove that the Defendant in this case really wants the result of acts prohibited in this article, namely blasphemy because the issue of intention or intentionality is a matter of heart as mentioned in the Judge's own judgment. The crime of blasphemy certainly has more difficulties to prove, considering that it must be proven intentional to a speech that can be interpreted differently by each person. Unlike the case with other criminal acts such as murder, the level of proof of deliberate will be easier to do because we can associate between aspects of the act with the intended effect of the perpetrator. Judges only see how the conditions surrounding actions that lead to intentionality, because according to the theory of knowledge that intentions can only be seen from their actions, while the consequences of these actions may be missed. Various judges' considerations did indeed lead to the conditions surrounding the act such as explaining the Defendant's knowledge when mentioning Al-Maidah 51 in the Kepulauan Seribu. The judge proved the Defendant's knowledge by considering that the Defendant clearly stated that from Al Maidah's letter by saying that it could have been lied to using Surah Al Maidah then the community did not elect the Defendant. The various considerations outlined above clearly illustrate that the Panel of Judges will first prove the Defendant's knowledge of the Al-Maidah 51. The next consideration is then the Judge will enter the conditions that include the Defendant so that the Defendant's actions lead to deliberate action. An example is the condition of the Defendant who is a public official in this case the Governor of DKI Jakarta, the Judge stated that as a public official the Defendant should understand that religious matters are sensitive and easy to cause friction between religious

⁶ *Ibid.* Page 181.

communities. The criminal act of blasphemy in Article 156a letter a which contains intentional elements does not describe the consequences of actions as an element in the article, but in general, it is easier to prove an intentional action by linking the relationship between the actions committed by the Defendant with the expected consequences. As has also been explained by Mr. Benedictus Nurhadi that proof of intentional elements in the crime of blasphemy is indeed difficult to do because the topic of blasphemy of religion itself is quite sensitive and often thick with the interests of certain parties which makes it difficult to prove itself. More simply it can be said that article 156a letter a requires extra caution to prove the element of intentions because there are no concrete consequences discussed in this article. The absence of these concrete consequences makes the Judge must be careful in seeing the facts that arise so that they can accurately prove the intentional element through strong judgment. Seeing the reasons that have been described by the writer above, the writer considers that the method is conducted by the Panel of Judges to prove the element of intent in this case is appropriate. The difficulty of the Judge in determining how the shadow or intention of tarnishing the religion of the Defendant which should be reflected in other than the act is the result of the act itself, then the actions and conditions which include the Defendant will be the Judge's main weapon in proving his intentions. The theory of knowledge (*voorstellingstheorie*) is used by the Judge as a theoretical basis for proving the element of intent, because this theory is in accordance with the conditions of the case that is the absence of a predictable effect from the statements issued by the Defendant. Considering the difficulty of proving the element of intent in criminal acts of blasphemy as outlined by the author above, the Panel of Judges focuses on proving the Defendant's knowledge of the verses of Surah Al-Maidah 51 and explaining the conditions which include the Defendant, namely as a public official in this matter as the Governor of DKI Jakarta. The Panel of Judges provides an illustration of how the Defendant has long known the position of Surah Al-Maidah 51 as a sacred verse of Islam because the Defendant wrote a book published in 2008 and the book has alluded to it. The utterance that became the main issue in the case was a statement delivered in a work visit forum, so that the speech was considered to have been planned. The defendant as a public official was then expected to be able to avoid using words that had a negative connotation to certain verses or religions. The Panel of Judges finally argued that with the Defendant's knowledge and in fact did not avoid the use of words that had negative meaning to a holy verse, the intentional elements in the article had been fulfilled so that all elements had been

fulfilled and criminal sanctions could be met. The Panel of Judges is quite careful in seeing all the facts that appear in the trial including witness statements, expert statements which of course in the case of blasphemy require a thorough understanding of all components to provide a fair decision.

4. CONCLUSIONS

After conducting studies and analysis regarding the proof of intentional subjective elements in the crime of blasphemy, the author based on theories and expert opinions can conclude that:

Proof carried out by the Panel of Judges is appropriate using the basic theory of intent that is right, namely knowledge theory, because in article 156a letter a does not describe the consequences as an element for someone to be convicted so that it will be difficult for the Judge to explain the intentional if no consequences should be achieved of the actions committed by the Defendant. Difficult interpretation of this article is mainly due to the lack of explanation regarding whether the blasphemy of religion itself and how the consequences arising from this act will make it difficult for the Judge to carry out proof, so the Judge only focuses on proving how deliberate in his actions by relating the conditions covering the Defendant in this matter as a public official, that is, as the Governor of DKI Jakarta, should avoid the use of negative connotations to the Islamic religious verses, namely Al-Maidah 51. The series of considerations used by the Judge to prove intentionality does not actually discuss the consequences of the direct actions of the Defendant. Judges will find it difficult to explain the direct consequences of the Defendant's actions in this case the blasphemy of religion which is certainly difficult to measure because based on the words of someone who can lead to different interpretations. The judge proved that the intentional element began with the Defendant's knowledge of the holy verses and then explained the conditions which included the Defendant when delivering expressions which were considered to defile the religion of Islam and finally concluded that with the knowledge and conditions that covered him when expressing the speech it could be said the Defendant had intentionally committed the blasphemy of that religion.

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