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Implementation of Crime Legality Principle on Defamation of Religion in Indonesia

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Abstract: **-** Religion is a fundamental element of human life, therefore, freedom of religion, no religion and proselytized should be respected and guaranteed. Expression of freedom of religion gives a broad sense that includes the building of houses of worship, assemble, worship, establish social institutions, publications, and contacts with individuals and institutions in religious matters at the national or international level. In the Criminal Code, Article 156 and 156a has been set on the issue of defamation of religion. In a sense, that every person who commits acts that lead to hostility, hatred, and desecration of a particular religion may be liable.

Keywords— *Defamation, Legality, Crime*

I. INTRODUCTION

Indonesia is not a religious state because it is not based on a particular religion, but it recognizes the existence of four religions, Islam, Christian, Buddha, and Hindu. Islam is one of the recognized religions in Indonesia and religion embraced by the majority of the Indonesian population [2][5]. Freedom of religion in Indonesia can be found in the Constitution of the Republic of Indonesia (UUD 1945) The second amendment to Article 28e Section 1 and 2 [1..19]. But there are also restrictions in the constitution. Citizens who do not obey these restrictions, it will be penalized in accordance with the rules inKitab Undang-Undang Hukum Pidana(KUHP).Having passed Law No. 1/PNPS/1965 on the Prevention of Abuse and Religious Defamation, KUHP added article 156a to ensnare the crime of blasphemy [6][7][8]. The lawmakers consider the consequences caused by the criminal act of defamation of religion is a very serious crime for the state and society. Because of deviant behavior to the norm, both religious norms, legal and social community is quite disturbing.In KUHP, there is no article specifically about the offense a religion, although there are offenses that could be categorized as an offense against religion (Article 156, KUHP) and after the enactment of Law No. 1/PNPS/1965 on the Prevention of Abuse and Religious Defamation, there is a new article in KUHP. Therefore any act prohibited by law should be avoided and anyone violating it will be subject to criminal prosecution. whether intentional or not [10][12].

Some of the theory of legal studies in setting certain actions intentional or not such as:

1. The act is known and desired (combined theoretical knowledge and the will).
2. The desired action (the theory of the will/willen).
3. The act is known (theory of knowledge/weten).

Conditions of use of the principle of "Legality" is a characteristic that essential, whether it was stated by the "Rule of Law" - a concept, nor by ideology "Rechstaat" first, and by the concept of "Socialist Legality". For example a ban on entry into force of the Criminal Law retroactive or retrospective, the prohibition of analogy, the enactment of the principle of "Nullum Delicium" in the criminal law. It is a reflection of the principle of legality in the process of the rule of law.

Anyone who commits criminal acts will still get penalized by the legal provisions in force in Indonesia (KUHP) regardless of their capacity as what, as contained in the Amendment Act of 1945. The theory of equality before the law are included in Article 27 Section 1 which states that "All citizens have equal status in law and government and shall abide by the law and the government, without exception" [11][15][19] Then the operator from the principles of the criminal law is used to indicate the work of criminal law.

Application of the principle of equality before the law is the driving force within the umbrella of general law and singular. The singularity of the law as a whole in the face of other social dimensions, such as the economic and social. The similarity "only" before the law, as if giving a signal in it, that the social and economic one may not get the similarity.Normative and empirical recognition of the principle of the rule of law stating that all issues were resolved with the law as the supreme guide, by making the law as a commander in the dynamic state life, not politics or economics.Therefore, the jargon commonly used in English to refer to the principles of the Law is 'the rule of law, not of the man'. With the implementation of the principle of legality material in the concept of a new Criminal Code, it will bring good consequences to its laws or against the executors (judges).

By implementing the substantive legality principle, the law in the society would be maintained. While the community itself, they can feel the real justice. Thus, it establishes a balance between positive law with the values that live in the community.

II. THEORIES

Legal framework is the basic principles or legal standards underlying the book of "Kitab Undang-Undang Hukum Acara Pidana" (KUHAP) in the application of law enforcement [15][16][18]. These legal principles that guide the law enforcement agencies in implementing provisions. Not only just for law enforcement officers only legal principle standard and the foundation, but also for every member of the community involved and interested in carrying out actions concerning KUHAP. The idea of protection of the rights of individuals by the state by procedures. Countries should define and consistently perform the procedure. Judicial authority by the State is empowered to uphold the law must obey the law. Law enforcement must be under the law is not above the law. It is done to avoid the arbitrariness of law enforcement in enforcing the law.To implement KUHAP as a whole and consequently, one must first sincerely and carefully listening and understanding embodied those principles. Those articles will only be a dead, and dry formulation and law enforcement will not be able to carry out parallel with the soul and spirit of the philosophical foundation and cornerstone of the constitution.It can be concluded that the principle is the principle of legality. The Principle of Legality firmly states that "The Republic of Indonesia is a constitutional state based on Pancasila and the Constitution of 1945, which upholds human rights and which guarantees all citizens equal before the law and government and shall abide by the law and the government without any exception. "Indonesia's legal system is Positivism. It shows that all legal actions there should be laws governing. In criminal law in Indonesia is called the principle of legality [13][4]. In the Criminal Code, Article 1 Section 1 states "No one may be punished the only act, but on the power of the criminal provisions in the legislation, which is earlier than the act."

The legality principle formulated in Latin "Nullum delictum, nulla poena, sine praevia lege poenali", which means that an act can not be convicted except by the power of the criminal provisions of the legislation that has gone before. The legality principle has been applied in various countries that use the criminal law has been codified in a "Wetboek" as countries that embrace the continental European legal system. This principle is also contained in the Universal Declaration of Human Rights, 1948 (Article 11).

According to Jorgen Jepsen that all government policies or official bodies of the state are essentially aimed at establishing central norms in society. It is done through legislation. The same thing was also stated in Law No. 35 of 1999 on Principles of Judicial Power in Article 6 Section 1. It reads, "No one can appear before a court other than that assigned to him by the Act."Arrangements that support the principle of legality in criminal law is also contained in the Rome Statute of the International Criminal Court, 1998. He stated that there are three general principles of criminal law, namely:Article 22 Section 1 states that "A person is not criminally responsible by this statute unless it acts include an act that at the time this action takes place, a crime within the jurisdiction of the Court."Article 22 Section 2 states that "The definition of a crime should be interpreted strictly and should not be extended by analogy, in the case of the vagueness of the definition should be interpreted that benefit the person being investigated, prosecuted or convicted." Article 3 Section 3 states that "This section does not affect the characteristics of each character's behavior as criminal under international law independently."Objectives to be realized in the application of the principle of legality in criminal law is to enforce the law and justice in society. It is also that the existence of criminal law is very deemed necessary to maintain security and stability in the life of the nation.Although the law and justice are the goals that have been known long ago, this goal is often forgotten and spilling out; sometimes deliberately forgotten or less cautious in enforcing them. As a result, in every process of law enforcement and justice has turned into injustice and cheating. This is because the process of law enforcement has been mixed with conceit and ruthlessness of human rights [6][8][12].

III. METHODOLOGY

The principle of the entry into force of criminal law under this time contained in Article 1 paragraph 1 of the Criminal Code, which reads: "No one may be punished the only act, but on the power of the criminal provisions in the legislation, which is earlier than the act."Penal Code does not regulate religious offense. It is just a law on Godslastering in the Netherlands in 1932 is known as the Lex Donner by Minister Donner who created these laws. The legislation in Germany in Strafgesetzbuch included the offense of religion in Article 166; it seems to be a model and inspiration for the Netherlands, which has no rules regarding the offense of the religion in the midst of a legal there and hold no transfer to the Constitution of the Republic of Indonesia No. , 1, 1946 in KUHP.Finally, the crime of defamation of religion was provided for in Article 156 and 156a paragraph (a) of the Constitution of the Republic of Indonesia No. 1 Year 1946 in KUHP, which formulates: "Punishable by imprisonment for five-year-old person who deliberately publicly issued feelings or acts:

a. Which mostly hostile, misuse or desecration of a religion followed in ndonesia.

b. With the intention people do not practice any religion also that based on God. "

Application of the principle of legality has been in force in various countries that use the criminal law has been codified in a "Wetboek" as countries that embrace the Continental European legal systems. This principle is also contained in the Universal Declaration of Human Rights, 1948 (Article 11).Montesquieu was one of the lawyers who fight for the principle of legality, with the theory of "Trias Politica" her. This theory teaches that there is a clear separation of each power such as:

1. The legislative authority or the power to make laws is the Parliament.
2. Executive power is held by the government.
3. Judicial power is held by the judiciary.

With separation system of power that Montesquieu found outside the law is no law. Laws made by the Parliament carried out by the king, and the judge assigned to hear cases that arise as a result of violations of the rule of law. Remove each rule is intended to limit the absolute power of the king.The powers that be on the one hand would lead to the arbitrariness of the authorities.

Public law serves to implement the will of its people. The state is formed to keep the maintenance of life of the nation, protect its citizens from enemy attacks, improve social welfare and empower citizens. State acts as a facilitator in life; it needs the rule of law, it supported the principle of legality ontological existence of the public law to be strong; the public law does not need to consider whether the words that contain elements of the crime by the hearts of people who did it or not.

Elements of Article 156 of the KUHP are as follows:

a. In public
b. Expressing feelings of hostility, hatred or contempt
c. Against class.

Definition of groups according to Article 156 KUHP is that each part of the population of Indonesia is different from something or some portion of the population because of the nation, religion, place of the original, offspring, nationality or national law. If Article 156 is reviewed regarding its placement in KUHP (Book II, Chapter V on Crimes Against Public Order), it is a bit far from the chapter XVI of the insult. It is an indication that not insults referred to in this article in the conduct of criminal but expressed feelings of hostility hatred or contempt.This Article has a broad sense; this includes statements than what is possible by the insult. Regarding Article 156a PNPS No. 1/1965 as mentioned above, the explanation chapter by chapter, in particular, Article 4 states The purpose of this provision has been sufficiently explained in the general description above.

It removes the similarity or performs an act to be done orally, in writing or other actions. Letter a, an offense intended here, is solely (essentially) addressed to the intention to hostile or offensive. Thus, then, the descriptions were written or oral objectively, and scientific zakelijk about a religion that is accompanied by an attempt to avoid the inclusion of the words is not a criminal offense under this article.Letter B, The person who commits an offense set out herein, in addition, to disrupting the peace of the religious, basically betraying the first principle of the State's total, and therefore are in place, that the offense shall be punished appropriately.

IV. EVALUATION

If both Article 156 and 156a are closely examined, theyhave weaknesses, such as:

a. Article 156 does not formulate clear about religious offense. This article said little about religious offense, but it is not clear. What is covered by this chapter are the "people" or "religion."
b. Article 156 needs to be clarified regarding the intent. This article from the point of Islam is an article concerning defamation offense. Only in the teachings of Islam "insult was not required to do in public." Nor is it required actions disrupt public order.
c. Article 156a requires the existence of religious offense, in general; protection against religions recognized as a legitimate religion in Indonesia. However, the phrase "publicly" that brings consequences such as Article 156. This leads to the public interest rather than the interests of religion.Article defamation of religion is also outlined in Article 28 Section 2 of Law No. 11 of 2008 on Information and Electronic Transactions. As for the criminal provisions, is regulated in article 45, paragraph 2 of this law. However, this article is applicable in particular, which is only for the crime of blasphemy relating to information and electronic transactions, or can be just for the crime of blasphemy committed in the cyber world or virtual world that uses electronic technology or the internet.Performers are generally speaking as a person who committed a particular act. An offender is a person who has committed a crime that is often referred to as criminals. Actually, the term villain is not recognized in the Criminal Code. No one any term in these chapters that the convicted person is a criminal. The term was only known in public life. The term is a term contained in a society given to certain people, who, according to the society had broken the rules in force in the community.Definition of liability in criminal law is an extension of the notion of criminal acts. If people have committed a crime, not necessarily be punished because it remains to be seen whether that person can be blamed for the actions that have been done so that the person can be criminally. If it can not be proved guilty, then apply the principle Geen Straf Zonder Schuld

which means: no crime if there is no error. Thus the failure by a person to be punished must satisfy the elements of criminal acts and liability in criminal law (having errors).In the end, how a person is able to responsibility? According to Van Hammel, people capable of responsible must meet at least three requirements, such as:

a. Can realize (understand) the meaning of his actions like crime.
b. Can realize that perbuatanya in view inappropriate in the association community.
c. Being able to determine the intentions or desires to act earlier.

In the context of the law of criminal procedure, evidence is central to hearing criminal cases because it sought in criminal procedural law is the material truth, which is the goal of proof is true that a crime has occurred and the defendant who is guilty doing it. To prove the guilt of the accused, the court is bound by the provisions of proof as set out in the legislation. Proof of lawful to do on the court by the applicable procedures in the rules of evidence.Regarding the kinds of evidence in Article Article 1 Section 28 of Law No. 8 of 1981 in KUHP states "The testimony given by an expert who has special expertise in the needed to make light of a criminal case for the purpose of examination. "Besides, it also strengthens the criminal acts of defamation of religion are the testimony of witnesses, the current society. Witness testimony is evidence the first order under Article 184 Section 1 of Law No. 8 of 1981 in KUHP. Witness testimony has the meaning of Article 1 paragraph 27 of Law No. 8 of 1981 on the Law of Criminal Procedure defines "witness testimony is one type of evidence in a criminal case in the form of testimony from witnesses regarding a criminal and he heard himself; he sees himself and his experience. "

V. CONCLUSION

It can be concluded that application of Article 156a in KUHP in cases of alleged defamation of religion is a potential threat to democracy in Indonesia. Blasphemy is not in the concept of law and human rights. Religious defamation case could not be resolved through legal product because it is abstract. If it is forced then, there will be much controversy. There is a similar pattern of cases of defamation of religion in Indonesia. Almost no cases that do not involve the masses. This case is always preceded by demonstrations and mass mobilization by some people, followed by the actions of law enforcement officers, to make the suspect, tried in court and sentenced to many years.

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