

# Criminal Sanctions Against The Crime Of Blasphemy Through Electronic Media (Juridical Analysis Of The Surabaya District Court Decision Number: 1413/Pid.Sus/2020/Pn.Sby.)

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# Criminal Sanctions Against The Crime Of Blasphemy Through Electronic Media (Juridical Analysis Of The Surabaya District Court Decision Number: 1413/Pid.Sus/2020/Pn.Sby.)

Wahyu Tris Haryadi

email : triswahyu0@gmail.com

Faculty of Law Bhayangkara Surabaya University Indonesia

**Abstract**—This study discusses criminal sanctions against blasphemy through electronic social media. This is based on the rise of cases of blasphemy through electronic social media. The purpose of writing this thesis is to find out how to regulate criminal law against perpetrators of criminal acts of blasphemy through electronic social media facilities and the application of the law. This study uses a normative juridical method. This is based on the consideration that this type of research is normative legal research with a statutory approach. The results of this study indicate that: 1) criminal sanctions against blasphemy through electronic social media are threatened with Article 28 paragraph (2) jo. Article 45 paragraph (2) of Law Number 11 of 2008 concerning Electronic Information and Transactions, which was last amended to Article 45A paragraph (2) of Law Number 19 of 2016 concerning Electronic Information and Transactions, 2) In the case of criminal case number : 1413/Pid.Sus/2020/PN.Sby., The Surabaya District Court imposed a criminal sanction on the defendant Bambang Bima Adhis Pratama in the form of imprisonment for 7 (seven) months, reduced as long as the defendant was in temporary detention because he had been proven guilty of a criminal act blasphemy as regulated in Article 45A paragraph (2) Jo. Article 28 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

**Keywords**—Crime, Blasphemy, Electronic Social Media

## INTRODUCTION

Indonesia is a plural country. As a pluralistic country with various ethnicities, races, cultures, religions and groups, it can be said that Indonesia is prone to disturbances in security and order. In fact, it can develop into a horizontal or vertical conflict. These conflicts can occur if not anticipated early. In the reform era, the diversity (plurality) of society tends to

be a burden rather than the capital of the Indonesian nation. This is evidenced by the emergence of various problems whose sources smell of pluralism, especially in the field of religion (Ade Dedi Rohayana, 2011).

From a religious perspective, all religious groups are not convinced that the basic value of every religion is tolerance. As a result, intolerance and conflict emerge. Whereas religion can be a positive energy to build the value of tolerance in order to create a just and prosperous country. In this reform era, we should uphold democracy and tolerance. Democracy without tolerance will give birth to an authoritarian political order, while tolerance without democracy will give birth to tolerance that is vulnerable to communal conflicts. (<https://www.rctiplus.com/trending/detail/208111/selama-2020-ylbhi-tekan-tens-case-penodaan-agama>).

In certain cases, such as cases of blasphemy or blasphemy, it becomes one of the crucial issues that are still vulnerable in Indonesia. Based on the monitoring of the Indonesian Legal Aid Foundation (YLBHI) during January-May 2020, there were dozens of cases related to blasphemy or blasphemy that occurred in various regions. Cases of blasphemy are currently dominated by electronic social media users. This electronic social media is widely used by young people who often do not understand the legal consequences when playing social media so that more and more young people are caught up in the law. One of the victims was Bambang Bima Adhis Pratama (B). This 18-year-old youth from Surabaya is threatened with 5 years in prison after spoofing the lyrics of the song "Aisyah" which is currently popular on social media. He was threatened with Article 45A paragraph 2 and Article 28 paragraph 2 of the Republic of Indonesia Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE).

Based on this background, in this study what will be discussed are: 1) how is the regulation of criminal law sanctions against perpetrators of criminal acts of blasphemy through electronic social media facilities and 2) how the law is applied by the Surabaya District Court in its decision number: 1413/Pid.Sus/2020/PN.Sby. Crime comes from the Dutch

language "Strafbaarfeit", which is translated into Indonesian with various meanings including, criminal acts, offenses, criminal acts, criminal events and acts that can be criminalized. According to Pompe, a criminal act is a violation of norms (disruption of the legal order) which has intentional or unintentionally been carried out by someone the perpetrator is necessary for the maintenance of legal order and the guarantee of the public interest (Lamintang, 2013). Meanwhile, Simons defines a criminal act as an act (handeling) which is threatened with criminality by law, contrary to the law (onrechtmatig) carried out with an error (schuld) by someone who is capable of being responsible (Roni Wiyanto, 2012).

Meanwhile, Moeljat uses the term "criminal acts", namely: "actions that are prohibited by a rule of law, which prohibitions are accompanied by the threat of sanctions in the form of certain crimes, for whom prohibition is". The term criminal act arises and develops from the Ministry of Justice which is often used in legislation although it is shorter than an act, but a crime shows an abstract word such as an act, but only shows concrete things (Kansil and Christine, 2004).

Legally, there is no clear definition or understanding of blasphemy, either in the PNPS no. 1 of 1965, neither the Criminal Code nor the Electronic Information and Transaction Law (UU ITE) provide a clear definition or explanation of the meaning of the term blasphemy. Blasphemy is an act of humiliation, blasphemy, or disrespect for sacred figures, religious artifacts, customs, and beliefs of a religion (Adnani, 2017).

Blasphemy is an act against the law, both Islam and other religions, both in Indonesia and in other countries. Blasphemy / blasphemy of religion in general can be interpreted as opposing things that are considered sacred, or which should not be attacked (taboo), namely religious symbols/religious leaders and religious scriptures. While the form of acts of blasphemy / blasphemy of religion is generally known as words or writings that oppose the divinity of established religions (Siti Aminah, 2015).

According to Kurnia Dewi Anggraeny, blasphemy is a conflict with something that is considered sacred or which should not be attacked, such as religious symbols/religious leaders/religious scriptures. Generally, the form of blasphemy of religion is a word or writing that opposes the divinity of an established religion (Kurnia Dewi Anggraeny, 2017).

Social media is an online media, where users (users) through internet-based applications can share, participate, and create content in the form of; blogs, wikis, forums, social networks, and virtual world spaces powered by increasingly sophisticated multimedia technologies. The internet, social media and multimedia technology become an inseparable unit and encourage new things. Here are some definitions of social media according to experts.

According to Chris Garrett, social media are tools, services, and communications that facilitate relationships between people with one another and

who share a common interest or interest. Meanwhile, according to Sam Decker, social media is digital content and interactions created by and between each other. Meanwhile, according to Lisa Buyer, defining social media as the most transparent, interesting and interactive form of public relations today (<http://www.guru Pendidikan.com/21- Characteristics-Pengertian-media-Social-Menurut-Para-Ahli- positive-negative impacts/>.) This research was made specifically to find out how the criminal law regulation of the criminal act of blasphemy against religion and the application of the law in the Surabaya District Court in a criminal case number: 1413/Pid.Sus/2020/PN.Sby.

## RESEARCH METHODS.

This study discusses and analyzes criminal sanctions against blasphemy in the Surabaya District Court Decision Number: 1413/Pid.Sus/2020/PN.Sby. This type of research is normative juridical, which describes the legislation as a starting point for reviewing the subject matter and is associated with legal theories and legal principles. This study uses a statutory approach, a conceptual approach and a case approach to determine the judge's considerations in applying the law. This study uses primary legal sources such as: statutory regulations and the Surabaya District Court Decision Number: 1413/Pid.Sus/2020/PN.Sby. as well as secondary sources of legal materials obtained from the literature, and tertiary legal source materials, such as: legal dictionaries, encyclopedias, etc., which are useful for providing instructions or explanations so that the terms/words are meaningful. All existing legal materials are processed and systematized according to the main research problem, then interpretation is carried out so that the legal material has meaning, which is then analyzed to obtain answers to the problems discussed in this study.

## RESULTS AND DISCUSSION.

### 1. Regulation of criminal law sanctions against perpetrators of blasphemy crimes through electronic social media facilities.

Along with the development of people's needs in the world, information technology plays an important role, both now and in the future. The development of information technology by itself has changed the behavior of society and human civilization globally. This development can change social values, social rules, behavior patterns, organizations, and others from the side of human life, so that new norms, new values, and so on emerge.

As a result of such developments, legal problems are often faced by the community, such as: electronic delivery of information, communication and/or data, which contains elements of a criminal act or crime. Acts or crimes through information technology facilities often occur in cyberspace, both intentionally and unintentionally by the perpetrators due to the influence of information technology.

Acts or crimes through information technology at this time that need a lot of serious attention, namely criminal acts of humiliation or hate speech and/or blasphemy of religion, as well as the dissemination of other information on social media aimed at causing hatred or hostility between individuals and/or groups certain communities based on ethnicity, religion, race and inter-group (SARA).

Regulations regarding the criminal act of blasphemy against religion, judges in deciding cases mostly refer to Articles 156 and 156a of the Criminal Code, as well as Law no. 1/PNPS/1965 concerning the Crime of Blasphemy. However, if the act of blasphemy against religion is carried out through electronic social media, the legal basis is to refer to Article 28 paragraph (2) of the ITE Law No. 11 of 2008.

The regulation of criminal sanctions for violators of Article 28 paragraph (2) of the ITE Law No. 11 of 2008 is regulated in Article 45 paragraph (2) of the ITE Law no. 11 of 2008 which was last amended to Article 45A paragraph (2) UU ITE No. 19 of 2016 as reads as follows:

*"Every person who knowingly and without rights disseminates information aimed at causing feelings of hatred or hostility towards certain individuals and/or groups of people based on ethnicity, religion, race, and inter-group (SARA) as referred to in Article 28 paragraph (2) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)."*

Several cases of blasphemy or blasphemy against religion in Indonesia through electronic social media have been decided by court judges using Article 45 paragraph (2) of UU ITE No. 11 of 2008 which was last amended to Article 45A paragraph (2) UU ITE No. 19 of 2016. One of them was applied by the Surabaya District Court Judge in trying the blasphemy case carried out by the defendant Bambang Bima Adhis Pratama. In his decision number: 1413/Pid.Sus/2020/PN.Sby., the Surabaya District Court Judge sentenced Bambang Bima Adhis Pratama to imprisonment for 7 (seven) months because the defendant Bambang Bima Adhis Pratama was found guilty of committing a criminal act as stipulated and subject to criminal sanctions Article 45A paragraph (2) Juncto Article 28 paragraph (2) RI Law no. 19 of 2016 concerning Amendments to the Law of the Republic of Indonesia No. 11 of 2008 concerning ITE, as in the first indictment of the Public Prosecutor.

## **2. Application of criminal sanctions against perpetrators of blasphemy crimes through electronic social media facilities in the Surabaya District Court Decision Number: 1413/Pid.Sus/2020/PN.Sby.**

Judges in examining criminal cases try to find and prove material truth based on the facts revealed in the trial, and adhere to what is formulated in the indictment of the public prosecutor. Based on the position of the case in case Number: 1413/Pid.Sus/2020/PN.Sby., that the application of

the alternative indictment of Article 45A paragraph (2) Juncto Article 28 paragraph (2) of the ITE Law No. 19 of 2016 concerning amendments to the ITE Law No. 11 of 2008 and Article 156 letter a of the Criminal Code is in accordance with the position of the case. Furthermore with respect to the alternative indictment, the Panel of Judges after taking into account the legal facts at trial, immediately chose the first alternative indictment, namely Article 45A paragraph (2) Juncto Article 28 paragraph (2) UU ITE No. 19 of 2016 concerning amendments to the ITE Law No. 11 of 2008, to prove every element. This according to the author is in accordance with the position of the case.

To prove whether or not the application of Article 45A paragraph (2) Juncto Article 28 paragraph (2) UU ITE no. 19 of 2016 concerning amendments to the ITE Law No. 11 of 2008 which was handed down by the Panel of Judges on the basis of the indictment of the Public Prosecutor that the defendant committed a criminal act intentionally and without the right to disseminate information aimed at causing hatred or hostility to certain individuals and/or community groups based on ethnicity, religion, race, and ethnicity. intergroup (SARA) as regulated in Article 45A paragraph (2) Juncto Article 28 paragraph (2) UU ITE no. 19 of 2016 concerning amendments to the ITE Law No. 11 of 2008, then the elements regarding the crime must be fulfilled in its entirety.

The elements of Article 45A paragraph (2) Juncto Article 28 paragraph (2) UU ITE no. 19 of 2016 concerning amendments to the ITE Law No. 11 of 2008 concerning ITE are as follows: 1) Everyone; 2) Deliberately and without rights to disseminate information aimed at causing hatred or hostility to certain individuals and/or community groups based on ethnicity, religion, race and intergroup (SARA) Whereas based on the facts revealed at the trial, it is clear that the defendant committed a crime "intentionally and without rights in spreading information aimed at causing hatred or hostility to certain individuals and/or community groups based on ethnicity, religion, race, and inter-groups" SARA" Thus this element has been fulfilled.

In this case the Judge sentenced the defendant to imprisonment and a fine, namely imprisonment for 7 (seven) months. This is lighter than the demands of the Public Prosecutor, namely imprisonment for 10 (ten) months. The judge has taken the decision after considering all matters related to the decision, both juridical and non-juridical considerations. As for the juridical considerations, such as considering the indictment given by the public prosecutor, then outlining the articles indicted element by element, and as for the non-juridical considerations, it can be seen in the judge's considerations regarding aggravating or mitigating circumstances for the accused contained in the decision.

Thus the application of Article 45A paragraph (2) Juncto Article 28 paragraph (2) UU ITE no. 19 of 2016 concerning amendments to the ITE Law No. 11 of

2008 in the case of disseminating information aimed at creating feelings of hatred or hostility towards certain individuals and/or community groups based on ethnicity, religion, race, and intergroup (SARA) by the defendant Bambang Bima Adhis Pratama which was applied by the Panel of Judges was appropriate because the case was carried out using electronic media / ITE, <sup>15</sup> the articles in the ITE Law were applied and not the articles of the Criminal Code.

### CONCLUSION

a. The criminal act of blasphemy against religion through <sup>5</sup> electronic social media, the legal basis is to refer to Article 28 paragraph (2) of the ITE Law No. 11 of 2008.

b. The judges of the Surabaya District Court <sup>3</sup> applied Article 45A paragraph (2) Juncto Article 28 paragraph (2) of the ITE Law no. 19 of 2016 concerning amendments to the ITE Law No. 11 of 2008 the blasphemy case by the defendant Bambang Bima Adhis Pratama is appropriate because the case was carried out using electronic social media facilities <sup>13</sup>

If the criminal act of blasphemy against religion is carried out without going through electronic media, then the article that can be applied is referring to Article 156 and Article 156a of the Criminal Code jo. Article 3 of Law no. 1/PNPS <sup>13</sup> 65. If the criminal act of blasphemy against religion is carried out without <sup>34</sup> going through electronic media, then the threat of criminal sanctions that must be applied is referring to the Criminal Code and/or Law no. 1/PNPS/1965 and not articles of the ITE Law.

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