



Legal Politics of Blasphemy in Religion in Rudolf Stammler's Perspective

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Article Info	Abstract
<p>Keywords: Religion; Blasphemy; Legal Politic</p> <p>Article History Received: Feb 21, 2020; Reviewed: Feb 28, 2020; Accepted: Mar 20, 2020; Published: Mar 31, 2020.</p> <p>DOI: 10.22219/ljih.v28i1.11355</p>	<p><i>The conflict based on religion is a very sensitive issue in various countries of the world. Indonesia as a godly state as contained in the state philosophy of the first precepts Pancasila has also given birth to special regulations in dealing with the defamation problem contained in Law No. 1 PNPS 1965. Using a historical approach, this legal research uses a type of normative legal research. The purpose of this study is to provide a new perspective in making legal formulations by using Rudolf Stammler's perspective in accordance with the ideals of the law. Rudolf Stammler's theory, which became the knife of analysis in this study, showed that the blasphemy law was formed with a repressive pattern in which the state with its power to make laws and regulations forced both politically and legally. However, the presence of repressive law is the most appropriate solution when viewed from the historical record of the conflict in Indonesia which is motivated by the issue of religion. So that under the ideals of the law, the accuracy of the legislation at that time should be adjusted to the conditions of the nation to create a law that is responsive and fair.</i></p>

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INTRODUCTION

The phenomenon of the birth and development of new movements and movements in a religion occurs in almost all religions. An example is the case of the Aum Sinrikyo sect's underground poison gas, one of the branches of Buddhism led by Shoko Asahara as a Japanese Buddhist figure in 1995, the bombing of an abortion clinic in America by Mike Bray as a movement they call the *Army of God* years 1984,

as well as the shooting case at a Jewish health center in California on August 10, 1999 by activist *Christian Identity* (Juergensmeyer 2002).

On a national scale Christian sects are considered heretical by the majority of adherents as well. Like the flow of the Zion City of God, Unitarian, until the flow of Jehovah's Witnesses. The flow of Zion City that developed in Kupang was led by Nimrot Lesbaun, in his teaching he forbade his followers to visit the families of the deceased, attend the Holy Communion in the church, the obligation to veil for short-haired women, even in this flow allowed to marry up to 4-7 people according to the command of God's spirit (Billy 2017). Unitarianism falls into this category because it rejects the concept of the Trinity and the belief that Jesus is Lord or son of God.

In Setara Institute sees that Amnesty International's published data shows that there is a trend of blasphemy cases in Indonesia starting to increase in 2003. This year, there were two major cases that occurred; *first*, is the interpretation of the shahada by Masud Simanungkalit entitled I Found the True Truth in the Koran (Malik 2005), *second*, the use of Indonesian prayer recitation which was taught and developed by Yusman Roy (Bashori 2016). During the years 2004-2008, 19 cases of blasphemy were recorded with the highest number of cases occurring in 2006, in which seven were processed by law (Dewi et al. 2018).

In PNPS Law No.1 of 1965 concerning Prevention of Abuse and / or Blasphemy of Religion, the rules regarding blasphemy and heresy, including the meaning of blasphemy and heresy in Article 1, and legal sanctions in Article 2 and Article 3 (UU PNPS Nomor 1 tahun 1965 tentang Pencegahan Penyalahgunaan Dan/Atau Penodaan Agama 1965).

the movement that supports and denies the existence of PNPS No. 1 of 1965 is always associated with human rights, which includes part of the constitution and the post-reform legislation. Those who support view that the PNPS Law must still exist, so they support the rejection of the Constitutional Court (MK) for the *Judicial Review* submitted by the National Alliance for Freedom of Religion and Belief (AKPBP). For groups that are not in line with this view see that the PNPS Law No. 1 of 1965 is a product of the Old Order law that was used massively by the New Order, to co-opt the development of religion as well as freedom of religion and belief in Indonesian society.

The phenomenon that is currently happening is that many Muslims do not go through the clarification phase and are eager to impose sanctions on anyone who is considered blasphemous to religion. Indirectly, many parties have indicated that the superficial understanding of the meaning of blasphemy also affects the process of formation and application of law in Indonesia. So this research is about to explore the model of philosophical blasphemy law formulation using the stamler's view.

This research explores how the law formulation is more comprehensive in seeing conflicts in society caused by religious issues. The handling of the problem of blasphemy into the criminal domain should be expanded not only to provide punishments but to be more coaching and preventive. The resolution of the problem of blasphemy by giving criminal sanctions is often felt as a service lip and tends to provide external sanctions without effective problem solving.

As in the Theory of Development Law pioneered by Mochtar Kusumaatmadja. (Kusumaatmadja 2014). As an academic theory building, the imposition of sanctions is a frame of reference based on the way of life of the people and nation. That view was born of a group of people by looking at the structure, culture, and substance that lives and must always receive special attention as stated by Lawrence F. Friedman (L.Abubakar 2013).

This perception basically provides a basis for the functioning of law as a means of community renewal. Not only in this aspect, law is also a system that is very necessary for the Indonesian people as a State in maintaining the stability of society and politics that support state management.

Dynamically, observers and academics of law see that the scope of the Mochtar Development Law Theory is a modification and adaptation of the Roscoe Pound Theory, namely "Law as a Tool of Social Engineering" (Matnuh 2018). More than that, Mochtar's theory of development law is also influenced by the way of thinking of Herold D. Laswell and Myres S. Mc Dougal (Policy Approach). All the experts were mixed by Mochtar into a theory and way of thinking in Indonesia.

Mochtar's conception of thought cones on the view that law is a tool aimed at maintaining order in society. Although law is basically a conservative idea in maintaining and sustaining what has been achieved, social reality still requires the existence of law in obtaining mutual hope. The function of order in social life is needed by all social groups because of the rights and obligations that are maintained and protected.

However, the reality of society experiences a pattern of rapid change. The rule of law is no longer deemed able to fulfill its role and function in responding to the needs of the community. At this point, the law must be able to follow changes and adapt to society. A rigid and static perception of law by emphasizing the function of maintaining order becomes less appropriate.

With this perspective, it is expected that the law on blasphemy that in fact becomes the value of plurality of people in Indonesia must be very specific and comprehensively absorb social values. The absorption of this value is expected to be the building and form of the face of law in accordance with Indonesia's basic morals. Not only focused on giving sanctions which is the paradigm of giving misery, but the

punishment given should contain the value of the nation's ideology that rehabilitates and returns to the nature of a plural and dynamic society towards diversity.

The chosen of perspective *Rudolf Stammler's* in this study is also expected to provide a new perspective in making legal formulations that are in accordance with the ideals of the law. The ideal of the law in the perspective of the stamler functions as a guiding star (*leitstern*) for the achievement of the ideals and ideals of society. In practice, the legal ideal has two united sides, on the one hand the legal ideal as a positive legal examiner that applies and on the other hand directs positive law as an effort with coercive sanctions towards something just (Rosadi 2010).

The purpose of this study is to provide a new perspective in making legal formulations by using *Rudolf Stammler's* perspective in accordance with the ideals of the law. Based on the background as set out above, contribution of this research is to explores and found the ratio legis of the released of Law No. 1 PNPS regarding blasphemy in force in Indonesia using the historical approach and analysis of Rudolf Stamler's theory of the ideals of law.

METHOD

This research uses the normative juridical method, the research whose main study is the law as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that normative legal research focuses on an inventory of positive law, principles and doctrines of law, legal discovery in concreto cases, systematic law, synchronization levels, comparative law and legal history (Muhammad 2004). As with the type of normative legal research, this research will use an approach that is more than just one approach to find more comprehensive results (Ibrahim 2006). The approach used is the *Statute Approach approach* in conducting an analysis of the legal substance in the legislation, as well as the *conceptual approach* (Muhammad 2004) who look more conceptually the formation of good legislation.

Judging from the type of classification, research, this study belongs to the type of library research, because the data collected and analyzed comes from library materials. As the primary data source is Law No. 1 / PNPS / 1965, books on legal politics, books on political configuration, and books on religious freedom. As secondary data sources are books that explain the historical setting of the emergence of Law no. 1 / PNPS / 1965, books and writings on Dutch colonial politics, Guided Democracy, the New Order, and the Reform Order and the policies of the four government regimes related to matters of religion and community beliefs. Analytical descriptive is the choice of research model which means that the data are explained in detail first and then analyzed. This research uses content analysis method 28 and draws conclusions by deduction and induction. Deduction is a model of drawing

conclusions that starts from general rules, while induction departs from specific causes or particular examples.

RESULTS AND DISCUSSION

The Political Configuration of the PNPS Law

In the discussion of political science there are two main types of political configurations that can be found in a country or regime, namely elitism (integralism / totalitarianism/authoritarianism-bureaucracy) versus pluralism (democracy). Elitism is the view that the political history of a country or regime is the history of elite domination.

In a country, there must be two main classes, the ruling class and the ruled class. The first class, which always has fewer numbers, carries out all political functions, monopolizes power, and enjoys the benefits arising from power, where the second class, which is more numerous, is directed and controlled by the first class.

The character of all countries, both consensual and authoritarian, dynamic and static, legitimate and not legitimate, is determined by the character of its elite (Marsh and Stokker 1997). In this perspective, the first class is played by the state. The state, as a ruling class, is characterized by three things. First, a separate set of institutions and personnel. Second, centralization, in the sense that power is centralized in the state and controls all areas it has. Third, the monopoly on policy making which is supported by the monopoly on the means and use of physical violence (Marsh and Stokker 1997).

Elitism, in the discourse of political science, is also called integralism (integralism / totalitarianism / authoritarianism) or authoritarianism (authoritarian regimes). Pluralism (democracy) is a political style that embraces the separation between state and civil society, the distinction between political power and economic power, and the accommodation of various interests in society. In a pluralist regime, power is not centralized on the one hand but spread on many parties, and therefore the role of the state is to manage conflicts of interest in society rather than to dominate society in pursuit of its own interests.

On a more practical level, the political configuration of a regime can be grouped into two major schemes, namely the democratic political configuration and the authoritarian political configuration. A democratic political configuration is a political system that fully accommodates community participation in determining general policies. This participation is carried out by the people's representative council which is elected periodically in an atmosphere of equality and political freedom. In a democratic political configuration there is a plurality of political parties and community organizations with their existence being relatively autonomous from regime interference.¹⁸ Authoritarian political configuration is a political style that

places the government in a very dominant position with its interventionist nature in setting and implementing its policies so that the potential and aspirations society is not aggregated and articulated proportionally. In such government domination, people's representative institutions and political parties cannot carry out their functions and roles properly and are more justification for the interests of the government. While the press cannot carry out its role as socio-political control because it is always under the supervision and threat of banning and criminalization by the government.

The character, nature or nature of legal products can be seen from several perspectives (theories). Many identifications are given to the character of law, such as the force of law, not retroactive, general, abstract, imperative and facultative. However, according to Moh. Mahfud MD, the character of legal products as products of political policy can be divided into responsive law and orthodox law (Najib 2012). To distinguish between the two characters of this legal product can be seen from three aspects, namely the process of making, function, and interpretation.

Seen from the process of making it, responsive law involves community participation, while the orthodox law of making it is centralized - more dominated by institutions of power. Judging from its function, responsive law is aspirational, containing materials that are generally in accordance with the aspirations of many people, while orthodox law is positive-instrumentalist — containing materials that better reflect the socio-political views of the authorities or regimes in guaranteeing their interests. Judging from its interpretation, responsive law provides little room for the authorities to interpret it arbitrarily through various implementing regulations, while orthodox law provides many opportunities for the regime to interpret it in their own interests. Laws born from democratic political configurations tend to reveal their autonomous character.

Laws are autonomous, according to Philippe Nonet and Philip Selznick, as explained by Moh. Mahfud MD, is characterized by ten things, namely: first, the purpose of the law is error; second, its legitimacy is the upholding of principles or values; third, the form of the rules is very clear / detailed and binds the makers and those who are regulated; fourth, the model of legal reasoning binds itself tightly to the legal authority and is critical of formalism and legalism; fourth, the discretion is limited by certain principles or rules; fifth, the compulsion is controlled by legal restrictions; sixth, autonomous from political power; seventh, accepting legal criticism; eighth, giving priority to legal and institutional morality rather than morality of power and communal (Irawan 2020).

Law born from an authoritarian political configuration tends to reveal its repressive character. Laws are repressive / oppressive, according to Philippe Nonet and Philip Selznick, as explained by Moh. Mahfud MD, is characterized by ten

things, namely: first, the purpose of the law is order; second, its legitimacy is the conservation of power; third, the form of the rules is not well-ordered, not detailed, and binds the maker weakly; fourth, the model of legal reasoning is ad hoc, particularistic, positivistic, and prioritizes procedural accuracy rather than substantive justice; fourth, arbitrary (opportunistic) discretion; fifth, the force is strong because of weak restrictions; sixth, subject to political power; seventh, demanding unconditional compliance; eighth, reject criticism; and ninth, prioritizing communal morality (forced morality) over civil morality.

The Law in Rudolf Stamler's Perspective

Rudolf Stamler (Hasan 2014) explains that the ideals of law (*rechttsidee*) are determinants of the direction of achieving the ideals of society. Although it is well known that the final point of the ideal cannot be fully achieved, the legal ideal provides two perceptual perspectives that can be tested, namely positive legal perspectives that apply and to the ideals of law can be directed towards positive law as an effort to regulate the life of the people and nation.

Furthermore according to the views of this theory, justice intended as a legal ideal becomes an effort and action to direct positive law towards the ideals of law. Thus, a fair law is a law that is directed by the ideals of the law to achieve the goals of society (Saleh 1995). Gustav Radbruch asserted that the ideals of law (*rechts idee*) not only functioned as regulative benchmarks, namely that which tested whether a positive law was fair or not, but also simultaneously functioned as a constitutive basis, ie which determined that without a legal ideal, the law will lose its meaning as law (Sisworo 1995).

From the description of the function of the ideal of law, with other, B. Arief Sidharta combines the function of the ideal of law as proposed by Rudolf Stamler and Gustav Radbruch. According to him, the ideals of the law function as general principles that guide (*guidingprinciple*), norms of criticism (rules of evaluation) and motivating factors in the administration of law (formation, application, enforcement and discovery) and legal behaviour (Sidharta 2000). According to Rudolf Stamler, *rechttsidee* functions as a *leitstern* (guiding star) for the realization of the ideals of a society (Attamimi 1990). From the *rechttsidee*, legal concepts and politics are compiled in the life of a country. The ideal of law is a priori which is both normative and constitutive. Normative, that is, it functions as a transcendental precondition that underlies every dignified positive law. It becomes the moral basis of law and at the same time a benchmark for a positive legal system.

To the *rechttsidee*, positive law originates as an effort towards justice. Constitutional, meaning *rechttsidee* serves to direct the law to the goals to be achieved. Gustav Radbruch said, *rechttsidee* functions as a constitutive basis for positive law.

Thus, *rechttsidee* becomes a regulative measure, namely testing whether positive law is fair or not. Without the ideals of law, no law will have a normative character. In short, the ideal of law has a constitutive function which gives meaning to law (Syam 2000).

The ideals of the law will influence and function as general principles guiding *principles*, norms of criticism (evaluation principles), and motivating factors in the administration of law (formation, discovery, application of law, and legal behaviour) (Prasetyo 2006). Formulation and understanding of the ideals of the law will facilitate its translation into various sets of authority rules and rules of conduct and facilitate the maintenance of consistency in the administration of law (Sidharta 2000).

In the 1945 Constitution found 4 (four) main ideas which were agreed upon by scholars as the ideals of Indonesian law. The four main ideas are:

- a. The nation protects the whole Indonesian nation and the whole bloodshed of Indonesia on the basis of unity.
- b. The nation seeks to create social justice for the people.
- c. The nation is sovereign, based on citizenship and representative representation
- d. The country is based on the Supreme Godhead on the basis of humanity fair and civilized.

Regarding the ideals of the law, scholars have varied formulations. However, all agreed that the ideal of Indonesian law was Pancasila (Saefuddin 1979). M. Noor Syam, formulated four elements of the ideals of Indonesian law, namely: (1) A state based on the Almighty God, according to a just and civilized humanitarian basis, within the framework of a unitary state, (2) a state that is sovereign of the people, (3) Justice social for all Indonesian people, (4) Protecting all Indonesian people and all spilled Indonesian blood based on unity by realizing justice social for all Indonesian people (Syam 2000). Because Pancasila is the principle of national spirituality, basic norms, legal ideals and sources of all sources of state law, Pancasila gives a state identity as a rule of law (Syam 2000).

The Ratio Legis of the PNPS Law

Viewing the law as an ideal rule of law in providing order and value in society, Durkheim believes that law is not only a rule, but in the sociology of law has correlation with various other aspects. In regard to Durkheim's social theory, the sociology of law, therefore, plays a major role. Strictly speaking, society is conceived as a system of law (Rechtssystem). Law is not only one, but the precondition of the constitution of social life (Schluchter 2003).

Legis ratio ratio perspective, the existence of Law Number 1 / PnPs / 1965 is motivated by the political situation in the period of guided democracy which is imbued with the ideals of the national revolution and the development of the national universe towards a just and prosperous society. The national ideals will never be achieved with many events with a religious background that can threaten the unity and integrity of the nation at that time.

With the hope to overcome and anticipate actions that could threaten national unity and integrity, especially those with religious motives, the a quo law was issued. The a quo law, which is one of the realizations of the Presidential Decree of July 5, 1959, is intended so that all people in all regions of Indonesia can enjoy religious peace and get guarantees to perform worship according to their respective religions. To create peace of religious life, the Law a quo determines the limitation and / or prevention of two main things, namely: first, preventive measures to avoid misappropriation of the basic teachings of religion; and secondly, preventive measures to avoid blasphemy / insults to religion and prevent the teachings of not embracing a religion that is based on Godhead.

Normatively empirical, the issue of law formation that generically seems authoritarian is an emergency or urgency of the state in protecting the unity and peace of society. So that, the chosen of authoritarian actions are not solely in the interests of the state, but in the interests of the state and society together. The establishment of such a law would have to adjust as the times and situations changed. But until now the changing situation has not been considered sufficient to change the constitutional rules on defamation of religion. The judges of the Constitutional Court until now have not been able to accept the juridical reasons established by the applicants for judicial review of the PNPS Law because there are not enough juridical reasons in changing the Law.

CONCLUSION

Based on the analysis conducted in this study, the government's attitude to this law is considered an emergency exit that must be taken in protecting national security. So that although it is not an ideal law in formulating legislation, its existence is needed. An empirical and convincing study is needed by using in-depth analysis of the judicial process and judges' decisions related to several blasphemy / blasphemy cases in Indonesia. So that it is expected that a responsive and progressive legal product will be born to deal with blasphemy / blasphemy cases in Indonesia.

REFERENCES

Attamimi, A. Hamid S. 1990. "Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara." Universitas Indonesia.

- Bashori, Luthfi. 2016. "Kronologi Mengapa Yusman Roy Ditahan." *Pejuang Islam*. <http://www.pejuangislam.com/main.php?prm=karya&var=detail&id=15> (April 3, 2020).
- Billy. 2017. "Ternyata Aliran Sesat Juga Ada Di Kristen." <http://www.dakta.com/berita/nasional/1333/ternyata-aliran-sesat-ada-juga-di-kristen.html/> diakses (July 1, 2018).
- Dewi, Kurniawati Hastuti, Atika Nur Kusumaningtyas, Esty Ekawati, and Syafuan Rozi Soebhan. 2018. "Modal, Strategi Dan Jaringan Perempuan Politisi Dalam Kandidasi Pilkada Langsung." *Jurnal Penelitian Politik* 15(2): 267–88. <http://ejournal.politik.lipi.go.id/index.php/jpp/article/view/765>.
- Hasan, KN Sofyan. 2014. "Kepastian Hukum Sertifikasi Dan Labelisasi Halal Produk Pangan." *Jurnal Dinamika Hukum* 14(2): 227–38.
- Ibrahim, Jhonny. 2006. *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing.
- Irawan, Aris. 2020. "Politik Hukum Pembentukan Undang-Undang Perlindungan Saksi Dan Korban, Dilihat Dari Perlindungan Whistleblower (Saksi Pelapor) Dan Saksi Ahli Di Indonesia." *JURNAL AKTA YUDISIA* 2(2): 62–75.
- Juergensmeyer, Mark. 2002. *Teror Atas Nama Tuhan Kebangkitan Global Kekerasan Agama*. Jakarta: Nizam Press.
- Kusumaatmadja, Mochtar. 2014. "Khazanah Editorial." *Padjadjaran Jurnal Ilmu Hukum* 1(3): 626–42. <http://journal.unpad.ac.id/pjih/article/view/7100>, .
- Lastuti Abubakar. 2013. "Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia." *Jurnal Dinamika Hukum* 13(2): 319–31. <http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/213>.
- Malik. 2005. "Asal Tafsir Divonis 3 Tahun." *tempo*. <https://nasional.tempo.co/read/58537/asal-tafsir-divonis-3-tahun> (April 3, 2020).
- Marsh, David, and Gerry Stokker. 1997. *Theory and Methods in Political Science*. London: Macmillan Press LTD.
- Matnuh, Harpani. 2018. "Law as a Tool of Social Engineering." 147(Icsse 2017): 118–20. <https://www.atlantis-press.com/proceedings/icsse-17/25889472>.
- Muhammad, Abdulkadir. 2004. *Hukum Dan Penelitian Hukum*. Bandung: PT. Citra Aditya Bakti.

- Najib, Ainun. 2012. "FATWA MAJELIS ULAMA INDONESIA DALAM PERSPEKTIF PEMBANGUNAN HUKUM RESPONSIF." 6(2): 393–405. <https://journal.ibrahimy.ac.id/index.php/lisanalhal/article/view/39>.
- Prasetyo, Dossy Iskandar. 2006. "Ide Dasar Mahkamah Konstitusi." Universitas Barawijaya Malang.
- Rosadi, Ootong. 2010. "Hukum Kodrat, Pancasila Dan Asas Dalam Pembentukan Hukum Di Indonesia." *Dinamika Hukum* 10(3): 282–90.
- Saefuddin. 1979. *Cita Hukum Dalam Pembangunan Hukum Nasional Menuju UUD 1945*. Yogyakarta: UII Press.
- Saleh, Roeslan. 1995. "Pembinaan Cita Hukum Dan Penerapan Asas-Asas Hukum Nasional Dalam Majalah Hukum Nasional (Edisi Khusus 50 Tahun Pembangunan Nasional)." *Pusat Dokumentasi Hukum BPHN Departemen Kehakiman*: 50.
- Schluchter, Wolfgang. 2003. "Lecture The Sociology of Law as an Empirical Theory of Validity." 19(5): 537–49.
- Sidharta, Bernard Arief. 2000. *Refleksi Tentang Struktur Ilmu Hukum*. Bandung: Mandar Maju.
- Sisworo, Soejono Koesoemo. 1995. "Mempertimbangkan Beberapa Pokok Pikiran Pelbagai Aliran Filsafat Hukum Dalam Relasi Dan Relevansinya Dengan Pembangunan/Pembinaan Hukum Indonesia Dalam 'Kumpulan Pidato Pengukuhan Guru Besar Fakultas Hukum Universitas Diponegoro Semarang.'" In *Pidato Pengukuhan Guru Besar Fakultas Hukum Universitas Diponegoro Semarang*, Semarang: Badan Penerbit Universitas Diponegoro, 121.
- Syam, Abdul M. Noor. 2000. *Penjabaran Filsafat Pancasila Dalam Filsafat Hukum (Sebagai Landasan Pembinaan Sistem Hukum Nasional)*. Malang: Laboratorium Pancasila IKIP Malang.
- UU PNPS Nomor 1 Tahun 1965 Tentang Pencegahan Penyalahgunaan Dan/Atau Penodaan Agama. 1965. Indonesia.