



## Regulation regarding policy for the commanding of criminal acts of arrival flows based on law number 1 PNPS of 1965 juncto article 156 of the kuhp and qanun number 11 of 2002

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### Abstract

Indonesia is a legal state whose affirmation is contained in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the State of Indonesia is a state of law". As a state of law, the real problems of law, law enforcement, and the judicial process and Indonesian court institutions have a very important position and meaning. In the eyes of the law, a cult is a crime against religion, where this term is used to describe criminal acts related to belief or religion. Several forms of criminal acts known as crimes against religion are apostasy (apostasy) and insults (blasphemy) including other acts that are categorized as crimes against religion. Often the unclear definition of "religious insults" gives the majority group power over dissenters and the state over individuals. Article 1 of Law Number 1 Year Concerning the Prevention of the Abuse and/or Blasphemy of Religion and Article 156 a letter (a) of the Criminal Code is essentially a rule regarding criminal acts against religion and criminal sanctions against such acts. In Aceh itself there is Qanun Number 11 of 2002 concerning the Implementation of Islamic Shari'a in the Field of Aqidah, Worship and Islamic Syiar. In implementing a sect that is considered heretical, it is still a question of which rules are applied to the handling of cases of deviant sects that occurred in the city of Banda Aceh, because Aceh has special rules and courts related to the enforcement of sharia. The existence of these regulations is considered to give rise to legal dualism, in which conditions like this will cause controversy in the wider community regarding the understanding of deviant sects, some agree and some disagree with the steps taken by the government in dealing with the problems of this cult. That is, policies from law such as criminal law as part of criminal policy that should, according to Sudarto, be a rational effort of the community in tackling crime, in addition to conceptually, as an integral part of community protection efforts (social defense) and efforts to achieve community welfare (social welfare). ). there are those who agree and there are those who do not agree with the steps taken by the government in dealing with the problem of this deviant sect. That is, policies from law such as criminal law as part of criminal policy that should, according to Sudarto, be a rational effort of the community in tackling crime, in addition to conceptually, as an integral part of community protection efforts (social defense) and efforts to achieve community welfare (social welfare). ). there are those who agree and there are those who do not agree with the steps taken by the government in dealing with the problem of this deviant sect. That is, policies from law such as criminal law as part of criminal policy that should, according to Sudarto, be a rational effort of the community in tackling crime, in addition to conceptually, as an integral part of community protection efforts (social defense) and efforts to achieve community welfare (social welfare).

**Keywords:** criminal acts, deviant sects, Law No. 1 PNPS of 1965 KUHP and Qanun No. 11 of 2002

### Introduction

Indonesia is a legal state whose affirmation is contained in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the State of Indonesia is a state of law". As a state of law, the real problems of law, law enforcement, and the judicial process and Indonesian court institutions have a very important position and meaning. A country really as a state of law or just a designation as a state of law will mainly be measured by the view of how the law is enforced.

The implementation of the rule of law is also evident from the protection of basic human rights, one of which guarantees the freedom to practice religion according to their respective beliefs. This is based on Pancasila which places religion as an important role, as well as being a target in realizing the nation. Article 29 paragraphs (1) and (2) of the 1945 Constitution state that the State is based on the One Godhead, and guarantees the independence of each resident to embrace their own religion and to worship according to that religion and belief.

Today, the problems regarding blasphemy are re-occurring, namely with the emergence of various religious sects or understandings that are very different in their religious teachings and understandings from the actual religious teachings which are hereinafter referred to as heretical sects. The cult is one of the social phenomena that characterizes the religious life of the Indonesian nation. Its existence has captured the attention of the public and not a few have invited debate in the community. In essence, heretical sects can be said to be teachings or activities that deviate from universally applicable religious norms. The existence of deviant sects has been felt to have hurt and offended religious feelings in society. Even heretical sects have often become the ringleaders and triggers for anarchic actions among religious people in the country.

In the eyes of the law, a cult is a crime against religion, where this term is used to describe criminal acts related to belief or religion. Several forms of criminal acts known as crimes against religion are apostasy (apostasy) and insults (blasphemy) including other acts that are categorized as

crimes against religion. Often the unclear definition of "religious insults" gives the majority group power over dissenters and the state over individuals. In a country that is multicultural and multi-religious, of course, it will be very vulnerable to the issue of humiliation. Judging from the nature of religion, a person's belief in one thing can be different from the beliefs of others, even blaming other people's beliefs,

In principle, the state cannot intervene as long as it concerns the beliefs, thoughts or understandings of individuals regarding a religious belief. But if the belief or understanding has clearly deviated from the main teachings of the religion itself with definite parameters, taught or disseminated to others, causing unrest in the community and disturbing the peace of religious life, the state in order to protect the public interest can act according to the law. applicable law, such as the case, can be responded to with the application of national law and *lex specialis* law if the capacity of the law has indeed fulfilled what is currently the problem. Legal action by the state against a religious belief or religious sect that is declared heretical is not in conflict with the law, Constitution, or Human Rights. The state has the right to take an action based on applicable law. However, if there is no law that is firm enough about sects that deviate from religious teachings, the legal apparatus loses their grip.

Regarding this deviant sect, Indonesia has a national legal provision, namely Law no. 1 of 1965 concerning Prevention of the Abuse and/or Blasphemy of Religion, Article 1 states: "Everyone is prohibited from intentionally telling publicly, recommending or seeking public support, to interpret a religion professed in Indonesia or to carry out religious activities that resemble those religious activities."

The main things that are prohibited by Law no. 1/PNPS/1965 is a deviation from religious teachings adopted in Indonesia, in the form of interpreting religious teachings, carrying out religious activities similar to the religion adopted, and so on. To determine the presence or absence of deviations in this case, a standard standard is needed to be used as a basis for assessment. So far, this Presidential Decree has been used as a legal basis other than the Criminal Code for efforts to crack down on deviant sects which only contains the formulation of a maximum imprisonment of five years.

In the criminal law code, there are also rules governing blasphemy against religion, namely in article 156a and article 156 letter (a) of the Criminal Code which reads:

"Those who intentionally express feelings in public or commit an act: a maximum imprisonment of five years shall be punished by a maximum imprisonment of five years.

- a. Which are essentially enmity, abuse, or blasphemy against a religion professed in Indonesia.
- b. With the intention that people do not follow any religion, which is based on Belief in the One Supreme God."

Article 156a which is often referred to as the article on blasphemy can be categorized as an offense against religion. This section will focus more on Article 156a of the Criminal Code which is often used as a reference for judges to decide on a blasphemy case.

Aceh is one of the provinces in Indonesia which is given its own authority by the central government in running its government, in which this government model is called

asymmetric decentralization or special autonomy, this means that the center has directly given authority politically, economically, fiscally and administration whose form (concept) is determined based on the specificity stated in the regulations that govern it. This is what makes in Aceh itself there are special rules regarding this deviant sect, which is stated in the Aceh Governor's Regulation Number 9 of 2011 concerning the Prohibition of Activities of the Millata Abraham sect in Aceh. Not only that, the Aceh Special Region Regulation Number 11 of 2002 concerning the Implementation of Islam in the Field of Aqidah, Worship, Article 5

1. everyone is obliged to maintain aqidah from the influence of misunderstanding
2. everyone is prohibited from spreading deviant beliefs or sects
3. Everyone is prohibited from intentionally leaving the aqidah and or insulting or harassing the Islamic religion.

Article 20

1. Whoever spreads a deviant ideology or sect as referred to in Article 5 paragraph (2) shall be punished with *ta'zir* in the form of a maximum imprisonment of 2 (two) years or a maximum of 12 (twelve) lashes in public.
2. Whoever intentionally leaves the Islamic aqeedah and or insults or harasses the Islamic religion as referred to in Article 5 paragraph (3) will be punished with punishment which will be regulated by its own qanun.

In Aceh itself, we know that there are regulations governing this matter, it is clear that when carrying out the settlement of this deviant criminal act, it seems that the law that applies nationally and the law that exists in Aceh itself should be examined, because looking back at the when the GAFATAR case was resolved in 2015 it was resolved using the national law (KUHP), while the Qanun itself clearly regulates the deviant sect. What needs to be known is how big the existence of the Qanun is so that in the settlement of this deviant sect case, national law must still be applied. Meanwhile, in the case of Millah Abraham in 2012, the government's efforts were to re-convict his followers.

The existence of these regulations is considered to give rise to legal dualism, in which conditions like this will cause controversy in the wider community regarding the understanding of deviant sects, some agree and some disagree with the steps taken by the government in dealing with the problems of this cult. That is, policies from the law such as criminal law as part of criminal policy which should, according to Sudarto, be a rational effort from the community in tackling crime. in addition to conceptually, as an integral part of community protection efforts (social defense) and efforts to achieve community welfare (social welfare).

Starting from this, an in-depth study is needed for every policy step, especially regarding legal policies against deviant sects as part of "religious" issues. In this study the author wants to expand our thinking about the study of the regulation of nationally applicable regulations and laws made by the autonomous region, namely Aceh, whether the concept of national law with the concept of qanun in Aceh is at a vertical level, namely whether the legal Laws that apply to a certain field of life are not contradictory to each other,

when viewed from the point of view of the legislation, and regarding how a rule of law can be reformulated according to developments and needs

### Research Methods

In this research, the writer uses normative legal research. Normative legal research is a scientific research procedure to find the truth based on the logic of legal scholarship from the normative side. Scientific logic in normative legal research is built based on scientific disciplines and the workings of normative legal science, namely the science of law whose object is law itself.

### Results and Discussion

#### A. Definition of Heretical Stream

According to Koentjaraningrat, religion is a system consisting of four components, namely:

1. Religious emotions that cause humans to be religious;
2. A belief system that contains all human beliefs and images about the attributes of God, the unseen nature, as well as all values, norms and teachings of the religion concerned;
3. The system of rites and ceremonies which is a human effort to find a relationship with God, gods or spirits who inhabit the unseen realm;
4. The community or social unit that adheres to a belief system and performs a ceremonial rite system.

The four components above are closely intertwined with each other so that they become a fully integrated system. The interests of religion are related to the interests of religious emotions, belief systems, ritual systems and people who are a unit. This is what causes the need for legal protection against religion or religious interests.

Astray or misguidance is the Arabic word for *dhlah*. That is, everything that deviates from the intended (right) path and every person who walks not on the right path, that is misguidance. The word "deviant" according to the MUI definition can be interpreted as a belief held by someone who becomes a public belief, or becomes the belief of his followers, so that people who are followed by their deviant beliefs are called misleading. While the notion of "misguided misguidance" (*dlallun mudillun*) is an understanding or thought held and practiced by a group of people that is contrary to Islamic creed and sharia and declared by the Indonesian Ulema Council (MUI) to be deviant based on the *syar'i* argument.

A cult can be defined as a belief that deviates from the mainstream of society, but this limitation becomes ambiguous because the criteria for heresy are multi-criteria. Therefore, there is disagreement about whether a cult or not is a separate issue that is not easy. A cult can be declared as heretical if it refers to a set of criteria that are stated a priori as not heretical. Therefore, sociological, political, and psychological measures are only an explanation of the possibilities why a person/group becomes part of a cult.

So far, two terms are also known which are intended to represent deviations from the practice of Islamic teachings in society. The first term is heresy, and the second, heretical sects. Understanding is an understanding based on one's knowledge of a particular object. The word flow comes from the word flow which ends in *-an*. The meaning of the word flow is something that flows. An understanding is usually conveyed to a wider party intentionally and planned.

If the understanding in question has been accepted and followed by a number of people, then it will develop into a sect. The meaning of the word misguidance is the wrong way, not going through the right path, wrong, wrong, doing indecent, deviating from the truth. Misguidance is also understood as going the wrong way or deviating from what has been determined. The coupling of understanding and heresy as an expression gives birth to the understanding that a person has a distorted understanding of a teaching due to the limitations and weaknesses of his knowledge. A cult can also be interpreted as a spread of understanding that deviates from the truth and seeks to gain supporters and followers in a continuous and systemic manner.

In short, heresy can also simply be interpreted as a direction, view, spirit or tendency towards the development of certain sects in religion that deviate from the truth.

#### B. Religious Offenses Against Heresies

Religious offenses in the sense of offenses against religion, namely Article 156a in the Criminal Code, have existed since the issuance of Law Number 1 PNPS of 1965 concerning the Prevention of Abuse and Blasphemy of Religion. State Gazette Number 3 of 1965 dated January 27, 1965, where one of the articles is Article 4 of Law Number 1 PNPS is included in the Criminal Code into Article 156a. 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 contained in the Criminal Code and spread outside the Criminal Code, especially Article 156a of the Criminal Code, Law Number 1 PNPS 1965, and specifically in Aceh there are special rules regarding deviant sects which are regulated in Governor Regulation No. 9 of 2011 which this rule was issued considering the prevalence of deviant sects that entered Aceh at that time.

#### C. Criminal Law Policy Against Heresies

Norms or rules give instructions to humans, how to act in society, as well as which actions to carry out and which actions to avoid. The rules/norms in principle consist of moral norms, decency norms, legal norms, religious norms and so on. In the Criminal Code and other laws and regulations, in essence there is a religious norm/rules that provide guidelines for all human behavior in social life, so that the interests of each can be maintained and guaranteed. Every member of the community knows their respective rights and obligations.

Religious offenses in the sense of offenses against religion are seen especially in Law Number 1 PNPS 1965 and in particular Article 156a of the Criminal Code (blasphemy against religion and committing acts so that people do not adhere to religion). Religious offenses in the sense of offenses "against religion" (Article 156 of the Criminal Code) were not initially found in the provisions of the Criminal Code. This offense is specifically intended to protect the Majesty and Glory of God, His Word and Character, Prophets/Apostles, Scripture, Religious Institutions, Teachings of Religious Worship and places of worship or other holy places. It should be emphasized that religious offenses in the sense of "offences against religion", namely Article 156a in the Criminal Code, have existed since the issuance of Law Number I PNPS 1965 concerning the Prevention of Abuse and Blasphemy of Religion, State Gazette No. 3 of 1965 dated January 27, 1965,

#### **D. Rationale for Regulation of Criminal Acts of Heresy in Law no. 1 PNPS 1965 in conjunction with Article 156 of the Criminal Code, and Qanun Number 11 of 2002.**

If we look at the concept of juridical applicability, it looks more at the process of establishing a rule of law before it is enforced by the competent authorities. This is where the application for judicial review of Law No. 1/PNPS/1965 was formally submitted to the Constitutional Court because it was deemed to have violated the process of establishing laws and regulations as stipulated by the 1945 Constitution. It should be noted that Law no. 1/PNPS/1965 is derived from Presidential Decree (Penpres) Number 1 of 1965 Law no. 1/PNPS/1965. The historical background for the formation of the presidential decree at that time was actually based on the Presidential Decree of 5 July 1959 and the state of emergency in Indonesia.

Under these conditions, state organs and government can make two choices to overcome this situation, namely state organs become dysfunctional at all (dysfunction syndrome) or the rulers become tyrannical (dictator by accident). The President took the initiative to issue a presidential decree to regulate several things, namely PNPS No. 1/1959 concerning the Provisional DPR, PNPS No. 2/1959 on the Provisional MPR, PNPS No. 3/1959 on DPA. Meanwhile, in 1965, PNPS No. 1/1965. Related to the enactment of TAP MPRS No. XX/MPRS/1966 concerning the Order of Legislation of the Republic of Indonesia, indeed, the legal product of the presidential stipulation is not explicitly regulated, considering that the material for PNPS No. 1/1965 in Article 4 provides an instruction to add Article 156a to the Criminal Code, so legally only legal products in the form of laws are needed, not presidential decrees.

The enactment of Law no. 1/PNPS/1965 from the recognition criteria can be seen from the sense of being bound by the community at that time not to commit acts prohibited by the law, and the many cases of blasphemy/blasphemy against religion are evidence that society is bound by the rule of law. Regarding legal fact, Law no. 1/PNPS/1965 is considered quite effective in overcoming religious irregularities or blasphemy which in many cases occurs.

So, the essence of what is prohibited according to Article 1 above is "to carry out interpretations and religious activities that deviate from the main teachings of that religion". In other words, to prevent deviations/deviations from religious teachings which are considered as basic teachings by the scholars of the religion concerned.

In principle, everyone is allowed and justified to carry out interpretations and religious activities, because this is a freedom and a human right as stated in Article 29 of the 1945 Constitution, it's just that the act of carrying out interpretations and religious activities is not unconditional, the conditions are: Constitution. Meanwhile, the condition for carrying out interpretations and religious activities according to this law is "not to deviate from the main teachings of that religion".

Structurally, it was only in 1958 that the Indonesian Attorney General's Office established the Section on Religious Movements and Community Trust, and in 1960 this section was upgraded to the Pakem Bureau with the task of coordinating the task of supervising the flow of belief in society along with other government agencies for religious purposes. and public order".

The formulation of religious offenses in the Criminal Code must be interpreted as the sincerity of this nation to seek to improve and reform the law as well as a form of policy against deviant sects. And this must still be done.

The placement of Article 156a as part of Chapter V of the Criminal Code can be qualified as a crime against public order. While the explanation of the article in Law Number 1/PNPS/1965, is intended as a legal regulation to protect the peace of religious people. This peace is closely related to religious feelings. This placement and explanation has consequences regarding the punishment that can only be considered if the statements made disturb the peace of religious people and endanger public order. On the other hand, if the peace of religious people and the interests of public order are not disturbed, then the person concerned cannot be punished.

Specifically in Aceh, there are special rules regarding deviant sects which are regulated in Governor Regulation No. 9 of 2011 which this rule was issued considering the widespread cult that entered Aceh at that time.

Regarding Qanun Number 11 of 2002 which applies in Aceh, where throughout the history of the Acehese people have made Islam a guide in their lives. The appreciation and practice of Islamic teachings in a fairly long history has given birth to an atmosphere/condition of an Islamic Acehese society and culture, culture and customs were born from the reflections of the scholars, then practiced and developed and preserved.

Efforts to legislate the implementation of Islamic Shari'a in the fields of Aqidah, Worship (Ramadhan Prayer and Fasting) and Islamic syi'ar are not attempts to regulate the substance of Aqidah and Worship. The problem of substance has been regulated in the texts and has been developed by scholars in various Islamic disciplines. Thus, the legislative effort of implementing Islamic Shari'a as regulated in this Qanun is to foster, safeguard, maintain, and protect the aqidah of Muslims in Aceh from various colors, beliefs, and sects that are considered heretical and misleading. Against violations of the field of Aqidah in this Qanun only threatens every Muslim and or insults or harasses Islam, the threat of punishment is regulated in a separate Qanun on HUDUD.

#### **E. The ideal concept of the policy of regulating criminal acts of deviant sects in Indonesian criminal law.**

According to the historical aspect of the policy of dealing with religious offenses (including deviant sects) until the issuance of Law no. 1/PNPS/1965 concerning Prevention of Abuse and Blasphemy of Religion, State Gazette no. 3 of 1965, dated January 27, 1965, based on the consideration of the emergence of sects or mystical belief organizations that are contrary to religious teachings and laws. The teachings and actions of these sects have led to things that violate the law, divide national unity, and tarnish religion.

The formulation of Article 1 of Law no. 1/PNPS/1965 it can be understood that Law no. 1/PNPS/1965 prohibits parties or sects or belief organizations that deviate from the main teachings of the religion adopted in Indonesia (six religions recognized according to the Elucidation of Article 1 of Law No. 1/PNPS/1965). The main things that are prohibited by Law no. 1/PNPS/1965 is a deviation from religious teachings adopted in Indonesia, in the form of interpreting religious teachings, carrying out religious activities similar



to the religion adopted, and so on. To determine the presence or absence of deviations in this case, a standard standard is needed to be used as a basis for assessment. Uniquely, Law no. 1/PNPS/1965 does not directly refer to whom the authority to assess the presence or absence of deviations is given.

Elucidation of Article 1 of Law no. 1/PNPS./1965 only provides a benchmark that the assessment is based on "as long as it does not violate the provisions contained in this regulation or other laws and regulations." However, there is a lack of clarity on the limits and measures to what extent a sect or belief/mysticism can be said to abuse and/or tarnish the existing religion. Therefore, it is very important to further stipulate the limits and basis of the assessment as well as the competent authorities to assess the presence or absence of deviations in the form of blasphemy or abuse of the religion adhered to by the Indonesian people. According to the author, because in Indonesia there are religious institutions that overshadow each religion and have authority from the government.

Criminal law enforcement is an effort to translate and realize the wishes of criminal law into reality. According to Van Hammel, criminal law is the overall basis and rules adopted by the state in its obligation to enforce the law, namely by prohibiting what is contrary to the law (On Recht) and putting suffering (suffering) on those who violate the prohibition.

Efforts to resolve a criminal act through a penal policy when viewed from the perspective of the workings of criminal law are carried out through the stages of concretization/operationalization/functionalization of criminal law consisting of the formulation stage of the crime, the stage of criminal application, and the stage of implementing criminal law.

In relation to the problem of this deviant sect, it is not only a matter of criminal law, but a social problem. For this reason, non-penal efforts are also needed which are efforts that can complement the limitations of penal efforts. Muladi and Barda Nawawi Arief said these non-penal efforts include sponsorship and social education in the context of developing social responsibility for the community, implementing community mental health through moral education, religion and so on, increasing child and adolescent welfare efforts, patrolling activities. and other continuous monitoring by the police and other security forces and so on.

A persuasive approach also seems to be an interesting thing in an effort to resolve a problem of religious differences that occur, given that a persuasive approach is an approach that is persuasive in nature to believe others in a belief, attitude and behavior so that those who have fallen into an understanding or misleading teachings can return to what is true.

Other non-penal efforts that can be done such as:

1. Making religious teachings a source of motivation and inspiration in building morals that are based on actual values;
2. Making religion a 'medicine' in fortifying problems of deviant sects/different religious views;
3. Facilitating the development of diversity in people's lives.

## Conclusion

Norms or rules give instructions to humans, how to act in society, as well as which actions to carry out and which actions to avoid. Criminal law enforcement is an effort to translate and realize the wishes of criminal law into reality. The placement of Article 156a as part of Chapter V of the Criminal Code can be qualified as a crime against public order. Meanwhile, the explanation of the article in Law Number 1/PNPS/1965 is intended as a legal regulation to protect the peace of religious people. This tranquility is closely related to religious feelings, Such placements and explanations have consequences regarding the punishment, which can only be considered if the statements made disturb the peace of religious people and endanger public order. On the other hand, if the peace of religious people and the interests of public order are not disturbed, then the person concerned cannot be punished.

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