

# JURIDICAL ANALYSIS OF RELIGIOUS BLASPHEMY CRIMES THROUGH SMARTPHONE APPLICATIONS BASED ON THE INFORMATION AND ELECTRONIC TRANSACTIONS (ITE)

*by sentosadelimandiri 1*

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# JURIDICAL ANALYSIS OF RELIGIOUS BLASPHEMY CRIMES THROUGH SMARTPHONE APPLICATIONS BASED ON THE INFORMATION AND ELECTRONIC TRANSACTIONS (*ITE*)

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## Abstract

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The presence of Law No. 11 of 2008 on Information and Electronic Transactions as revised by Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Information and Electronic Transactions, should be expected to be able to direct Indonesians to be more intelligent in building communication and behaving on social media which is now a new social reality in human civilization in the modernization era. This study aims to find out and analyze about the crime of blasphemy through social media and the application of the law and the impact of the application of the ITE Law on public legal awareness. This research is normative legal research using case approach, legal approach and conceptual approach. This research is descriptive analytically using qualitative analysis.

Keywords: Analysis, Blasphemy, ITE Law.

## I. BACKGROUND

The presence of the internet not only causes changes in human communication patterns in people's social relations, but also changes the pattern of social media community, namely with the existence of social media communities, through various applications available on smartphones, such as: Facebook, Twitter, Instagram, WhatsApp and others. The development of the internet has brought a community of people and a new world, namely the existence of a community of cyber communities known and often called netizens.

Social media is said to be a new social reality in modern society, because through the use of smartphones that provide a variety of applications, people are able to establish relationships with various communities without being limited by space, place and time, even beyond cross-country. This condition is a consequence of the development of technology and internet networks. So it encourages most of the wider community to use smartphones.

The Internet has brought a new reality of life to people. Through the use of the internet, various activities that in the real world are difficult to do because they are limited by space, place and time can be done. Through the internet, users can browse virtual space, communicate with a variety of global information, enter the universe of differences and cross ethnic, religious, political, cultural, freely without having to be limited by space and time.

The widespread use of the Internet on the one hand has brought positive changes in various areas of people's lives, be it political, social, economic and cultural fields. Budi Suharyanto, explained that various social networking sites that are widespread to the community can be used according to the needs of each user. Through social networks, people can express and freely express opinions, criticisms or suggestions.

The development of the Internet in reality not only has a positive impact on people, but it can also have a negative impact. The ease of communicating and exchanging information through various social media applications available on smartphones among fellow users, if netizens are not smart and careful, then the content submitted or uploaded through social media may lead to acts of humiliation and blasphemy, be it against individuals, groups, or to religions that are often referred to as SARA-charged content. Confused (ETS)

The phenomenon that has recently developed in society, it seems that most of the public does not yet have intelligence in using social media applications through smartphones. This is characterized by many cases of insults of a racist nature, even blasphemy against religion. Social media content containing racist content or SARA, in the regime of the ITE Law is referred to as hate speech.

Blasphemy or desecration is not expressly and clearly regulated in the ITE Act. However, content containing SARA in the ITE Law is categorized as Hate Speech. The act of communication through social media containing sara content is included as an act prohibited in the ITE Law and formulated as a criminal act. Proper Nouns (ETS)

The formulated hate speech as a criminal act in the ITE Law, based on the consideration that hate speech in a certain context can trigger or potentially arise horizontal conflict in society. The spread of hate speech through social media, whether intentionally or unintentionally, is basically aimed at inciting hatred or hostility between individuals and/or with certain groups of people, based on ethnicity, religion, race.

The substance of the ITE Law governing the order of behavior for users, should be able to direct the public as users to be more intelligent and careful in loading content on social media. Because, how has social media become a new social reality in human civilization in modern society today. Therefore, every user who is part of the cyber community must comply with the provisions of the ITE Law. This is where the role of The ITE Law is said to be a means of community renewal (law as tool of social engineering).

Based on the brief background above, in this study determined several problem formulations as follows:

1. What is the regulation on the crime of blasphemy in positive law in Indonesia?
2. How is the application of ITE Law in law enforcement against the crime of blasphemy through electronic media?
3. How does law enforcement impact the ITE Law on public legal awareness?

## II. RESEARCH METHOD

Judging by its type, this research is a normative juridical research. Normative legal research is research conducted by examining library materials (secondary data) or library law research. This research uses a statute approach, case approach, so that this research is not limited to research on the applicable law (normative) only, but more than that is how the law should be applied. 2

The type of data used in this study is secondary data, namely data obtained from legal materials, in the form of primary legal materials, secondary legal materials and tertiary legal materials. Data analysis used in research is qualitative analysis, by describing the discussion of research through a series of solid and clear sentences. 11

## III. RESEARCH RESULTS

The issue of religion is a very sensitive issue in Indonesia, considering the Indonesian nation has a characteristic as a pluralism society. One of the characteristics of Pluralism in Indonesian society is religious diversity. Religious diversity in Indonesia is a characteristic of the Indonesian nation which is a treasure of wealth for the Indonesian nation, in addition to other diversity, such as ethnic, national, and ethnic diversity.

The diversity of Indonesian society, if the community is not able to maintain harmonization relations between religious people (religious tolerance), then in the diversity is very potential for friction that can trigger the emergence of communal conflict (horizontal), namely religious conflict. The Indonesian state has a bitter experience of religious conflict, namely the religious conflict between Muslims and Christians that occurred in Poso in 1998-2001.

The development of technology and the internet has encouraged most people to use smartphones, because it provides a variety of features and applications that provide easy communication for the community to establish communication between people, be it communication between individuals with individuals, individuals with certain communities, or between certain communities with other communities. The ease of communicating through various social media applications using smartphones in reality has caused new social symptoms in the community, namely the emergence of various cases of blasphemy or blasphemy against religion.

The first case to go public related to blasphemy through social media was a case of blasphemy committed by Basuki Tjahaja Purnama or better known as Ahok. Ahok's blasphemy case began when he gave a working visit to Pramuka Island, Kepulauan Seribu on September 27, 2016. At the time, Ahok in his speech delivered a comment related to Surah Al-Maidah verse 51, which he said many people were "lied to" by the letter by not being allowed to choose a nonmuslim leader. In this case, Ahok is not alone, law enforcement also determined another suspect, namely Buni Yani's brother who is considered responsible as the party that distributed the video footage containing Ahok's speech containing blasphemous content. 18

Any content that contains sara issues in the ite law regime is called hate speech. Hate speech is defined as an act of communication by individuals or groups containing provocations, incitement, or insults to other individuals or groups in various aspects such as race, color, gender, sexual orientation, religion and others.

Legal perspective, hate speech means as a word, behavior, writing, or performance that is prohibited by law, because it can trigger acts of violence and prejudice on the part of the perpetrator of such statements or victims commonly referred to as (Hate Speech). While the website that uses, implements and delivers Hate Speech is called hate site. P/V (ETS)

Regulation on blasphemy or blasphemy in positive law in Indonesia, there are at least two provisions of the law governing it, namely: Article 156, Article 156 A N of the Criminal Code jo Article 28 paragraph (2) of the ITE Law. is the public domain, which belongs to the ordinary deliberation.

The Penal Code regulates the interests of protected religions, i.e. acts that attack or harm the interests of protected religions, namely acts regulated in book II Chapter V concerning crimes against Public Order. Barda Nawawi Arief mentions religious blasphemy as a criminal act / deliberation against religion and deliberation related to religion, namely deliberations aimed at religion and related to religion or to religious life.

Deliberation of blasphemy or often referred to as blasphemy, formulated in Article 156 and Article 156 letter a of the Criminal Code. Article 156 of the Penal Code states: "Anyone who

Confused (ETS)

Wrong Article (ETS)

publicly expresses feelings of hostility, hatred or contempt for something or some group of Indonesian citizens, shall be sentenced to four years imprisonment or a maximum fine of Rp. 4,500".

The provisions of Article 156 of the Criminal Code are basically almost the same as the provisions of Article 154 of the Criminal Code, the difference is that Article 154 of the statement is against the Government of Indonesia, while Article 156 is addressed to something between several groups of Indonesian citizens. The population groups, for example: Europeans, Chinese, Japanese (population by nationality) or Javanese, Batak, Dayak, Balinese (ethnic groups) and Muslims, Christians, Buddhists (population groups based on religion).

Furthermore, the deliberation of blasphemy is regulated in Article 156 letter a of the Criminal Code, which reads:

Sentenced to imprisonment for a maximum of five years whoever deliberately publicly expresses feelings or commits acts:

1. which is essentially hostility, abuse or desecration of a religion adopted in Indonesia;
2. with the intention that people do not follow any religion, which is in the same way as the One True God.

In addition to referring to the provisions of Article 156 and Article 156 letter a of the Criminal Code, the deliberation of blasphemy is also regulated in Law No. 1/PNPS/1965 on Blasphemy. In the formulation of Article 1 of Law No. 1/ PNPS / 1965, formulate prohibited acts in the form of:

- a. intentionally
- b. in public
- c. narrate, advocate or seek general support to interpret a religion adopted in Indonesia or;
- d. conduct religious activities that resemble the activities of the religion;
- e. which interpretations and activities deviate from the subject matter of the religion.

Law enforcement against cases of blasphemy, law enforcement tends to use the provisions of Article 156a of the Criminal Code. The reason for the use of Article 156a of the Criminal Code, because the provision of this article is a stand-alone legal norm and does not depend on the norms of administrative law or the imposition of administrative sanctions as stipulated in Article 2 of Law No. 1/PNPS/1965 on Blasphemy.

The provisions of Article 156 and Article 156a of the Criminal Code then become a reference or basis in the criminal act of blasphemy related to electronic information, which can be used by law enforcement to ensnare perpetrators of blasphemy through social media using electronic means and internet networks.

One of the factors causing tensions in society related to religious blasphemy deliberation is because of the vagueness of the formulation policy for prohibited acts in the 156a of the Criminal Code. The obscurity can be observed from the phrase "hostility, abuse and criminalization of a religion". The phrase is not strong enough to determine and explain actions that can be categorized as blasphemy of religion. Such formulation causes the act intended in Article 156a of the Criminal Code to be an act that is very difficult to measure.

The element of action in the crime of blasphemy formulated as an act "which is essentially hostility and abuse or desecration of a religion", relies heavily on the assessment of feelings for religion, religious life for a person or a group of people who tend to be subjective. In addition, the existence of Article 156a of the Criminal Code also has a very wide scope, so it is very multi-interpreted, which can imply violations of individual rights, which can thus lead to

tensions of religious background in society and lead to violations of the rights of certain individuals or groups in society.

Confusion of the formulation of religious blasphemy deliberations also occurs in the ITE Law. The formulation of religious blasphemy deliberation can be seen in Article 28 paragraph (2) of the ITE Law, which reads: "Everyone deliberately and without the right to disseminate information intended to cause hatred or hostility to certain individuals and/or groups of people based on ethnicity, religion, race, and interfaith (SARA). The criminal sanctions for violations of Article 28 paragraph (2) as stipulated in Article 45A Paragraph (2), i.e. with the threat of imprisonment of maximum 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.- (one billion rupiah).

Based on the textual article above, there are two important things that need to be studied more deeply so as not to become a legal loophole of this article, namely first, the element "intentional" and "without rights". In this case the object being disseminated is information and the dissemination is done "intentionally" and without "rights". The application of Article 28 paragraph (2) of the ITE Law is different from other prohibited acts in the ITE Law, which lists electronic information and electronic documents. This article does not explain clearly about the form of information used whether in the form of electronic information or electronic documents, so the form of information and facilities used is still not very clear.

The second element in Article 28 paragraph (2) can be seen from the phrase "to cause hatred or hostility of certain individuals and or groups of people based on ethnicity, religion, race, and between groups (SARA)", is the main element in Article 28 paragraph (2) of the ITE Law. This element becomes the basis for proving whether an information that has been disseminated is intended to cause hatred and hostility between individuals or groups in society. Therefore, in the application of hate speech deliberation, the fulfillment of this element is very important to be considered in understanding the nature of Article 28 paragraph (2) of the ITE Law.

Based on the substance of Article 28 paragraph (2) of the ITE Law, in the application of this article there are two possibilities, namely: First, it is possible that the dissemination of information by a person or group of people is not intended to cause provocation, but in reality the information disseminated it provokes hatred and hostility between individuals or groups of people. For example, a socio-political journalist who initially only wanted to disseminate information without the intention of provoking. However, because the political atmosphere is heating up in the middle of the presidential election, it turns out that the information triggers animosity or conflict between communities. In the event of such circumstances, can the journalist be convicted of this article?

The second possibility is that the opposite situation may be possible, in which the person spreading the information is intended to provoke a person or group of people, but in reality what the dissemination of such information does not happen or materialize. In response to both conditions, Sutan Remy Syahdeni, categorized the criminal act of this article as a formal criminal act, thus the perpetrator can be convicted even if the desired does not occur.

The formulation of Article 28 paragraph (2) of the ITE Law also introspects conventional blasphemy. Therefore, in the application of Article 28 paragraph (2) of the ITE Law there are similarities with the acts of blasphemy formulated in Article 156 a of the Criminal Code and Law No. 1/PNPS/1965 on Blasphemy. However, it should be remembered that the ITE Law is a special law (lex specialis) of the provisions stipulated in Article 156 a of the Criminal Code and Law No. 1/PNPS/1965 on Blasphemy. So that the provisions of Article 28 paragraph

(2) of the ITE Law certainly have more specific elements than the provisions stipulated in Article 156 a of the Criminal Code and Law No. 1/PNPS/1965 on Blasphemy.

Violation of the provisions of Article 28 paragraph (2) of the ITE Law shall have implications for the provision of criminal sanctions as stipulated in Article 45 paragraph (2) of the ITE Law, i.e. imprisonment of maximum 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.- (one billion rupiah). If the elements contained in Article 28 paragraph (2) of the ITE Law are met, then the criminal sanction applied to the perpetrator is imprisonment for a maximum of six years and/or a fine of as much as one billion. The judge in sentencing the accused can choose whether to impose sanctions alternatively or combine the two (cumulative), i.e. impose a prison sentence as well as a fine.

The articles governing the deliberation of blasphemy are still multi-interpretive, because the law itself does not give a clear and firm limit on how the act is intended as an act that is essentially hostile and abuse or desecration of a religion".

For example, the case of blasphemy committed by Meliana in Tanjung Balai city, which by the Medan District Court has been sentenced to 18 months in prison through the decision of the Medan District Court No. 1612 / Pid. B/2018/PN. Mdn. This case began from a request from Meliana to nazir mosque to decrease the volume of adhan in al-Maksum mosque. In the dialogue, Meliana has no words of hostility and hatred towards muslims and no words that threaten the peace of religion.

The application of blasphemy law according to Article 156a of the Criminal Code, the main element that must be proven is the "element of intentionality". Then the new "element of deeds", followed by the proving of the element of error and the element of ability to be responsible (there is no excuse for forgiveness and no reason for vindication).

In the case of blasphemy against Meliana, the author sees that the case stems from Meliana's request to the manager of al-Maksum mosque to decrease the volume of adhan. The request according to the author is still within the limits of religious tolerance. Meliana felt that the volume of the adhan of al-Maksum mosque was too loud, thus disturbing her composure. Meliana then asked the mosque administrator to turn down the volume of adhan. If examined from the perspective of religious harmony, then meliana's request is still within the limits of religious harmony tolerance. It is natural, if a person experiences a disturbance that disturbs his calmness, then the person asks any party that has disturbed his calmness, in order to be more tolerant of the surrounding environment. Although the disturbance is derived from worship activities carried out by one of the recognized religious people in Indonesia.

The actions committed by Meliana did not adequately indicate the existence of an element of "willfulness" and the element of deeds "which are essentially hostile and abuse or desecration of a religion". Despite the legal facts found by the judge in deciding the blasphemy case committed by Meliana, here the author assumes that law enforcement against the crime of blasphemy still needs to be reviewed. Considering that in law enforcement against the crime of blasphemy religion still raises a number of legal polemics, especially with regard to the substance of the law governing the deliberation of blasphemy, both in the Criminal Code and the ITE Law.

The implications of blurring the elements of criminal acts in the criminal act of blasphemy in the context of law enforcement will cause legal uncertainty. Therefore, lawmakers must define clearly without vague (nullum crimen sine lege strica), so that there is no ambiguous formulation of prohibited acts that by law are sanctioned in the form of criminal.

Formulation that is not clear or too complicated to be understood by the community only raises legal uncertainty and hinders prosecution (criminal), because citizens as the object of the law will be able to defend themselves that the provisions are not clear. It is useful to be used as a guideline.

Efforts to combat the crime of blasphemy, the government should prioritize preventive efforts rather than repressive efforts. Given the legal awareness and communication ability of the community that is still very low, the approach of criminal law in tackling the crime of blasphemy will thus cause new problems for the government, namely the increase in case handling and over capacity in sentencing that adds new problems related to the problem of over capacity of correctional institutions.

The increase in cases of blasphemy through social media proves that law enforcement against perpetrators of blasphemy and the application of the ITE Law has not been able to provide learning and as a means of renewal for the wider community, especially users (users) of social media. In addition, the punishment of perpetrators of blasphemy also does not cause a deterrent effect for the community. Even cases of blasphemy through social media have increased. This indicates that the prevention of blasphemy crimes must be done through social and religious approaches.

The social approach is carried out by providing an understanding for the community that in the life of Indonesian people who are pluralis, it is demanded mutual respect between fellow religions and groups. In this case it is expected that the participation of religious leaders in providing enlightenment for the people or congregations of each, about the concept of peace and tolerance in religious life, which is the purpose of the religion itself, namely creating peace. If the understanding of the existence of the community of religious purposes can be realized, the act of blasphemy in society will be minimized.

#### IV. CONCLUSION

1. The crime of blasphemy in positive law is regulated in the Criminal Code, Law No. 1/PNPS/1965 on Blasphemy and the ITE Law. The formulation of blasphemy in the three laws has similarities with each other, only in the ITE Law has a more specific element, namely requiring the dissemination of information through electronic media and electronic systems. Although the ITE Law is not mentioned explicitly regarding the form of information disseminated and the means of dissemination of information. However, from the title of this law it can be understood that the dissemination of information intended in Article 28 Paragraph (2) of the ITE Law is by using electronic means. Criminal sanctions for violations of Article 28 paragraph (2) as stipulated in Article 45A Paragraph (2), i.e. with the threat of imprisonment of maximum 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.- (one billion rupiah).
2. Law enforcement against the crime of blasphemy through electronic media, through the approach of criminal law as stipulated in the Criminal Code and ITE Law has not shown any legal certainty. This is because the formulation of religious blasphemy deliberation in the Criminal Code and ITE Law is still multi-interpreted. In addition, in certain cases, law enforcement against perpetrators of blasphemy does not realize justice, even if it may violate the rights of a particular individual or group.
3. Law enforcement of ITE Law has not been able to raise public legal awareness. This is characterized by the recent increase in cases of blasphemy in the community. The prevention of



blasphemy through the approach of criminal law is still less effective, because it does not cause a deterrent effect for the community. So it can be said that the presence of the ITE Law has not been able as a means of renewal for the public, especially users (users) of social media to be able to social media wisely and intelligently, without having to harm others and commit violations of the law.

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PAGE 1

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**Missing ","** Review the rules for using punctuation marks.



**P/V** You have used the passive voice in this sentence. You may want to revise it using the active voice.



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**Missing ","** Review the rules for using punctuation marks.

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**Confused** You have used either an imprecise word or an incorrect word.



**P/V** You have used the passive voice in this sentence. You may want to revise it using the active voice.



**Proper Nouns** You may need to use a capital letter for this proper noun.



**Article Error** You may need to use an article before this word. Consider using the article **a**.



**Prep.** You may be using the wrong preposition.

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**Article Error** You may need to remove this article.



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**Proofread** This part of the sentence contains an error or misspelling that makes your meaning unclear.



**Sentence Cap.** Review the rules for capitalization.



**Missing "?"** Review the rules for using punctuation marks.



**Confused** You have used either an imprecise word or an incorrect word.



**Wrong Article** You may have used the wrong article or pronoun. Proofread the sentence to make sure that the article or pronoun agrees with the word it describes.

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**Run-on** This sentence may be a run-on sentence.



**Confused** You have used either an imprecise word or an incorrect word.



**Article Error** You may need to remove this article.



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**Article Error** You may need to use an article before this word. Consider using the article **the**.



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**Frag.** This sentence may be a fragment or may have incorrect punctuation. Proofread the sentence to be sure that it has correct punctuation and that it has an independent clause with a complete subject and predicate.



**Prep.** You may be using the wrong preposition.



**Article Error** You may need to remove this article.



**Article Error** You may need to remove this article.

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**Article Error** You may need to remove this article.



**Frag.** This sentence may be a fragment or may have incorrect punctuation. Proofread the sentence to be sure that it has correct punctuation and that it has an independent clause with a complete subject and predicate.



**S/V** This subject and verb may not agree. Proofread the sentence to make sure the subject agrees with the verb.



**Article Error** You may need to use an article before this word.



**Article Error** You may need to remove this article.



**Article Error** You may need to use an article before this word.



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**Article Error** You may need to use an article before this word.

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**Missing ","** Review the rules for using punctuation marks.



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