

LAW ENFORCEMENT ON BLASPHEMY OFFENSE¹

(Study case on Lia Eden Community, Yusman Roy and Ahmadiyah)

By: Saru Arifin*

Abstract

This research attempts to analyze the argumentations or factors which are used by government to criminalize heretical sects in Indonesia and their relation to the freedom to perform devotional acts in accordance with one's religion or belief. This is a normative-juridical research, under the consideration that the standpoint of the research merely analyzes laws and regulations on heretical sects. However, the library research has been conducted not only on laws and regulations in Indonesia but also some legal provisions on blasphemy from many other countries. Based on the analysis in this research, the result shows that parameter used by the government to criminalize the adherents of the heretical sect in Indonesia refers to the provision article 156b KUHP. The three cases studied in this research are Lia Eden, Yusman Roy and Ahmadiyah, proven to commit blasphemy. To support the argumentation of article 156a, the panel of judges confirmed various evidence including the opinion of the pre-requested qualified expert of religion.

الخلاصة

يهدف هذا البحث إلى تحليل الأدلة والعوامل التي استخدمتها الحكومة الإندونيسية في تحديد جريمة المذاهب المنحرفة، وعلاقتها بالحرية التعبديّة حسب اعتقادهم. دخل هذا البحث إلى دراسة قضائية معيارية حيث يحدد انطلاقها على تحليل القوانين لها علاقتها بالمذاهب المنحرفة، رغم أن الدراسة المكتبية فيها غير محدودة على تحليل القوانين في إندونيسيا فحسب، بل تشتمل على قوانين تنتظم فيها المسائل الانحرافية الدينية في الحكومات الأخرى. إضافة إلى هذه الدراسة، نستنتج إلى أن المعيار استخدمته الحكومة الإندونيسية في تحديد جريمة المذاهب المنحرفة يتجه إلى المجمع القانوني 165b من KUHP. فأدلت هذه الدراسة، التي اختصت إلى ثلاثة المذاهب المنحرفة فهي ليا عدن، يسمان راي و أحمدية، على أن هذه المذاهب قامت بالافتراء الديني والإهانة على العظمة الإلهية. واستدلّت على ذلك بعض البيانات والمعلومات من العلماء نحو عمليتهم.

Keywords: blasphemy, law, belief, and human rights.

A. Introduction

The history of religion, especially in Indonesia, according to Nazarudin Umar², is full of tensions³, which ends with bloodshed among the religious

* Researcher on Law and Public Policy in the Directorate of Research and Public Service (DPPM), UII, Yogyakarta. E-mail: sa_riffhui@yahoo.com

¹ This article is an extract of the writer's research in 2006 focused on three heretical sects, they are: Eden community, Ahmadiyah and Yusman Roy's teaching on bilingual prayers. In recent development more and more heretical sects have emerged in many regions with the same issue, such as Al-Qiyadah Al-Islamiyah, Al-Qur'an Suci, and many else. Therefore, the result of the research is still relevant to generalize many cases on heterical sect emerged in 2007.

adherents. In the name of religion each party approves its own truth and considers other infidels.

Recently, tensions in the relationship of inter-religious community, especially in Islam, have occurred sporadically. These tensions, as approved by some intellectuals such as Ulil Absar Abdallah⁴, and Akh.Muzakki⁵, have been triggered by the MUI's *fatwas* on a number of Muslim communities such as Ahmadiyah, Salamullah (Lia Eden), Yusman Roy as heretical teachings.

Controversy over the communities addressed by the fatwa has caught public attention and even debate. Many discourses have been done to respond to this phenomenon⁶. The existence of these religious communities claimed as heretic by the MUI's *fatwa* is considered as teachings or activities which go against the universal religious norms. Therefore, their existence has offended religious feeling in the society and evoked social unrest. This has also triggered anarchy among religious community⁷.

The *fatwa* on the terminology on heretic, according to Assyaukanie,⁸ is derived from theological term or category in the middle age. Therefore, the

² Nazarudin Umar, *Solusi Sufi Atas Aliran Sesat*, extracted from <http://www.sufinews.com/index.php?wawancara>, p.1. accessed on 2 January 2006.

³ In almost the same context in Europe, according to Lance S Lehnhof, the fight for legitimation from the government among Christians, Jews, Muslims and other believers, has evoked debate among human right activist that it caused tention among interreligious community. See Lance S Lehnhof, *Freedom of religious association: The right of religious organizations Legal Entity Status Under the Uropean Convention*, (Brigham Young University Law Review; ABI/INFORM Global, 2002), p. 561.

⁴ In his opinion, the mass get the legitimation from the fatwa to commit anarchy toward Ahmadiyah community. See Tempo, 16 July 2005, *Ulil Abshar: Fatwa MUI Pemicu Kekerasan terhadap Ahmadiyah*. Dalam <http://www.kaskus.us/showthread.php?t=183096>. Accessed on 20 February 2008.

⁵ She supported his argumentation by using *speech act analysis*, as it is developed by Austin (1962), a theoretical framwork to see the close relationship between fatwa on heretical sects and violence among society.

⁶ As far as the researcher is concerned, public debate occurred in public sphere either on Television or Mass Media has involved human right's supporters (the supporter of religious freedom as human right), Liberal Islam Vs Fundamental Islam.

⁷ See Supriyadi, *Kejahatan Terhadap Agama, Kedaulatan Rakyat*, (Yogyakarta: 20 February 2006),p.16. See argumentations which support this opinion on footnote no.5 and 6.

⁸ Luthfi Assyaukanie, *Sikap Negara Terhadap Aliran Sesat*, cited from <http://www.assyaukanie.com/articles/sikap-negara-terhadap-aliran-sesat> accessed on 3 January 2008. Besides, Ma'ruf Amien one of the members of the fatwa commission explained, that " a belief or religious sect is considered heretic if it covers one of the ten criteria of heresy, such as deny the principles of faith, believe or follow one particular belief which is not in line with the

policemen do not have the authority to arrest someone of his/her belief. If someone is considered “deviant” by a community, the policemen should take an action, not to defend the majority, but to guard the belief of the minority whose religious right is being oppressed.

From the perspective of criminal law, the term deviant is not recognized. Rather, the term crime toward religion or blasphemy is stated as it is formulated on article 156a KUHP, especially on blasphemy. Its criminal penalty is five-year imprisonment by maximum. The substance of the article 156a KUHP is affirmed by the new article 336 RUU KUHP.

Moreover, articles 337 and 338 RUU KUHP criminalize 2 crimes against religion, especially Blasphemy. First, blasphemy covers offence against the glory of God, the divine revelation, and the attributes of God. Second, Godslastering covers mockery, disgracing, humiliating religion, prophet, messenger, the holy book or devotional acts. Their criminal penalties are five-year imprisonment⁹.

Although crime against religion has been categorized as criminalization in KUHP, the existence of heretical sects and the like have grown in Indonesia as it is seen from the disclosure of various cases on heretical sects from the beginning of 2006 up to 2008. Moreover, a number of heretical sects under the categorization of *dark number* are many. Such this condition indicates the limitation of law and its sanction as a way to cope with various teachings deviating from the universal religious norms¹⁰.

Furthermore, this case could be considered a failure of the government in conducting its function as the overseer of those heretical sects. This failure could be questioned to the associated instantion such as the Ministry of Religious Affairs or the Council of Indonesian Ulama or even the authoritative court which is responsible for overseeing any denominations which may endanger the people or the country and also preventing misapplication of religious teachings and

argumentations from the Holy Qur'an and the Prophet Traditions (*dalil Syar'i*), ". See Anonym, *Fatwa MUI untuk Luruskan Penyimpangan*, cited from <http://www.eramuslim.com/berita/nas/7b14122123-fatwa-mui-luruskan-penyimpangan.htm>. Accessed on 3 January 2007.

⁹ Supriyadi, ...*Op.Cit*, p.16.

¹⁰ *Ibid.*

blasphemy as formulated on article 30 section (3) UU No. 16 year 2004 on court¹¹.

Based on the above description, two main problems on the denominations which have been decreed heretic by the MUI are explained, they are: *First*, What are the parameters used to criminalize a denomination as deviant or non-deviant?; *Second*, How is the law enforcement enacted on the decreed heretical sect in the effort to bring them back to the religious teachings which are in line with the existing universal norms?

B. Criminalizing the Adherent of Religion

The standpoint of one particular criminal policy is based on the development of values and norms in the society. An act which was not considered crime may become crime in today's context. So, the change of paradigm in criminal policy depends on the dynamics of social change which closely related to space and time¹².

Based on the above perspective, criminal policy depends on social dynamics. The cases on the fatwa on heretical sects, according to the MUI, were caused by their opposition to the standardized beliefs which evoke social unrest. Therefore, they always trigger various reactions in the society¹³. The article used to indict the leader of the heretical sects are article 156a KUHP and UU No 1/PNPS/1965 on Precaution, misapplication and blasphemy¹⁴.

From the perspective of criminal law, teachings which were addressed deviant are forms of crime against religion, as formulated in article 156a KUHP, especially on blasphemy. Criminal penalty for this crime is five-year imprisonment. Article 156a KUHP reads as follow:

“Penalty of five-year imprisonment by maximum is given to who deliberately, in public, expresses or conducts : a). Hostility act,

¹¹ *Ibid.*

¹² See the law dynamic in Sudikno Mertokusumo, 2003, *Teori Hukum: Suatu Pengantar*, Yogyakarta: Liberty.

¹³ See footnote no.9.

¹⁴ Muhammad Gatot, *Undang-Undang Penodaan Agama akan dibawa ke MK*, cited from <http://hukumonline.com/detail.asp?id=13283&cl=Berita>, 29 July 2005, accessed on 6 May 2006.

misapplication or disgracing one particular religion adhered in Indonesia;
b).with the purpose of preventing others from adhering to any religion based on Oneness of God”.

The content of article 156a KUHP is affirmed by the new article 336 RUU KUHP. Moreover, articles 337 and 338 RUU KUHP criminalize 2 crimes against religion, especially Blasphemy. First is offence against the glory of God, the divine revelation, and the attributes of God. Second is mockery, disgracing, humiliating religion, prophet, messenger, the holy book or devotional acts. Their criminal penalty is five year imprisonment¹⁵.

Those three articles read as follows:

Article 336:

Each person, who deliberately in public, expresses or commits humiliating act towards a religion adhered in Indonesia is given a penalty of two-year imprisonment or a fine of category III at maximum.

Article 337:

Each person, who deliberately in public, disgraces the glory of God, His divine revelation, and his attributes is given a penalty of five-year imprisonment or a fine of category IV t maximum.

Article 338:

Each person who deliberately in public mocks, disgraces, or humiliates a religion, prophet, messenger, the holy book, religious teaching or devotional acts is given a penalty of five-year imprisonment or a fine of category IV by maximum.

According to Gatot¹⁶, article 156a KUHP was not derived from the Dutch’ *Wetboek van Strafrecht* (WvS), but it was taken from Law No. 1/PNPS/1965 on precaution, misapplication and blasphemy. Article no. 4 orders the above provision to be included in KUHP.

Article 1 UU No. 1/PNPS/1965 firmly mentions the banning of gaining public support and interpreting a religion. This article reads as follows:

”each person is prohibited to tell, to suggest, to gain public support in order to interpret one major religion in Indonesia or to conduct religious activities similar to the religion, interpretation and activity deviating from the fundamental teachings of the religion”.

¹⁵ See Supriyadi...*Op.Cit*, p.16

¹⁶ See Gatot...*Op.Cit*.

C. *Guarantee of Freedom of Religion*

Freedom of religion is the instruction of the constitution. The constitution 1945, article 29 section (2) states, “The state guarantee each and every citizen the freedom of religion and of worship in accordance with his religion and belief.” Article 28E on human right, a result of the amendment of UUD 1945 year 2000 states, (1) Each person is free to worship and to practice the religion of his choice (2) each person has the right to be free in his convictions, to assert his thought and tenets, in accordance with his conscience.

In law no. 39 year 1999 on human right (HAM) article 22 affirms (1) Each person is free to worship and to practice the religion of his choice; (2) The state guarantee each and every citizen the freedom of religion and of worship in accordance with his religion and belief. Articles 8 affirms that the state is responsible to guarantee the principle of freedom which becomes human right. Protection, improvement, enforcement, and fulfillment of human right become the responsibility of the state, especially the government¹⁷.

Accordingly, in the middle of September 2006¹⁸, the secretary of the country of the United States of America released its latest report on freedom of religion in Indonesia. Besides, this institution issued annual report on the condition of freedom of religion in many countries throughout the world based on cases on religious issue for the last one year.

Generally, there is no startling point on the content of the report. Our condition of freedom of religion causes more concern and has made no significant changes from the previous years. Violation and discrimination on the minority have occurred frequently and violence in the name of religion have not stopped.

The report states that many factors triggered the discrimination and violence on the freedom of religion in Indonesia. One of which is indistinctness of the government and the absent of will to change the situation. In some cases, the

¹⁷ See Mohamad Guntur Romli, *Dilema Kebebasan Beragama*, *Indopos*, Jakarta, cited from <http://www.ahmadiyah.or.id/page/index.php?id=178>. Accessed on 1 November 2006.

¹⁸ See Luthfi Assyaukanie, *Catatan Kebebasan Beragama Kita*, cited from <http://www.assyaukanie.com/articles/catatan-kebebasan-beragama-kita>. Accessed on 3 January 2007.

government takes no action on violation against freedom of religion. But whenever they take an action, the perpetrator can be released from any indictment.

However, the guarantee on freedom of religion as formulated on UUD 1945 and UU HAM is general and abstract. In this context, interpretation on the concept of freedom and improvement of rights on religiosity are not explicitly mandated to certain institutions as the legal authority. Nevertheless, it is related to universal norms on the criteria to actualize whether religious belief is deviating or not.

The formula on the intended universal norms uses the Holy Qur'an and the consensus of ulama's opinion as the standard, where their validity is acknowledged both methodologically and practically. In a country like Indonesia, there is the Council of Indonesian Ulama (MUI) and in socio-organizational context there are NU, Muhammadiyah, and many else which formulated the universality context of religious norms. Therefore, based on recommendation from these religious institutions, the government can take it as consideration to enact the law whenever any crime against religion or blasphemy occurred on the acknowledged religion.

D. Law Enforcement

According to Andi Hamzah¹⁹, *law enforcement* means *rechtshandhaving* in Dutch, while in Bahasa the term denotes that law enforcement should come together with *force*, that one may say that law enforcement works merely on criminal laws. On the other hand *handhaving*, according to Recht²⁰, means control and implementation (or with threat), the use of criminal instrument, so that system of legal provision and regulations can be generally accepted. Control means the government's monitoring in order that the regulations which are in line with the investigations on criminal laws be complied.

Before conducting law enforcement, negotiation, persuasion, and supervision are often implemented that the regulations be complied, it is named

¹⁹ Andi Hamzah, *Penegakan Hukum Lingkungan*, (Jakarta: Arikha Medi, 2005), p. 17.

²⁰ Cited from Andi Hamzah *Ibid*, p. 17.

compliance. American and Canadian differentiate *law enforcement* which means repressive act, whereas *compliance* means preventing any offense in criminal law. According to the Dutch, these two phases belong to *handhaving*, before conducting repressive acts, there should be preventive acts such as giving information and advice.

Therefore, the term *handhaving* covers both repressive and preventive acts. Investigation and the application of administrative and criminal sanctions are the closing end of *handhaving*. In line with Andi Hamzah's opinion, Siti Sundari Rangkuti²¹ states, that law enforcement can be conducted both preventively and repressively. Preventive law enforcement means active monitoring on a decree or regulation without involving concrete case which entails the assumption on the offense on regulation. Such an effort can be done through giving guidance, monitoring and supervising (sampling, stopping their activity and etc). Repressive law enforcement is conducted in terms of violation on regulations and is aimed at stopping the prohibited act directly.

Conceptually, the core of law enforcement according to Soerjono Soekanto²² lies on harmonization between values formulated on standardized norms and attitude as a chain of the formulation of the last phase of value in order to create, maintain and defend peace. Law enforcement, as a process, is actually the implementation of discretion in relation with the making of decision which is regulated by the provision of law, though it has an element of personal evaluation.

In addition Soerjono Soekanto²³ states that, the main problem on law enforcement lies on its influential factors. These factors are neutral, that both positive and negative impacts lie on their contents. Those factors are (1). law; (2). law enforcer; (3). facility; (4). society; and (5). culture.

The aforementioned five factors are interrelated, since they are the essence of law enforcement and also the standard of its effectiveness. According to

²¹ Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*, (Surabaya: Airlangga University Press, 2000) , p. 9.

²² Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, (Jakarta: CV. Rajawali, 1983), p.15.

²³ *Ibid.*

Baharuddin Lopa²⁴, law enforcement is basically aimed at upholding justice. Additionally, three components are needed to uphold justice ;

1. The regulation should be in line with the aspiration of the society;
2. Professional law enforcer who has a high integrity of good deeds;
3. The establishment of sense of justice among the society which enables law enforcement.

Practically, the heretical sects' case is administered by institution which has no credibility that they continue to spread and evoke social unrest, although the government has banned their dissemination. In this case, the attorney general and its "Pakem" (the overseer of the people's belief) are not able to deal with the danger of these sects which may endanger the society. Moreover, the law enforcer seems to be anxious to implement the ban and to take an action to these sects.

In this context, a number of sects are decreed as heretic by the attorney general (not only Ahmadiyah), but there were no proper action enacted on them. Meanwhile, social unrest has mounted and caused *eigenrichting* (the society had taken the law into their own hands) together with "provocation" of certain parties and resulted unnecessary damage²⁵.

Each penalty, especially of a Muslim, should be done in justice. So, before being sentenced by the *Mahkamah Syariah* or the authoritative institution to enact Islamic law and to execute penalty for each criminals, it is forbidden for us to torture other Muslims. For instance throwing a stone or hitting. The one who hits without any reasoning based on Islamic law can be given law of revenge or *qishash*. If anyone or a teacher (*ustad*) may execute a penalty on the suspect of criminal act the society will be in a mess. That we create a great repudiation or even slander on islam rather than to stop it²⁶.

²⁴ Baharudin Lopa, *Permasalahan Pembinaan dan Penegakan Hukum di Indonesia*, (Jakarta: Bulan Bintang, 1987), p. 25.

²⁵ Fauzan Al-Anshari, *Kasus Ahmadiyah*, cited from http://majelis.mujahidin.or.id/new/kolom/opini_dan_artikel/kasus_ahmadiyah/. Accessed on 19 July 2005.

²⁶ *Ibid.*

In the context the implementation of offense against religion committed by Lia Eden, Yusman Roy, dan Ahmadiyah²⁷, the category of offense, kinds of crime, and violation on law accused by the public prosecutor are varied.

In Lia Eden case, the committed offenses are against the glory of God and His divine revelations, mockery, disgracing, humiliating religion, the messenger, the prophet, the holy book, and the teaching or devotional acts, as formulated on article 156a KUHP. Schematically, the list of offese against religion committed by Eden community is presented on Table 1:

Table 1 Offense on blasphemy committed by Lia Eden

No.	Category of Offense	Kinds of Crime	The targeted religion	Article being violated
1.	<i>Blasphemy:</i> (Offence against the glory of God and the divine revelation)	<ul style="list-style-type: none"> a. Issues a fatwa that the Kingdom of God has been establish in her house; b. Issues a fatwa that pork is no longer forbidden. c. Declares that her son namely Muhammad Abdul Rachman is the reincarnation of the Prophet Muhammad resurrected from Betawi. 	Islam	Article 156a KUHP
2.	<i>Godslastering:</i> (mockery, disgracing, humiliating religion, prophet, messenger, the holy book or devotional acts).	<ul style="list-style-type: none"> a. Lia Eden has declared herself as Jibril, the Angel of God. b. Lia Eden has confirmed bilingual prayers. c. Declares that her son namely Muhammad Abdul Rachman is the reincarnation of the Prophet Muhammad resurrected from Betawi. d. Issues a fatwa that pork is no longer forbidden. 	Islam	Article 156a KUHP

Source: taken from primary data, 2006.

Similar to Lia Eden case who declares herself as the promised messiah and receives revelation from Gabriel and also declares her son as a new prophet, Yusman Roy case is based on the search of truth in religion through his own instilling and understanding. However, during the process, both Lia and Roy do

²⁷ Read the profile of Ahmadiyah in Hasan bin Mahmud Audah's book entitled *Ahmadiyah: Kepercayaan-Kepercayaan dan Pengalaman-Pengalaman*, (Jakarta: Lembaga Penelitian dan Pengkajian Islam [LPPi], 2002).

not have good knowledge in interpretation in searching the truth. Therefore, the result of the search is far from religious framework.

In Yusman Roy case, the offense is committed on prayers which are modified by using two languages, Arabic and Bahasa, as well as misinterpretation on many verses of The Holy al-Qur'an. Meanwhile, in Lia Aminudin case, the heretical points are many especially on her denial on Islamic teachings, declaration on new prophecy and personification of Gabriel with her. Crime against religion committed by Roy is categorized as *Godslastering*, mockery on Islamic teachings.

Almost the same offense against religion as committed by Lia Eden dan Yusman Roy, the fundamental teachings of the Ahmadiyah denomination²⁸ which has international impact, go against article 156a KUHP. However, the proportion of offense mostly cover mockery, disgracing, humiliating religion, the messenger, the prophet, the holy book, the teaching or devotional acts which conceptually categorized as *Godslastering*.

Schematically, the following are the list of crimes which mock, disgrace humiliate religion, the prophet, the messenger, the holy book, the teaching or devotional acts committed by Ahmadiyah, as presented on Table 2.

Table 2 Offense on blasphemy committed by Ahmadiyah²⁹

No.	Category of Offense	Kinds of Crime	The targeted religion	The Violated Article
-----	---------------------	----------------	-----------------------	----------------------

²⁸ Nasional Conference of the Council of Indonesian Ulama (Munas MUI) held on 27-29 July 2005 in Jakarta affirmed the fatwa that Ahmadiyah teaching is heretic and is out of Islam. See Aziz Hamid, Majelis Ulama Menyoal Ahmadiyah, cited from <http://www.icmi.or.id/ind/content/view/218/60/>. Cited on 9 May 2006.

²⁹ Fatwa on heretical teachings of Ahmadiyah was decreed through the decree of the Council of Indonesian Ulama Nomor: 11/MUNAS VII/MUI/15/2005. There are four considerations used by the MUI to give a fatwa on Ahmadiyah teachings, they are: (a). That up to now the Ahmadiyah denominations continuously make an effort to disseminate their doctrines in Indonesia, although the MUI has issued a *fatwa* and banned them. (b) That the effort to disseminate the Ahmadiyah doctrines has evoked social unrest. (c) That some members of the society urged the affirmation of the MUI's *fatwa* on the Ahmadiyah doctrines in relation with the emergence of various opinions and reactions within the society. (d) That in order to comply with the demand of the society and to maintain the purity of Islamic belief, the Council of Indonesian Ulama needs to affirm the *fatwa* on the Ahmadiyah doctrines.

No.	Category of Offense	Kinds of Crime	The targeted religion	The Violated Article
1.	<p><u>Blasphemy:</u> (Offence against the glory of God and the divine revelation)</p>	<ul style="list-style-type: none"> a. Believe that God do fast and pray, sleep and snore, write and stamp, make mistakes and have sexual intercourse. b. Believe that God speaks in English, since he (Mirza) communicates with God in English. c. One of their teachings is revoking canon law on jihad and administering its followers to be faithful to the British government as <i>waliul amri</i> (Islamic government) as it is formulated in the Holy Al-Qur'an. d. One of their teachings allows the consumption of Alcohol, opium, marijuana, and any intoxicating substances. e. They believe that Muhammad is not the last prophet, rather prophecy will continue. f. In their opinion, Mirza Ghulam Ahmad is the most prominent Messengers of God. g. They state that there is no al-Qur'an but the one brought by Mirza Ghulam Ahmad, and that there is no al-Hadits except those presented in Mirza Ghulam's meeting. h. They believe that there is no prophet but the one under Mirza's ordinance. i. They believe that their holy book revealed from sky namely `Al-Kitab al-Mubin', not al-Qur'an al-Karim the one in the hands of Muslims. 	Islam	Article 156a KUHP

No.	Category of Offense	Kinds of Crime	The targeted religion	The Violated Article
2.	<u>Godslastering:</u> (mockery, disgracing, humiliating religion, the prophet, messenger, the holy book or devotional acts).	<ul style="list-style-type: none"> a. Believe that Mirza Ghulam is the Promised Messiah; b. Believe that Jibril has come to Mirza Ghulam Ahmad, and utter divine revelation as it is revealed in al-Qur'an. c. One of their teachings is revoking canon law on jihad and administering its followers to be faithful to the British government as <i>waliul amri</i> (Islamic government) as it is formulated in the Holy Al-Qur'an. d. They believe that their holy book revealed from sky namely `Al-Kitab al-Mubin', not al-Qur'an al-Karim the one in the hands of Muslims. e. They believe that al-Qadian (the first source) is the same as Madinah al-Munawarrah and Mekkah al-Mukarramah and even more glorious than the two holy sites and that Qadian is the holy land which becomes their direction (<i>kiblat</i>) and a place where they perform Hajj. f. Believe that they are the adherents of an independent new religion, with independent law, and that all disciples of Mirza Ghulam are equal to the disciples of the Prophet Muhammad. 	Islam	Article 156a KUHP

Source: Taken from secondary data.

Based on the analysis on the category of offense against religion committed by these three denominations, the proportion of offense are mostly conducted by Lia Eden dan Ahmadiyah. Not only do these two denominations committed offenses against religion which disgrace the glory of God (*Blasphemy*), but also mock, disgrace and humiliate religion, the messenger, the prophet, the holy book, the teaching or devotional acts or *Godslastering*.

Accordingly, the limitation of the freedom of religion and practicing the religion is not a part of offense against human right as formulated on regulations No. 39 year 1999 on human right (HAM), article 22 affirms that:

1. Each person is free to worship and to practice the religion of his choice;
2. The state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief.

Article 8 affirms that the state is responsible to guarantee the principle of freedom which becomes human right. Protection, improvement, enforcement, and fulfillment of human right become the responsibility of the state, especially the government³⁰.

It is because of the substance of the freedom is limited by universal values, such as humanity and religious values. In other words, the context of human right is internally accepted by the adherents of the religion it may concern. Whenever one particular action offends or disgraces another religion it is not the freedom formulated in article 22 of the Act No. 39.

In international context, law regulation on heretical sects is named *blasphemy laws* (Anti-blasphemy laws). The regulation on blasphemy is varied in many countries. In Pakistan³¹ for instance, *blasphemy laws* tend to protect Islam from any disgrace from irresponsible person. This partiality is due to Pakistan as a Muslim country in which its constitution is based on al-Qur'an and As-sunnah as the prime sources in Islamic law.

Meanwhile, western countries³² such as British, Italy, Portugal, France, Denmark, and Australia, tend to protect Christians either catholic or protestant; since the majority of the citizen in these countries are Christians. In general, Both Muslim and non-Muslim countries have had regulations on anti blasphemy although substantially their law materials are different with one another.

E. Conclusion

³⁰ Mohamad Guntur Romli, Dilema Kebebasan Beragama, *Indopos*, Jakarta, in <http://www.ahmadiyya.or.id/page/index.php?id=178>. Accessed on 1 November 2005.

³¹ See Anonym, Blasphemy Laws in Pakistan Offenses Relating to Religion: Pakistan Penal Code, cited from http://www.rationalistinternational.net/Shaiikh/blasphemy_laws_in_pakistan.htm. Accessed on 4 May 2006.

³² Anonym, Europe Blasphemy Laws, cited from <http://www.dw-world.de/dw/article/0,2144,1894686,00.html>. Accessed on 6 May 2006.

Based on the above analysis, it is concluded that the parameters used to criminalize the followers of heretical sects in Indonesia is normatively based on article 156a KUHP. The article states that the concept of offense against religion is general, in view of Indonesia as multi religious country. Therefore, in practice it is implemented casuistically based on the category of offense against religion.

The elements of acts which is categorized as offense against religion on the article 156a are: (a) the doer; (b) the act is intentionally done among the public; (c) any expressions or hostility acts, misapplication or disgracing against a religion adhered in Indonesia; (c) the act is aimed at provoking someone not to adhere any religion based on Oneness of God”.

In this discussion, the three religious denominations including Lia Eden, Yusman Roy or Ahmadiyah, are proven to commit offense against the glory of God (Blasphemy), as well as mockery, disgracing, humiliating religion, prophet, messenger, the holy book or devotional acts or *Godslastering*. To support the argumentation of article 156a, the panel of judges confirmed various evidence including the opinion of the qualified experts of religion which is pre-requisites by the judge.

Meanwhile, the pattern of law enforcement on these heretical sects is conducted individually such as conviction on Lia Eden, and Yusman Roy, whereas the Ahmadiyah was given a Fatwa by the MUI which affirms this sect as heretic. There is no legal remedy in a form of arrest or seizure on the board of Ahmadiyah, as it is done to Lia Eden and Yusman Roy.

Law enforcement on heretical sect would not be effective when implemented by using the instrument of positive law. Rather, its integration with the elements of religion is needed. The instrument of positive law cannot solve the root of the problem which evokes the establishment of heretical sects.

Facing the establishment of various sectarianism, especially in Islam, models of religious supervision to the adherents conducted by religious institutions both informally and formally are needed, and avoiding emotional acts in facing various heretical sects as well as having synergetic coordination with the state apparatus as the instrument of law enforcer.

BIBLIOGRAPHY

- Andi Hamzah. 2005. *Penegakan Hukum Lingkungan*. Jakarta: Arikha Media, Jakarta.
- Anonim. 2007. *Fatwa MUI untuk Luruskan Penyimpangan*, diakses tanggal 3 Januari 2007 on <http://www.eramuslim.com/berita/nas/7b14122123-fatwa-mui-luruskan-penyimpangan.htm>.
- Anonim. 2006. *Blasphemy Laws in Pakistan Offenses Relating to Religion: Pakistan Penal Code*, accessed on 4 May 2006 on http://www.rationalistinternational.net/Shaiikh/blasphemy_laws_in_pakistan.htm.
- Anonim. 2006. *Europe Blasphemy Laws*, accessed on 6 May 2006 on <http://www.dw-world.de/dw/article/0,2144,1894686,00.html>.
- Anonim. 2005. *Ulil Abshar: Fatwa MUI Pemicu Kekerasan terhadap Ahmadiyah*, accessed on 20 February 2008 on <http://www.kaskus.us/showthread.php?t=183096>.
- Aziz Hamid. 2005. *Majelis Ulama Menyoal Ahmadiyah*, accessed on 9 May 2006 on <http://www.icmi.or.id/ind/content/view/218/60/>.
- Baharudin Lopa. 1987. *Permasalahan Pembinaan dan Penegakan Hukum di Indonesia*, Jakarta: Bulan Bintang.
- Fauzan Al-Anshari. 2006. *Kasus Ahmadiyah*, accessed on 19 July 2005 on http://majelis.mujahidin.or.id/new/kolom/opini_dan_artikel/kasus_ahmadiyah/.
- Hasan bin Mahmud Audah. 2002. *Ahmadiyah: Kepercayaan-Kepercayaan dan Pengalaman-Pengalaman*. Jakarta: Lembaga Penelitian dan Pengkajian Islam (LPPI).
- Lance S Lehnhof. 2002. *Freedom of religious association: The right of religious organizations Legal Entity Status Under the Uropean Convention*. Brigham Young University Law Review; ABI/INFORM Global, p. 561.
- Luthfi Assyaukanie. 2007, *Catatan Kebebasan Beragama Kita*, accessed on 3 January 2007 on <http://www.assyaukanie.com/articles/catatan-kebebasan-beragama-kita>.
- _____. 2007. *Sikap Negara Terhadap Aliran Sesat*, accessed on 3 January 2008 on <http://www.assyaukanie.com/articles/sikap-negara-terhadap-aliran-sesat>.
- Muhammad Gatot. 2006. *Undang-Undang Penodaan Agama akan dibawa ke MK*, accessed on 6 May 2006 on <http://hukumonline.com/detail.asp?id=13283&cl=Berita>, 29 Juli 2005.

- Mohamad Guntur Romli, 2005. *Dileme Kebebasan Beragama*, Indopos, Jakarta, accessed on 1 November 2006 on <http://www.ahmadiyya.or.id/page/index.php?id=178>.
- Nazarudin Umar. 2006. *Solusi Sufi Atas Aliran Sesat*, accessed on 2 January 2006 on <http://www.sufinews.com/index.php?wawancara..>
- Siti Sundari Rangkuti. 2000. *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*. Surabaya: Airlangga University Press.
- Soedikno Mertokusumo. 2003. *Teori Hukum: Suatu Pengantar*. Yogyakarta: Liberty.
- Soerjono Soekanto. 1983. *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: CV. Rajawali.
- Supriyadi.. 2006. *Kejahatan Terhadap Agama, Kedaulatan Rakyat*, Yogyakarta, 20 Februari.
- Kitab Undang Undang Hukum Pidana (KUHP)
- Rancangan Kitab Undang Undang Hukum Pidana (RKUHP)
- Undang Undang Dasar Tahun 1945 [Amandemen kedua].
- Undang Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.
- Undang Undang Nomor 1/PNPS/1965 Tentang Pencegahan Penyalahgunaan dan atau Penodaan Agama.
- Undang Undang Nomor 16 Tahun 2004 Tentang Kejaksaan
- Keputusan Fatwa Majelis Ulama Indonesia Nomor: 11/MUNAS VII/MUI/15/2005 Tentang Ahmadiyah.