

THE REQUEST FOR POSTPONEMENT OF THE BLASPHEMY CASE-CRIMINAL CHARGE READING BY POLICE AND PROSECUTORS

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ABSTRACT

This research aims to evaluate the police's request to postpone the criminal charge reading of the blasphemy case at the North Jakarta District Court, which was not based on Indonesia's positive law. The request to postpone a trial by the police without a legal basis could be considered a form of police intervention against the trial process, which has legal criminal consequences based on Article 3 Paragraph 2 and 3 of Law Number 48 of 2009 concerning Judicial Power. Meanwhile, the request for a two-week trial postponement by the public prosecutors due to their inability to complete the criminal indictment, as well as considering the request from the police, has created an impression that the public prosecutors have complied with the request of the police. It also injured public trust that demanded a fair and transparent law enforcement process.

Key Words: criminal charge reading; postponement; judicial power.

INTRODUCTION

Basuki Tjahaja Purnama (BTP or well-known as Ahok) was caught in a legal case related to religious blasphemy, which sparked the reaction of Muslims from 2016 to 2017 (Permatasari, 2018). He was then serving as the Governor of the Special Capital Region of Jakarta (Daerah Khusus Ibukota/DKI Jakarta). Previously, Joko Widodo and BTP were respectively elected as Governor and Deputy Governor of the region. However, since Joko Widodo was elected as President, BTP has succeeded as Governor.

The blasphemy case occurred ahead of the DKI Jakarta gubernatorial election. The case was triggered by BTP's controversial statement at the Thousand Islands, North Jakarta, which alluded to Surah al-Maidah verse 31. He said, "So don't trust people. It could be that you actually don't want to vote for me. Lied to using Surah al-Maidah verse 51 and all kinds of things." These words

sparked a wave of protests by Muslims, was reported to the police, and BTP was eventually named a suspect. The case was tried at the North Jakarta District Court. The legal process was conducted simultaneously with the DKI Jakarta regional election process in which BTP was one of the candidates.

During the course of this case, the Jakarta Police Chief sent a letter to the Head of the North Jakarta District Court requesting a postponement of the criminal charge reading. The reason was the precarious security situation in DKI Jakarta ahead of the second stage of the gubernatorial election. The trial process was approaching the election silence period and the polling day, and there were possibilities of mass mobilizations. In addition to the police request, the public prosecutors asked for a two-week trial delay to complete the criminal indictment. The trial was requested to be adjourned until the second stage of voting was completed.

Although eventually, the panel of judges delayed the trial, they initially expressed distrust to the prosecutors. They stated that it was unlikely for an established institution such as the Attorney General's Office not to have adequate facilities and human resources to complete the criminal indictment. The public reacted to this situation because it appeared that the police had intervened with the judicial process, and the Public Prosecution Service was unprofessional; thereby, the judge had no other option but to postpone the trial. The reasons for the request to adjourn the trial were doubtful for the panel of judges and court visitors and appeared absurd to all Indonesians who witnessed and followed the developments of the blasphemy trial.

Although several parties understood the police's concern and, thus, supported the proposal to delay the trial, it was considered an intervention to judicial independence. The support to adjourn the trial was feared to affect the quality of regional elections (BBC, 2017).

The request to postpone the trial triggered a lengthy discussion in the academic world. Academics considered that court affairs and regional elections are two separate issues. A legal process should continue regardless of any reasons, including the matter of regional elections.

Based on Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, the police cannot determine the time and place of trials because it is the responsibility of the panel of judges. Muzakir stated that the request to delay the criminal charge reading created an unfair atmosphere because the police appeared to be interfering in court matters. It is essential not to repeat the incident during the court decision reading on the Jesica case. At that moment, the number of police guarding the venue outnumbered the court visitors. Such police actions may affect the judges (Republika, 2017). The public prosecutors' situation that was unprepared to charge the defendant was also questioned. It was hardly possible to happen because public prosecutors have standardized professional procedures and timelines. Thus, the proposed reasons were not entirely reasonable. Although it is common to request delays, it is vital to provide rational reasons (Republika, 2017).

Based on the description above, it is interesting to analyze and understand the legal basis for the Police and the Public Prosecution Service to request a delay of the criminal charge reading in the blasphemy case at the North Jakarta District Court.

Studies on related issues have been previously conducted. Arsil (2018) described issues related to blasphemy. Maya Putri Sari discussed the delay of criminal charge reading due to a written request from the Jakarta Regional Police given the security considerations ahead of the second round of the DKI Jakarta regional election (Sari, 2017). Also, Imron (Imron, 2016) explained the duties and authorities of the judges, prosecutors, and police in handling corruption cases.

RESEARCH METHODS

It is a normative legal study based on applicable legal provisions and continued with related theories and juridical explanations related to Indonesia's positive law. The methodology was

employed to explain the research object, i.e., the request by the police to postpone the court decision in the case of religious blasphemy (Fajar & Achmad, 2017).

DISCUSSIONS AND ANALYSIS OF RESULTS

1) The Legal Basis for the Authority of the Police and the Public Prosecution Service

Article 1 Paragraph 3 of the third Amendment to the 1945 Constitution of the Republic of Indonesia stated that Indonesia is a state of law. However, the 1945 Constitution did not provide further details on its true meaning. The state of law concept is based on two interpretations, i.e., related to the meaning of *rechtsstaat* and the meaning of the rule of law. The fourth paragraph of the Preamble to the 1945 Constitution implied that the state of law referred to in Article 1 Paragraph 3 of the 1945 Constitution is a *Pancasila*-based state of law. As a state of law, Indonesia has an integrated criminal justice system that includes supporting sub-systems, namely the Police, Public Prosecution Service, Court, and Corrections, which have respective functions and duties.

The first principle of law enforcement is legal certainty (*rechtssicherheit*). Certainty is a matter or condition that is definite, either provisions or stipulations. (Kansil, 2009). In essence, the law must be definite and fair. Definite as a code of conduct and fairness because the code of conduct must support an order considered reasonable. The law becomes functional only if it is just in its nature and applied with certainty. Thus, certainty and justice are not only morally demanded, but they factually characterize the law. In addition, the benefit (*zweckmassigkeit*), understanding the meaning of legal benefit and function, is basically evaluating the significant meaning of a legal rule.

As a modern concept, the law has a function to carry out a social change. In carrying out its functions, the law is consistently challenged with the established societal values and behavioural patterns (Mulyani, 2010). The last principle is justice (*gerechtigkeit*). The measure of justice, as mentioned above, covers the ideal area as it discusses the issue of justice, meaning that it falls into a

philosophical level requiring deep reflection to its deepest nature. Even Hans Kelsen emphasized on the philosophy of Plato's law that justice is based on the knowledge of a good deed. Knowledge of good things is fundamentally an out-of-the-world issue; therefore, justice is included in philosophical studies (Nasution, 2016). There must be harmony between the three principles; each must be given proportionate and balanced attention. However, manifesting harmony between the principles is not a simple task in practice.

When the Indonesian National Police was repositioned as an independent institution, it was separated from the Indonesian Armed Forces and positioned directly under the Ministry of Defense and Security. The paradigm shift in the Indonesian constitutional system, which resulted in the separation of the National Armed Forces from the National Police, became one of the considerations for the birth of Law Number 2 of 2002 concerning the Indonesian National Police. Since it was promulgated on 8 January 2002 in the State Gazette of the Republic of Indonesia Number 2 of 2002, the National Police became a non-departmental government institution, controlled directly under the President, and led by a National Police Chief (Article 8 Paragraph 1 and 2 of Law No. 2 of 2002).

In the criminal justice system, the National Police acts as a gatekeeper. This term is based on the understanding that criminal proceedings begin with police actions, starting from the examination, investigation, and the *P-21* stage, i.e., the stage that requires transfer of files, suspects, and evidence to the Public Prosecution Service.

After the enactment of Law Number 8 of 1981 concerning the Criminal Procedure Code, prosecutors were given great authority in the criminal proceedings. The prosecutors' duties and authorities were reaffirmed in Law Number 16 of 2004 concerning the Public Prosecution Service. This organization is a non-departmental institution led by a ministerial-level Attorney General. In the integrated criminal justice system, the Public Prosecution Service functions to exercise the

prosecutorial power of the state and other authorities based on the legislation (Article 2 Paragraph 1 of Law No. 16 of 2004).

The BTP case has generated reactions from Indonesian academics, practitioners, and law enforcement observers due to the Jakarta Police Chief's written request to postpone the trial. The request was expressed via document Number B/5006/IV/2017 dated 4 April 2017. It was directed to the Head of the North Jakarta District Court with copies sent to the Head of the Supreme Court, Chief of the National Police, Inspector for General Supervision of the National Police, Head of the DKI Jakarta High Court, and Head of the DKI Jakarta Regional Prosecutor's Office. The request to delay the trial scheduled for criminal charge reading was based on the increasingly precarious security situation and the need to apply security measures in preparation for the second round of the regional election in DKI Jakarta.

It is necessary to evaluate whether there is a legal basis for the police to request a trial delay to the court. Article 13 of the Police Law stated that the primary duties of the National Police are related to maintaining security and public order, law enforcement, as well as providing protection and service to the community. The duties and authorities of the police are outlined in Article 14 to 16 of the Police Law.

Regarding the criminal proceedings, the police have the duty to carry out investigations of all criminal acts according to the relevant legislation. The task includes seeking information and evidence, and other authorities as stipulated in Article 16 of the Police Law.

Based on the literature search, there was no legal basis for the police to request a trial postponement to the court. However, it should be noted that the basis for the request was the uncertain security situation in DKI Jakarta ahead of the second stage of the gubernatorial election. The trial was also planned to be held nearing the silence period and polling day; hence, there were possibilities of mass mobilization. For this reason, the police recommended postponing the trial until the second stage of voting has been completed. The author argues that the request for trial

adjournment was based on the main duties of the police according to the Police Law, i.e., maintaining public security and order. The request was submitted to minimize the possibility of mass mobilization to the court location that may cause friction between the pros and cons and lead to security and public order disturbances.

The public prosecutors also submitted a request for trial postponement to the head of the panel of judges. The request was submitted by Ali Mukartono, as the Head of the Public Prosecutors Team, in the courtroom on 11 April 2017. The reason for the request was because the team has not completed the *requisitoir*.

The Public Prosecution Service is a law enforcement institution closely related to the judicial power, thus playing a central role in the integrated criminal justice system. This institution exercises the prosecutorial power of the state and is responsible for the results of investigations. Public prosecutors are prosecutors who are authorized by law to carry out prosecutions and carry out judges' verdict (Article 13 of Law No. 8 of 1981). The authority to carry out the prosecution is given directly by the norms of Article 14g and Article 137 of the Criminal Procedure Code in conjunction with Article 30 Paragraph 1a of the Public Prosecution Service Law.

The prosecutorial authority begins when the public prosecutor receives a complete investigation result from the investigator and determines that the case files meet the requirements; hence, ready to be transferred to court (Article 139 of Law No. 8 of 1981). The public prosecutor then prepares a dated and signed lawsuit containing (Article 140 Paragraph 1 in conjunction with Article 143 Paragraph 2 of the Criminal Procedure Code): (a) the full name, place of birth, age or date of birth, gender, nationality, residence, religion, and occupation of the suspect; (b) an accurate, clear, and complete description of the charged criminal act by stating the time and location of the crime.

Once the lawsuit is prepared, the public prosecutor submits the case to the District Court, accompanied by the lawsuit, and requests the case to be tried immediately (Article 143 of the Criminal Procedure Code).

The criminal proceeding is continued in the courtroom by presenting evidence via witness testimonies, experts, document examinations, obtaining instructions from the judge, and listening to the defendant's testimony. The opportunity to present witnesses, experts, and documents are provided equally to both the public prosecutor and the defendant. After the examination is declared complete, the public prosecutor submits the criminal charge (Article 182 Paragraph 2 of the Criminal Procedure Code).

Submission of criminal charges is prepared in the form of a *requisitoir*, i.e., a document containing evidence of the lawsuit based on information revealed at trial, the public prosecutor's conclusion regarding the defendant's crime, and the criminal charges. In preparing criminal charges, the public prosecutor is bound to the lawsuit, delivered at the beginning of the trial. The lawsuit is the basis and sets the boundary of the trial (Badiklat, 2019).

The *requisitoir* in a trial proceeding is a reference to determine the prosecutor's standpoint towards the facts in a criminal case. Thus, it has a vital role in the criminal prosecution process (Syahril, 2014).

In formal juridical terms, the public prosecutor has the authority to submit an indictment as a follow-up to the lawsuit that was delivered earlier at the trial. Regarding the request for trial adjournment by the public prosecutors in the BTP case, the author argues that the request is legally grounded. The criminal charge submission is the absolute authority of the public prosecutor; therefore, if the public prosecutor has not completed the criminal indictment due to justifiable reasons, they have the authority to request a trial postponement.

However, the police's request to delay the blasphemy case trial has no legal basis and was not their authority. The request for trial postponement was based on the interpretation of Article 13a

and Article 14 Paragraph 1b and 1e of the Police Law, which regulates police duties. Meanwhile, the prosecutors' action requesting a postponement of the trial was based on Article 182 Paragraph 1a of the Criminal Procedure Code that authorizes public prosecutors to submit criminal charges.

2) Analysis of the Request for Postponement of the Blasphemy Case Charge Reading by the Police and Prosecutors at the North Jakarta District Court

One of the principles of a state of law is the assurance of an independent judicial power to uphold law and justice. In Indonesia, this principle is implemented based on *Pancasila* and the 1945 Constitution (Article 1 Number 1 of Law No. 48 of 2009). Judicial power is exercised by the Supreme Court and the lower levels of public court, religious court, military court, state administrative court, and the Constitutional Court (Article 18 of Law No. 48 of 2009). The North Jakarta District Court is an institution that exercises judicial power; therefore, it accepted, examined, and adjudicated the alleged religious blasphemy case committed by BTP.

The Jakarta Police Chief requested a postponement of the criminal charge reading due to the precarious security situation ahead of the second stage of the DKI Jakarta regional election. The trial was scheduled close to the silence period and the polling day, potentially triggering mass mobilization. Apart from the police, the public prosecutors proposed a similar request because they have not completed the criminal indictment yet. The public prosecutors also considered the police's recommendation to adjourn the trial.

The action of the Jakarta Police Chief, who asked the court to postpone the criminal charge reading, was not based on Indonesia's positive law. This law does not allow the police to interfere in trial proceedings; thus, it can be viewed as a form of police intervention. Regarding ongoing trial proceedings, the police are only authorized to provide security assistance, securing the implementation of court decisions, activities of other institutions, and community activities (Article 15 Paragraph 1 of Law Number 2 of 2002). The police, which has a role as an investigator, can

request for a trial delay if they, with the permission of the public prosecutor, acts as a prosecutor in a criminal proceeding which follows a rapid trial procedure based on the provisions of Article 205 Paragraph 2 of the Criminal Procedure Code. Apart from these provisions, the police do not have the legal standing to request a trial adjournment. This action should be viewed as an act of meddling in judicial affairs that has criminal legal consequences based on Article 3 Paragraph 2 and 3 of Law Number 48 of 2009 concerning Judicial Power.

Judicial power is an independent power to administer justice. Trial adjournment is the absolute authority of the panel of judges who examine the case and cannot be interfered with by external parties for any reason. Any interference in judicial affairs by external parties outside the judicial power is prohibited, except in cases referred to in the 1945 Constitution. Anyone who deliberately violates these provisions shall be punished according to the legislation (Article 3 Paragraph 2 and 3 of Law No. 48 of 2009).

Normatively, criminal case trial adjournments can only be justified in the following cases: (1) If the defendant is summoned illegally, the head judge will postpone the trial and order the defendant to be summoned again on the next trial day (Article 154 Paragraph 3 of the Criminal Procedure Code). (2) Regarding the defence, the judge may postpone the examination for a maximum of seven days at the request of the defendant or legal counsellors (Article 203 Paragraph 3 of the Criminal Procedure Code). (3) If a judge gives an order to a person to take an oath outside the court, the judge can postpone the case examination until another trial day (Article 223 Paragraph 1 of the Criminal Procedure Code).

Apart from the matters above, a trial delay can only be carried out for reasonable and accountable explanations. Trial adjournment without transparent and accountable reasons is contrary to the processual principle that underlies a good criminal justice system. An undue delay must be avoided, and a fast trial must always be prioritized.

Postponement of a trial is the absolute authority of the panel of judges who examine the case. Hence, in a fair law enforcement process, the panel of judges must be free from pressure or interference from any parties. The panel of judges must conduct a fair and impartial court. Law enforcement in the Indonesian integrated criminal justice system must be consistently carried out rapidly, simply, and at low cost, as well as freely, honestly, and impartially at all levels of justice as mandated by the Criminal Procedure Code. The principle of justice is also the "spirit" of Article 2 Paragraph 4 of the Judicial Power Law, which stated, "the trial is carried out simply, rapidly, and at low cost". The provision contains two judicial principles, i.e., independent, as well as rapid, simple, and low cost.

During the BTP case trial at the North Jakarta District Court, which was scheduled for criminal charge reading, the public prosecutors requested a two-week trial adjournment due to their inability to complete the criminal indictment. The public prosecutors also considered the adjournment request from the Jakarta Police Chief. Therefore, they asked for the trial to be continued after the second round of the regional election was completed. The author argues that the request for trial delay is legally reasonable because submitting criminal charges is the absolute authority of the public prosecutor based on Article 182 Paragraph 1a of the Criminal Procedure Code. If the public prosecutors have not completed the criminal indictment for reasons that can be accounted for, they have the authority to request a trial adjournment. However, the request to postpone the trial gave the impression that the public prosecutors had complied with the request of the Jakarta Police Chief and damaged public confidence for a fair and transparent law enforcement process. Moreover, the defendant was a public official who was a candidate in a regional election. Public prosecutors should work professionally and complete the criminal indictment in time according to a predetermined trial schedule.

The application of simple, fast, and low-cost trial principles is intended to respect the dignity and rights of every citizen who faces legal problems. The manifestation of this principle will

minimize the defendants' losses in undergoing the legal process. Case examination in a lengthy and protracted trial will not provide a sense of fairness, especially for the defendant, because an inappropriate application of legal procedures has the potential to override substantive justice.

The head judge must act as a commander and make efforts to carry out each step of the trial proceeding rapidly. All obstacles that arise due to the rigid application of procedures must be minimized to prevent an obstructed legal process that may result in a protracted trial. An example is a repeatedly adjourned trial due to the inability of the public prosecutors to complete the criminal indictment. The public prosecutors are considered not using their rights proportionally if they cannot complete the criminal indictment within the given time limit. Thus, to manifest a fair legal process, the panel of judges should continue the trial with the following agenda based on the applicable procedural law.

Trial delays for reasons that cannot be accounted for will hamper the manifestation of simple, rapid, and low-cost trial principles. It will also harm the defendant's right. Thus, as part of the criminal justice sub-system, all parties must maintain the neutrality of justice in Indonesia.

In order for judges to resolve problems or conflicts impartially based on the applicable law, they must be independent and free from the influence of any parties, including the government, police, and prosecutors, in the decision-making process. Judges have the right to resolve cases they are responsible for without being dictated by any party (Lubis, 2008).

CONCLUSIONS

The police's request to adjourn the criminal charge reading in the blasphemy case at the North Jakarta District Court was not based on Indonesia's positive law that does not explicitly state that requesting such matter is one of the authorities of the police. Meanwhile, the request for trial postponement by the public prosecutors was based on the provisions of Article 182 Paragraph 1a of the Criminal Procedure Code, which gives absolute authority to the public prosecutors to submit

criminal charges. Therefore, if the public prosecutors have not yet completed the indictment with justifiable reasons, they have the authority to request a trial adjournment.

The request to postpone the trial by the police can be seen as a form of police intervention in the trial proceeding, which has legal consequences. The police can request to adjourn a trial if they are part of the prosecutors in a criminal proceeding that follows a rapid trial procedure. Apart from these provisions, the police do not have the legal standing to request a trial postponement. Meanwhile, the postponement request by the public prosecutors due to their inability to complete the criminal indictment, as well as considering the reasons for the request by the police, may affect public trust in the law enforcement process. Public prosecutors should work professionally in completing criminal indictments so that they can be delivered according to the predetermined trial schedule, especially for cases that attract public attention.

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