

## Re-Evaluation of The Judicial System: Competence and Role of Religious Courts in Blasphemy Cases

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### **Abstract**

*Cases of blasphemy in Indonesia are a problem that still occurs frequently, such as the interpretation of verses in the holy book for personal and/or political gain. The main challenge in blasphemy legal cases is that the jurisdiction is under the District Court, but this raises questions about the role of the Religious Courts that already exist in Indonesia regarding blasphemy cases. Supposedly, religious courts should have proper knowledge and correct interpretation for cases related to religion, however, due to Indonesia's democratic and plural legal system, blasphemy cases fall under criminal law and are considered criminal cases, not civil cases, which makes them outside the jurisdiction of religious courts in terms of judgments. In comparison, Saudi Arabia has a form of religious court in its implementation, but the existence of the court is due to a national idea based on Sharia Law and not based on plural democracy, thus signifying major differences in national identity and basis, which leads to differences in decision-making bodies and law enforcers.*

**Keywords:** *Judicial System, Competence, Religious Courts, Blasphemy Cases*

### **INTRODUCTION**

The Legal Basis of Religion in Indonesia is based on several legal articles, one of which is Article 29 Paragraph 1 of the Constitution which states that "The State is based on the One Godhead". The application of sanctions related to blasphemy or defamation of religion is regulated in Article 156a of the Criminal Code which states "Punished with imprisonment for a maximum of five years, whoever deliberately in public expresses feelings or commits acts: (a). which is essentially hostile, abusive or blasphemous against a religion practiced in Indonesia; (b). with the intention that people do not adhere to any religion that has the One Godhead."

The article shows a very clear direction regarding punishment related to all matters related to blasphemy or defamation of religion, but this, in the termination of cases, is subordinated to the District Court, which historically, is a derivative of the Dutch Colonial Era.

The legal system in Indonesia is not based on Islamic principles, but is a derivative of the Franco-Dutch legal tradition or Concordance Principal, so it does not cover the issue of corporal punishment and is based on retribution in Islam . As previously explained, there are several aspects that include Sharia law in the termination of cases, but this is still considered a civil case and not a criminal case.

Indonesia's plural political conditions are a challenge to determine the ideal role of religious courts in blasphemy cases, and in the current conditions only include expert witnesses, and there is no direct role in the decision of the blasphemous case.

### **METHODS**

This research uses a normative research approach, using literature including laws and regulations, publications from legal experts, and previous research. The authors process the data by examining and analyzing the literature and considering its relevance to the research topic. Furthermore, the authors examine the relationship between the legal materials used as references to produce strong conclusions and overcome research problems.

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Data processing is carried out by reading and analyzing literature, including laws, legal journals, and the works of legal experts. The author compiled research, taking into account relevant laws and regulations as well as the opinions of experts in the field of law regarding the interpretation of each legislative provision referred to.

The analysis uses an evaluative method to confirm the conclusions or findings of the research. This approach includes legislative, conceptual, and historical perspectives, which helps in better understanding and interpreting data.

#### Research Questions

1. How effective is the adjudication process related to blasphemy in Indonesia?
2. What is the competence of the Religious Court in handling blasphemy cases?

## **DISCUSSION**

### **How Effective is the Adjudication Process Related to Blasphemy in Indonesia?**

Effectiveness is important in the process of achieving justice so that decisions can be found holistically, in-depth and professionally so that a fair case can be decided.

One of the leading legal experts is Lawrence M. Friedman who defines the effectiveness of the judicial process can be analyzed in 3 components:

- a. Legal Structure is the framework of the legal system in its function, which consists of institutions, procedures, and formal rules that function to guide the legal process. This includes courts, legislatures, administrative bodies, as well as mechanisms for making, interpreting, and enforcing laws.
- b. Legal Substance is the content of a legal system, such as laws, statutes, regulations, and legal principles. The substance also includes civil and criminal law, constitutional provisions, regulatory statutes, jurisprudence, and legal doctrines. The whole serves to represent what is stated by law, which includes the rights and obligations of individuals and institutions as well as sanctions in the event of non-compliance.
- c. Legal Culture is the attitude, values, beliefs, and expectations of the community towards their legal system. It includes, in its application, the perception of the law, legal institutions and the legal profession as well as how the law is used in everyday life, its compliance and interpretation. reviews

Therefore, to determine the effectiveness of the Court in dealing with blasphemy law, the Court is assessed based on Friedman's theory.

#### **Legal Structure**

The legal structure includes the performance and competence of institutions and law enforcement officials, including courts, prosecutors, and police.

First, the Court follows the Principles of Simple, Fast, and Low Cost in accordance with "Article 2 paragraph 4 of Law Number 48 of 2009 concerning Judicial Power". In this case, "Simple" means that investigations and trials are carried out efficiently and effectively, "Light Cost" means that the costs associated with cases can be afforded by most people, and "Prompt" means that all settlements are carried out in a timely manner.

Second, judges are selected through a rigorous recruitment process. According to "Attorney General's Regulation Number Per-035/A/JA/12/2009 concerning Amendments to Attorney General's Regulation Number Per-064/A/JA/07/2007 concerning Procurement of Candidates Civil Servants and Candidates for Prosecutors of the Prosecutor's Office of the Republic of Indonesia", the recruitment of a judge is a series of processes that involve the formation of needs, announcement, registration, selection materials, selection process, and management, as well as the announcement of the selection process and placement of selected candidates to Education and Training facilities. This indicates a rigorous process in recruiting prospective

judges, which means that each candidate is judged based on the achievements shown through the selection process, thus ensuring that these decision-makers are not only well-trained, but also well-knowledgeable.

In addition, in accordance with Article 14 of Law No. 49 of 2009, it is stipulated that judges must meet certain criteria such as, but not limited to; being an Indonesian citizen (WNI), loyal to Pancasila and the 1945 Constitution, Bachelor of Law, and passing Judge Education. This shows that the judge is a true nationalist, has general legal knowledge from a law college, and has specific legal knowledge as a judge.

In order to carry out their duties as expected, there must be a form of supervision and balance in the position of judges, this is shown in the "Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: KMA/104A/SK/XII/2006 dated December 22, 2006 concerning the Code of Conduct of Judges", which states not only the jurisdiction and the main role of a judge in accordance with its formation, but also the disciplinary actions that can be taken in case of violation of their duties. The Court's decision also includes prohibitions that a judge should not make, such as that a judge should not decide on the basis of personal bias, either individual involvement or identity-based. The same thing is also repeated in the "Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: 215/KMA/SK/XII/2007 dated December 19, 2007 concerning Guidelines for the Implementation of the Code of Conduct for Judges", where it is explained that a the judge shall not publicly provide statements or opinions, comments, criticisms, or defenses in connection with any particular proceeding which has strict force under any circumstances, and furthermore, a judge shall not function as an advocate, except specifically relating to the case proceedings and providing pro-bono advice to the families involved. This shows that to produce a verdict, a judge needs a proper process through an investigator who will conduct an investigation into the issue based on legal articles.

In the Criminal Procedure Code, a report is submitted by an individual or body regarding a legal issue, then followed by an investigation to classify whether it is a criminal or civil case, and then an evidence gathering process is carried out which will then be submitted for consideration in a decision.

Therefore, the Court has a legal structure by operating efficiently using the basic principles of the Criminal Court "Simple, Fast, and Low Cost" and all its processes are built in the Criminal Code. The qualifications are also evidenced by how judges are selected through a rigorous process with complicated and lengthy steps to ensure the quality of the judges.

## **Legal Substance**

The substance of the law includes the applicable regulations and norms. By definition, the substance of law consists of actual substantive values such as laws, statutes, regulations, and legal principles, so that in the case of blasphemy law, it serves as a real basis.

First, to test whether the Court follows the substance of the law, the Court's compliance with laws and regulations must be assessed. In essence, the legal basis for Blasphemy in Indonesia can be found in Article 156a of the Criminal Code which states that "With a maximum prison sentence of 5 years will be punished every person who deliberately in public expresses feelings or commits an action, (a). which on the principle is hostile to, abuses, or desecrates a religion practiced in Indonesia; (b) with the intention of preventing a person from practicing any religion based on belief in God Almighty." Blasphemy is considered a crime in the Criminal Code, therefore it is an evil act and must be subject to legal consequences like other evil acts in the Criminal Code. Therefore, with its provisions and the Court's obligation to follow the Criminal Code, this proves that the Court complies with the laws and regulations.

Second, judicial interpretation. In blasphemy law cases, a judge must be able to analyze the violations involved and determine the verdict consistently, fairly, and based on legal interpretation.

An example of this is the blasphemy case involving Ahok, where he was sentenced to two years in prison because his actions were deemed blasphemy by a court ruling despite several different opinions, with different arguments that it was just a misinterpretation from the public. However, through careful investigation, regardless of his intentions, it was the actual actions that became important and thus he was found guilty.

Analyze and fulfill the essence of Article 156a of the Criminal Code, which states that "Committing a crime, anyone, deliberately in public commits an act or expresses feelings of hostility, abuse or blasphemy against the religion practiced in Indonesia."

Anyone who violates the article is found guilty of blasphemy, of which Ahok is found guilty, as can be found in "Decision Number 1537/Pid.B/2016/PN.Jkt Utr.

In terms of verdicts, to ensure justice in the constitution, known and regulated in the Criminal Procedure Code, the principle of Presumption of Innocence.

In the Criminal Procedure Code, this is stated in the third "General Explanation" which states that every person who is presumed to be arrested, detained, prosecuted, and/or confronted in court, must be presumed innocent until there is a certain court decisions that declare error and must have a concrete and professional representation in the eyes of the law.

In conclusion, there will be no verdict without an investigation, and the results of the investigation must be determined whether it meets the elements of the Blasphemy Law.

This proves why the Court has met the second criterion of effectiveness.

### **Legal Culture**

This aspect is related to people's attitudes and perceptions towards the law, where one of the aspects that needs to be fulfilled is compliance.

Compliance can be measured through Determinence. This theory states that criminal punishment is not an act of revenge against the perpetrator, but to protect and improve the welfare of the community. The sanctions in question are focused as a preventive measure to prevent people from committing crimes and not for absolute satisfaction through the courts, so, especially in Ahok's case, people are less likely to commit hate crimes and blasphemy.

Thus, it can be concluded that the Court has fulfilled Friedman's theory of effectiveness by having competent judges, prosecutors, and police through a selection process, fulfilling several basic principles of criminal law and criminal procedure, as well as examples of cases that have been resolved by the court.

### **Competence of Religious Courts in Handling Blasphemy Cases**

To assess the effectiveness of Religious Courts in handling blasphemy cases, Friedman's theory of court effectiveness must also be applied.

### **Legal Structure**

In terms of legal structure, the Religious Court also uses some of the same principles. To prove its effectiveness in the legal structure, especially in handling blasphemy cases, the Religious Court also applies the principle of "Simple, Fast, and Cost Lightweight" . Therefore, if the Religious Court were to handle a blasphemy case, it would reflect the effectiveness of the District Court, where the parties to the dispute would have an uncomplicated, fast, and financially affordable legal process.

The competence of judges, as part of the legal structure, also reflects the District Court, with several different characteristics. Like the District Court, the judges of the Religious Court also follow the same process and qualifications in accordance with Article 13 of Law No. 50 of 2009 concerning Religious Courts. In this article, there are 11 prerequisites that must be met by a judge of the Religious Court: (a) Indonesian citizen; (b) Embracing Islam; (c) Obedience to God Almighty; (d) Loyal to Pancasila and the 1945 Constitution; (e) Have a degree in Sharia, Islamic Law, or Law with proficiency in Islamic Law; (f) Have passed judicial education; (g) Physically and mentally able to carry out duties and responsibilities; (h) Authoritative, honest, fair, and well-behaved; (i) Minimum age of 25 years and maximum of 40 years; (j) Never been sentenced to imprisonment for a crime based on a court decision that has permanent legal force. Thus, the competence of the judges of the Religious Court is basically the same with some more specific exceptions, such as the judge of the Religious Court must complete Judge Education, have a Bachelor of Shari'ah, Bachelor of Islamic Law,

or Bachelor of Law with mastery of Islamic Law. This shows that judges in the Religious Courts have knowledge in Law but especially have extensive knowledge in Islamic philosophy and Islamic Law.

As a form of *Check and Balance*, to ensure that judges are not only competent but also fair and unbiased, all judges (both in District Courts, Religious Courts, and other courts in Indonesia) must follow the Code of Ethics and Code of Conduct for Judges (KEPPH). In this codification, it is stipulated that judges must be fair, honest, wise, and have high integrity.

Thus, based on the analysis of the legal structure, the Religious Court has adequate competence in handling blasphemy cases and can be expected to operate with the same effectiveness as the District Court, with a special emphasis on a deep understanding of Islamic Law.

### **Legal Substance**

Religious Courts also meet this criterion and in adjudicating blasphemy cases, they must follow the same laws that govern blasphemy laws such as Article 156a of the Criminal Code and Article 28 paragraph 2 of the ITE Law. Therefore, the same analysis will be used as before, where the Religious Court will also use this law as a legal basis and interpret the law at the time of discovery of ambiguity.

Interpreters in Religious Courts may have a better condition in handling blasphemy cases because of their specialized knowledge of Sharia, Islamic philosophy, and Islamic Law compared to National Courts or District Courts. So, either the decision can be better in giving punishment to the perpetrator, knowing the severity of the blasphemy or the punishment can be relatively lighter if the judge considers the blasphemy minor.

Status quo, religious organizations such as MUI (Indonesian Ulema Council) and NU (Nahdatul Ulama) still play a role in religious cases as experts who provide input and clarity on the case. However, the difference is that when jurisdiction is transferred to the Religious Court, the judgment will also be transferred to a judge with special knowledge.

Therefore, the shift in jurisdiction will not change the previously mentioned prohibition in the Blasphemy Law, so the analysis is the same as that of the District Court, but the judgment and analysis may be better with the Court of Religion. Regardless of the outcome, the Religious Court also meets the second criterion.

### **Legal Culture**

In the context of Legal Culture, the Religious Court meets the criteria as a body that can be used as a representative in handling blasphemy cases, because the community actively believes that their voices can be properly represented and acted upon.

According to Article 5 "Law No. 48 of 2009", (1). A Judge and constitutional judge are obliged to explore, follow, and understand the values of law and the sense of justice that live in society. (2) Judges and constitutional judges must have integrity and personality that is irreproachable, honest, fair, professional, and experienced in the field of law. (3) Judges and constitutional judges are obliged to obey the Code of Ethics and the Code of Conduct for Judges. Therefore, a judge not only needs to analyze whether an act is considered blasphemy according to the law, but the judge must also investigate, understand, and apply legal values with a sense of justice in public life. Thus, if there is ambiguity, the judge must assess whether the values are contrary to the action performed, and thus, whether the act is punishable in accordance with the law.

### **CONCLUSION**

In terms of fulfilling 3 aspects of effectiveness, both the Religious Court and the District Court have fulfilled these aspects, so that their effectiveness in handling blasphemy cases is considered equally capable.

Based on the arguments and reasons already mentioned, blasphemy should be categorized as a civil offense and therefore, in terms of justice, it should be handled by the Religious Court and not the District Court. Another solution is to expand.

The jurisdiction of the Religious Courts to also include criminal offenses specifically related to religious matters, especially blasphemy.

Changes in the context and objectives of the Religious Court, in this case, need to be made to include not only Islamic Law, but also the laws of all religions recognized in Indonesia, with judges from various religions having the same competence and background as mentioned earlier.

Researchers consider that this offers a beneficial and fair solution with the potential for court expansion, where blasphemy cases will be handled by people with appropriate competence and experience, compared to if the cases are handled by National Courts or District Courts, where judges do not specifically understand aspects of religious law and open up advocacy avenues for religious minorities.

However, this also poses a challenge in the provisions of Article 13 "Law No. 50 of 2009\*\* and \*\*Law No. 7 of 1998", because these specific laws and regulations need to be revised to adapt to these new conditions.

This condition led to the need for changes in the laws governing the jurisdiction of the courts and the laws governing blasphemy cases.

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*Re-Evaluation of The Judicial System: Competence and Role of Religious Courts in Blasphemy Cases*

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