

INTENTION AND TARGET OF RELIGION-BASED HATE SPEECH IN A DECADE OF JUDICIAL DECISIONS

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ABSTRACT

The meaning of Religion-based Hate Speech can be explored deeply through the judge's considerations in linking these two issues: freedom to express religious beliefs and the target of the RHS. This research examines how Indonesian judges interpret the RHS in two ways: 1) Did the perpetrator accused of committing religion-based hate speech really have the intention to blaspheme religion? 2) Who is the target in cases of RHS the religion itself, the adherents of the religion, or other parties? The research database includes cases that have permanent legal force for 10 years (2016-2025). The legal materials were collected by downloading decisions related to the RHS that have permanent legal force and have been officially posted on the Supreme Court website. Secondary legal materials are authoritative texts written to interpret or discuss primary legal materials. In the cases analyzed, the perpetrators' intentions were not the only consideration in the judicial decisions. When a speech is considered a religion-based hate speech and becomes a case that is tried, the judge considers the elements that were violated, in this context, namely, creating a commotion and causing hostility. Furthermore, remarks deemed to be religion-based hate speech are those that "offend a religion or belief," and they were linked to protests or demonstrations by followers.

INTRODUCTION

Extreme verbal abuse and acts of intolerance motivated by religion are still common,¹ and they regularly include well-known religious leaders, including religious scholars and teachers.² Hate speech can take the form of insults, defamation, harmful actions, provocation, incitement, and the spread of misinformation.³ This kind of speech is always intertwined with the issue of freedom of expression,⁴ especially to express religious beliefs, and the target or the aim of hate speech.⁵

Hate speech research based on 2009 Scopus publication metadata shows a consistent increase from 2021 to 2024, given that religious issues are a key domain in global hate speech.⁶ Social media has become a platform for hate speech, including calls to view those with different beliefs as wrong or bad.⁷ These acts of verbal violence are known as blasphemy or "religion-based hate speech" (RHS).⁸

Perpetrators of the RHS often use the argument of freedom of expression as part of human rights.⁹ The justification for freedom of expression is based on philosophical arguments (to seek the truth), individual arguments (to respect human dignity), and political arguments (as a prerequisite for a democratic society).¹⁰ In history, even religion-based hate speech is often understood as a manifestation of faith.¹¹ Perpetrators of RHS often do not understand the applicable law and commit RHS due to psychological and ideological influences. However, the legal construction of hate speech in Indonesian criminal law emphasizes that RHS is related to intent (*mens rea*) and must be distinguished from freedom of expression, so that objective parameters are needed in law enforcement.¹²

Three traits are typical of hate speech: 1) A speech targets a person or group of people because of their unique characteristics; 2) It stigmatizes the target by attributing undesirable

¹ Yearry Panji Setianto, Husman Nurjuman, and Uliviana Restu Handaningtias, "Remaja, Media Sosial, Dan Ujaran Kebencian: Studi Konsumsi Online Religious Content," *Interaksi: Jurnal Ilmu Komunikasi* 12, no. 1 (2023): 125–45.

² Syawal Amirul Syah, Muhammad Fachri Said, and Muhammad Fauzi Ramadhan, "Legal Analysis Of Offense : The Hate Speech Of Religion And Denominations," *Jurnal Hukum Dan Keadilan* 1, no. 4 (2024): 39–48.

³ Arista Candra Irawati, "Analysis of Criminal Laws in Hate Speech on Social Media," in *The Virtual International Conference on Economics, Law and Humanities Volume 2 Number 1 2023*, vol. 2, 2023, 259–65.

⁴ Shohib Muslim and Nuryati Solapari, "The Impact of Hate Speech Regulations on Freedom of Expression an Indonesian Legal Perspective," *The Easta Journal Law and Human Rights* 3, no. 01 (2024): 10–19, <https://doi.org/10.58812/eslhr.v3i01>.

⁵ Imadah Thoyyibah, "Analisis Aksiologis Kebebasan Ekspresi Majalah Charlie Hebdo Dalam Penerbitan Kartun Nabi Muhammad," *Jurnal Filsafat Indonesia* 5, no. 1 (2022): 17–29.

⁶ Arrisa Aprilani Nurindah, Nida Hasanati, and Qurrotul Aini, "Bibliometrik Hate Speech : Tren Metode Penelitian Dan Domain Implementasi," *JUSIFOR: Jurnal Sistem Infrmasi Dan Informatika* 4, no. 2 (2025): 270–78.

⁷ Ku Hasmita Samsu et al., "Sains Insani EISSN: [0127-7871]," *Sains Insasi*, no. eISSN: [0127-7871] (2024).

⁸ Philips J Vermonte, *Asking Sensitive Questions: Panduan Pelaksanaan Survei Dengan Tema Tindakan Ekstrem Berbasis Agama Dan Non-Agama* (Jakarta: Centre for Strategic and International Studies, 2019).

⁹ Derry Angling Kesuma and Husnaini, "Telaah Norma Pidana Ujaran Kebencian (Hate Speech) Di Indonesia Dalam Hukum Positif Indonesia Dan Hukum Pidana Islam," *Lex Librium, Jurnal Ilmu Hukum* 9, no. 2 (2023): 207–16.

¹⁰ Harry Melkonian, *Freedom of Speech and Society: A Social Approach to Freedom of Expression* (New York: Cambria Press, 2012).

¹¹ Peter W Edge, "Oppositional Religious Speech : Understanding Hate Preaching," *Ecclesiastical Law Journal* 20 (2018): 278–89, <https://doi.org/10.1017/S0956618X18000467>, accessed May 20, 2024.

¹² Wahyu Ramadhani, Zainul Lian, and Malik Hasibuan, "Tinjauan Hukum Atas Perbuatan Ujaran Kebencian," *Indonesian Journal of Criminal Law and Criminology* 5, no. 2 (2024): 57–65.

characteristics to it, either explicitly or implicitly; and 3) It presents the target as an unwanted presence and a legitimate target of animosity.¹³ Several research results show that RHS targets tend to be aimed at minority religious groups or groups that have experienced historical stereotypes,¹⁴ “overwhelmingly targets specific social groups,” especially race, ethnicity, and religion.¹⁵

From an exploration of 2389 articles on cyberhate using the Scopus, Pubmed, PsyArticles, and Sciencedirect databases, hate speech may be conceptualized as the deployment of violent, aggressive, or offensive language against particular groups based on religion, race, gender, or political affiliation via online and social media platforms, typically reflecting unequal power relations and occurring in repetitive, systematic, and uncontrolled forms driven by ideological motives.¹⁶ A case study by Saintio examining the video content of KH Said Aqil Siradj’s visit in the aftermath of the bombing of Makassar Cathedral Church¹⁷ highlights how like-minded people use content as a catalyst to reaffirm their preexisting opinions.

Research in predominantly Christian countries focus on Muslims as its primary target. In addition to Muslims in general, individuals, religious symbols, and the collective identity of Muslims.¹⁸ These studies confirm that RHS is a form of communication that encourages audiences to persecute others based on religion,¹⁹ often associated with stereotypes and collective threats. At the same time, victimization studies confirm that victims are individuals who are attacked because of their religion or religious views.²⁰ Therefore, the target is human beings, not religion as an abstract entity. Religion is only an instrument in hate speech, not the main target.²¹ This differs from the provisions of Article 156a of the Criminal Code, which targets religion itself.

In the normative construction of Article 156a of the Criminal Code, the target of speech is not religious adherents, but rather "religion" itself as the protected object. This

¹³ Devita Kartika Putri, “Hate Speech and the Harm in Indonesian Judicial Decisions Hate Speech and the Harm in Indonesian Judicial Decisions,” *Cogent Social Sciences* 9, no. 2 (2023), <https://doi.org/10.1080/23311886.2023.2274430>.

¹⁴ Maya Flax, “Victims of religious hate crime: Victimization of Muslims, Jews and Hindus Compared”, *Criminology and Criminal Justice* 1, No.21 (2024):1-21

¹⁵ Maxime Lepoutre et al., *What Is Hate Speech? The Case for a Corpus Approach, Criminal Law and Philosophy*, vol. 18 (Springer Netherlands, 2024), <https://doi.org/10.1007/s11572-023-09675-7>.

¹⁶ Sergio Andrés Castaño-Pulgarín et al., “Internet, Social Media and Online Hate Speech. Systematic Review,” *Aggression and Violent Behavior* 58, no. January (2021), <https://doi.org/10.1016/j.avb.2021.101608>, accessed October 20, 2025.

¹⁷ Fidelis Aggiornamento Saintio, “Hate Speech and Spiral of Silence in Social Media, A Case Study of Video Content of KH. Said Aqil Sirad’s Visit after Suicide Bomb Explosion at Makasar Cathedral”, Paper presented at the Second International Conference on Values and Religious Education (ICVRE), May 27, 2023.

¹⁸ Xingyi Guo · Hamed Mohd Adnan · Muhammad Zaiamri Zainal Abidin, “A Scientometric Analysis of Potentially Harmful Speech Detection in Muslim Communities: Trends, Challenges, and Future Directions”, *Society* 62, no.5 (2025).

¹⁹ Jordan Kiper, “Religious Hate Propaganda : Dangerous Accusations and the Meaning of Religious Persecution in Light of the Cognitive Science of Religion,” *Religions* 14, no. 185 (2023): 1–19.

²⁰ Sophie Litvak, Markus Kaakinen, and Janne Kivivuori, “Religious Hate Crime Victimization and Adaptation to Risk Among Young Adults : A Four-Country Study,” *International Criminology* 5, no. 3 (2025): 415–29, <https://doi.org/10.1007/s43576-025-00182-4>.

²¹ Winda Wana Utami and Darmaiza Darmaiza, “Hate Speech, Agama, Dan Kontestasi Politik Di Indonesia,” *Indonesian Journal of Religion and Society* 2, no. 2 (2020): 113–28, <https://doi.org/10.36256/ijrs.v2i2.108>.

Article regulates acts of hostility, abuse, or blasphemy against a religion with the intention of discouraging people from adhering to religion. Textually, the object of attack is religion (the belief system, not the person). The object of protection in this article is religion (teachings, symbols, sacred values), while the protected legal interests are public order and harmony among religious communities.

These research issues concern the intent behind the RHS and the target of religion-based hate speech. While the normative construction of Article 156a of the Criminal Code targeted the religion itself, the practice of judicial decision should be researched to determine whether the perpetrator who is accused or prosecuted based on committing RHS actually committed his actions to commit "blasphemy against religion" or to attack religious adherents.

In the Indonesian context, where religion plays a crucial role in social life, the meaning of RHS can be explored more deeply through the judge's considerations in linking these two issues: freedom to express religious beliefs and the target of the RHS. This research examines how Indonesian judges interpret the RHS in two ways: 1) Did the perpetrator accused of committing religion-based hate speech really have the intention to blaspheme religion? 2) Who is the target in cases of RHS—the religion itself, the adherents of the religion, or other parties?

The research database includes cases that have permanent legal force, and the cases available during the last 10 (ten) years, 2016 – 2025, are "Meliana Case" (2016-2019), "Ahok" Case (2016-2018), "Borobudur Temple Stupa" Case (2023-2024), and Al Zaytun Case (2024). The four cases have permanent legal force and were spread by word of mouth and through social media.²²

The results of this study can serve as lessons learnt for policymakers, law enforcement, scientists, and the wider public, since a proper understanding of the RHS will elicit a response that emphasizes the inclusive character of society or the benefits that can be brought when society upholds multicultural values.²³

Legal materials, which include both primary and secondary legal texts, as well as legal aid, are collected. The principal legal materials include 1) Indonesian positive law regarding religion-based hate speech; 2) Judicial decisions that have permanent legal force, both at the District Court, High Court, and Supreme Court of the Republic of Indonesia from 2016 to 2025. The legal materials were collected by downloading decisions related to the RHS that have permanent legal force and have been officially posted on the Supreme Court website. Secondary legal materials are authoritative texts written to interpret or discuss primary legal materials. All of these legal materials are further classified as open, axial, and thematic coding. Open coding, which is labeling the data transcripts; Axial coding, which combines, sorts, and determines the relationships of the data; Thematic coding, which is arranging the results of axial coding to form concepts. All data are recorded in descriptive and reflective notes, then presented qualitatively and descriptively. Following the study of problem formulations 1 and 2, the Registrar's Office and the Supreme Court's Research and Development Centre conducted in-depth interviews with experts to triangulate the findings. Achievement indicators are based on the following standards: location and date of RHS occurrence; type of RHS; RHS content and context; judicial decision at any level; rules used; and judicial

²² Putri, "Hate Speech and the Harm in Indonesian Judicial Decisions Hate Speech and the Harm in Indonesian Judicial Decisions."

²³ Mutaz Afif Ganari and Ismunarno, "Pertanggungjawaban Pidana Terhadap Penyebaran Informasi Suku Agama Ras Dan Antargolongan Yang Menimbulkan Permusuhan Dan Kebencian," *Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 8, no. 2 (2019): 187–94., accessed May 20, 2024.

argumentation in each decision, and reflective notes from researchers and informants based on triangulation results.²⁴

DISCUSSION

Cases Considered Religious-Based Hate Speech

This section will analyze cases considered blasphemy or RHS, meaning the complainant filed a complaint based on blasphemy.

The “Meliana” Case

Meliana, a Chinese-Indonesian resident of Tanjungbalai, North Sumatra, complained to her neighbor about the volume of the adhan loudspeaker at the Al-Maksum Mosque, which she felt was too loud. She said, *"Why is the noise in that mosque so loud? It wasn't like that before, was it? Sis, please ask the elderly man to turn down the volume at the mosque. Sis, it hurts my ears, it's so noisy."*²⁵ Meliana's complaint spread and was misunderstood by some people as a prohibition or blasphemy against the call to prayer, thus triggering riots with SARA nuances in Tanjungbalai, where angry mobs damaged and burned several Buddhist places of worship.

Residents made a stamped statement letter on December 2, 2016, requesting the police to investigate Meliana, who, according to them, had committed harassment, blasphemy, and expressed hatred towards Islamic worship activities at the Al-Maksum Mosque of Tanjungbalai.

That same month, the Alliance of Independent Students and Communities United (AMMIB) delivered an official letter to the Chairperson of the Tanjungbalai City Indonesian Ulema Council (MUI) requesting an audience and a fatwa regarding Meliana's alleged blasphemy. The letter was then followed up with a request for a fatwa from the North Sumatra Provincial MUI regarding blasphemy. Following a 19-day discussion, the North Sumatra MUI Fatwa Commission issued a fatwa declaring Meliana's remarks to be blasphemous and demeaning to Islam.

Prosecutors brought a primary indictment against Meliana under Article 156(a) of the Indonesian Criminal Code concerning blasphemy. The Panel of Judges at the Medan District Court (later confirmed by the Medan High Court and the Supreme Court), on August 21, 2018, decided that Meliana was found legally and convincingly guilty of intentionally and publicly expressing feelings or committing acts that were essentially hostile, abusive, or blasphemous toward a religion practiced in Indonesia, in violation of Article 156a letter (a) of the Criminal Code, and was sentenced to one year and six months' imprisonment.

In considering this case, the panels of judges at the first instance court (Medan District Court) and the appellate court (Medan High Court) primarily considered the elements of "Intentional Action" and "Hostile, Abusive, or Blasphemous Action". The judges determined that Meliana intentionally voiced discomfort with the volume of the call to prayer to witnesses (neighbors), rather than to the mosque administrators or other authorized parties, even though her house was close to the mosque. Furthermore, Meliana's expressions, "My ears hurt, it's noisy," and her request to "lower the volume at the mosque," were deemed offensive and threatened the peace and tranquility of the Muslim community

²⁴ Prokopis A Christou, "How to Use Thematic Analysis in Qualitative Research," *Journal of Qualitative Research*, no. January (2023), <https://doi.org/10.4337/jqrt.2023.0006>.

²⁵ Decision of PN Medan No: 1612/Pid.B/2018/PN Mdn., August 21, 2018, High Court Decision: No: 784/Pid/2018/PT MDN., October 25, 2018, Supreme Court Decision 322 K/Pid/2019. Accessed from Supreme Court Website, www.mari.go.id, accessed May 21, 2024.

surrounding the mosque. The judges concluded that Meliana's actions, although initially a personal complaint, met the elements of blasphemy because the statement spread and sparked a strong reaction from the community, thus being deemed to have incited hostility or blasphemy against Islam.

The judges based their decision on the testimony of witnesses, the defendant's statement (Meliana admitted to making the complaint), evidence (two loudspeakers and one TOA amplifier), and a letter from the North Sumatra Indonesian Ulema Council (MUI) declaring Meliana's statement blasphemous. The judge also considered the impact of Meliana's statement, namely the riots and destruction of places of worship, indicating that the act had a negative impact and disturbed the community.

This first-instance court decision was upheld on appeal through Appeal Decision Number 784/Pid/2018/PT MDN, dated October 25, 2018, and the cassation (Supreme Court Decision Number 322 K/Pid/2019; March 27, 2019), which declared Meliana legally proven to have violated Article 156a (a) of the Criminal Code concerning blasphemy against Islam and sentenced her to one year and six months in prison. This decision was also backed up by linguists and legal experts, suggesting that Meliana's statement is an insult and blasphemy against the Islamic religion.

Table 1. Prosecutor's Demands and Judicial Decisions

Prosecutor's Demands and Legal Basis	Judicial Decisions		
Blasphemy against a religion that is adhered to in Indonesia (Article 156a of the Indonesian Criminal Code)	District Court	High Court	Cassation Court
	Decision of the District Court of Medan Nomor 1612/Pid.B/2018/PN Mdn	Decision of the High Court of Medan No. 784/Pid/2018/PT MDN	Decision of the Supreme Court Nomor 322 K/Pid/2019
	Article 156a of the Criminal Code, which criminalizes the intentional and public expression of feelings or the commission of acts that are essentially hostile, abusive, or blasphemous toward a religion adhered to in Indonesia.	Upheld the District Court Decision	Upheld the lower court decisions.

“Ahok” Case

The case arose during an official visit while Basuki Tjahaja Purnama, known as "Ahok", was serving as the Governor of Jakarta and also running for re-election for the 2018–2024 term.²⁶ On September 27, 2016, he visited and gave a speech at the Pramuka Island Fish Auction (TPI), Panggang Island Village, South Thousand Islands District, Seribu

²⁶ Beniharmoni Harefa et al., “Protecting the Religious Belief : A Study on the Blasphemy Laws Across Jurisdictions and Religions,” *Contemporary Issues on Interfaith Law and Society* 4, no. 1 (2025): 45–86.

Islands Administrative Regency. The speech also took place at the end of his term and close to the regional election period.

The visit speech circulated on social media, Twitter, and went viral, deliberately including sentences related to the DKI Governor election agenda by linking to the Al-Maidah verse 51, which, among other things, said as follows:

*"... this election has been brought forward, so even if I am not elected, I will stop in October 2017. So if we run this program well, you will still have time to harvest with me even if I am not elected as governor. So this story is so that you are enthusiastic, so you don't have to think about it... If you don't get elected, Ahok's program will definitely be disbanded, no... I will be there until October 2017. So, don't simply trust what others say. It may be that, deep in your heart, you cannot choose me. You have been influenced by the use of Al-Maidah 51 and similar arguments, and that is your right. If you feel unable to choose because you fear going to hell after being misled, that is acceptable, as it is a personal decision. The program is still running, so you do not need to feel guilty. In your conscience, you cannot choose Ahok, or you do not like Ahok. However, for me, accepting the program still does not feel right, and for that I am grateful to you, don't have bad feelings, you'll die slowly from a stroke."*²⁷

The speech was distributed through WhatsApp by Habib Novel Chaidir Hasan, Secretary of Dewan Syuro FPI DKI Jakarta. He felt hurt by the insult to his religion, then reported to the Criminal Investigation Division at the Headquarters of the Indonesian National Police, accompanied by the team from the Love for the Homeland Advocates (ACTA). He stated that he rejected Ahok's candidacy for Governor, that those who do not dare to fight Ahok will go to hell, their prayers and worship will not be accepted, therefore, Ahok must fight to the last drop of blood, and there is no need to be afraid.

Also, Grand Imam of the Islamic Defenders Front/FPI) DKI Jakarta Habib Muchsin Alatas reported the speech to the Criminal Investigation Agency. The report was filed on his own behalf, as well as on behalf of the FPI and other mass organizations - FUI, PUSAMI, GPII, and GBN - as these organizations had agreed and requested that he report it.

Ahok's speech was also discussed by the Alumni Association of the University of Muhammadiyah North Sumatra (IKA UMSU) in the *Jabodetabek* area, the Alumni Association of the University of Muhammadiyah Jakarta (IKA UMJ), and the Alumni Families of Muhammadiyah Universities throughout the Archipelago (KAUMAN). The result of the discussion was reported to the Regional Police.

On October 10, the Indonesian Council of Ulama officially declared that Ahok's remarks, quoted in his speech in the Seribu Islands contain elements of insult to Islam, including the Quran and Islamic scholars. The Council issued a fatwa (religious opinion) that can serve as "documentary evidence" for the Public Prosecutor, as a reference in the alleged violation of Article 156a of the Criminal Code. This Council also issued a "national sermon" and recommendations, including: reaffirming the MUI's opinion on the alleged blasphemy, urging law enforcement officials to use the MUI's opinion as a reference in the legal process.

Table 2. Prosecutor's Demands and Judge's Decision

²⁷ North Jakarta District Court, "Decision No.1537/Pid.B/2016/PN.Jkt.Utr Terhadap AHOK" (Jakarta, 2016).

Prosecutor's Demands and Legal Basis	District Court Decision and the Legal Basis	Judicial Review Decision and its Legal Basis
Article 156a of the Criminal Code on blasphemy against a religion recognized in Indonesia. Or Article 156 of the Criminal Code, the public expression of feelings of hostility, hatred, or contempt against one or more groups of the Indonesian population.	Has been lawfully and convincingly proven guilty of committing the criminal offense of blasphemy under Article 156 letter (a) of the Criminal Code.	The Supreme Court held that the decision of the North Jakarta District Court remained in force, affirming that Ahok was lawfully found guilty of blasphemy and sentenced to two years' imprisonment.

Roy Suryo Case

On June 10, 2022, Roy Suryo made a Quote tweet/quoting a tweet from the Twitter account @fly_free_DY, featuring an image of a stupa, a sacred Buddhist symbol, that had been edited to show the face of President Jokowi. Roy also added a sentence to the image of the stupa with the caption/sentence "While the weekend is light, Tweet. In connection with public protests against the planned increase in entrance ticket prices for Borobudur Temple—from IDR 50,000 to IDR 750,000—which was later postponed, many netizens expressed their creativity by altering one of Borobudur's iconic open stupas.

As a result of this incident, Roy Suryo was reported on allegations of blasphemy and the dissemination of information intended to incite hatred based on ethnicity, religion, race, and intergroup relations (SARA). The report was filed by the Buddhist organization Dharmapala. He was charged under Article 28 paragraph (2) in conjunction with Article 45 of the ITE Law, Article 156a of the Criminal Code, and Article 15 of Law Number 1 of 1946.

On June 20, 2022, Herna Sutana, representing the Buddhist religious organization, Dharmapala, reported Roy Suryo's upload based on alleged blasphemy (Article 156a of the Criminal Code) and the dissemination of information intended to incite hatred based on ethnicity, religion, race, and intergroup relations (SARA) (Article 28 paragraph (2) in conjunction with Article 45 of the ITE Law and Article 15 of Law Number 1 of 1946). Then, on June 11, 2022 Kurniawan Santoso, Ade Suhendra, Eddy and other Buddhists who are members of the Dharmapala organization reported to the Jakarta Metropolitan Police, alleging that the defendant lacked the capacity to explain the meaning of the stupas at Borobudur Temple based on the ITE Law and Article 156a concerning blasphemy.

However, at the prosecutor's level, the public prosecutor only charged based on violating the ITE Law as the First Charge: Article 28(2), read in conjunction with Article 45A of Law No. 19 of 2016, which amends Law No. 11 of 2008 on Electronic Information and Transaction; meanwhile, the article on blasphemy is only an alternative charge.

Table 3. Prosecutor's Demands and Judicial Decision

Prosecutor's Demands	District Court Decision	High Court Decision
1. Article 28 paragraph (2) in conjunction with Article 45A of Law Number 19 of 2016, amending Law Number 11 of 2008 on Electronic Information and Transactions; or	Intentionally and without lawful authority, disseminating information intended to incite hatred or hostility among individuals based on ethnicity, religion,	has been lawfully and convincingly proven guilty of committing the criminal offense as regulated under Article 28 paragraph

2. Article 156a of the Criminal Code; or 3. Article 15 of Law Number 1 of 1946 concerning Criminal Law Regulations.	race, and intergroup relations (SARA), pursuant to Article 28 paragraph (2) in conjunction with Article 45A of Law Number 11 of 2008 on Electronic Information and Transactions, as amended by Law Number 19 of 2016, Law Number 8 of 1981 on Criminal Procedure, and other applicable and relevant laws and regulations.	(2) in conjunction with Article 45A of Law Number 19 of 2016 amending Law Number 11 of 2008 on Electronic Information and Transactions.
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Panji Gumilang/ Al Zaytun Case

Panji Gumilang, who serves as the leader of the Al-Zaytun Islamic boarding school, in March – May 2016, gave a lecture at the Al Hayat Al-Zaytun Mosque. The contents of his lecture included: 1) comparing the way mosque congregation funds are managed by comparing them to those in the Vatican Church 2) stating that Indonesia is also a holy land, not just Mecca, so there is no need to die in Mecca to wait to become holy; 3) The mosque which is a place of worship for Muslims/Islam by depicting it as a place for desperate people.

The lecture was broadcast live to the audience or by utilizing the Al-Zaytun Movie YouTube channel. It triggered public demonstrations as it was deemed to contain false information and to disregard the principles of harmony, tolerance, and mutual respect among followers of different religions, as well as respect for individuals' rights and freedoms to adhere to and practice their religion.

The Indonesian Ulema Council issued Fatwa Number 47 of 2023 concerning the Religious Teachings of Panji Gumilang, declaring that Panji Gumilang's statement is blasphemy against Islam. The statement in question is: "The Prophet Muhammad also declared that the *zalikal kitabu laa raib....* the Prophet Muhammad who declared it was based on divine revelation... not the words of Allah, the words of the Prophet Muhammad which were obtained from revelation... well, if Allah speaks Arabic, it will be difficult to meet the people of Indramayu... prewe... they don't understand, God doesn't understand."

After that, on the same month, 300 members of the Indramayu Forum demonstrated at Al Zaytun Boarding School, and 500 people participating in the Organization LPKSM and 13 NGO as well as mass organizations held speeches and demonstrations against Panji Gumilang's video.

Table 4. Prosecutor's Demands and Judicial Decision

Prosecutor's Demands	Judicial Decision	Judicial Review Decision
Article 156a of the Criminal Code, deliberately and publicly expressing sentiments or engaging in conduct that is essentially hostile, insulting, or blasphemous toward a religion practiced in Indonesia.	Based on Article 156a letter (a) of the Indonesian Criminal Code, lawfully and convincingly proven guilty of intentionally, in public, expressing feelings or committing acts that were essentially hostile, abusive, or blasphemous toward a religion practiced in Indonesia.	Declares that the District Court's decision remains in force.

THE INTENTION OF RELIGION-BASED HATE SPEECH IN JUDICIAL DECISIONS

The Intention in the Meliana Case

The elements of Article 156a of the Criminal Code are *actus reus* and *mens rea*. *Actus reus* in this article refers to acts that are hostile, abusive, or blasphemous toward religion. *Mens rea* is the element of "intentionally" committing the act.

In this instance, Meliana voiced her displeasure with the loudness of the call to prayer loudspeakers in a private setting rather than a public venue, without making any theological remarks or disparaging remarks about Islamic principles. However, societal criticism was construed as blasphemy, and this private complaint was handled as a public offense. That Meliana's argument has a very weak element of purpose indicates that Meliana's case lacks substantial proof of her intention to denigrate religion. Instead, intent is presumed rather than demonstrated.

Meliana's expression that made her the object of blasphemy was about the volume of the loudspeaker, not the substance of the Adhan (religious ritual). Ahmad Rohiman stated that loudspeakers are not *ashlun min ushuluddin* (the main teachings of religion), so they cannot necessarily be used as grounds for blasphemy.²⁸

The Intention in the Ahok Case

The main issue in this case is whether the defendant's statement alluding to the use of Al-Maidah 51 can be qualified as having the element of "intention" (*mens rea*), thereby constituting "an act of blasphemy against religion" as referred to in Article 156a of the Criminal Code.

The judge upheld the prosecutor's argument that Ahok's statement was religiously motivated (through holy verses). Because Al-Maidah 51 is part of Islam, offending the verse is tantamount to offending religion. The act was blasphemy, as Ahok's statement was deemed to demean the use of verses.

The element of "mens rea" was deemed present in Ahok's statement because the defendant was aware of his statements, thus fulfilling the element of "intentionally." This was reinforced by the social impact, namely the widespread public reaction, which reinforced the perception of "blasphemy". The Ahok case was accompanied by the "212 Movement," which contained anti-Ahok, anti-non-Muslim, and anti-Chinese sentiments.

Both the news about Ahok and the 212 Movement became the main news for several mass media, with various framings covering it. When searched on the Google search engine, the keyword "212" produces 2,090,000 search results, dominated by links related to the December 2, 2016, mass demonstration in Jakarta. The term also suggests efforts to prevent certain religious groups from being elected to office. Some people believe Ahok is unfit to be a leader because he is ethnic Chinese and/or a non-Muslim. In fact, before the 2017 Jakarta gubernatorial election, negative sentiment toward Ahok was already strong. This negative sentiment intensified when a video of Ahok's blasphemy was circulated.²⁹

²⁸ Ahmad Rohiman, Belajar dari Gus Dur, "Tuhan Tidak Perlu Dibela. Dia Sudah Mahasegalanya", Belajar dari Gus Dur, "Tuhan Tidak Perlu Dibela. Dia Sudah Mahasegalanya" Halaman all - Kompasiana.com. accessed May 22, 2024.

²⁹ Rochmanuddin, 'Survei SMRC: Sentimen Anti-Tionghoa Akibat Mobilisasi Politik - News Liputan6.Com', 29 December 2016, <https://www.liputan6.com/news/read/2691455/survei-smrc-sentimen-anti-tionghoa-akibat-mobilisasi-politik>., accessed January 14, 2025.

However, a linguistic analysis reveals that Ahok's statements' real target is religious followers rather than religion itself. Ahok does not criticize religion *per se*, but rather people who exploit verses for political purposes. Rahayu Hidayat, an expert from the University of Indonesia, provided testimony that supports this, but the judge disregarded it. Furthermore, Ahok's statement was political communication rather than animosity when considered in its context. The prevalence of sociological and mass reaction approaches has largely ignored the *mens rea* component.

The Intention in the Roy Suryo Case

The element of "intention" appeared in the prosecutor's argument that Roy "should have known" that the use of Buddhist symbols would be offensive. This falls under *dolus eventualis* (awareness of potential consequences). However, doctrinally, this is weaker than direct intent (*dolus directus*) and is insufficient for an ideological crime like blasphemy. In this case, there is no strong evidence to blaspheme Buddhism; there is only the visual expression (a meme), and there is potential for offense due to public reaction. However, this does not prove any intention to blaspheme.

In his consideration, the District Court held that the indictment most closely corresponding to the facts revealed at trial was the First Indictment under Article 28 paragraph (2) in conjunction with Article 45A of Law Number 19 of 2016 amending Law Number 11 of 2008. The Court further stated that once one indictment has been proven, the Panel would not examine the remaining indictments. The elements of the First Indictment are as follows: (1) the element of "any person"; (2) the element of intent; (3) the element of acting without lawful authority; and (4) the element of disseminating information intended to incite hatred or hostility among individuals and/or certain groups of the community based on ethnicity, religion, race, and intergroup relations (SARA).

The Judge considers that, with the defendant's expertise, the defendant was able to avoid making multiple tweets that would display the stupa whose face had been edited, and could still criticize the planned increase in the entrance ticket to Borobudur Temple in a more polite manner.

It is crucial to remember that even though Roy Suryo did not post the tweet, the defendant should have been able to consider the potential harmful effects of sending many tweets using the theory of intent as a possibility. He knew that the picture of one of the Borobudur stupas that had been altered to feature Mr. Joko Widodo, the President of the Republic of Indonesia, would inevitably go viral on social media. The defendant has about 90,000 followers on Twitter, and his account is public rather than private, which would undoubtedly cause a quick response from online users, particularly if it were unpleasant.

The Supreme Court of the Republic of Indonesia considers, that according to the Panel of Judges, the defendant should have been aware that the President of the Republic of Indonesia is one of the leaders of the Republic of Indonesia who deserves respect and his face should not be carelessly edited in various places, especially in the case of the face of the President of the Republic of Indonesia edited as one of the stupas in Borobudur in the world of Social Media, then the defendant should have been able to think about not publishing even though with the reason that the Multiple Quote Tweet automatically shows the image when the defendant reasons that it aims to criticize the plan to increase ticket prices to Borobudur Temple.

Roy Suryo's meme emerged in public discourse (the controversy over the Borobudur ticket price, which was criticized as too expensive). Therefore, Roy's statement contained political and social criticism, and religion was not the primary target.

The Intention in the Panji Gumilang Case

In determining whether Article 156a of the Criminal Code has been fulfilled, it is necessary to examine whether Panji Gumilang's statement was delivered within an internal religious forum or addressed to the broader public in a manner that could provoke public reaction. In the context of the speech, it appears more likely that the statement was made in an internal setting, such as his own Islamic boarding school, rather than constituting public hate speech directed at society at large.

Academically, there are three possible motives for Panji Gumilang's statement. 1) Blasphemy (the strongest criminal claim) and indeed the intention to demean religion. The problem is, explicit evidence of this intention is relatively weak. Panji Gumilang conveyed an alternative interpretation and developed his own doctrine. This is an interpretation that "deviates" from generally held beliefs. In this case, Panji Gumilang's statement is closer to freedom of belief.

Once again, public reaction is more dominant than proof of intent. Ronald Dworkin's approach to law as interpretive states that the law must assess principles, not merely social pressure. The question is, does the judge's decision protect the integrity of the law or simply respond to public pressure? There is no strong basis for concluding that Panji Gumilang intended to "blaspheme religion" in the sense of clear and directed *mens rea*. More likely is an intention to express an alternative theological argument, possibly motivated by social/authority. However, in Indonesian legal practice, intent is often "constructed" from social impacts, rather than independently proven. Thus, the nature of "blasphemy" is highly interpretive, dependent on standards of orthodoxy and public perception. Strictly speaking, the element of intent to blaspheme religion has not been strongly proven, but rather is closer to the intent of religious reinterpretation with a possible social/authority motive.

Compared to Meliana and Ahok, Panji's case is more complex because it involved an ideological construct, but not a direct attack. In theory, it should be more difficult to prosecute, but in practice, it can still be criminalized. Here, misidentification of intent occurs by equating impact with intent and inferring intent from social pressure.

The judgment against Panji Gumilang reveals a fundamental doctrinal flaw in the treatment of *mens rea*. The court did not identify explicit evidence of intent to insult or degrade religion. Instead, intent was inferred directly from the defendant's statements and their perceived deviation from orthodox religious teachings.

The Target Of Religion-Based Hate Speech In Judicial Decisions

The Target in the Meliana Case

In criminal law, every offense requires a clear object (object of the offense), namely, what is attacked and who or what is protected by the norm. In the context of Article 156a of the Criminal Code, the protected object is religion as a belief system. This means that the target must be: doctrine, core teachings, and essential theological symbols.

In the Meliana case, the question of "who was the target of the speech" became a crucial and controversial point in legal analysis. Factually, Meliana's speech was directed at a neighbor (an individual). The speech was given in the context of common grievances rather than a public forum, and its content was the loudspeaker volume in the mosque. This indicates that the use of loudspeakers was the speech's primary goal rather than religion as a belief system.

Under Article 156a of the Criminal Code, to fulfill the crime of blasphemy, the religion itself or its core doctrines should be the target of the speech. However, in the ruling, the target shifted from what was originally a social practice (the use of loudspeakers) to an

attack on a religious symbol (the call to prayer), and even expanded to an attack on Islam as a whole.

The court failed to distinguish clearly between statements that attacked religious beliefs and those that criticized religious activities. The court's interpretation of religious protection was overly expansive, believing that all religious rituals and activities are akin to religion itself. However, not all religious practices are automatically shielded from criminal prosecution.

More crucially, in the crime of blasphemy, it must be evident who is being attacked; in Meliana's case, there is no "who" being attacked, so there is no "identifiable victim." Rather, the offended community is thought to be the target of Meliana's speech. In this instance, the alleged offense's object was conceptually misidentified. There is no "who" being assaulted in Meliana's situation. Consequently, there isn't an "identifiable victim." Rather, Meliana's statement is seen as aimed at the insulted community. The claimed offense's object was conceptually misidentified in the Meliana case.

The Target in the Ahok Case

Normatively, the protected object under Article 156a of the Criminal Code is "religion" as a belief system, not explicitly "religious adherents." However, in practice, this interpretation has evolved. Religion does not exist in isolation. It lives through the community of its adherents, so attacks on religious interpretations or symbols are often perceived as attacks on the collective dignity of those adherents.

Ahok's questioned statement concerns the use of Al-Maidah 51 in a political context. There are two main interpretations of this:

First, the defensive interpretation: Ahok is not attacking religion; he is merely criticizing the way the verse is used by certain parties in political contests. Therefore, the target of Ahok's statement is religious adherents, not the religion itself.

Second, the interpretation of the Prosecution and Court Decision stated that Ahok's statement was considered the substance of a teaching (holy verse). Since verses are part of religion, criticism of verses is regarded as touching on religion itself. It can be concluded from the court's decision that the target of Ahok's statement was religion (through its symbols/sacred texts). In the decision (at the North Jakarta District Court), the judge tended to view Ahok's statement as offending Islam through A-Maidah 51, thus qualifying it as blasphemy.

Formally, religion is a protected object. Adherents are not directly relevant. Substantively, it is impossible to separate religion and its adherents. In hate speech based on religion, the collective feelings of the community are actually hurt. Therefore, normatively, the target is religion. Sociologically, the impact of the speech is on religious adherents.

The question yet remains: should "religion" or "the feelings of the community" be protected by the law? Religion is protected by Article 156a of the Indonesian Criminal Code. This theological approach safeguards the purity of religion. The inference is that religious interpretation and debate are being suppressed because the state appears to be defending orthodoxy. In the meantime, the sociological model safeguards community sentiments and public order. Because actual disagreements arise between people, this approach is more realistic. However, using "offended feelings" as the legal criteria and penalty is risky.

The Target in Roy Suryo Case

In the "Buddha statue" case involving Roy Suryo, the target of hate speech needs to be considered based on the object being attacked in the statement, not simply who reported it.

Because the object being discussed, the Buddha statue at Borobudur Temple, is considered offensive to their religious symbol. This symbol holds religious significance for Buddhists, so criticism or comments about it could be considered an attack on the religious group's identity, not simply a criticism of an object or policy.

Within the framework of Indonesian criminal law (e.g., Article 28 paragraph (2) of the ITE Law and Article 156a of the Criminal Code), what is protected are groups based on ethnicity, religion, race, and intergroup relations (SARA), not physical objects. Therefore, if hate speech is directed at a religious group, the legal target is the community of adherents of that religion (Buddhists).

Conceptually, a religious symbol is not the same as the adherents of that religion. Criticism of a symbol can be artistic or policy-based without the intention of attacking a group. Article 28(2) of the ITE Law states that inciting hatred or hostility is a crucial element. However, can criticism of religious symbols be classified as hate speech against religious groups? Article 28(2) of the ITE Law and Article 156a of the Criminal Code protect religious groups, not objects. If the criticism is directed at a symbol, it is not necessarily hate speech. However, if it is linked to religious identity or incites hatred, it can be considered a crime. The problem is that judges often use the "offended feelings" approach to define "harm."

The judge constructed his reasoning with the following construction: 1) there was an act (*actus reus*); 2) the defendant uploaded/shared content related to the Buddha statue at Borobudur Temple; and 3) the content was deemed provocative and polemic-inducing. For the "intentional" element, judges typically interpret the defendant as knowingly and intentionally disseminating the content. It is not necessary to prove explicit malice (*dolus directus*); knowledge of the consequences of posting is sufficient. Importantly, intent is often derived from actions, not explicit motives.

The "inciting hatred/hostility" element is crucial. Judges assess public reaction (anger, reports, social unrest, and sensitivity to religious issues). From this, they conclude that the content has the potential to incite or has incited hatred against a religious group (Buddhists).

In Roy Suryo's case, the judge's reasoning was as follows: 1) the symbol is directly associated with the group; 2) hatred toward religion is evidenced by public reaction, not the normative content of the statement; 3) there is no need for actual violence; only the potential for conflict/unrest is sufficient.

Using Ronald Dworkin's "law as interpretation" approach, judges tend to use the standard of "offense" (feeling offended) rather than "harm" (actual harm). This results in the line between legitimate criticism and hate speech becoming blurred.

In the context of the case involving Roy Suryo regarding the upload of a meme of Borobudur Temple edited to resemble Joko Widodo's face, the question "who is the target of the hate speech?" requires careful analysis between the direct target and the legally constructed target.

The underlying fact of the speech is that the Buddhist stupa/statue at Borobudur served as a visual object, modified to resemble the face of the then-President and uploaded/reposted on social media by Roy Suryo. Therefore, both textually and visually, there are two possible direct targets: the individual (personal target), namely Joko Widodo, because the image depicted is that of the President. This could be interpreted as criticism, satire, or insulting the leader.

The second possibility is the culturally symbolic object, namely Borobudur Temple, as a cultural site and religious symbol of Buddhism.

During the legal process, the interpretation of the target shifted: from visual expression (political meme/satire) to being considered an attack on Buddhist religious symbols and even Buddhists as a group.

The issue becomes ambiguous. Is this criticism of the president or blasphemy of a religious symbol? This is crucial because the articles used have different legal consequences.

The target in the Roy Suryo case is ambivalent and debatable. Objectively, the most direct target is the president (Joko Widodo), while in legal interpretation, the target is constructed as a religious symbol (Buddha/Borobudur) or even a Buddhist group. Without a clear target, the elements of the crime become blurred and potentially lead to overcriminalization.

The Target in the Panji Gumilang Case

The substance of Panji Gumilang's statement primarily discusses the teachings, interpretations, and practices of Islam, rather than directly attacking individual Muslims or groups.

In the instance of Panji Gumilang, Islam is the normative target. However, Muslims are empirically affected by the speech's impact and public reaction, it is frequently interpreted as an attack on their followers. It would be more accurate to categorize Panji's statement as speech against religion (belief system) rather than hate speech against religious followers (group-based hatred). This is significant because it qualifies as blasphemy (156a/blasphemy) if the objective is religion. It is considered hate speech if the aim is to target religious followers.

Is it feasible to "criticize religion" without coming across as an assault on its followers? Does Indonesian law genuinely safeguard the community's sentiments or religion as a doctrine? From an ethical standpoint, this relates to two ethical systems: the duty-based (deontological) approach, which protects core religious principles, and the consequence-based (utilitarian) approach, which emphasizes societal impact and public outrage. Notably, both theories offer valuable insights when applied to real-world moral challenges, but they often reach conflicting conclusions, revealing the tension between consequentialist and deontological ethics.

Linguistic-Sosio-Legal Perspectives

The regulation of the RHS under national legislation, both in the Criminal Code and the ITE Law, remains a subject of debate, given how easily people can report on the basis of "blasphemy".³⁰ Even at the court level, the judge's interpretation of the rules and facts, which often involves religious figures and language experts, still sparks debate because it often fails to take into account the intention or mens rea of the perpetrator of the speech considered blasphemous.³¹

In the Ahok case, the judge relies heavily on expert testimony from linguists, Quran specialists, and legal language experts to interpret the RHS. This is especially helpful when it comes to blasphemy because it enables the judge to comprehend topics that are often impacted by blasphemy, including fundamental teachings, dogma, religious rites, theological comprehension, and other insights that the judge has not yet grasped. This is done in order for the defendant's acts to be fully understood and for the judge to make an appropriate

³⁰ Agus Triyono, Agus WIyaka, and Ahmad Galang Ma'rufa, *Komunikasi, Religi Dan Budaya* (Yogyakarta: Asosiasi Pendidikan Ilmu Komunikasi Perguruan Tinggi Muhammadiyah, 2017)., accessed May 21, 2024.

³¹ Muhammad Rustamaji and Gendis Nissa Aulia, "Telaah Konsepsi Penistaan Agama Terhadap Penegakan Hukum Kasus Meliana (Studi Putusan Pengadilan Negeri Medan Nomor: 1612/Pid.B/2018/PN.Mdn)," *Jurnal Verstek* 8, no. 1 (2018): 30–38., accessed May 21, 2024.

decision. However, Prof. Mahyuni and Prof. Rahayu Surtiati Hidayat, two linguists, had divergent views.

The Public Prosecutor presented Prof. Mahyuni, a linguist and Indonesian language expert from the University of Mataram in West Nusa Tenggara, who interpreted Ahok's speech linguistically and pragmatically by examining the meaning of the word "dibohongi" (lied to), which has the potential to denigrate and offend specific parties (individuals, groups (clerics), or attack religious teachings (the Quran). The speech is found to violate Article 156a of the Criminal Code, which criminalizes acts of hatred, abuse, or blasphemy against religion, and to have ramifications for the usage of holy texts in the Quran. It also contains problematic linguistic content.

However, linguist and Indonesian language specialist Rahayu Surtiati Hidayat of Indonesia University believed that Ahok's remarks were aimed at the practice of politicizing the verse rather than the Quran itself. The usage of the verse in a political setting by some parties was the target of the criticism. The speech did not fit the language requirements for blasphemy because it was part of a political-educational conversation. But according to judicial review (PK/Pid/2018) and first-level judges (Decision of PN 1537/Pid.B/2016/Jkt. Utr), Ahok was found guilty of breaking Article 156a of the Indonesian Criminal Code.

From a socio-legal standpoint, research on RHS is primarily carried out in Western nations, where Islam is frequently the focus. It is driven by Islamophobia, which is reinforced by the spread of digital media and the cultural processes of globalization. In the meanwhile, the RHS targets Buddhism and Christianity in addition to Islam, according to preliminary observations of Indonesian court rulings.

Based on the collected data, statements interpreted as hate speech are those that "offend a religion or belief." In the statements conveyed in a post, there are graphic elements or certain dictions that have the potential to lead public opinion, such as "don't want to be lied to" (Ahok's case), comments about the volume of the Maghrib call to prayer loudspeaker (Meliana's case), the use of image manipulation techniques applied to Buddha statues (Roy Suryo's case).

Various RHS cases that have been decided often involve mass organizations that directly or indirectly put pressure on judicial decisions.³² According to the data, some posts do have a purpose, or these remarks are frequently entwined with SARA (ethnicity, religion, race, intergroup) attitudes that already exist in specific contexts, such as political, interethnic, and interreligious sentiments. Some remarks, nevertheless, are not meant to upset SARA. These remarks are regarded as insulting even when they are not offensive because they have sparked animosity or hatred in society. This happens as a result of the very unique context in which speech incorporating SARA is comprehended.

For instance, Ahok and Meliana's remarks, which were laced with political, anti-Chinese, and anti-indigenous emotions, fall under this extremely particular context. However, the particular backdrop surrounding Roy Suryo's case is political feeling associated with his information and technical competence. On social media and online news sites, this expertise is frequently the focus of disparaging discourse.

A persistent question raised by human rights advocates is how a community, whose members live relatively peacefully, supports or even engages in violent attacks on its neighbors.³³ For instance, the public thought that Muslims in Tanjung Balai felt religiously offended or embarrassed by Meliana's conduct because they had a strong sense of ownership

³² Interview with Bapak Zaky, Puslitbang Mahkamah Agung RI, on November 3, 2023).

³³ Lucky Nurhadiyanto and Putri Puspita, "Penodaan Agama Ditinjau Dari Perspektif Teori Konflik: Studi Kasus Pasal Penodaan Agama Di Tanjung Balai," *Deviance Jurnal Kriminologi* 5, no. 1 (June 30, 2021): 20, <https://doi.org/10.36080/djk.2162>, accessed January 2, 2026

over their faith in the instance of hate speech entwined with Chinese racial prejudice. Instead of acting alone, they organized themselves into community organizations and took part in large-scale actions.

Meliana, on the other hand, belonged to a different communal group because her race and religion were viewed as minorities in Tanjung Balai. The Tanjung Balai public's use of the epithet "Chinese" to vent their rage was indicative of this sentiment. Due to this ethnic prejudice, Meliana's grievance with the call to prayer's loudness could not be considered a "normal complaint." This "normal complaint" was seen as heresy since interethnic antipathy had grown to such a degree. As a result, the people began to believe that "China prohibits the call to prayer." It's probable that the judges ignored Meliana's complaint's objective in favor of this tumultuous and antagonistic environment. Similar circumstances occurred in the Ahok case, when anti-Chinese animosity and anti-Christian feeling were major issues.

As demonstrated by the Ahok, Meliana, Roy Suryo, and Al Zaytun incidents, the public has formed its own opinions and interpretations based on certain sentiments. "Intentionally" refers to acting with intent in criminal law. Sometimes, though, the speaker has no intention of generating animosity and hatred, much less blaspheming a faith. Since the requirements for the crime under the ITE Law have been met, this is not taken into account. In certain cases, an individual who is truly a victim may become a perpetrator due to their acts meeting the requirements of the ITE Law, which include promoting hatred and enmity.

Just as "rubber" is elastic in its shape, the application of "rubber articles" creates uncertainty, "chaos," and controversy among the public. However, because this article is oriented towards impact rather than motive or intention or purpose, the legal consequence that occurs is that anyone who disseminates information that meets the criminal provisions in this article can be punished if the impact written in this paragraph is met, regardless of the motive, intention, or purpose.

According to Lilik Mulyadi, the "elasticity" of the application of certain articles in the ITE Law can be overcome through the consolidation of the application of the law by the courts. If judges have a uniform application of the law in every case tried related to certain articles in the ITE Law, then justice with legal certainty can be realized. Conversely, if there is a lack of unity in the application of the law among the panels of judges in a similar case (violation of certain articles in the ITE Law), it will give rise to inconsistencies in court decisions that lead to the emergence of legal uncertainty.³⁴ Legal certainty concerns not only the provisions set out in legislation, but also consistency in judicial decisions, both within a single judge's rulings and across the decisions of different judges in comparable cases that have been adjudicated."

The judge in Roy Suryo's case took into account not just the impact but also aspects of social media involvement (engagement), including trending topics, followers, and engagement.

Roy Suryo-related news, hashtags, and topics can reach anybody thanks to algorithms that cause virality. A person's beliefs, knowledge, attitudes, and ideology can be controlled and influenced by this discourse through interactions, the text's structure, and the use of technology. Therefore, the degree of social media contact can be seen as having an impact on society's knowledge, attitudes, and ideology, and the "noise" produced by social media and its information technology may have an impact on judges' interpretations.³⁵ The most

³⁴ Lilik Mulyadi, "Naskah Urgensi Pedoman Penerapan Pasal-Pasal Tertentu Dalam UU ITE" (Jakarta, 2023), p.105.

³⁵ Gilang Reno Prakoso, Arthur Josias, and Simon Runturambi, "Strategic Intelligence Analysis Of Religion-Based Hate Speech In Social Media : A Case Study Of The Directorate Intelligence And Security At

frightening consequence of hate speech is stigmatization and labeling that bring hatred to individuals or groups who are stigmatized and labeled.³⁶

Judge's Interpretations

When dealing with the target of the RHS, the considerations and interpretation of the judges should be used. Interpretation is science's partner in the search for truth. Dworkin's idea that law is interpretation or has an interpretive dimension begins with the assumption that the world cannot be separated from interpretation. Judges do not make law, but rather interpret what is already part of the legal material. Through their interpretation of this legal material, they give voice to the values embraced within a legal system. Even if judges ultimately "discover" the law, it is the result of the interpretative process itself.³⁷ The interpretative dimension of law, as proposed by Dworkin, was actually inspired by Gadamer, a German philosopher whose theory is known as the hermeneutic circle-based interpretation.³⁸

In legal practice, judges are commonly regarded as interpreters of the law. The meaning of the law is determined after the judge examines and establishes the facts of the case. This is known as concurrent interpretation or operative interpretation. Dworkin prioritizes justice in his legal theory. Justice is a value, while law is a norm. The two may conflict, but he emphasizes that the lifeblood of responsibility lies in integrity. A constructive interpretation adequate to guide judgment or decisions is "fit," appropriateness, and conformity to theory; moral value: that conformity to theory must be cross-checked with moral values; and integrity: that Judges ought to decide cases by enhancing the coherence of the legal system, prioritizing interpretations that treat the law as an integrated moral framework.³⁹

These four cases in Indonesia share a similar pattern. They begin with large-scale demonstrations. Police and authorities often use "public unrest" as a justification for handling these cases. In the four cases described above, prosecutors' charges of religion-based hate speech were not always upheld by judges. In reality, judges differed in their decisions on which articles to use as the basis for sentencing. This is summarized in the table below.

Table 5. Judicial Decisions

No	Case	Basis of Judicial Decision	Sources
1	The Meliana Case (Mosque Loudspeaker Case):	156a of the Criminal Code (Insults against certain religions in Indonesia)	District Court Decision: No: 1612 Pid.B/2018/PN Medan, 21 Maret 2018 High Court Decision No: 78/Pid/2018/PT MDN, 22 Okt 2018

Polda Metro, International Review of Humanities Studies," *International Review of HUmanities Studies* 6, no. 1 (2021).

³⁶ Syah, Said, and Ramadhan, "Legal Analysis Of Offense : The Hate Speech Of Religion And Denominations."

³⁷ Ronald Dworkin, *Justice for the Hedgehog* (London: Harvard University Press, 2011), p.135-136.

³⁸ R. Diah Imaningrum Susanti, *Penafsiran Hukum Yang Komprehensif Berbasis Lingkak Hermeneutika*, IPHILS (*Indonesian Philosophical Studies*) (Malang: Indonesian Philosophical Studies, 2015)., Diah Imaningrum Susanti, *Penafsiran Hukum, Teori dan Metode*, (Jakarta: Sinar Grafika, 2021), p.10.

³⁹ Ronald Dworkin, *Law's Empire* (London: Harvard University Press, 1986).

			Cassation Decision No: 322 K/Pid/2019, 27 Maret 2019
2	The Ahok Case	156a of the Criminal Code (Insults against certain religions in Indonesia)	District Court Decision: No.1537/Pid.B/2016/PN.Jkt. Utr Judicial Review Decision No: Putusan PK No. 11 PK/Pid/2018
3	The Roy Suryo Case	Article 28 paragraph (2) in conjunction with Article 45A of Law Number 19 of 2016 amending Law Number 11 of 2008 on Electronic Information and Transactions.	West Jakarta District Court Decision No: 890/Pid.Sus/2022/PN Jkt.Brt 23 Desember 2022. High Court Decision No: 9/PID.SUS/2023/PT.DKI 6 February 2023.
4	The Panji Gumilang Case,	Article 156a of the Criminal Code: intentionally committing, in public, an act that is essentially blasphemous toward a religion practiced in Indonesia.	Indramayu District Court Decision No: 365/Pid.Sus/2023/PN Idm. Judicial Review No: 188 PK/Pid/2024.

The targets of RHS can be summarized in the following table:

Table 6.

No Cases		Speech Acts	The Target of Speech Acts		
		Expressions of Religious Faith	The Faith of Other Religions	Religion's Adherent	Other
1	Meliana	X	X	X	✓ (loudspeaker)
2	Ahok	X	X	✓ (adherents of Islam)	X
2	Roy Suryo	X	X	X	✓ (Government)
3	Panji Gumilang	✓ (self-criticism of Islamic religious beliefs that do	X	✓ (adherents of Islam)	X

		not align with personal beliefs)			
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3.4 Transformation of Hate Speech Crimes from the ITE Law to the New Criminal Code (UU No.1 of 2023)

Government policy in the legislation serves not only as a subject but also as an object of development in its implementation.⁴⁰ Indonesia has revised the Criminal Code, which came into full effect in March 2026. From the ITE Law (Article 28, paragraph (2) and Article 45A, paragraph (2)) to the new Criminal Code (Law No. 1 of 2023, Articles 242-243), the regulation of hate speech crimes has changed significantly, with a focus on defining the basis of discrimination, lowering penalties, and incorporating it into public order offenses. Article 28, paragraph (2) of the ITE Law defines hate speech as the broadcast of electronic information that incites hatred or animosity based on SARA (ethnicity, religion, race, or intergroup). Hate speech is punishable by up to six years in prison and/or a fine of up to IDR one billion. Although Constitutional Court Decision No. 105/PUU-XXII/2024 restricts it to intentional speech that poses a genuine risk of discrimination, hostility, or public violence, this article is frequently criticized for its wide reach and propensity to restrict freedom of expression.

Articles 242 and 243 of the New Criminal Code restrict hate speech as a criminal offense against public order. Article 243 addresses the dissemination of information that incites discrimination or hostility based on specific identities (race, ethnicity, gender, disability), with a prison sentence of up to 4 years or a fine of category IV (IDR 200 million). Article 242 forbids public statements of hostility or hatred against groups based on race, ethnicity, etc., with a maximum 3-year prison sentence or a fine of IDR 200 million. For persistent violators in their field, there is an extra penalty of having their professional rights revoked.

The elements distinguishing hate speech offenses under the ITE Law (Article 28(2) in conjunction with Article 45A(2)) and Article 242 of the new Criminal Code (Law No. 1 of 2023) concern the subject, the act, the purpose/object, and the context of delivery. Dealing with the subject, both provisions apply to "any person." The ITE Law specifically targets those who intentionally and without authorization disseminate information via electronic media. Article 242 also covers "any person," but is broader in scope because it applies to actions in public generally, not only through electronic channels.

Concerning Act and Purpose/Object, under the ITE Law, the offense involves disseminating information that is "intended to incite hatred or hostility" toward individuals or groups based on SARA (ethnicity, religion, race, or intergroup relations). By contrast, Article 242 criminalizes "expressing feelings of hostility, hatred, or contempt" toward groups based on race, nationality, ethnicity, skin color, gender, or mental/physical disability, and it does so without requiring that information be disseminated.

The transformation of hate speech crimes from the ITE Law to the new Criminal Code (Law No. 1 of 2023) represents a significant shift in Indonesia's criminal law

⁴⁰ Defril Hidayat, Hengki Firmanda, and Mahmud Hibatul Wafi, "Analysis of Hate Speech in the Perspective of Changes to the Electronic Information and Transaction Law," *Fiat Justitia* 18, no. 1 (2024): 31–48, <https://doi.org/10.25041/fiatjustisia.v18no1.3146>.

framework. Starting from 2026, several hate speech-related provisions previously governed under the ITE Law are replaced by more detailed and measurable norms in the new Criminal Code. These changes include clearer subjective elements, the new Criminal Code narrows the criteria for liability, requiring more specific intent or mental elements before an act can be deemed criminal; reduced criminal sanctions, with penalties for hate speech-related offenses generally lower compared with those under the ITE Law.; Retention of core prohibitions, that the fundamental prohibition against spreading hatred based on identity (e.g., ethnicity, religion, race, group affiliation) remains intact; and better alignment with human rights norms: By tightening definitions and reducing penalties, the new Criminal Code moves closer to international human rights standards, especially regarding freedom of expression. Despite these improvements, legal coherence must still be addressed, particularly in light of the Constitutional Court's recent ruling on hate-speech provisions within the revised ITE Law. Overall, the transformation reflects an effort to create clearer, more proportionate, and less easily abused hate speech regulations, though further legal harmonization remains necessary, as cybercrime's characteristics are transnational, cross-jurisdictional, and using fast developed technology.⁴¹

The new Criminal Code has implications for cases under the old ITE Law. The practical implication is that cases under the old ITE Law (pre-2026) remain valid, but prosecutors can transition to the new Criminal Code for lighter sanctions (e.g., hate speech sentences of ≤3-4 years vs. ≤6 years under the ITE Law). Regarding digital evidence, the new Criminal Code is weak on electronic evidence (logs/metadata), while the ITE Law is stronger. Harmonization with the new Criminal Procedure Code is needed.

CONCLUSION

Regarding the intention and target of hate speech, the four cases above show that:

- a. The intention of the perpetrators did not the only consideration of the judicial decision. When a speech is considered a religion-based hate speech and becomes a case that is tried, the judge considers the elements that were violated, in this context, namely, creating a commotion and causing hostility.
- b. Addressing the subject of speech acts was deemed blasphemous; remarks deemed to be religion-based hate speech are those that "offend a religion or belief," and they were linked to protests or demonstrations by followers.

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⁴¹ Silawati Dayang Ganjar, "Urgensi Pembaruan Hukum Pidana Dalam Menanggulangi Kejahatan Siber : Tinjauan Kritis Terhadap Kesesuaian KUHP Nasional Dan Perubahan UU ITE," *Locus Journal of Academic Literature Review* 4, no. 3 (2025): 197–208.

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