

ABSTRAK

ANALISIS DASAR PERTIMBANGAN HAKIM DI RUANG LINGKUP YURIDIS DAN SOSIOLOGIS PUTUSAN PENGADILAN TERHADAP TINDAK PIDANA PENISTAAN AGAMA (STUDI PUTUSAN 1469/Pid.B/2020/PN. TJK)

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Tindak pidana penistaan agama merupakan suatu perbuatan yang dapat dikategorikan sebagai perilaku penghinaan terhadap Allah SWT dan Nabi Muhammad SAW serta merusak aqidah islam, seperti kasus penodaan agama yang akan dibahas dalam putusan 1469/Pid.B/2020/PN. Tjk, bahwa dalam kasus tersebut Gunarto bin Sihono menyuruh lakukan dengan ancaman kepada Muhammad Yasin Alviansyah mengencingi kitab suci Al-Qur'an. Kemudian Muhammad Yasin Alviansyah melaporkan kasus tersebut ke Polresta Bandar Lampung dan dalam putusnya Gunarto bin Sihono terbukti melakukan tindak pidana penistaan agama terhadap kitab suci Al-Qur'an. Namun dalam hal ini pembuat materil pengencingan Al-Qur'an tidak di tuntutan dalam sidang pengadilan. Permasalahan penelitian: bagaimana dasar pertimbangan hakim dalam menjatuhkan putusan tindak pidana penistaan agama dalam studi putusan nomor: 1469/Pid.B/2020/PN. Tjk dan mengapa pelaku penodaan Al-Qur'an tidak di tuntutan dalam sidang pengadilan.

Penelitian ini menggunakan pendekatan yuridis normatif dan yuridis empiris dengan metode analisis kualitatif melalui teknik studi pustaka dan studi lapangan yaitu wawancara dengan beberapa narasumber yang terdiri dari Hakim, Jaksa, Polisi, Dosen bagian hukum pidana, dan Tokoh Agama pondok pesantren araffah yayasan insan rabbani.

Hasil penelitian dan pembahasan dasar pertimbangan hukum dalam memutus kasus dalam putusan nomor 1469/Pid.B/2020/PN. Tjk, bahwa Gunarto bin Sihono telah terbukti secara sah dan meyakinkan melakukan tindak pidana penodaan agama, yang telah memenuhi unsur Pasal 156a sebagaimana dakwaan alternatf jaksa penuntut umum ke-tiga, dengan dijatuhi hukuman pidana penjara selama 1 (satu) tahun, dan kemudian menetapkan agar Gunarto Bin Sihono membayar biaya perkara sejumlah Rp2000,00 (dua ribu rupiah). kemudian mengapa Muhammad Yasin Alviansyah yang disuruh lakukan oleh terdakwa Gunarto untuk mengencingi Al-Qur'an tidak dituntut dalam sidang pengadilan, berdasarkan wawancara yang sudah dilakukan oleh para narasumber yaitu kepolisian, kejaksaan dan pengadilan, akademisi fakultas hukum. Bahwa, yang dilakukan oleh Muhammad Yasin Alviansyah adalah masuk dalam kategori daya paksa *overmacht*, yaitu adanya alasan pemaaf *strafuitsluitings gronden*

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sebagai penghapus pidana yang mana telah tercantum dalam Pasal 48 KUHP yang menyatakan: “barang siapa melakukan perbuatan karena pengaruh daya paksa tidak dipidana. Apabila di pandang di lingkup sosiologisnya faktanya penduduk Indonesia mayoritas adalah beragama islam maka dari itu perlakuan menista Al-Qur’an telah melukai hati seluruh umat islam. Hasil wawancara dengan tokoh agama, bahwa penodaan terhadap Al-Qur’an sama saja perbuatan yang menentang Allah dan Rasul, maka patutlah daripada mereka yang berbuat penistaan terhadap kitab suci Al-Qur’an siksa yang menghinakan dan neraka jahanam, kemudian dalam surah Al-Ahzab Ayat 61 bahwa siapa saja yang melakukan penistaan terhadap agama Allah termasuk kitab suci al-Quran halal untuk dibunuh, namun di Indonesia tentu aturan tersebut tidak diberlakukan di Indonesia karena telah ada yang mengatur. Dalam teori yang di pakai yaitu teori perlindungan agama bahwa agama di lihat sebagai kepentingan hukum /objek yang akan di lindungi oleh negara melalui peraturan perundang-undangan yang di buatnya, yaitu telah tercantum dalam KUHP Pasal 156 huruf a.

Saran dalam penelitian ini untuk seluruh aparat penegak hukum harus mempertimbangkan secara komperhensif terhadap pelaku tindak pidana sesuai dengan ketentuan hukum pidana, kemudian penegak hukum selain menegakkan keadilan sesuai dengan pancasila dan peraturan perundang-undangan juga harus memberikan pemahaman hukum terhadap masyarakat agar tidak terjadi keasalah pahaman dan menimbulkan stigma negatif terhadap penegak hukum.

Kata Kunci: Dasar Pertimbangan Hakim, Yuridis, Sosiologis, Putusan Pengadilan, Penistaan Agama.

ABSTRACT

BASIC ANALYSIS OF JUDGE CONSIDERATIONS IN THE JURISDICTION AND SOCIOLOGICAL SCOPE OF JURISDICTIONS AGAINST THE CRIME OF RELIGION BLASPHEMY (Study of Decision Number: 1469/Pid.B/2020/PN. TJK)

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The criminal act of blasphemy is an act that can be categorized as an insult to Allah SWT and the Prophet Muhammad SAW as well as damaging the Islamic creed, such as the case of blasphemy which will be discussed in decision 1469/Pid.B/2020/PN. Tjk, that in that case Gunarto bin Sihono ordered Muhammad Yasin Alviansyah to urinate on the holy book of the Qur'an. Then Muhammad Yasin Alviansyah reported the case to the Bandar Lampung Police and in his decision Gunarto bin Sihono was proven to have committed a crime of blasphemy against the holy book Al-Qur'an. However, in this case, the maker of the Qur'anic curing material was not prosecuted in court. The research problem: what is the basis for the judge's consideration in passing the decision on the crime of blasphemy in the study of decision number: 1469/Pid.B/2020/PN. Tjk and why the perpetrators of blasphemy of the Qur'an were not prosecuted in court.

This study uses a normative juridical and empirical juridical approach with qualitative analysis methods through library research techniques and field studies, namely interviews with several sources consisting of judges, prosecutors, police, lecturers in criminal law, and religious leaders at the Arafah Islamic Boarding School, the rabbani human foundation.

The results of the research and discussion of the basic legal considerations in deciding the case in decision number 1469/Pid.B/2020/PN. Tjk, that Gunarto bin Sihono has been legally and convincingly proven to have committed a criminal act of blasphemy, which has fulfilled the elements of Article 156a as stated in the third alternative indictment of the public prosecutor, by being sentenced to imprisonment for 1 (one) year, and then stipulating that Gunarto Bin Sihono paid a court fee of Rp. 200,000 (two thousand rupiah). then why Muhammad Yasin Alviansyah who was told to do by the defendant Gunarto to urinate on the Qur'an was not prosecuted in court, based on interviews that have been conducted by the sources, namely the police, prosecutors and courts, academics from the law faculty. Whereas, what Muhammad Yasin Alviansyah did was fall into the category of overmacht coercion, namely the excuse of forgiving strafuitsluitings gronden

as a criminal eraser which has been stated in Article 48 of the Criminal Code which states: "Whoever commits an act due to the influence of coercion is not punished. If you look at the sociological scope, the fact is that the majority of the Indonesian population

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is Muslim, therefore the treatment of insulting the Qur'an has hurt the hearts of all Muslims. The results of interviews with religious leaders, that blasphemy against the Qur'an is the same as an act that is against Allah and the Messenger, then it is better for those who commit blasphemy against the holy book of the Qur'an, a humiliating torment and hell, later in Surah Al-Qur'an. Ahzab verse 61 states that anyone who blasphemes against Allah's religion, including the holy Koran, is lawful to be killed, but in Indonesia, of course, these rules are not enforced in Indonesia because there are regulations. In the theory used, namely the theory of religious protection, religion is seen as a legal interest / object that will be protected by the state through the laws and regulations that it makes, which is stated in the Criminal Code Article 156 letter a.

Suggestions in this research for all law enforcement officers must consider comprehensively the perpetrators of criminal acts in accordance with the provisions of criminal law, then law enforcers in addition to upholding justice in accordance with Pancasila and statutory regulations must also provide legal understanding to the community so that there is no misunderstanding and creates a negative stigma against law enforcement.

Keywords: Basis for Judges' Consideration, Juridical, Sociological, Court Decisions, Blasphemy.