



# The Comparison of the Criminal Code and Draft Criminal Code Formulations of Crimes against Religion and Religious Life\*

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## Abstract

The formulation of criminal acts against religion and religious life in Indonesian laws and regulations still leaves various problems. This article discusses the form of formulation of criminal offenses against religion and religious life in the upcoming Criminal Code and RKUHP. The form of this research is normative juridical with legal, conceptual and case approaches. The results of this study indicate that the RKUHP has made changes that lead to "concretization" and "objectification" of crimes against religion and religious life, so that the principles of *lex certa* and *lex stricta* are truly considered. The RKUHP has also been more advanced in formulating crimes against religion and religious life based on the notion of respect for the right to religion as a human right protected by the Constitution. Hopefully the enactment of the RKUHP can be a solution in law enforcement against various crimes against religion and religious life in Indonesia in the future.

**Keywords:** Formulation; Criminal acts against religion; Religious life

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## Perbandingan Rumusan KUHP dan Rancangan KUHP tentang Kejahatan Terhadap Agama dan Kehidupan Beragama

### Abstrak

Perumusan tindak pidana terhadap agama dan kehidupan beragama dalam peraturan perundang-undangan di Indonesia masih menyisakan berbagai persoalan. Tulisan ini membahas terkait bagaimana bentuk perumusan tindak pidana terhadap agama dan kehidupan beragama dalam KUHP dan RKUHP mendatang. Bentuk penelitian ini adalah yuridis normatif dengan pendekatan hukum, konseptual, dan kasus. Hasil penelitian ini menunjukkan bahwa RKUHP telah mengadakan perubahan yang mengarah pada “konkretisasi” dan “objektifikasi” tindak pidana terhadap agama dan kehidupan beragama, sehingga prinsip *lex certa* dan *lex stricta* benar-benar diperhatikan. RKUHP juga telah lebih maju dalam merumuskan tindak pidana terhadap agama dan kehidupan beragama yang didasarkan pada pemikiran tentang penghormatan terhadap hak beragama sebagai hak asasi yang dilindungi Konstitusi. Semoga dengan diberlakukannya RKUHP dapat menjadi solusi dalam penegakan hukum terhadap berbagai tindak pidana terhadap agama dan kehidupan beragama di Indonesia masa mendatang.

**Kata Kunci:** Perumusan; Tindak pidana terhadap agama; Kehidupan beragama

### Сравнение формулировок преступлений против религии и религиозной жизни в УК и проекте УК

#### Абстрактный

Уголовные преступления против религии и религиозной жизни в индонезийских законах и постановлениях по-прежнему вызывают много проблем. В этой статье рассматривается, как новый Уголовный кодекс и РКУХП формулируют уголовные преступления против религии и религиозной жизни. Исследование имеет нормативно-юридический характер и использует юридические, концептуальные и прецедентные методы. Согласно результатам этого исследования, РКУХП внес изменения, которые привели к «конкретизации» и «объективизации» преступлений, связанных с религией и религиозной жизнью, что привело к тому, что принципы *lex certa* и *lex stricta* были адекватно применены. Кроме того, РКУХП продвинулся в формулировании преступлений против религии и религиозной жизни, основываясь на идее уважения права на религию как права человека, защищаемого Конституцией. Мы надеемся, что в будущем принятие RKUHP поможет правоохранительным органам бороться с различными преступлениями против религии и религиозной жизни в Индонезии.

**Ключевые слова:** Формулировка; Преступные действия против религии; Религиозная жизнь

## A. INTRODUCTION

The formulation of criminal acts against religion and religious life in Indonesia still leaves various problems in criminal law. In particular, if you look at its formulation in the Criminal Code and RKUHP. This is not only at a theoretical level but even further in legal practice in criminal justice. The reality in law enforcement practice in Indonesia shows that there is no uniform pattern in determining actions that qualify as criminal acts against religion and religious life. So it is not surprising that the discourse on this matter is still interesting and has not provided an answer that can be accepted by all groups. This fact cannot be separated from the pluralistic condition of Indonesia, making it a sensitive social issue and requiring special attention. Religious issues in Indonesia can trigger divisions, and wars and are often positioned as a serious threat factor in the life of society and the state. Furthermore, as part of social reality and political institutions, the state has an important role in social and state life. The idea of establishing a country cannot be separated from the process of fulfilling human life's needs. ([Fathuddin, 2015: 5](#))

Even though the first principle of Pancasila is religious, it doesn't mean that Indonesia is a religious country that is based on one faith. Instead, religion is a moral value and a way to honor the conscience of the people. This country is here because Allah Almighty made it so. Indonesia is a secular country, but it is not secularistic. This means that it is not built on one religion or on all religions. Instead, it has a national view ([Soewoto, 1996: 4](#)). However, in order to maintain both religious freedom and religious concord, it is necessary for the state to take the initiative to give legal protection. Religious problems are, at their core, a matter of personal concern for each individual. In the context of the right to religious freedom, it is the responsibility of the government to offer services and aid in order to ensure that its adherents are able to practice their religion in a manner that is conducive to health, safety, and harmony. ([Rudini, 1994: 66](#))

Various cases that occur with religious backgrounds are ultimately reported to law enforcement and processed up to court. For example, in the case of the "prophet's hut sect" in Bandung by Mangapin Sibuea, in 2004, he was sentenced to two years in prison because he was proven to have violated Article 156a of the Criminal Code, in the case of Lia Eden Aminuddin, in 2005, he was sentenced to two years in prison on charges of blasphemy against religion because proven to have violated Article 156a of the Criminal Code ([Mudzakkir, 2012: 161-176](#)), the "Al-Maidah letter" case committed by Ahok in 2017, sentenced to 2 years in prison because he was proven guilty of committing the crime of blasphemy for violating Article 156a of the Criminal Code ([Jakarta District Court,](#)

[2017](#)), and the case of Meliana who was sentenced to 18 months in prison because she was deemed guilty of committing religious blasphemy based on Medan District Court Decision No: 1612/Pid.B/2018/PN.Mdn. ([Rustamaji; Gendis, 2020: 97](#))

The criminal act of blasphemy or insulting religion is a form of deviant behavior. Whatever the cause, the message is that expressing feelings or actions which can essentially give rise to hostility, abuse or desecration of a religion adhered to in Indonesia is very dangerous, destructive and can cause disruption to the well-being of oneself, the community's family, the nation and humanity ([Erlandi, 2018: 539](#)). Regulations regarding religious insults are contained in Article 156 and Article 156a of the Criminal Code. Thus, based on this article, every person who intentionally expresses feelings in public or commits an act which is essentially hostile, abuses, or desecrates a religion adhered to in Indonesia can be punished.

In the context of administering the Unitary State of the Republic of Indonesia, religion is an inseparable part of state administration. Therefore, religion and problems between religious communities, whether within the same religious belief or different religious beliefs, are regulated by the state and are the responsibility of the state. The state is also responsible for encouraging religious communities to obey the teachings of their religion and guaranteeing legal protection for religious communities. Religious blasphemy often triggers fanaticism and collectivism among its adherents in society. The public felt hurt, restless, and disappointed with the Government's attitude which seemed not to have the courage to act decisively on behalf of the public's unrest, and ultimately this limited patience led to a desire to vent their anger at adherents of heretical teachings and the destruction of their religious symbols. ([Maulani, 2013: 1](#))

In Indonesia itself, criminal acts against religion and religious life are increasing day by day, with all forms and modus operandi. It has even triggered conflicts between religious adherents and conflicts over the ideology of freedom which has led to disharmonious relations between religious adherents. This occurs inseparable from the subjectivity of law enforcers in interpreting the formulation of criminal acts that regulate them. Especially when formulating prohibited acts and the application of criminal law to an act that is categorized as a criminal act against religion and religious life. This situation is increasingly widened when faced with developments in Indonesian law which have included articles containing human rights in the 1945 Constitution of the Republic of Indonesia, so that in the interpretation of criminal law articles that regulate criminal acts against religion and religious life they are faced with constitutional

rights, especially regarding the interpretation of freedom of opinion and freedom of religion.

The Criminal Code has regulated criminal acts against religion and religious life, then supplemented by Law Number 1/PNPS/1965 concerning Prevention of Abuse and/or Blasphemy of Religion which contains provisions on administrative law and criminal law as well as amendments to the Criminal Code, namely including Article 156a of the Criminal Code, so that the regulation of criminal acts against religion and religious life becomes more complete. The existence of legal norms that regulate administrative actions in order to prevent blasphemy against religion and if it is deemed ineffective, criminal sanctions are used as a last resort (*ultimum remedium*). However, the existence of Law Number 1/PNPS/1965 is questioned because preventive measures are considered to be contrary to human rights regulated in the constitution.

The idea of formulating religious criminal offenses came from the First National Law Seminar in 1963. In one of the resolutions it was said that in future criminal law reforms, it is necessary to study in depth religious offenses in the Criminal Code. Furthermore, it is said that the recognition of the first principle, Belief in One Almighty God, is not the primary cause in the Pancasila state, with Article 29 of the 1945 Constitution (after the amendment contained in Article 28 of the 1945 Constitution of the Republic of Indonesia) which must be the basis for religious life in Indonesia, justifying even requires the creation of religious offenses in the Criminal Code. Religion in our life and legal reality is a fundamental factor, it can be used as a strong and solid foundation for carrying out religious offenses. Religious offenses can coexist with moral offenses, and can even take religious elements as a source of inspiration.

The practice of law enforcement for criminal acts against religion and religious life in Indonesia is often faced with problems of interpretation, especially regarding insults or desecration of religion, namely which actions are deemed to have insulted or tarnished religion. Moreover, in this case it is the object of God's word written in the holy book. The problem is who has the competence to carry out this interpretation. So those who oppose it often say this is a form of criminal law enforcement that violates human rights. This cannot be separated from the problem of formulating criminal acts which is a very strategic initial planning stage of the law enforcement process "in abstracto", which will determine the law enforcement process "in concreto". This strategic position has the consequence that weaknesses at the formulation stage will affect its enforcement ([Candra, 2021: 6](#)). Through this article, it is hoped that it can

emphasize and clarify the existence of criminal acts against religion and religious life in Indonesia.

## **B. METHODS**

This research falls within the category of normative legal research. The legal approach, the conceptual approach, and the case approach are the three methodologies that are utilized in legal research. Examining the wording of criminal offenses against religion and religious life in the Criminal Code is one method of approaching the issue from a legal standpoint. The conceptual approach is being carried out in the meantime by conducting an analysis of the concept of defining criminal actions against religion and religious life in the RKUHP as *ius constituendum*. In order to implement the case approach, one must first conduct an analysis of judicial decisions concerning criminal offenses committed against religion and religious life in Indonesia.

## **C. RESULTS AND DISCUSSION**

### **1. Understanding Criminal Acts Against Religion and Religious Life**

The offense of religion includes slandering a religion, insulting a religion, making fun of a religion, blaspheming a religion, disobeying Allah and His Apostle, opposing Islam, and engaging in improper behavior. In the religion of Islam, neither the Quran nor the Hadith contain any passages that criminalize disobedience to religious law. Except that on the basis of the results of the scientists, which were afterward imposed in various Islamic countries, with sanctions ranging from the lightest such as prison to the heaviest punishment of life and death, the scientists' findings led to the imposition of these harsher punishments. As a result of the fact that the reference that the scholars employ when engaging in their idolatry in the process of inventing the crime of religion is rejected by a society that is homogenous in faith, the only religion that is protected from the consequences of this crime is Islam. This research falls within the category of normative legal research. The legal approach, the conceptual approach, and the case approach are the three methodologies that are utilized in legal research. Examining the wording of criminal offenses against religion and religious life in the Criminal Code is one method of approaching the issue from a legal standpoint. The conceptual approach is being carried out in the meantime by conducting an analysis of the concept of defining criminal actions against religion and religious life in the RKUHP as *ius constituendum*. In order to

implement the case approach, one must first conduct an analysis of judicial decisions concerning criminal offenses committed against religion and religious life in Indonesia. ([Hilman, 2020: 39](#)).

On a theological level, the practice of criminalizing actions that blaspheme religion may be traced back to Judaism. This practice was later adopted by Western nations based on Christian ideals and spread throughout the world. Only Christianity is protected in Western countries because of the history behind the Christian sacred book. In the meantime, in the nation of Israel, the religious life of its people is based on the Torah, which governs religious crimes. In the formulation of its standards, the Torah not only protects the Jewish religion, but it also protects any and all other religions that are practiced in that country. ([Afriandi, 2017: 4](#))

Blasphemy and other forms of religious offenses can be understood in a number of different ways, including as follows: a. a criminal act or delict "according to religion"; b. criminal acts or offenses "against religion"; c. criminal acts or offenses "related to religion" or "against religious life" The definition of a criminal act or a delict "according to religion" can include acts that, according to applicable law, are criminal acts and seen from a religious perspective, are also acts that are forbidden or disgraceful, or it can include other acts that do not constitute criminal acts according to applicable law, but if seen from a religious point of view, it is an act that is forbidden or disgraceful. Crimes committed "against religion" and crimes committed "related to religion" are offenses that are directed against religion as well as those that are related to religion or religious life ([Barda, 2007: 1](#)). From this explanation, religious blasphemy is an attempt to insult or demean someone's beliefs such as God, deities, holy books in the form of actions or in the form of speech. ([Prasetyo; Arifin, 2019: 9](#))

Acts of criminality that are associated with religion or religious life are committed with the intention of providing a sense of serenity and security for religious communities while they engage in religious and spiritual practices. Within the context of maintaining public order, it is necessary to ensure that people have the opportunity to practice their religions in an atmosphere free from fear and disruption. Due to the fact that it is not regarded to be a legal interest, religion cannot be an object of protection in this instance of the crime. An example of interrupting religious ceremonies and burial ceremonies for corpses or creating a raucous atmosphere at places of worship with the intention of disrupting the flow of worship would fall within the category of activities that are considered to be of a legal interest in the context of religion and religious practices.

Blasphemy, on the other hand, is an Indonesian word that refers to the deed itself. Acts of insulting, harassing, humiliating, defiling, damaging, making fun of, etc., directed toward a religion are all included in the definition of the term "blasphemy," which is equivalent with these actions. This kind of profanity is referred to as "sabba" in religious parlance, which literally translates to "cursing" or "insulting." Actions that violate religion, committed against something that is revered or celebrated, such as criticizing or glorifying God, the prophets (messengers), angels, or the holy books, are examples of terms that can be used to signify blasphemy ([Dahri, 2017: 61-62](#)). This also includes activities that desecrate worship equipment, places of worship, and the procedures that are followed during worship (religious rituals). In the meanwhile, the Criminal Code does not provide a clear explanation of what constitutes religious blasphemy. However, other sources do provide such an explanation. According to this definition, religious blasphemy is a premeditated attack on the good name and honor of a person or organization with the intention of making this known to the larger community. ([Lala, 2017: 28-29](#))

Acts that are deemed to be criminal and are committed against religious life have the purpose of protecting religious communities from other activities that are also considered to be unlawful. There are a number of different objects that are considered to be things that must be safeguarded against specific offenses in the Criminal Code. This protection for religious communities can take on a few different forms, such as the following: disturbing, obstructing, dispersing with violence, or threatening to use violence against congregation members who are carrying out their worship while the service is in progress; mocking people who are carrying out their worship; or mocking religious officials who are carrying out their duties; desecrating, damaging, or setting buildings of worship or objects used for worship on fire.

Theoretically and juridically, heretical sects as part of religious problems and problems related to religion and religious life, are part of the scope of religious offenses as regulated in Article 156a of the Criminal Code and Law Number 1 PNPS 1965. Muladi said that:

"Criminal acts against religion and religious life are regulated in a special chapter (Chapter VII of the Bill), which reflects that Indonesia is a religious nation state, and where all religions (religions) that are recognized as valid in Indonesia are of great legal interest that must be protected and are not merely part of the public order that regulates religious feelings and peaceful religious life" ([Muladi, 2004: 8](#)).

In fact, in the Criminal Code there is no special chapter that regulates criminal acts against religion and religious life. Although in some formulations



the article can be categorized as a criminal offense against religion and religious life. The term criminal act against religion itself actually contains several meanings: a). Offense according to religion; b). Offenses against religion; and c). Offenses related to religious life.

Oemar Seno Adji, as quoted by Barda Nawawi Arief, stated that religious offenses only include offenses against religion and offenses related to religion. However, in fact religious offenses are not absent from the Criminal Code, even though they are not fully included in the Criminal Code. For example, Article 156a of the Criminal Code which is often referred to as the article on blasphemy against religion can actually be categorized as a criminal offense against religion. However, Article 156a of the Criminal Code has a broad scope in defining an act of religious blasphemy, so there is a need for a clear definition of what is meant by religious blasphemy ([Adare, 2013: 26](#)). Meanwhile, Article 175 of the Criminal Code, Article 176 of the Criminal Code and Article 177 of the Criminal Code which are often referred to as articles on obstructing or disturbing various religious activities can actually be categorized as criminal acts against religious life.

## **2. Formulation of Criminal Acts Against Religion and Religious Life in Current Positive Law**

Initially, there were no "crimes against religion and religious life" specifically regulated in the Criminal Code. This fact is understandable considering that the Criminal Code modeled on *Wetboek van Strafrecht* was designed within the framework of the rule of law of a liberal society, and avoids entering someone's private space too deeply or injuring the values of democratization and freedom. It's just that there is Article 156a of the Criminal Code which contains the formulation of the offense regarding "crimes against religion" which is an "amendment article" inserted based on the Decree of the President of the Republic of Indonesia No. 1 of 1965 concerning Prevention of Abuse and/or Blasphemy of Religion. Then, there are also several formulations of offenses that can be seen as "crimes against religious life", namely in Article 175, Article 176, and Article 177 of the Criminal Code. At that time the Presidential Decree (Penpres) was a legal product equivalent to a law, which is now known as a Government Regulation in Lieu of Law (Perpu), so that the introduction of this matter in the Criminal Code reflected the actual needs of the Indonesian people.

Both Article 156a of the Criminal Code and Article 175, Article 176 and Article 177 of the Criminal Code are offenses contained in Chapter V concerning "Crimes Against Public Order". When crimes against religion and religious life are placed in the chapter on crimes against public order, then basically "religion" or "religious life" is not the main interest that is intended to be protected by criminal law. However, this act is prohibited because it has the potential to disrupt public order. Meanwhile, in the RKUHP this criminal offense is placed in a separate chapter. Thus, "religion" and "religious life" are seen as separate legal objects, which are of special interest to the nation and therefore require separate protection with criminal threats.

In accordance with Article 156a of the Criminal Code, the formulation of criminal offenses against religion is as follows: ([KUHP 2007](#))

"Any person who intentionally expresses feelings or commits an act in public will be punished with a maximum imprisonment of five years: a. which is essentially hostile, abuses or desecrates a religion adhered to in Indonesia; b. with the intention that people do not adhere to any religion, which is based on belief in the Almighty God."

In giving an abstract and broad definition of religious blasphemy, as in Article 156a of the Criminal Code, this leads to excessive use of the article and interpretation of the article that leads to uncertain interpretation for the public when an act can easily be decided in a court of law as a criminal act, which is not what the legislature intended. damaging an Indonesian religion's reputation ([Binsar; Dina; Triana, 2021, 78-94](#)).

Meanwhile, criminal offenses against religious life in the Criminal Code are formulated as follows:

Article 175

"Anyone who, by violence or threats of violence, obstructs a public and permitted religious gathering, or a permitted religious ceremony, or a burial ceremony for a corpse, is threatened with imprisonment for a maximum of one year and four months."

Article 176

"Anyone who intentionally disrupts a public and permitted religious gathering, or a permitted religious ceremony or burial ceremony for a corpse, by causing chaos or noise, is threatened with imprisonment for a maximum of one month and two weeks or a fine of a maximum of one thousand eight hundred rupiahs."

Article 177

"Threatened with a maximum imprisonment of four months and two weeks or a maximum fine of one thousand eight hundred rupiah: a. whoever laughs at a

religious officer in carrying out his permitted duties; b. whoever insults objects for the purposes of worship in the place or at the time of worship."

At first glance, there doesn't seem to be anything wrong with how the crime is described above. But, as we've already talked about, crimes against religion are subjective because they have to do with a person's faith or opinion in the religion they follow. This means that making actions against the law because they are related to a person's beliefs is a problem in and of itself. This is because every religion has different sects, or schools of thought, and each has its own way of thinking and method for understanding and interpreting its holy books. So, criminal acts against religion and religious life can only be punished if they fall under the public law of religion. For example, they can only be punished if they upset public order by doing something that goes against religious teachings or is a desecration of religion. On the other hand, crimes against religious life that have to do with religious activities are clear-cut, easy to show, and easy to enforce. For example, disturbing religious people when they are praying or destroying places of prayer.

### **3. Formulation of Criminal Offenses Against Religion and Religious Life in the RKUHP**

Criminal acts against religion and religious life in the upcoming RKUHP must be oriented towards Pancasila ideas which contain moral, humanitarian, national, democratic and social justice values. The protection that must be protected in the Criminal Code is feelings of religious life, peaceful religious life as stated in Pancasila. Apart from that, the law must provide protection to religious adherents in Indonesia who live tolerant lives or believers in order to revise the law on religious blasphemy so that it is more detailed. Because no matter how wide a person's freedom is, it will still be limited by the freedom of other people. The freedom that gives birth to peace is a freedom in which there is no blasphemy, harassment, or insults to religious figures or the sanctity of religion. ([Irma Hayati; Syafruddin, 2018: 141](#))

There are developments that make fundamental changes from the Criminal Code to the RKUHP, especially in looking at acts that "blaspheme" a religion or various worship activities carried out by its adherents. The RKUHP places "religion" as the foundation of national life, so that defamation of it is seen as a disgraceful act and is therefore punishable by crime. Freedom to carry out a "religious life" for the Indonesian people is a basic right, so all interference with this must be eliminated. Indonesia's religious society means maintaining this

lifestyle is absolutely necessary. This is in line with Hatta's view that interpreting the principles of belief in one and only God is not merely about mutual respect between followers of different religions, but religious life is fundamental and determines the direction of the nation's development.

In the Criminal Code, crimes against religion are formulated in the form of a prohibition on the act of "deliberately publicly expressing feelings or committing acts which are essentially hostile, abuse or desecration of a religion adhered to in Indonesia". Presidential Decree No. 1 of 1965 provides very general restrictions regarding this offense. It was stated in the explanation that this act was an act that was "solely (in essence) aimed at the intention to antagonize or insult. Thus, written or oral descriptions carried out objectively, materially (*zakelijk*) and scientifically regarding a religion accompanied by efforts to avoid words or arrangements of words that are hostile or insulting, are not criminal acts according to this article."

If you look closely at the description of the crime above, you'll see that it focuses on three main things that are not allowed: "hostility," "abuse," and "defaming" religion. But the explanation only lists "hostile" and "insulting" as possible acts. The author thinks it's not clear what is meant by "hostile" or "expressing feelings of hostility" here. Keeping in mind that the word "enemy" in the Criminal Code mostly means "opponents of war" (Article 96 paragraph 2), "other countries that are at war with the Republic of Indonesia" (Article 106 of the Criminal Code), or "rebels" (Article 96 paragraph 1), these words were taken out of the RKUHP. Also, it's not clear what "abuse" means, even though its meaning can be determined scientifically. On the other hand, the words "insult" or "insult" seem to be more specific in this case. As Everyone knows "insults" are now a crime in and of themselves, and the article on insults (Article 310 of the Criminal Code or Article 529 of the RKUHP) explains what insults are. " and "symbols of religion."

Apart from that, in the author's opinion the formulation of the act of "expressing feelings" is still a formulation that is "too general". Likewise, the words "basically acts", which also do not determine "definitely" what is actually prohibited. Perhaps this is the main reason why in the RKUHP, apart from such a general formulation, the offense formulation is also more detailed and concreted, namely by using the words "mocking", "defaming" or "degrading". Apart from that, considering that "religion" is an abstract "legal object", the RKUHP also emphasizes the object of "insulting religion", namely by using words such as "the greatness of God", "(God's) word", "His nature", "apostle", "holy book", "religious teachings", or "religious worship". In the event that the

criminal act of insulting religion is committed by means of printing or recording, the punishment is increased as specified in Article 344 paragraph (1) of the RKUHP. This weight is commonly used in criminal law as adopted in the Criminal Code, and is still maintained in the RKUHP.

Meanwhile, the criminal offense of incitement to negate religious beliefs in the Criminal Code is formulated in the form of a prohibition on the act of "deliberately expressing feelings in public or committing an act with the intention of preventing people from adhering to any religion, which is based on belief in the Almighty God." In the Explanation of Presidential Decree no. 1 of 1965, the meaning of this article is determined that "people who commit criminal acts here, apart from disturbing the peace of religious people, basically betray the first principles of the state totally, and therefore it is appropriate that these acts be punished appropriately".

In the RKUHP the words "expressing feelings or committing acts" are concretized into the act of "*incitement*". The act of "incitement" is also a *mala in se*, which is formulated in Article 160 of the Criminal Code or Articles 290 to Article 292 of the RKUHP. Objections can actually be raised against the formulation of the core part (*bestanddeel*) of "religions practiced in Indonesia" whose meaning is narrower than the element "any religion" contained in the Criminal Code. The author believes that the formulation of the Criminal Code is more appropriate than the RKUHP in this regard, bearing in mind that legal protection for "religion" should not be limited solely to religions that have adherents in Indonesia.

The formulation of criminal offenses against religion, belief, and religious life in the RKUHP is regulated in CHAPTER VII starting from Article 302 to Article 307, in full quoted as follows: ([RKUHP, 2022](#))

#### I. Criminal acts against Religion and Belief;

Article 302

Any person in public who:

- a. commit acts of a hostile nature;
- b. express hatred or hostility; or
- c. Inciting hostility, violence, or discrimination against religion, belief, other people, classes, or groups on the basis of religion or belief in Indonesia is punishable by a maximum imprisonment of 5 (five) years or a maximum fine of category V.

Article 303

- (1) Every person who broadcasts, displays, pastes, writes or images, or listens to a recording, including disseminating it via information

technology means which contains a criminal offense as intended in Article 302, with the intention that the contents of the writing, image or recording become known or better known to the public shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of category V.

- (2) If a person mentioned in paragraph 1 does the act in the course of his job and it hasn't been two years since a criminal decision with permanent legal force was made against him for doing the same criminal act, he can be given extra punishments like revocation rights, as stated in Article 86 letter f.

#### Article 304

- (1) Any person who publicly incites with the intention of causing someone to change their religion or belief held in Indonesia will be punished with a maximum imprisonment of 2 (two) years or a maximum fine of category III.
- (2) Any person who, by force or threat of violence, forces someone to have no religion or belief or change a religion or belief held in Indonesia shall be punished with a maximum imprisonment of 4 (four) years or a maximum fine of category IV.

## II. Criminal acts against religious life and facilities of worship.

#### Article 305

- (1) Any person who makes noise near the building where worship is carried out while the service is in progress, will be punished with a maximum fine of Category I.
- (2) Any person who, by means of violence or threats of violence, disrupts, obstructs or disperses a religious or belief meeting shall be punished with a maximum imprisonment of 2 (two) years or a maximum fine of category III.
- (3) Any person who, by means of violence or threats of violence, disrupts, obstructs, or disperses people who are carrying out worship or a religious or belief ceremony shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of category IV.

#### Article 306

Any person who publicly insults a person who is carrying out or leading a religious service ceremony or belief shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of category III.

#### Article 307

- (1) Any person who desecrates a building for a place of worship or a religious ceremony or belief or an object used for worship or a religious ceremony or belief will be punished with a maximum imprisonment of 1 (one) year or a maximum fine of category II.
- (2) Any person who unlawfully damages or burns buildings of worship or religious ceremonies or beliefs or objects used for worship or religious ceremonies or beliefs shall be punished by a maximum imprisonment of 5 (five) years or a maximum fine of Category V.

Meanwhile, criminal acts related to interference with the implementation of worship and religious activities in the Criminal Code are formulated in Article 175, where the prohibition is directed at acts of violence or threats of violence obstructing public and permitted religious gatherings, or permitted religious ceremonies, or burial ceremonies for corpses, threatened with imprisonment for a maximum of one year and four months.

In the Draft Criminal Code, this offense is placed in crimes against religious life. Thus, criminalization is expanded to include the prohibition of actions that "disrupt, obstruct, unlawfully disperse by means of violence or threats of violence" religious activities. This offense is seen as being in line with and very necessary to manifest Article 29 of the 1945 Constitution of the Republic of Indonesia, which guarantees freedom to carry out religious worship. Disturbance in a concrete sense, such as "making noise near a place of worship while worship is in progress" is punishable by a separate crime. In line with this, the provisions of Article 176 of the Criminal Code. The words "permitted" are completely removed, because religious activities do not require permission at all, as long as they are carried out in places or places of worship.

Apart from that, to protect the honor of religious adherents or religious leaders, they are also threatened with the crime of "insulting" people who are carrying out their worship or religious officials who are carrying out their duties. The word "insult" is considered a more concrete terminology and can include all degrading actions towards people who are carrying out their worship or towards religious officials who are carrying out their duties. Furthermore, the term "insult" is much more concrete in its disgraceful nature than the term "laughing at" which is used in Article 177 of the Criminal Code.

Meanwhile, in order to maintain the sanctity of places of worship or objects used for worship, the crime of "desecrating" or "unlawfully" damaging or burning buildings of places of worship or objects used for worship is also punishable. In this case, the author himself raises objections about the word

"desecrate", which actually amounts to a criminal act against religion by adding "places and/or houses of worship" as "religious symbols".

#### D. CONCLUSIONS

Based on the description above, it can be concluded that the RKUHP has made changes that lead to the "concretization" and "objectification" of criminal acts against religion and religious life in Indonesia, so that the principles of *lex certa* and *lex stricta* are truly taken into account. Thoughts that are "worrying" about this being a form of shackles or restrictions on the right to express opinions, thoughts, or ideas, become irrelevant if you remember the explanation of Presidential Decree No. 1 of 1965, which states "written or verbal descriptions carried out objectively, materially (*zakelijk*) and scientifically regarding a religion which is accompanied by efforts to avoid words or arrangements of words that are hostile or insulting, are not acts of criminal". The RKUHP has also been more advanced in formulating criminal acts against religion and religious life which are based on the idea of respecting religious rights as a human right protected by the Constitution. Hopefully, the enactment of the RKUHP can be a solution in law enforcement against various criminal acts against religion and religious life in Indonesia in the future.

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