

## CRIMINAL LAW POLICY IN BLASPHEMY ENFORCEMENT BASED ON RESTORATIVE JUSTICE

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### ABSTRACT

Policies for resolving religious blasphemy in Indonesia are regulated in Law Number 1/PNPS/1965 concerning the Prevention of Blasphemy of Religion and Article 156a of the Criminal Code. Sentences are often repressive and do not fulfill the value of justice. The formulation of the problem in this article is: what is the criminal law policy in the settlement of blasphemy and what kind of settlement model is chosen to handle the case. This research method is normative legal research with a statutory approach based on primary legal materials. The research results show that the imposition of punishment is the main solution. Meanwhile, the model chosen in the resolution of defamation of freedom of expression according to the concept of restorative justice uses an integrated approach that tries to implement penal and non-penal efforts simultaneously to fulfill justice for the perpetrators of defamation, including involving the role of the community through the Religious Communication Forum (FKUB). Suggestions that need to be conveyed are that criminal law policies are still being implemented, but harsh criminal sanctions are softened by using the concept of restorative justice, bearing in mind that not every case of blasphemy deserves a harsh sentence.

**Keywords:** blasphemy; freedom of expression; mediation; policy; restorative justice.

### INTRODUCTION

The Indonesia State is a pluralistic country with the largest multiculturalism in the world which has potential with a wealth of language, culture, ethnicity, and religion.<sup>1</sup> Religion in Indonesia has a strong foundation in Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD 1945).<sup>2</sup> Other guarantees of religious freedom as stipulated in Article 28 E and Article 29 of the UUD 1945. The Indonesian government recognizes five religions in Indonesia, namely Islam, Catholic Christianity, Protestantism, Hinduism, Buddhism and Confucianism. Every religion has different principles and beliefs. If these differences are not managed properly, it can raise the problems and conflicts between religions.<sup>3</sup> Conflicts between religions are complex in their settlement and have massive social impacts so that the conflict is not simple.

Indonesia is a threatened country to problems and religious conflicts. One of them is blasphemy. The results of research conducted by the Setara Institute show that from 1965 to 2017 there were 97 cases of blasphemy. This case has increased since the end of the New Order Era. Before the reformation, there were only 9 cases of blasphemy, but there were 88 cases of blasphemy after

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<sup>1</sup> Gina Lestari, "Bhinneka Tunggal Ika: Khasanah Multikultural Indonesia di Tengah Kehidupan SARA", *Jurnal Pendidikan Pancasila dan Kewarganegaraan*, Vol. 28 No. 1, 2015, p. 31

<sup>2</sup> Budiyo, "Hubungan Negara dan Agama Dalam Negara Pancasila", *Fiat Justitia: Jurnal Ilmu Hukum*, Vol. 8 No. 3, 2014, p. 411.

<sup>3</sup> Inayatul Ulya, "Pendidikan Islam Multikultural Sebagai Resolusi Konflik Agama di Indonesia", *Fikrah: Jurnal Ilmu Aqidah dan Studi Keagamaan*, Vol. 4 No. 1, 2016, p. 22.

the reformation.<sup>4</sup> From these data, it is evident that cases of blasphemy threatened to occur in Indonesia. Therefore, blasphemy requires special attention in the context of a multi-religious and multi-ethnic Indonesian state.<sup>5</sup>

In general, the blasphemy regulation in Indonesia is regulated in Law No.1/PNPS/1965 concerning the Abuse and/or Blasphemy or called the Blasphemy Law and Article 156a of the Criminal Code or KUHP. However, the law does not provide a clear context and interpretation of criminal acts against religion, even enmity, abuse or blasphemy.<sup>6</sup> Based on several blasphemy decisions, there have been several shifts in the prevention of blasphemy. For example, the perpetrators of blasphemy are directly tried by the court and sentenced to prison under Article 156a of the Criminal Code. This punishment is without prior advice and warning as regulated in the Blasphemy Law.<sup>7</sup> Thus it can be seen that the blasphemy law and Article 156a of the Criminal Code have an unsynchronized arrangement, which these two regulations should complement and relate to each other because they both regulate blasphemy.

As the Setara Institute Report states that in the period from 1965 to 2017, 76 cases of blasphemy were resolved through the courts, and only 5 cases were acquitted.<sup>8</sup> In addition, the findings of several decisions in cases of blasphemy in district courts are the form of anxiety in the community followed by pros and cons related to the impact of the blasphemy.<sup>9</sup> Based on these facts and data, it can be seen that there is a mismatch between the existing law and its application. Various legal problems in solving the blasphemy can cause various reactions for and against the Indonesian people. In the settlement of blasphemy, it often leads to actions, both peaceful and violent.<sup>10</sup> Based on the Research Report on Patterns of Religious Conflict in Indonesia (1990-2008), 832 incidents of religious conflict occurred in Indonesia in the period January 1990 to August 2008.<sup>11</sup>

One example of resolving a blasphemy case that led to violence was the Saleh case, the riot of 10 October 1996 in Situbondo.<sup>12</sup> The case was initiated by Saleh who was reported on the blasphemy because Saleh issued a statement during a religious discussion. He state that Allah is an ordinary creatures. During the trial process, people who were angry with Saleh vandalized the court where Saleh was being tried. The result of the rampage is 5 victims of people and 34 churches was broken

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<sup>4</sup> Muhammad Dahri, "Tindak Pidana Penodaan Agama di Indonesia: Tinjauan Pengaturan Perundang-Undangan dan Konsep Hukum Islam", *AT-TAFAHUM: Journal of Islamic Law*, Vol. 1 No. 2, 2017, p. 57.

<sup>5</sup> Mudzakkir, *Tindak Pidana Terhadap Agama Dalam Kitab Undangundang Pidana (KUHP) dan Undang-Undang Nomor 1/PNPS/1965 Tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama (Kajian Terhadap Praktek Penegakan Hukum Dan Prospek Pengaturannya Dalam Hukum Positif Indonesia)*, Jakarta: Pusat Perencanaan Pembangunan Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia, Jakarta, 2010, p. 1-3.

<sup>6</sup> Yudha Bhakti Ardhiwisastra, *Penafsiran dan Konstruksi Hukum*, Alumni, Bandung, 2000, p. 8.

<sup>7</sup> Nazar Nurdin, "Delik Penodaan Agama Islam di Indonesia", *International Journal Ihya' 'Ulum Al-Din*, Vol. 19, No. 1, 2017, p. 132.

<sup>8</sup> Setara Institute, *Rezim Penodaan Agama 1965-2017: Ringkasan Eksekutif Laporan Riset Tematik Kebebasan Beragama dan Berkeyakinan*, 27 Februari 2017, p. 2.

<sup>9</sup> Nazar Nurdin, *Loc.Cit.*

<sup>10</sup> Lola Amelia, Arfianto Purbolaksono, Muhammad Reza Hermanto, Zihan Syahayani, *Indonesia 2016*, The Indonesia Institute Center for Public Policy Research, Jakarta, 2016, p. 34.

<sup>11</sup> *Ibid.*

<sup>12</sup> Carluna Ixhi Carmin, "Kerusuhan 10 Oktober Tahun 1996 Situbondo", *AVATARA, e-Journal Pendidikan Sejarah*, Vol. 6, No. 1, 2018, p. 134.

in the Situbondo area.<sup>13</sup> Whereas an example of a form of peaceful action on the settlement of blasphemy is the case of Ahok 2016. Ahok or Basuki Tjahaja Purnama was accused blasphemy of Islam, he stated that al-qur'an as a scripture of islam is lied. Specifically, Ahok stated that one of al-qur'an article (Al-Maidah 56) is lie, which that statement of Ahok rise an anger of Islamic people. The case has grown several peaceful actions to defend Islam in various regions. These actions included the 14 October 2016 Action, the 411 Action, and the 212 Action. These actions basically demanded the same thing, namely the fair enforcement of the law against Ahok who was considered to have committed blasphemy.<sup>14</sup>

Based on this, it can be said that the settlement by the court or the penal settlement in blasphemy is considered ineffective. So it is necessary to have a criminal law enforcement model against blasphemy through another settlement beside the court or penal settlement. Basically, the problem-solving method can be pursued in two ways, namely the settlement with the penal and non-penal. But in reality, if a problem occurs, especially those related to criminal law (criminal cases), the method of solving the problem is always carried out using the penal settlement.<sup>15</sup> Therefore, the settlement of non-penal offenses can be an alternative solution when the existing law has criticism and contra from various parties.

The non-penal settlement is a form of criminal law policy that leads to criminal law reform. Institute for Criminal Justice Reform or ICJR<sup>16</sup> view that the direction of reform of Indonesian criminal law in the future must be carried out with a humanist paradigm and approach that strengthens due process and restorative justice.<sup>17</sup> Thus, the alternative solution to blasphemy through non-penal settlement with the concept of restorative justice can be in the form of mediation based on criminal law policies and involving law enforcement officials and social institutions.

Behind the many issues and problems that exist in blasphemy settlement, this research will attempt to provide a blasphemy settlement model that embodies a sense of justice in society based on the value of restorative justice. The problem that will be discussed in this research is: what is the criminal law policy in blasphemy settlement on freedom of expression according to the concept of restorative justice? What is the chosen model in resolving blasphemy on freedom of expression according to the concept of restorative justice? This research method is normative legal research with

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<sup>13</sup>Uli Parulian Sihombing, Pultoni, Siti Aminah, Muhammad Khoirul Roziqin, *KETIDAKADILAN DALAM BERIMAN Hasil Monitoring Kasus-Kasus Penodaan Agama dan Ujaran Kebencian atas Dasar Agama di Indonesia*, The Indonesia Legal Resources Center (ILRC), Jakarta, 2012, p. 21.

<sup>14</sup>*Ibid.*, p. 33.

<sup>15</sup>Kristian & Christine Tanuwijaya, "Penyelesaian Perkara Pidana Dengan Konsep Keadilan Restoratif (*Restorative Justice*) Dalam Sistem Peradilan Pidana Terpadu Di Indonesia", *Jurnal Mimbar Justitia*, Vol. I No. 02 Edisi Juli-Desember 2015, p. 592.

<sup>16</sup>Institute for Criminal Justice Reform (ICJR) is an independent research institute founded in 2007. ICJR focuses on reforming criminal law and justice, and general law reform in Indonesia. ICJR takes the initiative by providing support in the context of building respect for the Rule of Law and at the same time building a strong human rights culture in the criminal justice system. <https://icjr.or.id/about-us/>, accessed on May 19, 2020.

<sup>17</sup>Institute for Criminal Justice Reform (ICJR), "Ringkasan Eksekutif ICJR", p. 3. Accessed on <http://icjr.or.id/wp-content/uploads/2019/11/Ringkasan-Eksekutif-Kertas-Kerja-Rekomendasi-Arah-Pembaruan-Kebijakan-Pidana.pdf>.

a statutory approach based on primary legal materials. The paper derived from the processed data, then analyzed descriptively-qualitatively and conclusions are drawn deductively and inductively. Based on the background above, the novelty of this research is to provide an explanation regarding the latest criminal policy related to cases of religious blasphemy based on restorative justice. As for the previous research as a comparison, namely research entitled "Pluralism Justice System in the Settlement of Religious Freedom Problems"<sup>18</sup> by Muhammad Nizar Kherid and Fifiana Wisnaeni. However, this research is more focused on explaining how the latest criminal policies are related to cases of religious prayer based on restorative justice.

## **METHODS**

The research method is normative juridical, namely by reviewing norms, rules and regulations through literature studies by reading, analyzing, citing readings and examining the legal basis through a statutory approach related to research problems. In this research aims to describe the method and approach to the problem in preparing the research. The type of approach taken by researchers is the problem approach, the process of data collection and finally data analysis. In this research, it aims to describe the methods and approaches to problems in preparing the research. The types of approaches used by researchers are problem approaches, data collection processes and finally data analysis.

## **DISCUSSION**

### **The Settlement of Blasphemy Based on Restorative Justice Concept**

Law No. 1/PNPS/1965 regulates two aspects: first, it regulates the prohibition in public to tell, advocate and seek public support, to interpret a religion adhered to in Indonesia or to carry out religious activities that resemble religious activities of the principal religious teachings. The provisions can be interpreted as prohibiting public distribution and carrying out acts of interpretation that are considered deviant.<sup>19</sup> In the articles of this law, the prohibition is followed by administrative procedures and consequence of disbanding the organization or criminal threats to the perpetrators.

In Article 4 of Law no. 1/PNPS/1965 stated that there was the addition of a new article to the Criminal Cod, namely article 156a. In other words, Article 156a of the Criminal Code is an article inserted in the Criminal Code based on 1965 Presidential Decree No. 1 Article 4 (State Gazette 1965 No. 3).<sup>20</sup> Based on the formulation of article 156a of the Criminal Code, there are several important elements that can be looked at more carefully, namely:<sup>21</sup>

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<sup>18</sup> Muhammad Nizar Kherid and Fifiana Wisnaeni, "PLURALISM JUSTICE SYSTEM DALAM PENYELESAIAN MASALAH KEBEBASAN BERAGAMA," *Masalah-Masalah Hukum* 48, no. 4 (October 16, 2019): 385–392, accessed January 4, 2023, <https://ejournal.undip.ac.id/index.php/mmh/article/view/22867>.

<sup>19</sup> R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Pliteia, 1996, hlm. 134-135

<sup>20</sup> Wirjono Prodjodikoro, *Tindak-tindak Pidana Tertentu di Indonesia*, Bandung: Refika Aditama, 1982, hlm. 149.

<sup>21</sup> Sustira Dirga Maidina Rahmawati, *Keluhan Bukan Kriminal: Amicus curiae (Sahabat Pengadilan) dalam Perkara Nomor 1612/PID.B/2018/PN.Mdn di Pengadilan Tinggi Medan*, Jakarta: Institute for Criminal Justice Reform (ICJR), 2018, hlm. 22-25.

1. Whoever Element. Every person (*een eider*) or anyone who commits a criminal act is a legal subject who can be legally responsible for all their actions, so that every person refers to a legal subject as a person who can be held criminally responsible.
2. Elements on purpose. Deliberation is an element of error, of which there are two forms in the error doctrine, namely intent and negligence. Deliberation as defined in Article 156a of the Criminal Code means that a person knows and aware that the act of expressing feelings or committing an act which is essentially hostile, abuses or desecrates a religion adhered to in Indonesia with the intention of preventing the person from adhering to any religion which is based on belief in the Almighty God is an act contrary to legal obligations or contrary to the rights of others.
3. Elements in public. This element does not require that the prohibited act must be carried out in a public place (a place that anyone can go to), but it is sufficient if the act is carried out by the perpetrator in such a way that the statement can be heard by the public.
4. Elements that are essentially hostile, abuse or blasphemy of a religion adhered to in Indonesia. Phrases of hostility, abuse or blasphemy of religion are immeasurable actions because they are related to a process of assessing the nature, feelings of religion, religious life and worship which are subjective in nature. This element has contained a lot of controversy, according to what is classified as hostility, abuse, or blasphemy against a religion is subject to multiple interpretations. Law enforcement officials generally consider that an act is a form of religious blasphemy based on the opinion of the majority accompanied by mass pressure and intervention by religious institutions/organizations.

The settlement of blasphemy according to Law no. 1 PNPS of 1965 that imposes sanctions on acts of blasphemy with 2 stages, namely:

1. Give advice, strong warning (personal) or disband (organization/sect).
2. If the act still continued, it will be sentenced to a maximum of 5 years in prison.

Meanwhile, Article 156a of the Criminal Code states that without warning, a person who is proven to have committed blasphemy will be charged with a maximum penalty of 5 years in prison, through a legal process. This is a form of sanction that is clearly stated in the statutory regulations in Law No.1 PNPS of 1965 and Article 156a.<sup>22</sup> Thus it can be seen that between Law no. 1 PNPS 1965 and Article 156a of the Criminal Code have asynchronous regulations, in which these two regulations should complement and relate to each other because they both regulate blasphemy.

It can also be assessed that the formulation of Article 156a of the Criminal Code is considered inadequate for imprisoning someone because there is no clear definition of blasphemy in that article and there is an inconsistency in that article with Law No. 1 PNPS 1965. So in this case, the settlement of blasphemy through the penal settlement cannot fulfil justice and legal certainty for the Indonesian people, because behind it there are various criticisms and contra as well as problems in the regulate

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<sup>22</sup> Muhammad Dahri, *Op. Cit.*, p. 61.

law in settlement of blasphemy. In settlement of the crime, using the criminal law is not the only way, but can also use other methods or policies that are non-penal.

The settlement of crime policies can be carried out through two approaches, namely the penal approach (application of criminal law) and the non-penal approach (the approach outside of criminal law). The integration of these two approaches is indicated in the proposed United Nations Congress on the Prevention of Crime and Offenders' Treatment.<sup>23</sup> The existence of this non-penal settlement is because it is considered that the use of criminal law or criminal law enforcement is not the only effective way of crime settlement.<sup>24</sup> Settlement of criminal cases through the non-penal settlement is an alternative settlement beside the main settlement, namely penal. Actually, the existence of this alternative settlement is not recognized by the basic rules of criminal procedure law, namely the Criminal Procedure Code, but its existence exists and is recognized by the community so that it is used as a way to resolve criminal cases.<sup>25</sup>

Currently, the settlement of criminal acts through courts or penal settlement has received harsh criticism, both from practitioners and legal theorists. The role and function of the judiciary today are considered too overloaded, slow and waste of time, very expensive and less responsive to public interests, or are considered too formalistic and too technical (technically). The existence of a "judicial mafia" indicates a judge's decision can be purchased.<sup>26</sup> As the description according to Bagir Manan, that the enforcement of Indonesian law can be said to be "*communis opinio doctorum*", which means that law enforcement considered failed in achieving the objectives indicated by law.<sup>27</sup> Based on that various criticisms of the judicial process and to respondi various problems in resolving religious blasphemy, in current legal developments an alternative has emerged, namely through non-penal policies.

The crime settlement policy through the "penal" settlement focuses more on the "repressive" character (suppression/eradication) after a crime occurs, while the "non-penal" policy focuses more on the "preventive" nature (prevention/deterrence) before the crime occurs.<sup>28</sup> Due to its nature that character to emphasize preventive action when a crime occurs, the main objective of non-penal policies is to deal with the factors conducive to the occurrence of crime. Among others, these conducive factors focus on social problems or conditions that can directly or indirectly lead to crime.<sup>29</sup>

According to Is Heru Permana, compared to the prevention through the penal policy, the criminal settlement is much more effective if it is carried out with a non-penal policy. Apart from the state, the community can also make efforts through social policies, such as in the field of education,

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<sup>23</sup> Beby Suryani, "Pendekatan Integral Penal Policy Dan Non Penal Policy Dalam Penanggulangan Kejahatan Anak", *Doktrina: Journal of Law*, Vol. 1 No. 2, 2018, p. 71.

<sup>24</sup> Michael Barama, "Model Sistem Peradilan Pidana Dalam Perkembangan", *Jurnal Ilmu Hukum*, Vol. 3 No.8, 2016, p. 8.

<sup>25</sup> Agus Raharjo, "Mediasi Sebagai Basis Dalam Penyelesaian Perkara Pidana", *MIMBAR HUKUM*, Vol. 20 No. 1, 2008, p. 93.

<sup>26</sup> Bambang Sutiyoso, *Penyelesaian Sengketa Bisnis, Solusi Dan Antisipasi Bagi Peminat Bisnis Dalam Menghadapi Sengketa Kini dan Mendatang*, Citra Media, Yogyakarta, 2006, p. 30.

<sup>27</sup> Rudi Rizky (ed), *Refleksi Dinamika Hukum (Rangkaian Pemikiran dalam Dekade Terakhir)*, Perum Percetakan Negara Indonesia, Jakarta, 2008, p. 4.

<sup>28</sup> Soedarto, *Kapita Selekta Hukum Pidana*, Alumni, Bandung, 1986, p. 188.

<sup>29</sup> M. Hamdan, *Politik Hukum Pidana*, Raja Grafindo Persada, Jakarta, 1997, p. 20.

improving the standard of living of community members.<sup>30</sup> This is also agreed by W. A. Bongger, who stated that the efficiency and effectiveness of preventive policies is better than repressive policies. The thought of preventing the crimes is better than trying to educate criminals to be good again, better here also means easier, cheaper and more achieving its goals.<sup>31</sup>

The non-penal policy in blasphemy can be through strengthening the law intended to make the function of prevention (preventive) effective so that there are no more incidents of mass violence in the name of religion and/or groups in the life of the community, nation and state. To carry out this preventive function, the most important thing is that our legal development policies must be directed to restructure the regulatory system and the institutionalization of legal institutions, both those working in the law making field and implementing,<sup>32</sup> especially in the development of laws to tackle religious offenses or what is often called a criminal policy.<sup>33</sup> Then in the non-penal policy settlement, the handling of offenses against religious and belief harmony can be approached with theological and sociological approaches which include; theological approach, nationalism, education and dialogue between religious and believers.<sup>34</sup>

In addition, Saiful Abdullah in his research stated that in non-criminal blasphemy policies, such as the emergence of deviant sects can use criminal law policies for the future, by carrying out juridical anticipation, namely preparing various regulations related to deviant sect as part of religion criminal acts, especially in the Concept of the Criminal Code. Prevention of deviant sects through non-penal measures can be pursued by adopting a religion prevention approach. Besides that, a cultural approach, a moral/educational approach is also needed. Or in other words, the religious approach is one of the non-penal efforts in overcoming deviant sects or differences in religious views/beliefs.<sup>35</sup> In addition to non-penal efforts outside the preventive process, the settlement of blasphemy can use a non-penal mechanism through restorative justice that fulfills the sense of justice in society with a simple application in resolving religious blasphemy.

The background of the thought of restorative justice is based on the theory of criminal law policy which is identical to the reform of criminal law. The ideas of criminal law reform are related to the Criminal Justice System or SPP, in which the ideas of penal reform consist of the idea of victim protection, the idea of harmonization, the idea of restorative justice, the idea of overcoming rigidity/formality in the prevailing system, the idea of avoiding the negative effects of the SPP and the

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<sup>30</sup> IS Heru Permana, *Politik Kriminal*, Universitas Atma Jaya, Yogyakarta, 2007, p.12.

<sup>31</sup> W.A. Bongger, *Pengantar Tentang Kriminologi Pembangunan*, Ghalia Indonesia, Bogor, 1995, p. 167.

<sup>32</sup> Jimly Asshiddiqie, "Penguatan Hukum Dalam Upaya Pencegahan Kekerasan Massa Yang Mengatasnamakan Agama Atau Kelompok", *Papers at the Discussion Forum of the Presidential Advisory Council of the Indonesia*, 2011, p. 1

<sup>33</sup> Endri, "Kebijakan Kriminal Dalam Menanggulangi Kejahatan Delik Agama", *JIH Riau*, Vol. 3 No. 1, 2012, p. 12.

<sup>34</sup> Yayan Muhammad Royani, "Kebijakan Kriminal Dalam Menanggulangi Delik-Delik Terhadap Kerukunan Umat Beragama dan Berkepercayaan", *Criminal Justice System Thesis*, Program Magister Ilmu Hukum Universitas Diponegoro Semarang, 2013, p. 256.

<sup>35</sup> Saiful Abdullah, "Kebijakan Hukum Pidana (Penal) dan Non Hukum Pidana (Non Penal) dalam Menanggulangi Aliran Sesat", *Law Reform*, Vol. 2 No. 2, 2009, p. 18.

current criminal system, especially in finding other alternatives to imprisonment.<sup>36</sup> This criminal law reform is the most effective step so that the process of litigation can find a justice that really benefits. The “Out of Process Settlement” policy provides the best solution to answer justice that leads to balance.<sup>37</sup>

The concept of restorative justice is a concept that can function as an accelerator of simple, fast and low cost justice principles to guarantee the fulfilment of legal certainty and public justice. As with Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Law on Judicial Power), the justice-seeking community hopes that the administration of justice and law enforcement that meets the principles of fast, simple and low cost will become a reality in legal life.<sup>38</sup> This concept will be applied to blasphemy cases because basically the needed when blasphemy occurs is the perpetrator's correction of the religion that has been defiled. Through this concept, correction from the perpetrator can take in the form of real action so that the perpetrator can understand the mistakes he has made when desecrating religion. The concept of implementing restorative justice is carried out through activities such as: Mediation of victims and perpetrators/offenders; Family group deliberations; Recovery services in the community for both victims and perpetrators. The purpose of implementing the criminal justice system depends on the system's model, namely the retributive justice model or the restorative justice model. Thus, in resolving religious blasphemy based on restorative justice, prioritizing deliberation or mediation will involve various parties, not only victims and perpetrators but also the community. All of these parties will be directly involved in blasphemy settlement so that the settlement process's outcome will fulfil justice for all parties.

### **The Idea of Penal Mediation in Religious Blasphemy Settlement**

One form of restorative justice is mediation.<sup>39</sup> As research from the practical dimension, mediation will correlate with the achievement of the world of justice. As time goes by, the number of cases that go to court is increasing day by day, so that the consequences become a burden on the court in examining and deciding cases according to the principle of “simple, fast and low-cost justice”.<sup>40</sup> Penal mediation is the settlement of a criminal case through deliberation with the help of a neutral mediator, attended by victims and perpetrators and parents and community representatives, to restoring the victim, perpetrator, and the community.<sup>41</sup> The development of theoretical discourse and the development of criminal law reforms in various countries, there is a strong tendency to use penal mediation as an alternative to solving problems in the field of criminal

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<sup>36</sup>Sahuri Lasmadi, “Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia”, *Jurnal Universitas Jambi*, 2011, hlm. 7.

<sup>37</sup>Taufiqurrohman Abildanwa, “Mediasi Penal Sebagai Upaya Dalam Rangka Pembaharuan Hukum Pidana di Indonesia Berbasis Nilai-Nilai Keseimbangan”, *Jurnal Pembaharuan Hukum*, Vol. 3 No. 1, 2016, p. 144.

<sup>38</sup>Manuasa Saragi, “Penal dan Non Penal Untuk Penyelesaian Sengketa Bisnis dalam Rangka Pengembangan Investasi di Indonesia (Kajian Penegakan Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman jo Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa)”, *E-Journal Graduate Unpar Part B: Legal Science*, Vol. 1 No. 2, 2014, p. 55.

<sup>39</sup>Eva Achjani Zulfa, *Keadilan Restoratif*, Badan Penerbit Fakultas Hukum Universitas Indonesia, Jakarta, p. 64

<sup>40</sup>Yuniar Ariefianto, “Penerapan Restoratif Justice Dalam Penyelesaian Kasus Kecelakaan Lalu Lintas”, *Jurnal Magister Ilmu Hukum dan Kenotariatan Universitas Brawijaya*, Vol. 1 No.1, 2016, p. 4.

<sup>41</sup>DS. Dewi dan Fatahillah A. Syukur, *Mediasi Penal: Penerapan Restorative Justice di Pengadilan Anak Indonesia*, Indie-Publishing, Depok, 2011, p. 86.

law.<sup>42</sup> Countries that have implemented penal mediation include Austria, Germany, Belgium, France, Poland, Slovenia, Canada, the United States, Norway, Denmark, and Finland.<sup>43</sup>

Thus, efforts to resolve blasphemy can also use alternative problem-solving efforts with the concept of restorative justice, such as using mediation. Penal's mediation that applies restorative justice values is not new to the Indonesian people, in fact, currently, mediation with restorative justice can be said to be a progressive approach.<sup>44</sup> In principle, criminal cases cannot be resolved through the Mediation mechanism. However, in practice, criminal cases are often resolved through the mediation mechanism, which is an initiative of law enforcers as part of the settlement of cases. Thus, in reality mediation can actually be carried out in the Criminal Justice System or SPP.<sup>45</sup> This is also in accordance with the SPP theory put forward by Muladi that if the criminal justice system is too formal and based only for the sake of legal certainty it will lead to injustice.<sup>46</sup>

In the social practice of Indonesian society, penal mediation institutions have long been known and have become a tradition, among others, among the people of Papua, Aceh, Bali, Lombok, West Sumatra and the customary law of Lampung.<sup>47</sup> Even in Aceh (NAD), the settlement of criminal acts through mediation has been stated in Perda no. 7/2000 concerning the Implementation of Customary Life which, among other things, regulates:<sup>48</sup>

“Article 13: Disputes are settled first peacefully through customary deliberations. Article 14: Peace: binding the parties; Those who do not heed customary decisions will be subject to customary sanctions. Article 15: If the parties are not satisfied with the customary ruling, they can submit their case to law enforcement officials.”

As stated in the previous sub-chapter, settlement through peaceful means in cases of blasphemy has been regulated in Law no. 1 PNPS of 1965 is an effort to provide strong advice and warnings to perpetrators of blasphemy, before any penalties or trials are made. However, this advice is not sufficient, considering that in several cases blasphemy has led to various actions, ranging from demonstrations, riots to the destruction of public facilities, such as the case of Muhammad Saleh (1996).<sup>49</sup>, Dedi Priadi dan Gerry Luhtfi Yudistira (2007) case,<sup>50</sup> Antonius Richmond Bawengan (2010),<sup>51</sup>

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<sup>42</sup> Hanafi Arief dan Ningrum Ambarsari, “Penerapan Prinsip *Restorative Justice* Dalam Sistem Peradilan Pidana di Indonesia”, *Al'Adl*, Vol. X No. 2, 2018, p. 180.

<sup>43</sup> Mansyur Ridwan, *Mediasi Penal Terhadap Perkara KDRT (Kekerasan Dalam Rumah Tangga)*, Yayasan Gema Yustisia Indonesia, Jakarta, 2010, p.166.

<sup>44</sup> Eva Achjani Zulfa, *Pergeseran Paradigma Pemidanaan*, Lubuk Agung, Bandung, 2011, p. 67.

<sup>45</sup> Keyzha Natakharisma dan I Nengah Suantra, “Mediasi Dalam Penyelesaian Perkara Pidana di Indonesia”, *Jurnal Ilmu Hukum Kertha Wicara*, Universitas Udayana, Vol. 1 No. 5, 2013, p. 2.

<sup>46</sup> Muladi, *Kapita Selekta Sistem Peradilan Pidana*, Semarang: Badan Penerbit Universitas Diponegoro, 1995, p. Viii & 18

<sup>47</sup> Lilik Mulyadi, “Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori dan Praktik”, *Yustisia*, Vol. 2 No.1, 2013, p. 5.

<sup>48</sup> Sahuri Lasmadi, *Loc.Cit.*

<sup>49</sup> Pada kasus ini, masa yang marah dengan Saleh melakukan pengrusakan pada pengadilan tempat Saleh disidang, 5 korban jiwa dan kerusakan pada 34 gereja. Uli Parulian Sihombing, Pulton, Siti Aminah, Muhammad Khoirul Roziqin, *Op.Cit.*, p. 20.

<sup>50</sup> Aksi masa yang menyebabkan kerugian hingga 10 juta rupiah, *Ibid.*, p. 38.

<sup>51</sup> Kerusakan ini menyebabkan tiga gereja, satu sekolah, dan kantor Pengadilan Negeri Temanggung dirusak dan dibakar massa. *Ibid.*, p. 45.

Ahok case(2016),<sup>52</sup> and Meliana case (2017).<sup>53</sup> So that in the case of blasphemy is not enough just to give strong advice or warnings, but to be imprisoned, the legal basis for blasphemy is considered less compatible because limits human rights, namely the right to freedom of expression, opinion and religion.<sup>54</sup>

The idea of mediation as a blasphemy solution is also mentioned in research conducted by Soma Wijaya and Ajie Ramdan which states that mediation and dialogue are needed when blasphemy occurs because it is possible that this dialogue can change the religious views of the perpetrators. If what happens is a misunderstanding, such as a perpetrator does not intend or intentionally commit religious blasphemy, mediation and dialogue will clarify the accusation. Mediation and dialogue are in accordance with the character and direction of the current national criminal law politics.<sup>55</sup> Therefore, through the concept of restorative justice, which is in the form of penal mediation, it can be used as an alternative way to resolve non-penal blasphemy.

Understanding the method of "Penal Mediation", the "application" policy is a form of modernization of criminal law in an effort to get out of the difficulties shackles in finding a satisfactory basis for maintaining criminal sanctions, which revolves around the main objective of protecting public interests, preventing and controlling crime and correcting people who violate criminal law.<sup>56</sup> Criminal law policies in the prevention of criminal acts through the effort of "Penal Mediation" in the framework of reforming criminal law in Indonesia include formulation policies on the provisions of the Draft Criminal Code by making them as material for analysis and combined with comparative studies of criminal law in other countries.<sup>57</sup>

In the drafting of the Criminal Procedure Code on Penal Mediation is regulated in Article 111:  
“(1) An investigator has the authority to stop an investigation because there is insufficient evidence or the incident does not turn out to be a criminal act or the investigation is terminated by law.

(2) Termination of investigation as intended in paragraph (1) can also be carried out on the basis of:

- a. the decision of the pre-trial judge based on the request of the victim/reporter;
- b. achieved a mediation settlement between the victim/reporter and the suspect.”

The Draft Criminal Procedure Code mentioned above allows for penal mediation at the level of investigation as a reason for investigators to terminate a criminal case and is also regulated in a

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<sup>52</sup> Raising massive Islamic demonstrations throughout the end of 2016. <https://www.republika.co.id/berita/nasional/hukum/17/05/10/opp5r4330-ini-7-rangkaian-aksi-bela-islam-sebelum-ahok-divonis-2-tahun-penjara>, accessed on April 18, 2020.

<sup>53</sup> The angry mob destroyed houses and monasteries. <https://news.detik.com/berita/d-4501140/jejak-meliana-dihukum-ma-18-bulan-penjara-karena-kritik-volume-azan>, accessed on April 18, 2020.

<sup>54</sup> Arsil, Dian Rositawati, Muhammad Tanzil Aziezi, Nur Syarifah, Zainal Abidin, *Penafsiran terhadap Pasal 156a Kitab Undang-Undang Hukum Pidana tentang Penodaan Agama (Analisis Hukum dan Hak Asasi Manusia)*, Indonesian Institute the Independent Judiciary Lembaga Kajian dan Advokasi Independensi Peradilan (LeIP), Jakarta, 2018, p. 42.

<sup>55</sup> Somawijaya dan Ajie Ramdan, "The Urgency of Religious-Blasphemy Case Arrangement in the Frame of Diversitytowards National Criminal Law Reform", *PADJADJARAN Journal of Law*, Vol. 5 No. 3, 2018, p. 479.

<sup>56</sup> Taufiqurrohman Abildanwa, *Op.Cit.*, p. 144.

<sup>57</sup> *Ibid.*, p. 142.

limitative manner regarding what criminal acts can be mediated.<sup>58</sup> According to the idea that mediation can be carried out at the prosecution level as well as at court proceedings with the consideration of legal certainty, legal benefits and legal justice with arguments, if the penal mediation is carried out at the prosecution level, the principle that can be used is the principle of opportunity which is a teaching that gives authority to the Prosecutor to set aside a case, even though the evidence is sufficient, in the public interest, either with conditions or without conditions.<sup>59</sup>

Regarding the settlement of blasphemy through penal mediation, it can be carried out by the penal mediation process in the criminal justice system (SPP), which involves law enforcement officials in the mediation process. This kind of penal mediation process can be used as a contribution to reforming criminal law. The process can be done in the following way:<sup>60</sup>

1. Penal mediation in the criminal investigation stage, the investigation stage is the initial stage of the criminal justice process. At this stage is possible for investigators to continue or discontinue criminal acts into the criminal justice process. At this stage of investigation, mediation is a combination of informal mediation models, victim-offender mediation and recovery program negotiations between the perpetrators of blasphemy, the community, and the investigator.
2. Penal mediation at the prosecution stage, after a delegation from investigator to the public prosecutor. In this stage, the public prosecutor is not supposed to immediately forward the criminal act to the court but rather encourage the parties to reconcile. Or the public prosecutor can immediately stop the prosecution if there is a settlement outside the criminal justice system process.
3. Penal mediation at the court hearing examination stage, penal mediation is carried out at this stage after the case is transferred to court by the public prosecutor. At this stage of mediation as in civil cases, judges offer an alternative to the criminal case settlement by conciliation before an examination process is carried out in front of a court session to the parties, namely the perpetrator of blasphemy and the victim. In this case, religious people who feel their religion is being tainted. If an agreement is reached between the parties, then the results can be used as an excuse to abolish the punishment of the blasphemy perpetrators. At this stage, the mediator can be carried out by a judge or a mediator from outside the court.

Penal mediation at the stage of the perpetrator carries out a prison sentence. At this stage the penal mediation is carried out in the form of a recovery program negotiation that focuses on the payment of compensation from the perpetrator to the victim. Or in the form of victim-offender mediation, which focuses both on the concept of reconciliation and on the agreement to pay

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<sup>58</sup> Sahuri Lasmadi, *Op.Cit.*, p. 6.

<sup>59</sup> Andi Hamzah, *Terminologi Hukum Pidana*, Sinar Grafika, Jakarta, p. 14.

<sup>60</sup> Rudini Hasyim Rado, Barda Nawawi Arief, Eko Soponyono, "Kebijakan Mediasi Penal Terhadap Penyelesaian Konflik Sara di Kepulauan Kei Dalam Upaya Pembaharuan Hukum Pidana Nasional", *Jurnal Law Reform*, Vol. 12 No. 2, 2016, p. 274.

compensation to the victim. Mediation is carried out when the perpetrator is serving his sentence, especially imprisonment.

### **The Idea of Non-Penal Mediation in Settlement of Blasphemy and Freedom of Expression**

Basically, problem-solving through the mediation process is one way of solving fundamental problems to Indonesian society. As is well known, Pancasila is the basis of the Indonesian State,<sup>61</sup> and Pancasila is a source of value for a legal system in Indonesia.<sup>62</sup> *Pancasila* in the fourth *sila* as we know states that "Democracy is Led by Wisdom in Deliberation/Representation". It contained in the philosophy of deliberation, the meaning contained is prioritizing deliberation in making decisions for the common interest, and respecting every deliberation decision. The 4th *sila* of Pancasila teaches us to choose deliberation is prioritizing deliberation in making decisions for the common interest.<sup>63</sup>

In addition, with deliberation during the mediation, the perpetrator will also be given an understanding of religion that he should not despise or education related to religious deviations that should not be done. Thus, in completing this model, there will be education for the perpetrators related to blasphemy itself, as well as education on the concept of the limitations of freedom of expression and opinion. So what is emphasized in this model is not only limited to imprisonment without any understanding of the wrongs committed by the perpetrators of blasphemy but also to educate about the existence of norms that prohibit religious insults and deviations.

Mediation can be pursued through the Criminal Justice System section by law enforcement officials, or it can be pursued through processes outside of the criminal court, including through traditional village institutions / social institutions.<sup>64</sup> So, in resolving blasphemy, freedom of expression can not only be carried out by law enforcement officials, but social institutions also have the potential to solve these crimes. This is like a theory of criminal law policy which is an integral part of social policy.

Based on research conducted by Demi Hadianoro, Gunarto, Lathifah Hanim, which states that criminal law policies in efforts to blasphemy settlement in Indonesia require a comparative study with countries that have policies in the efforts to blasphemy settlement, both through penal and non-penal policies. This comparative study can be a reference or consideration and provide input, such as how the criminal acts are formulated, the system of accountability, types of criminal sanctions and so on.<sup>65</sup> Therefore, in this case, a comparison of the settlement of blasphemy will be carried out through a mediation process that does not involve law enforcement officials and has been implemented in several countries, including:

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<sup>61</sup> Astim Riyanto, "Pancasila Dasar Negara Indonesia", *Jurnal Hukum dan Pembangunan*, Vol. 37 No. 3, 2007, p. 457.

<sup>62</sup> Kuart Puji Prayitno, "Pancasila Sebagai Bintang Pemandu (Leitstern) dalam Pembinaan Lembaga dan Pranata Hukum di Indonesia", *Jurnal Media Hukum*, Vol. 14 No. 3, 2005, p. 152.

<sup>63</sup> Kuart Puji Prayitno, "Restorative Justice Untuk Peradilan di Indonesia (Perspektif Yuridis Filosofis dalam Penegakan Hukum In Concreto)", *Jurnal Dinamika Hukum*, Vol. 12 No. 3, 2012, p. 414.

<sup>64</sup> Rudini Hasyim Rado, Barda Nawawi Arief, Eko Soponyono, *Loc.Cit.*

<sup>65</sup> Demi Hadianoro, Gunarto, Lathifah Hanim, "Kebijakan Formulasi Tindak Pidana Penodaan Agama Dari Perspektif Hukum Pidana Di Indonesia", *Jurnal Hukum Khaira Ummah*, Vol. 12 No. 4, 2017, p. 821.

1. Sierra Leone formed a special mediation institution that aims to resolve conflicts related to religion in its country, namely the Inter Religious Council of Sierra Leone (IRCSL). IRCSL was founded in April 1997 and continues to play an active role in promoting reconciliation and mediation efforts in religious conflicts in Sierra Leone. IRCSL leaders use their credibility and influence in resolving conflicts peacefully by actively engaging in dialogue with perpetrators of religious conflicts by listening to their grievances.<sup>66</sup>
2. Chad also formed a mediation institution to resolve religious conflicts, namely the Committee for a Call to Peace and Reconciliation or the Standing Committee for a Call for Peace and Reconciliation (CSAPR). This committee has been operating since 2010, by involving religious leaders in Chad, such as Christian religious leaders, Muslim religious leaders, etc. in resolving religious and non-religious conflicts through mediation and negotiation.<sup>67</sup>
3. Nigeria has many religious-based NGOs which have contributed significantly to ethnoreligious reconciliation in Nigeria. For example, Nigeria Inter-Religious Council (NIREC); The Interfaith Mediation Center of Muslim Christian Dialogue Forum (IMCMCDF) and the International Peace League (IPL). These inter-religious institutions use mediation as the main role in conflict resolution by mobilizing political and religious leaders to engage in dialogue during religious conflicts.<sup>68</sup>

Based on several examples of countries using mediation mechanisms to resolve religious blasphemy but without involving law enforcement officials, and only involving a religious institution in their country, Indonesia can also do the same, namely the settlement of blasphemy through mediation facilitated by religious institutions. The role of religious institutions in resolving blasphemy through mediation is as a mediator. This mediator will then guide or find a solution that is acceptable to each party. The mediator mediates between the disputing parties and then brings together each opinion and offers a good and viable solution.<sup>69</sup>

In Indonesia, a religious institution has been formed since 2006, namely the Forum for Religious Harmony (FKUB). FKUB is a forum formed by the community at the provincial and district/city levels, and facilitated by the local government. Meanwhile, the number of administrators, composition, and membership, as well as the duties of the provincial and district / city FKUB have been regulated in the Joint Regulation of the Minister of Religion and the Minister of Home Affairs (PBM) Number 9 and 8 of 2006.<sup>70</sup> According to PBM Number 9 and 8 of 2006, FKUB's duties are to carry out dialogue with religious and community leaders, accommodate and distribute the aspirations of religious mass

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<sup>66</sup> Jacob Bercovitch dan S. Ayse Kadayifci-Orellana, "Religion and Mediation: The Role of Faith-Based Actors in International Conflict Resolution", *International Negotiation*, Vol. 14, 2009, pp. 183-184.

<sup>67</sup> Owen Frazer and Mark Owen, *Religion in Conflict and Peace Building Analysis Guide*, USA: the Endowment of the United States Institute of Peace, 2018, pp. 30-31.

<sup>68</sup> Mashood Omotosho, "Managing Religious Conflicts in Nigeria: The Inter-Religious Mediation Peace Strategy", *Africa Development*, Vol. XXXIX No. 2, 2014, pp. 141-142.

<sup>69</sup> Agus Raharjo, *Op.Cit.*, p. 106.

<sup>70</sup> Muhammad Anang Firdaus, "Eksistensi Forum Kerukunan Umat Beragama dalam Memelihara Kerukunan Umat Beragama di Indonesia", *Kontekstualita*, Vol. 29 No. 1, 2014, p. 63.

organizations and the community and disseminate information on laws and policies in the religious sector related to religious harmony and community empowerment.<sup>71</sup>

FKUB as an institution with members from interfaith figures spread throughout Indonesia has qualified instruments as a mediator in religious conflicts. FKUB can become a 'semi-formal' forum that bridges the government and community actors.<sup>72</sup> So in this case, FKUB can act as a mediator in the mediation process for the settlement of blasphemy. However, in carrying out its role as a mediator, FKUB has various limitations, such as human resources and funding, as well as impartiality as a challenge for FKUB and religious leaders to act as mediators.<sup>73</sup>

Another limitation is the unfamiliarity of FKUB among the Indonesian public. As already mentioned, community leaders have an important role in mediating the penal system of restorative justice. However, in fact there are still many people, especially ordinary people, who do not know what FKUB is and its role. So that in carrying out its duties, FKUB is expected to establish good cooperation with all elements of society both from elements of religious leaders, community leaders, and the government.<sup>74</sup>

In addition, in order for mediation to be one of the strategic options for resolving blasphemy, internalization is required at the group or network level (FKUB, civil society organizations). Activities that can be carried out are provide training to increase knowledge of mediation and introducing mediation service providers to FKUB members, government and civil society.<sup>75</sup> However, FKUB in several regions received less support from the government. Legislation in the form of a Joint Ministerial Regulation (PBM) as the basis for the formation of FKUB is still weak, so it needs to be upgraded a Presidential Decree or Government Regulation in order to get greater attention from the government. This is due to the vital role of FKUB in maintaining religious harmony in Indonesia.<sup>76</sup>

Thus, FKUB is an institution that has the potential as a mediation institution in resolving blasphemy cases. This can be done through legal regulations that stipulate the FKUB as a mediation institution has the authority to resolve cases of blasphemy. FKUB acts as a mediator for the settlement of religious blasphemy, which can be illustrated in the following chart:

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<sup>71</sup>Rifa Atul Murtofi'ah, "Peran Forum Kerukunan Umat Beragama (FKUB) dalam Mengelola Kerukunan Antar Umat Beragama (Studi Kasus di Desa Getas Kecamatan Kaloran Kabupaten Temanggung tahun 2013- 2015)", *Dakwah Management Thesis*, Fakultas Dakwah dan Komunikasi Universitas Islam Negeri Walisongo, 2015, p. 64.

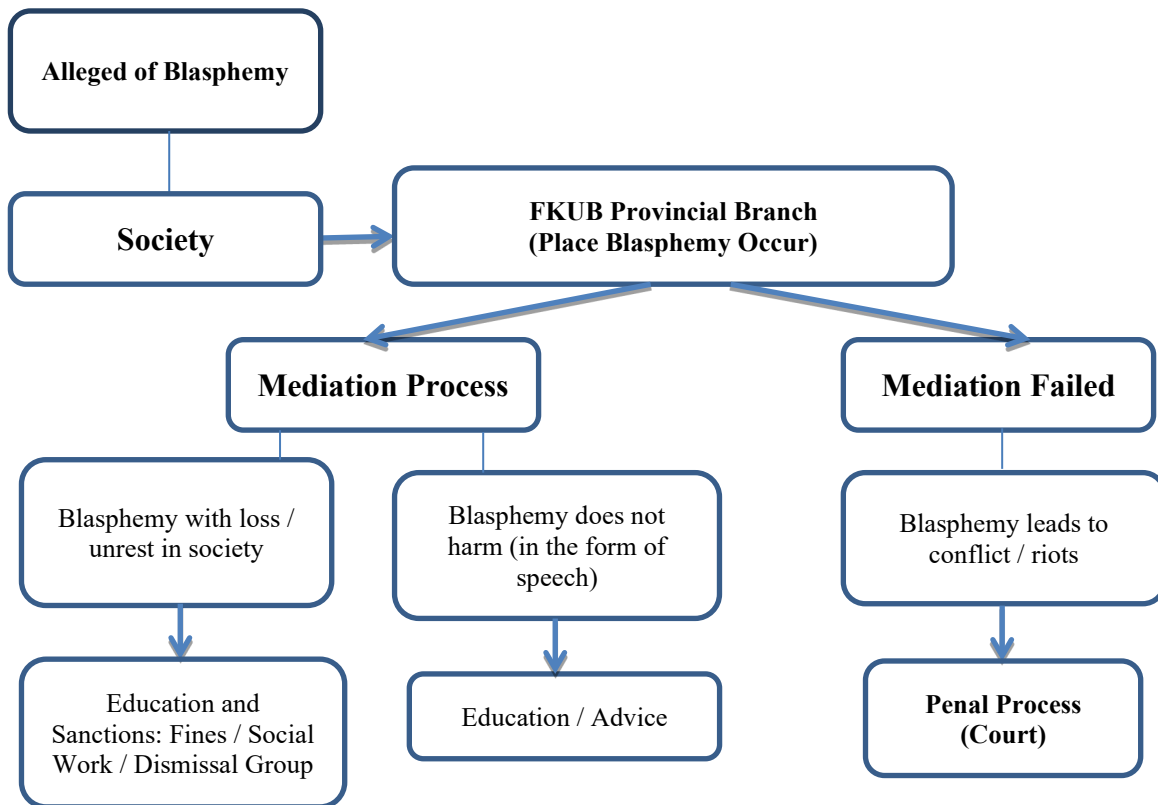
<sup>72</sup>Ihsan Ali-Fauzi, Zainal Abidin Bagir Dyah Ayu Kartika, Irsyad Rafsadie, *Menggapai Kerukunan Umat Beragama: Buku SakuFKUB*, Pusat Studi Agama dan Demokrasi (PUSAD) Yayasan Wakaf Paramadina, Jakarta, 2018, p. 36-37.

<sup>73</sup>*Ibid.*

<sup>74</sup>Muhammad Anang Firdaus, *Op.Cit.*, p. 64.

<sup>75</sup>Ihsan Ali-Fauzi, Zainal Abidin Bagir Dyah Ayu Kartika, Irsyad Rafsadie, *Op.Cit.*, p. 41.

<sup>76</sup>Muhammad Anang Firdaus, *Op.Cit.*, p. 67.



Suppose there is an act of blasphemy, such as insulting religion or deviating religious. In that case, the first thing the community will do is report it to the provincial FKUB where the blasphemy occurred. Then FKUB conducted mediation between the community and the blasphemy perpetrators as regulated in Law No.1 / PNPS / 1965.

If the acts of the perpetrators of blasphemy have harm or unrest among the community, then administrative sanctions can be imposed by FKUB such as fines or social works. However, if it is in the form of deviations from religious doctrine, then a person or group who committed it can be dismissal, and if the deviation continues then, it can be punished to pay a fine. Then if the alleged blasphemy is only in the form of words that have only been uttered once and have not caused unrest but have the potential to disrupt religious harmony, then FKUB can mediate by providing education or in the form of advice to the perpetrators. This step must be carried out when there has not been any conflict or damage resulting from blasphemy. So it can be said that FKUB is also an institution that plays a role in preventing religious blasphemy. The public must immediately be responsive and as soon as possible report the suspected of blasphemy before the conflict riot occurs.

However, if conflicts and riots have occurred of blasphemy, it can be stated that the mediation efforts by FKUB have failed. Based on research conducted by prof. Agus Raharjo, if mediation fails to occur, then there are two options for the case, namely, the case is left alone, so there is no resolution,

or the case is reported to the police.<sup>77</sup> This model is similar to the theory of law enforcement by Abdul Kadir Muhammad, that legal action can be carried out in several stages, where the first stage is a warning, then the imposition of sanctions, then imprisonment is the final stage after reprimands and sanctions are carried out.<sup>78</sup> So at this stage, the settlement can only be carried out through the penal settlement, because the case is considered too severe, it is necessary to have direct firmness from law enforcement officials

## CLOSING

Criminal law policy in blasphemy settlement can be done through outside the court or non-penal settlement, namely through penal mediation with the concept of restorative justice. The process of settlement blasphemy based on this model puts forward deliberation or mediation efforts and will involve various parties, namely victims, perpetrators and the community. The penal mediation process can be carried out in two ways: the criminal justice system and the system outside criminal justice. If it goes through the criminal justice system, it will involve law enforcement officials. Meanwhile, it can be done through social institutions through a system outside the criminal justice system. The model of mediation through a system outside the criminal justice system can be carried out through the Forum for Religious Harmony (FKUB), which can become a mediating institution for resolving blasphemy. This can be done through legal regulations that establish FKUB as a mediation institution that has the authority to resolve a blasphemy. In this model, FKUB is also an institution that plays a role in preventing religious blasphemy. The public must immediately be responsive and as soon as possible report the suspected of blasphemy before the conflict riot occurs.

This case, the FKUB is an institution that has the potential as a mediating institution in resolving blasphemy. This is as to establish FKUB, which is to maintain religious harmony. However, in carrying out its duties and objectives, FKUB must receive support from the government by establishing a legal basis of FKUB as the first institution to resolve blasphemy, before going to the penal stage.

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<sup>77</sup> Agus Raharjo, *Op.Cit.*, p. 106.

<sup>78</sup> Sunardi, Danny Tanuwijaya, Abdul Wahid, *Republik "Kaum Tikus"; RefleksiKetidakberdayaan Hukum dan Penegakan HAM*, Cet I, Edsa Mahkota, Jakarta, 2005, hlm. 16-17.

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