



Application of Balinese Customary Law Sanctions in Criminal Acts of Blasphemy Against Sacred Places

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Abstract. The increasing development of Bali's tourism has finally made it possible for temples to also serve as a tourist attraction area. However, this in turn allows cases of blasphemy against sacred places to occur. If it is viewed from the perspective of criminal law, in fact the crime of harassment or blasphemy against a sacred place needs to receive an exclusive attention in terms of imposing criminal sanctions. Unfortunately, a legal vacuum in the regulations regarding the perpetrators of the crime of blasphemy against sacred places, in fact, still exists. Using normative the legal research method, this study examines legal norms through the principles of legislation and with a statute approach, a conceptual approach, and an analytical approach. Over time, the Bali Provincial Government issued Governor Regulation No. 25 of 2020 regarding Protection Facilities for Temple, Pratima, and Religious Symbol. This regulation can anticipate the imposition of legal sanctions against perpetrators of blasphemy against sacred places, such as customary sanctions in the form of *arta danda* (fine), *pengaksara danda* (apologies by the perpetrator), and *sangaskara danda* (holding of certain ceremonies). Although customary sanctions are considered able to coordinate cases of blasphemy against sacred places, a form of criminal punishment is still needed to create a deterrent effect in accordance with the theory adopted in criminal law, the so-called theory of punishment.

Keywords: Balinese Customary Law · Sanctions · Blasphemy

1 Introduction

The formulation of the first precepts of Pancasila, the basis of the Indonesian state, is Belief in the One God. If interpreted, this formulation implies that despite not being composed of one religion, the people of the State of Indonesia still believe that there is only one God and accept the diversity of beliefs or religions. In addition to religion, the state also legally protects various races, ethnicities, and cultures that are truly diverse. Although the State of Indonesia does not prohibit the existence of various religions, it is hoped that nothing will deviate from the provisions of the legislation, as well as its sustainability. This is done due to the importance of the relationship between religious

freedom and public order. Therefore, the State makes limits in actions that are considered acts of blasphemy or insulting other religions to avoid conflicts in people's lives.

As time progresses, various criminal acts that interfere with the continuity of religious activities in Indonesia are also growing, one of which is the crime of blasphemy. This has been regulated in Presidential Decree Number 1 of 1965 concerning Prevention of Abuse and/or Blasphemy against Religion and Law Number 5 of 1965 concerning Statements of Various Presidential Decrees and Presidential Regulations as Laws on Blasphemy of Religion. Apart from blasphemy cases, another thing that often happens is the crime of harassment or blasphemy against sacred places in the Tourist Attractions (DTW) area, especially in Bali. The sacred place or temple is the most important institution on the island of Bali and the clearest illustration of the religious spirit of the Balinese.

As a symbol of Hinduism in Bali, temples have special sacred value and should not be tarnished. In the opinion of Anak Agung Oka Netra, a temple for Hindus serves as a means to worship Ida Sang Hyang Widhi Wasa and all his manifestations and as a place to worship ancestral holy spirits with various levels. Meanwhile, the function of a holy place, in particular, is a means to improve the quality of human beings, both as individual beings and as social beings. Individually, this function is to communicate the Sang Hyang Atma that exists in humans with God Almighty as the Source. Whereas socially, a holy place functions as a facility and infrastructure to carry out social activities; for example, deliberation and education activities, carrying out the sacred vows of marriage, and so on.

The growing tourism in Bali has finally allowed temples to serve as a tourist attraction area, so the occurrence of cases of blasphemy against sacred places is undeniable. If viewed from the perspective of criminal law, in fact the crime of harassment or blasphemy of sacred places needs to receive exclusive attention in terms of imposing criminal sanctions. This is because the activities of blasphemy against sacred places are becoming more rife but there is no firm sanction by the Indonesian government to resolve them. As a result, there are still tourists, both foreign and domestic, who commit acts of blasphemy against sacred places. Sacred places that are tourist destinations often provide easy access for tourists to travel in and out of the temple area. This often has an impact in the form of frequent cases of blasphemy against sacred places in the tourist attraction area in Bali.

2 Method

The method applied in this research is normative legal research. There are three approaches used, namely the statute approach, conceptual approach and analytical approach. The data used take the form of primary data and secondary data, which were collected using documentation and recording techniques analyzed using hermeneutic and qualitative techniques.

This research uses normative legal research by exploration of legal norms through the principles of legislation. Problem approaches used are statute approach, concept approach, legislation and analytical approach. Secondary data or legal materials were collected using documentation and recording techniques with a file system.

3 Result and Discussion

3.1 Regulations Regarding Blasphemy Against Sacred Places According to Positive Law

Indonesia, a nation that is abundantly rich in culture and customs, recognizes the existence of customary law in addition to national law, which regulates people's lives. Customary law is part of the adoption of the Common Law System which has its own characteristics. Most of the rules in it are unwritten. Generally this law is passed down from generation to generation in an oral manner. Unfortunately, it turns out that not all existing customary law is oral; some take written form. For example, in Bali, there is what is called *awig-awig*, a legal product that is used to regulate the pattern of people's lives in certain areas.

Customary law is known to have lived and developed in Indonesian society for a long time. It is based on values that live in the community itself, such as original values that have been respected in certain communities and syncretic values which are a combination of values that come from outside and only apply to people in that environment. The function of customary law is essentially to establish a balance between members of a community, both individually and in groups who are members of indigenous communities.

The life of the Balinese indigenous people is very thick with customs. The Indigenous peoples highly protect holy places or sacred places which are believed to be a bridge to achieve a balance between living things and God the creator. Therefore, the indigenous people of Bali strongly oppose actions that destroy sacred places, because such actions are considered to desecrate themselves and the surrounding environment, especially with acts that are considered as blasphemy or desecration.

The Criminal Code (KUHP), which is a product of national law, defines that what is meant by "blasphemy" is to attack someone's honour and good name. The action can be divided into 6 types: verbally insulting, written/written insults, slander, light insults, slanderous complaints, and slanderous accusations. In the Criminal Code, it can be seen that blasphemy is committed by a person or group to another person or group.

Along with the development of the era, blasphemy is committed not only against other people or groups. However, the actions of another person or group committed against or in a sacred place can also be claimed as an act of blasphemy against a holy place, let alone if it is committed in Bali, in which the sacredness of a holy place is highly respected. Unfortunately, in the Criminal Code there are no provisions regarding blasphemy or desecration against holy places. Only regarding criminal acts directed against religion and a certain group are regulated therein, as in the following Articles:

Article 156 *"Any person who publicly gives expression to feelings of hostility, hatred or contempt against one or more groups of the population of Indonesia, shall be punished by a maximum imprisonment of four years or a maximum fine of four thousand five hundred Rupiahs"* Article 156a:

It is penalized with imprisonment for as long as five years whoever intentionally in public expresses a sentiment or commits an act:

1. That basically has the nature of hostility, abuse or defamation against a religion that is adhered to in Indonesia;

2. With the purpose so that people do not adhere to any religion that is predicated upon the Believe in the One God.

Article 157 (1):

- (1) Any person who disseminates, openly demonstrates or puts up a writing or portrait where feelings of hostility, hatred or contempt against or among groups of the population of Indonesia are expressed, with intent to give publicity to the contents or to enhance the publicity thereof, shall be punished by a maximum imprisonment of two years and six months or a maximum fine of four thousand five hundred Rupiahs.
- (2) If the offender commits the crime in his profession and during the commission of the crime five years have not yet elapsed since an earlier conviction on account of a similar crime has become final, he may be deprived of the exercise of said profession.

In reference to the theory of legal protection, the criminalization of religious crimes that is regulated in the Criminal Code may be divided into three theories, namely:

- a. The theory of religious protection (Religionsschutz-Theorie). According to this theory, religion is seen as a legal interest or object that will be protected by the state, through the laws and regulations it makes.
- b. The theory of protection of religious feelings (Gefühlsschutz-Theorie). According to this theory, the legal interest to be protected is the religious feeling of religious people.
- c. The theory of protection of peace/tranquillity of religious people (Friedensschutz-Theorie). The object or legal interest that is protected according to this theory is the religious peace/ tranquillity among religious adherents, or in another sense, it is more focused on protected public order.

If the crime of blasphemy or desecration against a sacred place is associated with the theory of legal protection, it also has the same “right” to be protected as that of blasphemy. It is said so because if an act of blasphemy against a sacred place occurs, it will hurt the religious feelings of the religious people whose holy place is desecrated. Such actions can of course damage the peace or tranquillity of the community, especially indigenous peoples who have gone to great lengths to maintain the sanctity of their sacred places. This signifies the existence of a regulatory vacuum, especially in the national law regarding blasphemy against sacred places.

3.2 Application of Customary Sanctions in Blasphemy Against Sacred Places According to Balinese Customary Law

Blasphemy against a sacred place from the point of view of Balinese customary law is an act that intensely destroys the balance between man and God. If it happens, the settlement must use the customary law in force in the area concerned. Indigenous Balinese people believe that customary law, in this case customary sanctions, is needed to restore the

magical balance as a result of blasphemy against sacred places. Customary sanctions are imposed with the aim of neutralizing the shocks that occur as a result of violations. The sanctions also function as a stabilizer to restore the balance between the world of birth and the unseen world. The form of customary sanctions varies, depending on the values and feelings of justice for the community concerned.

Blasphemy against sacred places in Bali can be categorized as a violation of customary law and can lead to customary conflicts. Recently, several acts that are classified as blasphemy against sacred places in the tourist attraction area (DTW) in Bali have often occurred. Most of the tourists admitted that they did not know that such actions were prohibited because in their country such conditions were not a problem. However, wherever the city is, everyone should always remember the message of the proverb, "When in Rome, do as the Romans do". The proverb implies that wherever one is, they must comply with the rules and norms prevailing in the area they is visiting, both nationally and customarily. Thus, every visitor must first find out about the dos and don'ts in the community to be visited. Or at least they can obtain information from the guide who leads them.

Back to the adage that Indonesia is a state of law. Additionally, based on the rule of law theory which prescribes that the state must be based on laws or other governing regulations, in order to resolve the problem of blasphemy against sacred places, which in national law has not been clearly regulated, an alternative way can be taken, that is to say, to apply customary sanctions. This is done to always create a deterrent effect and at the same time to socialize to the wider community that there are actions that are prohibited from being carried out in sacred places. However, the decision regarding the application of customary sanctions must also be made with the consent of the indigenous peoples residing in the area in which the blasphemy of sacred places has taken place.

Customary sanctions in Balinese indigenous peoples consist of several types, as follows:

1. Arta danda: a type of customary sanction in the form of material, in that, the offender pays money or replaces treasures (material objects).
2. Sangaskara danda: a type of sanction in the form of holding special ceremonies in accordance with the teachings of Hinduism; for example, a cleansing ceremony whose purpose is to restore magical balance.
3. Jiwa danda: the sanction in the form of tormenting the body and spirit/soul.

Bali Provincial Government has now issued Governor Regulation Number 25 of 2020 concerning Protection Facilities for Temples, Pratima (sculpture), and Religious Symbols. In Article (1), it is prescribed that the temple security, as referred to in Article 5 paragraph (1) letter a, letter b, letter c, letter d, and letter e, is organised to prevent damage, destruction, desecration, and abuse of temples. Desecration in this article can be interpreted as blasphemy. Furthermore, Article 15 paragraph (1) explains that:

- (1) Temple rescue is done by revitalizing and restoring.
- (2) Revitalization as referred to in paragraph (1) is realized by rebuilding or maintaining temples that have been or are about to lost, at least by:

- a. exploring or re-learning the data of various temples that have been or are about to be lost;
 - b. re-creating temples that have been or are about to be lost; and
 - c. re-encouraging the use and function of temples that have been or are about to be lost.
- (3) Restoration as referred to in paragraph (1) is realized by returning or restoring the temple to its original state.

In the article it is shown that if desecration or blasphemy against a sacred place in Bali occurs, the condition must undergo restoration or the temple must returned or restored to its original state. This can be done with related traditional ceremonies.

Furthermore, in Article 45 which forms categorized as prohibitions is also explained, as in Paragraph (1), which reads “It is forbidden to enter the temple for: a. Everyone who is in a state of Cuntaka (menstruating) or Sebel (resentment); and b. Everyone who is not directly engaged in a prayer ceremony, piodalan and/or a temple protection activity.”; Paragraph (2) which reads “Everyone is prohibited from destroying and desecrating temples.”; Paragraph (3) which reads “Everyone is prohibited from damaging and stealing Pratiima.”; and Paragraph (4) which reads “Everyone is prohibited from destroying, stealing, desecrating, and abusing Religious Symbols.”

Regarding sanctions against offenders, it is regulated in the subsequent articles, such as Article 46 paragraph (2) which states that “Everyone who violates the prohibition as referred to in Article 45 paragraph (2), paragraph (3) and paragraph (4) shall be subject to sanctions in accordance with the provisions of the Legislation”. In Paragraph (3), the customary sanctions as referred to in paragraph (1) take the forms of:

- a. Arta danda (fine);
- b. Pengaksara danda (apologising);
- c. Sangaskara danda (special ceremonies).

Offenders of acts of blasphemy against sacred places may be subject to material sanctions, such as requiring them to pay all costs incurred to restore the sacred value of the sacred place in question. This material sanction can also be in the form of simply asking the offender to attend and pray for the restoration of the desecrated sacred place. And, it is even possible to take the other alternative in the form of physical and spiritual tormenting of the offender with the aim of causing a deterrent effect for them. The provision of these customary sanctions depends on the decision of the indigenous peoples whose sacred places have been desecrated.

Although the sanctions that can be imposed on offenders of blasphemy against sacred places have been formulated in the Governor Regulations of the Province of Bali, in the authors’ opinion relevant national laws and regulations are still needed. Establishment of criminal sanctions as well as administrative sanctions that are binding are intended not only on offenders of blasphemy against sacred places in Bali, but also those in all regions in Indonesia. The aim is that there will be no more cases of blasphemy against sacred places, as those which have often happened, not only committed by foreign citizens but also Indonesian citizens.

Imposition of criminal sanctions for the crime of blasphemy against sacred places is supported by the theory of punishment, the so-called Integrative theory which declares that the crime includes the principle of retaliation and the principle of order, the defense of public order. In other words, these two reasons are the basis of the criminal conviction. Basically the integrative theory is a combination of absolute theory and relative theory. Combination of the two theories teaches that the imposition of punishment is to maintain the rule of law in society and improve the personality of the criminal. With the provision of criminal sanctions for the crime of blasphemy against sacred places, in the coming days, it is hoped that it will have an impact on reducing cases of blasphemy against sacred places that have become Tourist Attractions (DTW), both by foreigners and Indonesian citizens. In addition, the policy is also expected to provide a more deterrent effect for the offenders.

4 Conclusion

In the national legal system, which is regulated by the Criminal Code (KUHP), there is no clear legal arrangement regarding the crime of blasphemy or desecration against sacred places. It is only provisions regarding criminal acts against certain religions and groups that are regulated therein. To fill the legal vacuum, another alternative can be taken, that is to say, by applying customary sanctions. This is with the aim of creating a deterrent effect for offenders and at the same time to socialize to the wider community that there are actions that are prohibited in sacred places. However, the decision to apply customary sanctions must be made with the consent of the indigenous peoples residing in the area in which the acts of blasphemy against sacred places took place. The customary sanctions that can be imposed on offenders are *Arta danda* (fines), *Sangaskara danda* (special ceremonies), and *Jiwa danda* (physical and spiritual/mental tormenting). This is in line with the regulations issued by the Bali Provincial Government, which is the Governor Regulation Number 25 of 2020 concerning Protection Facilities for Temples, *Pratima*, and Religious Symbols.

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