

## Research Article

## The Legal Comparison Concerning the Legislation Policy of Criminal Acts Towards Religion and Religious Life in the Books of Indonesian Criminal Law Year 2018 and Wetboek Van Strafrecht Year 2014

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**Abstract:** This paper aims at comparing legislation regarding criminal acts against religion and religious life as well as religious facilities in the National Criminal Code (RKUHP) drafted in July 2018 with the new Dutch Criminal Law (Wetboek van Strafrecht) in 2014. This research was carried out through normative juridical research methods and legal comparisons. The type of data used in this study is focused on secondary data further divided into primary, secondary and tertiary legal materials. The data collection in this study was conducted with a study of documentation and literature study, while the data analysis method in this study was qualitative and descriptive. The results of the study show that the legislation regarding criminal in fact acts against religion and religious life and religious facilities in the positive law in Indonesia, especially in the draft version of the national Criminal Code (RKUHP) in July 2018, which is a reflection that Indonesia adheres to the concept of the Pancasila law as a religious nation state, where all lives in Indonesia must be based on the trust in the One Godhead. The legislation policy (as the most strategic stage in the prevention of crime by using criminal law facilities) relating to criminal acts against religion and religious life and religious facilities in the July 2018 version of the Criminal Code (RKUHP) is based on the theory of Religionsschutz Theorie, Gefuhlschutz Theorie and Friedensschutz Theorie. This is conducted solely because religion is a legal interest that must be protected. Insults or other similar things can interfere with religious life and endanger the peace and security of living in a society as well as endangering national unity and security. The results of the study also show that the legislation regarding criminal acts against religion and religious life and religious facilities as stipulated in the draft version of the national Criminal Code (RKUHP) version of July 2018 unlikely refers to the development of legislation regarding "Godslasteringswet" in the Netherlands. It is because the current legislation on "Godslasteringswet" in the Netherlands apparently is not regulating much about criminal acts against religion and religious life and religious facilities (legislation policies in the Netherlands are more inclined to humiliation and discrimination based on religion or at least disruption to activities worship). Thus, it can be stated that the legislation regarding criminal acts against religion and religious life and religious facilities is a typical legislative policy, and thus is in accordance with the needs of the Indonesians as a multi-religion nation.

**Keywords:** Comparison of Laws, Legislation Policies, Crime Against Religion and Religious Life.

### 1. Introduction

The first principle of Pancasila as the philosophy of life, soul, life view, guideline and personality of the Indonesian nation as well as being a philosophy of nation, state and community and being the source of all sources of law in Indonesia is "Godhead the Almighty". This means that the Indonesian nation is one of the countries in the world that places religion as the main joint in all life in society, nation and state.

Religion itself according to the Encyclopedia of Philosophy as quoted by Mudzakkir [1] in his article entitled "Crime Against Religion in the Criminal Code (KUHP) and Law Number 1/PNPS/1965 concerning Prevention of Abuse and / or Blasphemy of Religion (Study of Law Enforcement Practices and Prospects for Arrangement in Indonesian Positive Law)" is a belief in God who is always alive, namely to the soul and divine will that governs the universe and has a moral relationship with all humanity.

The 1945 Constitution as a constitution or basis of the State of Indonesia is in Chapter XA which regulates Human Rights precisely in the provisions of Article 28E paragraph (1) and

paragraph (2) and Chapter XI which regulates Religion precisely in the provisions of Article 29 paragraph (1) and paragraph (2) affirm that the state has an obligation to guarantee freedom for everyone without exception to embrace their respective religions and to worship according to their religion and belief as a form of human rights protection that cannot be reduced under any circumstances.

Given that religion is one part of the soul of the Indonesian nation guaranteed by the Indonesian state constitution and is a human right that cannot be reduced under any circumstances and is important and fundamental in the life of the community, nation and state, it is only natural that the State enters or makes religion other matters related to religion) as one of the offenses in the positive law (this is known as the "criminal act against religion and religious life", "criminal offense against religion and religious life and religious facilities", or can also be called the term "religious offense") [2].

Muladi [3] states that the regulation of criminal acts against religion and religious life and means of worship or "religious

offenses” in Indonesia is a reflection that the State of Indonesia is a 'Nation State' which is religious. Related to this, Soehino [4] stated that the rule of law adopted by the Indonesian people was the State of Pancasila law where the State of Pancasila law was a religious nation state. By looking at the relationship between state and religion, the concept of the state of Pancasila law does not adhere to secularism but is also not a religious state as in theocracy and in the concept of the Islamic Nomocracy. The concept of the state of Pancasila law is very different from the concept of a secular state, an atheist state, a liberal state and a theocratic state, because the concept of the State of Pancasila law is a concept of a godly state. Belief here can be interpreted that the life of the people, nation and state of Indonesia must be based on the belief in the One Godhead, thus opening a freedom for citizens to embrace religion and belief according to their respective beliefs. The logical consequence of this prismatic choice is atheism and also communism is prohibited because it has ruled out trust in God Almighty. The same thing was also stated by Kirdi Dipoyudo [5] who stated that Pancasila brings together these two opinions and desires. The Pancasila State is not a religious state, nor is it an anti-religious state, but a Godhead that maintains noble human character and upholds noble people's moral ideals.

In the concept of “religious” or “religious nation state”, all legitimately recognized religions in Indonesia are legal interests that must be protected and are not merely part of public order which regulates the religious sense or peace of religious life [6 ] The regulation and protection of criminal acts against religion and religious life and religious facilities shows that Indonesia is indeed not a state based on religion, but that the Indonesian nation is also not a secular state, but a State with the Supreme Godhead.

With the existence of legal interests that must be protected and insults or other things that can disrupt religious life and endanger the peace and tranquility and security of living in a society and also endanger national and state unity and unity, it is only natural that criminal acts against religion and religious life are includes the regulation of criminal acts against religion and criminal acts relating to religion to become a priority that must be protected by criminal law, especially in the context of renewing the National Criminal Law Act [7].

However, there are some parties who refuse or object if the criminal acts against religion and religious life and religious facilities are included in the new National Criminal Code (RKUHP version 2018) on the grounds that there are many articles in the Draft Law The 2018 version of Criminal Procedure (RKUHP) will be over criminalization. There are also those who think that religious issues are a private area and not necessarily all religious cases fall into the realm of law (as a criminal act). On the other hand, religious issues are a very sensitive issue and can be a factor that destroys the unity and unity of the Indonesian people. Regulations concerning criminal acts against religion and religious life are also considered important in order to create peace, harmony, peace, prosperity (both materially and spiritually), create social justice

and create national stability and resilience, especially if it is associated with the concept of state Pancasila “Religious nation state” above.

It should also be stated in this section that there is an opinion stating that legislation regarding criminal acts against religion and religious life and religious facilities as stipulated in the new Criminal Code or the draft version of the national Criminal Code (RKUHP) 2018 actually refers to the development of legislation on “*Godslasteringswet*” in the Netherlands, specifically the section “*misdrifven tegen de openbare order*” (crime or crime against public order).

Therefore, this paper would like to compare legislation regarding criminal acts against religion and religious life and means of worship in the version of the National Criminal Code (RKUHP) draft in July 2018 with the new Dutch Criminal Law (*Wetboek van Strafrecht*) in 2014.

## **2. Method**

Considering the main focus of this research is on legislation regarding criminal acts against religion and religious life and religious facilities in the 2018 version of the Criminal Code (RKUHP) and legislation regarding criminal acts against religion and religious life in the Law New Dutch Criminal Law (*Wetboek van Strafrecht*) in 2014, this research was carried out through normative juridical research methods and legal comparisons. The legal comparison method is used in this study because comparative law is a method that compares legal systems and the comparison produces comparable legal system data [8]. Comparison of law is a technique or method for dealing with elements of foreign law from a legal problem [9]. The practical purpose of comparative law is a tool of help for orderly society and renewal of national law (so that it is suitable for political, sociological and practical reasons) and to provide knowledge of various legal rules and thoughts to legislators [10].

The type of data used in this study is focused on secondary data. The secondary data sources include primary legal materials, namely binding legal materials, consisting of basic regulations (the 1945 Constitution of the Republic of Indonesia and its amendments) and legislation concerning topics or research material; secondary legal material, namely legal material that provides further explanation of primary legal material in the form of books, journals, material seminars and symposiums, academic texts, research results, draft laws and several other literature related to the topic and research material and tertiary legal materials, namely legal material that provides further explanation of primary legal materials and secondary legal materials, including: Large Indonesian Language Dictionary, encyclopedia, legal dictionary and other materials related to research material [11]. Data collection in this study was carried out by the study of documentation and literature while the data analysis method carried out in this study was qualitative and descriptive.

## **3. Discussions**

Before entering into the subject matter, in this section it should

be worth to explain a little about the legislation policies and definitions of religious offenses. Related to the first thing, to establish criminal acts against religion and religious life and religious facilities in legislation certainly cannot be separated from legislative policies as part of efforts to overcome crime by using means of criminal law. The stage or process of legislation is the most strategic stage in the framework of crime prevention by using the means of criminal law because at this stage policy lines are formulated that clearly regulate actions as a crime [12].

Related to the second thing, the term “religious offense” basically contains at least 3 (three) meanings, namely: “offense according to religion”; “Offense against religion” and “offense related to religion”. Oemar Seno Adji as quoted by Barda Nawawi Arief [13] stated that in criminalizing offenses or criminal acts of religion, there were at least 3 (three) theories that could be used. The theory is as follows:

1. *Religionsschutz Theorie* (Theory of Protection Against Religion)

According to this theory, religion itself is seen as a legal interest or object to be protected (which is deemed necessary and obligatory to be protected) by the state, through the laws and regulations that it makes.

2. *Gefühlsschutz Theorie* (Theory of Protection Against Religious Feelings)

According to the theory of “Gefühlsschutz Theorie” or the Theory of Protection Against Religious Feelings, the legal interests that will or will be protected by law are religious feelings or feelings of religious people.

3. *Friedensschutz Theorie* (Peace Protection Theory or Protection Theory Against Peace of Religion)

Friedensschutz Theorie or also called the “Peace Protection Theory” or “Theory of Protection Against Peace of Religion” states that the object or legal interest to be protected according to this theory is peace or tranquility between intercultural believers.

By referring to the 3 (three) theories mentioned above, the term “offense according to religion”; “Offense against religion” and the “offense related to religion”, can be further elaborated into several forms of criminal acts, including the following:

- 1) Crime against a group of people whose attachment to the group is due to or based on religion;
- 2) Criminal acts against religious officers who are carrying out their religious duties or religious duties;
- 3) Crime against a group of people who worship according to their religious beliefs;
- 4) Crime against religious instruments, prophets, apostles, scriptures, and others;
- 5) Crime against buildings or places of worship;
- 6) Criminal acts against religious beliefs that cause people not to believe in their God or advocate to follow atheism; and

- 7) Criminal offense against the contents of religious teachings.

As stated in the introduction, there is an opinion stating that the regulation of criminal acts against religion and religious life and religious facilities in the new Criminal Code or the draft version of the 2018 national Criminal Code (RKUHP) refers to the development of legislation regarding “*Godslasteringswet*” in the Netherlands. “*Godslasteringswet*” itself can be interpreted simply as an act of insulting God’s majesty, the Word and the Divine Attributes.

Crimes against religion and religious life and religious facilities in the draft version of the national Criminal Code (RKUHP) in July 2018 are strictly regulated in Chapter VII which regulates “Criminal Actions Against Religion and Religious Life”. The importance of regulation regarding this matter is because the protection of religion and religious life is the embodiment of the first principle in Pancasila, namely the One and Only God, which means that in Indonesian society, religion is the main joint in the life of society, nation and state. Acts prohibited in Chapter VII of the draft version of the national Criminal Code (RKUHP) version of July 2018 are disgraceful acts that do not respect religion or religious people which can cause unrest in the community, or the religious community concerned, including the means of worship.

The legislation policy concerning criminal acts against religion and religious life and religious facilities in the draft version of the national Criminal Code (RKUHP) in July 2018 can be grouped back into several forms, as follows:

- 1) Crime Against Religion
  - a. Insult to Religion (Article 326 and Article 327 RKUHP); and
  - b. Sedition To Eliminate Belief in Religion (Article 328 RKUHP).
- 2) Crime Against Religious Life and Worship Facilities
  - a. Interference with the Implementation of Religious Worship and Activities (Article 329 RKUHP);
  - b. Insult to People Who Are Running or Leading Organizing Services (Article 330 RKUHP); and
  - c. Destruction of Places of Worship (Article 331 RKUHP).

The policy on criminal acts of religion and religious life in the draft version of the National Criminal Code (RKUHP) version of July 2018 is as follows:

**Article 326 RKUHP:**

*“Every person in public commits insults to the religion adopted in Indonesia, is punished with a maximum imprisonment of 5 (five) years or a fine of at most Category V”.*

In his explanation it was emphasized that humiliation in this provision was degrading to religious sanctity. The First Precept of the state philosophy of Pancasila is the One Godhead. This means religion, for the people of Indonesia is the main joint in living in a community. Therefore, insulting a religion in Indonesia deserves to be punished because it is deemed not to

respect and offend people who adhere to religion in society. Insult to religion in this provision, for example, insulting the Lord's Agenda, Word, His Attributes, or insulting the Prophet / Apostle, which will or can cause unrest in the group of people concerned. In addition to denouncing the act of humiliation, this Article also aims to prevent unrest and conflict within and between community groups. The humiliation above can be considered as an act that can damage the harmony of religious life in Indonesian society, and therefore must be prohibited and threatened with criminal.

**Article 327 RKUHP:**

- (1) *Anyone who broadcasts, displays, attaches writing or pictures, or makes a recording, including disseminates through information technology facilities that contain Criminal Actions as referred to in Article 326, with the intention that the contents of the text, images or records are known or more known by the public, punishable by imprisonment for a maximum of 5 (five) years or a fine of at most Category V.*
- (2) *If each Person as referred to in paragraph (1) carries out such acts in carrying out his profession and at that time not yet 2 (two) years since the conviction of the judge who has obtained permanent legal force because of committing the same Criminal Act can be sentenced additional form of revocation of rights as referred to in Article 96 letter h.*

**Article 328 RKUHP:**

*“Every person who publicly incites in any form with the intention of removing the belief in a religion that is legitimately adopted in Indonesia, is punished with a maximum imprisonment of 4 (four) years or a fine of at most Category IV”.*

The explanation of this article states that incitement is carried out in any form, with the aim that the followers of the religion embraced in Indonesia become religious. The actions stipulated in the provisions of this Article are subject to more severe penalties than the actions stipulated in the provisions of Article 329, because they can directly cause conflict within and between groups.

**Article 329 RKUHP:**

- (1) *Anyone who interferes with, obstructs, or against the law dissolves a religious meeting by means of violence or threats of violence, is punished with a maximum imprisonment of 2 (two) years or a maximum fine of Category III;*
- (2) *Anyone who interferes with, obstructs, or violates the law dissolves a person who is carrying out a religious service or ceremony by means of violence or threat of violence, punishable by imprisonment of a maximum of 5 (five) years or a fine of at most Category V.*
- (3) *Anyone who makes noise near a building where to worship at the time of worship is underway, is punished with a fine of at most Category I.*

Explanation of this article states that in this provision, what is meant by “religious ceremonies or religious meetings” is activities related to religion.

**Article 330 RKUHP:**

*“Everyone who publicly insults people who are carrying out or leading the implementation of worship, is punished with a maximum imprisonment of 2 (two) years or a fine of at most Category III”.*

Explanation of the provisions of this article states that a person or people who are running or leading a worship service or a religious official who is carrying out his duties must be respected. Therefore, the act of mocking or making fun of it deserves to be convicted for violating the principle of living in a society that respects the freedom to embrace religion and the freedom to practice worship, in addition to causing conflicts within and between groups.

**Article 331 RKUHP:**

*“Anyone who defiles or illegally damages or burns a place of worship or an object used for worship, is punished with a maximum of 5 (five) years imprisonment or a fine of at most Category V”.*

Based on his explanation, it was stated that in this provision, damaging or burning buildings or objects of worship is a despicable act, because it hurts the hearts of the people of the religion concerned. Therefore, the maker or actor deserves to be convicted. To be convicted based on the provisions in this article, the act must be carried out against the law. Thus, destruction and burning must be done against the law.

Furthermore, the draft version of the National Criminal Code (RKUHP) in July 2018 also stipulates several forms of criminal offenses relating to or relating to offenses or religious crimes or at least trust that grows and develops in Indonesian society. This is strictly regulated in the following provisions:

**Article 261 RKUHP: (Humiliation Crime Against Population Based on Religion)**

*“Everyone who publicly insults one or several Indonesian population groups based on race, nationality, ethnicity, color, and religion, or against groups based on sex, age, mental disability, or physical disability, is punished with the longest imprisonment 3 (three) years or a maximum fine of Category IV”.*

**Article 262 RKUHP: (Criminal Acts Disseminate Insulting Material Against Population Groups Based on Religion)**

- (1) *Anyone who broadcasts, displays, or attaches writings or drawings so that they are seen by the public or make recordings so that they are heard by the public or disseminate by means of information technology, which contain statements of feelings of hostility with the intention that the contents are known or more commonly known one or several groups of Indonesian population that can be determined based on race, nationality, ethnicity, skin color, and religion, or to groups that can be determined*

*based on sex, age, mental or physical disability which results in the emergence of violence against people or goods, sentenced to criminal imprisonment of a maximum of 4 (four) years or a maximum fine of Category IV.*

- (2) *If each Person as referred to in paragraph (1) commits the Criminal Act in carrying out his profession and at that time has not passed 2 (two) years since the conviction of the judge has obtained permanent legal force due to the same Criminal Act, the maker may additional criminal sanction in the form of revocation of rights as referred to in Article 96 letter f.*

**Article 270 RKUHP:** (Offering his magical powers to cause illness, mental / physical suffering or causing death of people)

- (1) *Anyone who declares himself to have supernatural powers, notifies, gives hope, offers or provides assistance to other people that because his actions can lead to illness, death, mental or physical suffering of a person, be punished with imprisonment for a maximum of 3 (three) year or criminal penalties of at most Category IV.*
- (2) *If each person as referred to in paragraph (1) commits such an act to seek profit or make a living or habit, the penalty may be increased by 1/3 (one-third).*

**Article 516 RKUHP:** (Crime of theft of religious holy objects or objects used for religious purposes)

- (1) *Sentenced to a maximum imprisonment of 7 (seven) years or a fine of at most Category V, Everyone who commits:*
- Theft of religious holy objects or objects used for religious purposes;*
  - Theft of archaeological objects;*
  - Theft of livestock or goods that are a source of livelihood or a person's main source of livelihood;*
  - Theft when there are fires, explosions, natural disasters, shipwrecks, aircraft accidents, train accidents, road traffic accidents, riots, rebellions, or war;*
  - Theft at night in a house or in a closed yard that has a house, which is carried out by the person there is unknown or not desired by the rightful person;*
  - Theft by dismantling, breaking, climbing, using fake keys, using fake orders, or wearing fake office clothes, to enter the place of committing a crime or to arrive at the goods taken; or*
  - Joint theft and alliance.*
- (2) *If the action as referred to in paragraph (1) letter e is accompanied by one of the methods as referred to in paragraph (1) letters f and g, shall be punished with imprisonment for a maximum of 9 (nine) years.*

**Article 531 RKUHP:** (Crime of Fraud by Misusing Religion)

*“Anyone who is unlawfully intended to benefit themselves or others by using a false name or false position, using deception or a series of false words, moves people to give up an item, give a debt, make a debt confession, or delete accounts, convicted of fraud, with a maximum imprisonment of 4 (four) years or a maximum fine of Category V”.*

In his explanation, it was stated that “... This provision mentions the effort used by the maker or perpetrator that causes the fraud to be punished, namely in the form of a name or false position, religious abuse, deception and a series of false words. Between the effort used and the desired action there must be a causal relationship, so that the person believes and gives what is asked”.

**Article 648 RKUHP:** (Genocide)

*“To be convicted of genocide, every person for the purpose of destroying or destroying all or part of a national group, race, ethnicity or religion, by means of:*

- Kill group members;*
- Result in severe physical or mental suffering for group members;*
- Creating the living conditions of the group that is calculated will result in physical destruction, both in whole and in part;*
- Imposing actions aimed at preventing births in groups; or*
- Forcibly transfer children from group to other groups,*

*Sentenced to capital punishment, imprisonment for life, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years”.*

**Article 649 RKUHP:** (Humanitarian Crimes)

*“Sentenced for criminal acts against humanity, every person who commits an act as part of a widespread or systematic attack that he knows that the attack is aimed at civilians, in the form of:*

- Murder, extermination, forced eviction or displacement, deprivation of liberty or deprivation of other physical freedoms that violate the basic rules of international law, or crimes of apartheid, with capital punishment, life imprisonment, or imprisonment for a minimum of 5 (five) years and most 20 (twenty) years old;*
- Slavery, torture or other inhumane acts that are of the same nature, intended to cause severe suffering or serious injury to the body or physical and mental health, with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years ;*
- Persecution of groups or associations on the basis of politics, race, nationality, ethnicity, culture, religion, gender or persecution with other discriminatory reasons that have been universally recognized as things that are prohibited under international law, with a minimum imprisonment of 5 (five) years and no later than 15 (fifteen) years; or*
- Rape, sexual slavery, forced prostitution, forced pregnancy, sterilization, or forced sterilization or other forms of sexual violence that are equal, or forced disappearance, with a minimum of 5 (five) years imprisonment and 20 (two forty) years”.*

In the 2014 Dutch Criminal Code or *Wetboek van Strafrecht*, religious offenses or religious crimes (and criminal acts related to religion) are formulated explicitly in the V Chapter which

regulates “*Misdrijven Tegen De Openbare Order*” (crime or criminal act against public order). The provisions governing offenses or religious offenses in the Dutch Criminal Code or Wetboek van Strafrecht in 2014 can be found in the following provisions::

1) **Article 137 C:**

(1) *Hij die zich in het openbaar, mondeling of bij geschrift of afbeelding, opzettelijk beledigend uitlaat over een groep mensen wegens hun ras, hun godsdienst of levensovertuiging, hun hetero of homoseksuele gerichtheid of hun lichamelijke, psychische of verstandelijke handicap, wordt gestraft met gevangenisstraf van ten hoogste een jaar of geldboete van de derde categorie.*

(Author's translation: Anyone openly, both verbally and non-verbally, in written form or image (image), intentionally classifying people based on their race, religion, belief or sexual orientation, both heterosexual and homosexual, or based on physical, psychological or intellectual disability, subject to imprisonment for 1 (one) year or fine in the third category)

(2) *Indien het feit wordt gepleegd door een persoon die daarvan een beroep of gewoonte maakt of door twee of meer verenigde personen wordt gevangenisstraf van ten hoogste twee jaren of geldboete van de vierde categorie opgelegd.*

(Author's translation: If the violation was carried out by someone who filed an appeal or because the customs adhered to by 2 (two) or more people, imprisonment for a maximum of 2 (two) years or a fourth category fine will be imposed).

2) **Article 137 D:**

(1) *Hij die in het openbaar, mondeling of bij geschrift of afbeelding, aanzet tot haat tegen of discriminatie van mensen of gewelddadig optreden tegen persoon of goed van mensen wegens hun ras, hun godsdienst of levensovertuiging, hun geslacht, hun hetero of homoseksuele gerichtheid of hun lichamelijke, psychische of verstandelijke handicap, wordt gestraft met gevangenisstraf van ten hoogste een jaar of geldboete van de derde categorie.*

(Author's translation: Everyone who openly, either verbally or through writing or with pictures, incites hatred or discriminates or commits violence against other people, based on their race, religion, belief, gender, heterosexual or homosexual orientation, or physically, their mental or intellectual disability, are sentenced to 1 (one) year imprisonment or criminal fine in the third category”.

(2) *Indien het feit wordt gepleegd door een persoon die daarvan een beroep of gewoonte maakt of door twee of meer verenigde personen wordt gevangenisstraf van ten hoogste twee jaren of geldboete van de vierde categorie opgelegd.*

(Author's translation: If the violation is committed by someone who filed an appeal or because the customs held by a group of

2 (two) or more members, a maximum sentence of 2 (two) years or a fourth fine will be imposed)

3) **Article 137 E:**

(1) *Hij die, anders dan ten behoeve van zakelijke berichtgeving:*

(Author's translation: Whoever, apart from the purpose of the business notification:)

1. *Een uilating openbaar maakt die, naar hij weet of redelijkerwijs moet vermoeden, voor een groep mensen wegens hun ras, hun godsdienst of levensovertuiging, hun hetero of homoseksuele gerichtheid of hun lichamelijke, psychische of verstandelijke handicap beledigend is, of aanzet tot haat tegen of discriminatie van mensen of gewelddadig optreden tegen persoon of goed van mensen wegens hun ras, hun godsdienst of levensovertuiging, hun geslacht, hun hetero of homoseksuele gerichtheid of hun lichamelijke, psychische of verstandelijke handicap*

(publishes a statement that, he knows or reasonably suspects, is offensive to a group of people because of their race, religion or belief, their heterosexual or homosexual orientation or their physical, psychological or mental disability, or incites hatred or discrimination or violent actions because of their race, their religion or belief, gender, heterosexual or homosexual orientation or their physical, psychological or mental disabilities).

2. *Een voorwerp waarin, naar hij weet of redelijkerwijs moet vermoeden, zulk een uilating is vervat, aan iemand, anders dan op diens verzoek, doet toekomen, dan wel verspreidt of ter openbaarmaking van die uilating of verspreiding in voorraad heft*

(Author's translation: An object in which, knowing or deserving of suspicion, such utterances are restricted, sent to someone, other than at his request, forwarded, or distributed or accessible or directed as the publication of a statement)

*wordt gestraft met gevangenisstraf van ten hoogste zes maanden of geldboete van de derde categorie (is liable to imprisonment not exceeding six months or a fine of the third category).*

(2) *Indien het feit wordt gepleegd door een persoon die daarvan een beroep of gewoonte maakt of door twee of meer verenigde personen wordt gevangenisstraf van ten hoogste een jaar of geldboete van de vierde categorie opgelegd*

(Author's translation: If the violation was carried out by someone who filed an appeal or by 2 (two) or more people who were united by customs, imprisonment of no more than 1 (one) year or a fine of the fourth category must be imposed)

4) **Article 137 F:**

*“Hij die deelneemt of geldelijke of andere stoffelijke steun verleent aan activiteiten gericht op discriminatie van mensen wegens hun ras, hun godsdienst, hun levensovertuiging, hun*

*geslacht, hun hetero of homoseksuele gerichtheid of hun lichamelijke, psychische of verstandelijke handicap, wordt gestraft met gevangenisstraf van ten hoogste drie maanden of geldboete van de tweede categorie”.*

(Author's translation: Anyone who participates or provides financial assistance or provides other material assistance for activities that aim to discriminate against others because of their heterosexual or homosexual race, religion, belief, gender or orientation or their physical, psychological or mental disability, are subject to criminal maximum imprisonment of 3 (three) months or criminal penalties in the second category).

**5) Article 145:**

*“Hij die door geweld of bedreiging met geweld hetzij een geoorloofde openbare samenkomst tot het belijden van godsdienst of levensovertuiging, hetzij een geoorloofde godsdienstige of levensbeschouwelijke plechtigheid of lijkplechtigheid verhindert, wordt gestraft met gevangenisstraf van ten hoogste een jaar of geldboete van de derde categorie”.*

(Author's translation: Anyone who ignites the act of threatening violence, either through a legally legitimate rally to celebrate a religious or belief event, or a legitimate religious or philosophical ceremony or funeral, is punished with a maximum of 1 (one) year imprisonment or a third criminal fine).

**6) Article 146:**

*“Hij die door het verwekken van wanorde of het maken van gedruis hetzij een geoorloofde openbare samenkomst tot het belijden van godsdienst of levensovertuiging, hetzij een geoorloofde godsdienstige of levensbeschouwelijke plechtigheid of lijkplechtigheid opzettelijk stoort, wordt gestraft met gevangenisstraf van ten hoogste twee maanden of geldboete van de tweede categorie”.*

(Author's translation: Anyone who deliberately confuses the atmosphere of chaos or makes noise in legitimate public meetings in the context of religious or belief practices, or legitimate religious or philosophical ceremonies or funeral ceremonies, is punished with imprisonment for 2 (two) months or subject to criminal fine second).

**7) Article 429 quarter:**

(1) *Hij die in de uitoefening van een ambt, beroep of bedrijf personen discrimineert wegens hun ras, hun godsdienst, hun levensovertuiging, hun geslacht of hun hetero of homoseksuele gerichtheid wordt gestraft met hechtenis van ten hoogste twee maanden of geldboete van de derde categorie.*

(Author's translation: Anyone who practices discrimination in professional or business practices because of their heterosexual or homosexual race, religion, belief, gender or orientation, is punished with a maximum of 2 (two) months imprisonment or a third category of fine penalty).

(2) *Met dezelfde straf wordt gestraft hij wiens handelen of nalaten in de uitoefening van een ambt, beroep of bedrijf zonder redelijke grond, ten doel heeft of ten gevolge kan hebben dat ten aanzien van personen met een lichamelijke, psychische of verstandelijke handicap de erkenning, het genot of de uitoefening op voet van gelijkheid van de rechten van de mens en de fundamentele vrijheden op politiek, economisch, sociaal of cultureel terrein of op andere terreinen van het maatschappelijk leven, wordt teniet gedaan of aangetast.*

(Author's translation: Similar penalties can be imposed on those who act in the profession or business without reasonable reason (logical), having an object or influence or recognition, relating to a person or group of people based on physical, psychological or mental disability. In practice, on the basis of equality of human rights and fundamental (fundamental) freedoms in the political, economic, social or cultural fields or other areas of social life, these must be canceled or deemed to be defective in their existence).

**8) Article 449:**

(1) *De bedienaar van de godsdienst die, voordat partijen hem hebben doen blijken dat hun huwelijk ten overstaan van de ambtenaar van de burgerlijke stand is voltrokken, enige godsdienstige plechtigheid daartoe betrekkelijk verricht, wordt gestraft met geldboete van de tweede categorie.*

(Author's translation: The minister of religion who, before the authorities, witnessed that their marriage had taken place before the prince, carried out several religious ceremonies which led to this, was sentenced to a fine of the second category).

(2) *Indien tijdens het plegen van de overtreding nog geen twee jaren zijn verlopen sedert een vroegere veroordeling van de schuldige wegens gelijke overtreding onherroepelijk is geworden, kan hechtenis van ten hoogste twee maanden of geldboete van de tweede categorie worden opgelegd.*

(Author's translation: If, as long as committing a violation less than 2 (two) years have passed, because the decision was previously found guilty of the same offense, the verdict cannot be revoked and imprisonment for a maximum of 2 (two) months or a fine of second category).

Based on the provisions concerning criminal acts against religion and religious life and means of worship in the draft version of the national Criminal Code (RKUHP) in July 2018 and the Dutch Criminal Code (KUHP) or Wetboek van Strafrecht in 2014 above, it can be described the similarities and differences in legislation policies with the following table:

**Kristian / The Legal Comparison Concerning the Legislation Policy of Criminal Acts Towards Religion and Religious Life  
in the Books of Indonesian Criminal Law Year 2018 and Wetboek Van Strafrecht Year 2014**

Table 1: Comparison of legislation regarding criminal acts against religion and religious life in the draft version of the national Criminal Code (RKUHP) version of July 2018 and the Dutch Criminal Code (KUHP) in 2014

<b>NO.</b>	<b>DEVELOPMENT CATEGORIES</b>	<b>THE NATIONAL CRIMINAL CODE</b>	<b>THE DUTCH CRIMINAL CODE</b>
01.	In public, insulting the adhered religion (degrading religious purity). This includes insulting the Lord's Agenda, Word, His Attributes, or insulting the Prophet / Apostle.	Article 326 Draft Criminal Code	Unregulated
02.	Broadcast, show, paste writing or images, or play a recording, including disseminating through information technology facilities that contain insults to the religion embraced (degrading religious purity). This includes insulting the Lord's Agenda, Word, His Attributes, or insulting the Prophet / Apostle (with the intention that it is known or better known by the public).	Article 327 Draft Criminal Code	Unregulated
03.	In public, inciting any form with the intention of removing the belief in the religion that is legitimately adopted.	Article 328 Draft Criminal Code	Unregulated
04.	Interfering with, obstructing, or against the law dissolving religious meetings by means of violence or threats of violence.	Article 329 paragraph (1) Draft of the Criminal Code	Can be qualified as a crime according to the provisions of Article 145
05.	Interfering with, obstructing, or violating the law dissolves people who are carrying out religious services or ceremonies by means of violence or threats of violence.	Article 329 paragraph (2) Draft of the Criminal Code	Can be qualified as a crime according to the provisions of Article 145
06.	Ignite the act of threatening violence to celebrate funerals.	Not yet explicitly regulated (but may be subject to the provisions of Article 288 Draft of the Criminal Code).	Article 145
07.	Make noise near the building where to worship at the time of worship.	Article 329 paragraph (3) Draft of the Criminal Code	Article 146
08.	Make noise or make a mess at the place for the funeral.	Article 288 Draft Criminal Code	Article 146
09.	Publicly insulting (mocking or making fun of) people (people, religious leaders or religious officials) who are carrying out or leading the implementation of worship.	Article 330 Draft Criminal Code	Unregulated
10.	Tarnish or unlawfully damage or burn buildings of places of worship or objects used for worship.	Article 331 Draft Criminal Code	Unregulated
11.	Openly, both verbally and non-verbally, in the form of writing or drawing, deliberately classifying people based on their race, religion, belief or sexual orientation, or based on physical, psychological or intellectual disability.	Article 263 Draft Criminal Code	Article 137 C
12.	In public, insult one or several population groups based on race, nationality, ethnicity, skin color, and religion.	Article 261 Draft Criminal Code	Can be qualified as a crime according to Article 137 D and Article 137 E
13.	Broadcast, show, or post writings or images so that they are seen by the public or play recordings so that they are heard by the public or disseminate by means of information technology, which contains statements of feelings of hostility with the intention	Article 262 Draft Criminal Code	Can be qualified as a criminal offense according to the provisions of Article 137 D and Article 137 E



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	that the contents are known or more known to the public, to one or several groups can be determined based on race, nationality, ethnicity, skin color, and religion which results in the emergence of violence against people or goods.		
14.	Participate in or provide financial assistance or provide other material assistance for activities that aim to discriminate against other people because of their race, religion, belief, gender, or sexual orientation or physical, psychological or mental disability.	Not yet explicitly regulated (but can be subject to the provisions of Article 263 of Draft Criminal Code Jo. Article 22 of Draft Criminal Code).	Article 137 F
15.	Practicing discrimination in professional or business practice because of race, religion, belief, gender or sexual orientation.	Article 263 Draft Criminal Code	Article 429 <i>quarte</i> .
16.	Performing several religious ceremonies that lead to the validity of marriage even though the marriage is not yet legal.	Not yet explicitly regulated (but can be subject to the provisions of Article 435 of Draft Criminal Code Jo. Article 436 of Draft Criminal Code)	Article 449
17.	Declare that he has supernatural powers, informs, gives hope, offers or provides assistance to others that because his actions can cause illness, death, mental suffering or physical suffering someone.	Article 270 Draft Criminal Code	Unregulated
18.	Theft of religious holy objects or objects used for religious purposes.	Article 516 Draft Criminal Code	Unregulated
19.	Unlawfully intended to benefit yourself or others by using false names or false positions, using deception or a series of false words (including abuse of religion), mobilizing people to surrender an item, give a debt, make a debt statement, or delete accounts.	Article 531 Draft Criminal Code	Unregulated
20.	Destroying or destroying all or part of a national, racial, ethnic or religious group (Genocide).	Article 648 Draft Criminal Code	Not regulated in the Criminal Code
21.	Conducting one act as part of a widespread or systematic attack that he knows that the attack was aimed at civilians, in the form of persecution of groups or associations on the basis of politics, race, nationality, ethnicity, culture, religion, gender or persecution for discriminatory reasons others that have been universally recognized as being prohibited under international law (Humanity crime).	Article 649 Draft Criminal Code	Not regulated in the Criminal Code

In closing, related to the criminalization of criminal acts against religion and religious life and religious facilities in Indonesia, it should be noted that Sudarto's opinion [14] states that there are several things that must be considered in using criminal sanctions. Some of these things are as follows:

1) The use of criminal law must pay attention to national development goals, namely to create a just and prosperous society that is evenly distributed both materially and spiritually based on the Pancasila. In connection with this matter, (the use of) criminal law aims to tackle crime and impose a countermeasure against the countermeasures itself, for the sake of the welfare and protection of society;

- 2) Acts that are attempted to be prevented and / or overcome by using criminal law must be undesirable actions, namely actions that bring harm (both materially and / or spiritually) to citizens;
- 3) The use of criminal law must also take into account the principle of cost and yield (cost and benefit principle);
- 4) The use of criminal law must also pay attention to the capacity or capability of the work force of law enforcement agencies, that is, there must be no overloading of duties.

Therefore, the use of criminal law in the framework of overcoming criminal acts against religion and religious life and religious facilities must be carried out in accordance with the

principles mentioned above. Therefore, it is true that Jeremy Bentham [15] stated that criminal provisions should not or should not be used if groundless, needless, unprofitable or inefficacious.

#### **4. Conclusion**

The first principle of Pancasila is "the One Godhead." This means that the Indonesian nation is one of the countries in the world that places religion as the main joint in all life in society, nation and state. Likewise, the 1945 Constitution as a constitution or basis of the State of Indonesia, places religion as a human right that cannot be reduced under any circumstances and is important and fundamental in the lives of all Indonesian people.

The regulation of criminal acts against religion and religious life and religious facilities in positive law in Indonesia, especially in the draft version of the 2018 Criminal Code (RKUHP) is a reflection that the Indonesian state adheres to the concept of the Pancasila law as a religious nation state. Thus, all life in Indonesia must be based on trust in the One Godhead, and as a consequence, freedom is opened for every citizen to embrace religion and belief according to their respective beliefs so that they can give birth to the noble human morality and Indonesian society .

The legislation policy is the most strategic stage in the context of crime prevention by using criminal law facilities (reasoning policy) because at this stage policy lines are formulated that clearly regulate acts as a criminal act. In relation to this, the legislation regarding criminal acts against religion and religious life in the draft version of the 2018 Criminal Code (RKUHP) is based on the theory of Religionsschutz Theorie (Theory of Protection Against Religion), Gefühlsschutz Theorie (Theory of Protection Against Religious Feelings) and Friedensschutz Theorie (Peace Protection Theory or Protection Theory Against Peace of Religion).

Legislation policies concerning criminal acts against religion and religious life in Indonesian legal politics are based on religion being a legal interest that must be protected and insults or other similar things can disrupt religious life and endanger the peace and tranquility and security of living in a society and also endanger unity and national and state unity.

The legislation policy regarding criminal acts against religion and religious life and religious facilities as stipulated in the draft version of the 2018 national Criminal Code (RKUHP) cannot be said to refer to the development of legislation regarding "Godslasteringswet" in the Netherlands, due to legislation regarding "Godslasteringswet" in the Netherlands at this time apparently has not regulated a lot of criminal acts that insult the glory of God, the Word and the Attributes of God and criminal acts against religion and religious life and religious facilities (legislation policies in the Netherlands tend to be based on insults and discrimination on religion or at least disruption to worship activities).

Thus, it can be said that legislation regarding criminal acts against religion and religious life and religious facilities, especially those concerning acts of degrading religious purity

(insulting to the Lord's Agenda, Word, His Attributes, or insulting the Prophet / Apostle), acts to eliminate the belief in a religion that is legitimately adhered to, insult (mock or mock) people (ummah, religious ceremonies or religious officials) who are carrying out or leading the administration of worship, tarnishing, damaging or burning the building of places of worship or objects used for worship, declaring himself to have supernatural powers and the theft of religious sacred objects or objects used for religious purposes is a typical legislative policy and in accordance with the needs of the Indonesian people as a multi-religious nation.

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