

Analysis of Legal Protection For Preachers Or Da'wa Practitionersin Delivering Da'wa

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Abstract

We often see and hear in the media such as on television and sometimes even witness firsthand in our own communities, preachers or mubaligh who deliver their sermons filled with hatred, slandering those in power, denigrating or declaring other ethnic groups or races as infidels, and whose sermons even incite provocation, division, and hostility. In fact, quite a few preachers or religious educators have had to face legal consequences and ultimately ended up behind bars or in prison. This study aims to examine the legal protections available to preachers or religious educators when delivering their sermons. This is a literature review using primary legal sources. The primary legal sources include the Criminal Code (KUHP), Law No. 1 of 2024, and Law No. 40 of 2008, while the secondary legal sources consist of books, journals, articles, and dictionaries related to the topic. The data were analyzed using descriptive methods and content analysis. The results of the study indicate that there is no specific protection for mubaligh or preachers in delivering their sermons; all are equal before the law and have the right to express their opinions. However, if their opinions contradict the law such as in cases of hate speech they may be subject to sanctions in accordance with the principles of the rule of law and the provisions of applicable laws and regulations.

Keywords: Legal Protection, Muballigh, Delivering the Message

Introduction

The word muballigh is the noun form (agent form) of the verb ballagha yuballighu tablighan, which means to convey.” “Tabligh” means “conveyance,” and a “muballigh” is a person who conveys a message. Based on the linguistic definition above, a muballigh can be defined as a person who possesses the ability and willingness to convey Islamic messages and to serve as a role model in the practice of Islamic teachings, with the intention of worshiping Allah.

In addition to muballigh, there is another term often heard: pendakwah. If we look more closely, the word dakwah is derived from the words da'a and yad'u. The word da'a is a past tense verb (fi'il madhi) meaning to supplicate, to ask, to pray, and to call terms mentioned in the Qur'an in 10 surahs and 11 verses. However, only three verses contain the meaning of “dakwah”: Surah Al-Anfal, verse 24; Surah Ar-Rum, verse 25; and Surah Fushshilat, verse 33. The word “yad'u” is a present tense verb (fi'il mudhari') mentioned in the Qur'an 21 times across 20 surahs. The word “yad'una,” in the context of “dakwah,” appears in 12 verses. The word “dakwah” is a mashdar noun mentioned in the Qur'an 5 times, with 2 verses conveying the meaning of “prayer” and

3 verses conveying the meaning of “da’wah.” The word “ادع” (ud’u) is an imperative verb form mentioned in the Qur’an across 8 surahs in 12 verses.

Among the verses of the Qur’an that most clearly emphasize the method of da’wah is Surah an-Nahl, verse 125:

أَدْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحُكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِمَنْ ضَلَّ عَنْ سَبِيلِهِ وَهُوَ أَعْلَمُ بِالْمُهْتَدِينَ

Meaning: “Invite (people) to the path of your Lord with wisdom and good counsel, and argue with them in a way that is best. Indeed, your Lord is the One who knows best who has strayed from His path, and He is the One who knows best those who are guided.” (Quran 16:125).

In Surah An-Nahl, verse 125, the Qur’an outlines three methods of da’wah, the essence of which is to adapt the content and approach of da’wah to its target audience: to scholars, through wisdom; to the general public, through mau’izhah hasanah that is, offering advice and parables that touch the soul, in accordance with their level of understanding; For the People of the Book and adherents of other religions, the approach is through jidal (discussion) in the best manner that is, using logic and subtle rhetoric, free from violence and insults.

As for the approach using the method of wisdom:

- a. Speaking to someone in their own language Part of wisdom is speaking and engaging in dialogue with others using their own language, so that the content of the conversation and two-way communication flow smoothly. This means it is not merely a matter of speaking to a Chinese person in Chinese or a Russian person in Russian, but goes beyond that: scholars should be addressed in their own language, and laypeople should be spoken to in theirs;
- b. Be Kind It is also part of wisdom to be kind and gentle when conveying commands and prohibitions. We should not burden someone with more than they can bear. That way, they will not reject our call;
- c. Taking into account the nature of work and its legal status: Another aspect of wisdom that must be carefully considered in the rhetoric of Islamic da’wah today is paying attention to and upholding the nature of work, its value, and its legal status under Islamic law. This is achieved by crafting Islamic messages appropriately, in accordance with the time, place, and specific context. Then we convey commands and prohibitions according to their priority;
- d. Gradual Approach: Another wise approach that must be observed is to guide people through tadarruj (gradually). This is because tadarruj itself is a law of nature just as it is a law of Sharia. Just as the creation of humankind occurred through a step-by-step process.

Mau’izhah al-hasanah, or good counsel, involves advising others in a kind manner that is, offering guidance toward goodness using language that is polite, acceptable, pleasing to the heart, touching to the emotions, and clear in thought, while avoiding harshness, and does not seek out or point out the audience’s faults so that the

recipient of the da'wah, of their own free will and out of their own awareness, may willingly follow the teachings conveyed by the da'wah practitioner. If the "way of wisdom" (hikmah) appeals to the intellect to understand the messages, then da'wah through mau'izhah hasanah appeals to the heart and emotions to realize the truth and be moved to act. Al-Mau'izha Hasanah is a method of da'wah or preaching that is pleasing, draws people closer to it rather than driving them away, and makes things easy rather than difficult. In short, it is a method that impresses upon the target audience that the preacher is a close friend who cares for them, and one who seeks out everything that is beneficial for them and brings them happiness.

Mujadalah is engaging in discussion in the best possible manner among the available methods of discussion. Mujadalah is the final method used for da'wah when the two preceding methods have already been applied to people with advanced and critical thinking such as the People of the Book, who have already acquired religious knowledge from previous messengers. This approach to da'wah is carried out through dialogue grounded in noble character, gentle speech, and a focus on the truth supported by rational and textual arguments with the aim of refuting the false arguments used by the dialogue partner.

However, we often see and hear in the media such as on television and sometimes even witness firsthand in our own communities, preachers or mubaligh who deliver their sermons filled with hatred, slandering those in power, denigrating or declaring other ethnic groups or races as unbelievers, and whose sermons even incite provocation, division, and hostility. In fact, quite a few preachers or religious educators have had to face legal consequences and ultimately ended up behind bars or in prison.

Based on the issues outlined above, the author seeks to examine the legal protections available to preachers or religious educators within the existing legal framework of our country, specifically Indonesia.

Methodology

This study is a literature review, also known as "library research," which involves an analysis using reference sources such as books, legal texts, court decisions, or other information relevant to or related to the scope of the discussion. The primary legal sources in this study are the Criminal Code, Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions, and Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination. Meanwhile, the secondary legal sources consist of books, journals, articles, and dictionaries related to the subject matter.

The data was analyzed using the descriptive method, which is a method of writing that involves presenting or describing a phenomenon as it actually is, based on the subject's perception. This was followed by content analysis, a method used to identify, study, and analyze the subject under investigation.

Results of Discussion

No provision was found in the law that regulates legal protection for a mubaligh or preacher in delivering his sermons. Under Indonesian law, the professions granted immunity or special protection are:

1. Attorneys

Article 16 of Law No. 18 of 2003 states that “attorneys cannot be prosecuted, either in civil or criminal proceedings, while performing their professional duties in good faith for the purpose of defending their clients in court proceedings.” The Ruling of the Constitutional Court of the Republic of Indonesia No. 26/PUUXI/2013 states that Article 16 of Law of the Republic of Indonesia No. 18 of 2013 on Attorneys (State Gazette of the Republic of Indonesia Year 2003 No. 49, Supplement to the State Gazette of the Republic of Indonesia No. 4288) has no binding legal force unless interpreted to mean “A lawyer may not be sued, either in civil or criminal proceedings, in the performance of his or her professional duties in good faith for the purpose of defending a client both in and out of court.” The term “outside the courtroom” in the Constitutional Court’s decision refers to an attorney’s defense of a client beginning from the time the client is questioned and charged outside of court proceedings.

2. Judges

Supreme Court Circular Letter (SEMA) No. 9 of 1976 on Lawsuits Against Courts and Judges serves as a guideline from the Supreme Court that provides protection to judges in the performance of their judicial functions. Although the term “judicial immunity” is not explicitly mentioned in this SEMA, its substance forms the basis for the development of the doctrine of judicial immunity in Indonesia.

3. Members of the Regional People’s Representative Council (DPRD)

Pursuant to Article 80 of Law No. 17 of 2009 on the People’s Consultative Assembly (MPR), the House of Representatives (DPR), the Regional Representatives Council (DPD), and the Regional People’s Representative Councils (DPRD) (MD3), the rights of DPR members are as follows: 1. To submit draft laws; 2. To ask questions; 3. To present proposals and opinions; 4. To vote and be elected; 5. To defend themselves; 6. Immunity; 7. Protocol; 8. Financial and administrative matters; 9. Oversight; 10. To propose and advocate for development programs in their electoral districts; and 11. To conduct public outreach on laws.

Provisions regarding the immunity rights of DPR members are guaranteed by the 1945 Constitution of the Republic of Indonesia, specifically Article 20A, paragraph (3). Further regulations are set forth in the relevant laws

and regulations, namely: Law No. 22 of 2003, Law No. 27 of 2009, Law No. 17 of 2014, Law No. 2 of 2018 (the second amendment to Law No. 17 of 2014), and Law No. 13 of 2019 (the third amendment to Law No. 17 of 2014). Immunity is a legal principle that protects a person or entity from legal action; members of the House of Representatives (DPR) cannot be prosecuted in court for statements, questions, and/or opinions they express—whether orally or in writing—during or outside DPR sessions, provided such statements relate to the functions, authority, and duties of the DPR.

4. Diplomat

The provisions governing diplomatic officials or personal immunity are set forth in Article 29 of the 1961 Vienna Convention, which states: “The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom, or dignity.” This means that diplomatic officials are inviolable. They cannot be held liable in any form for arrest or detention. The receiving state must treat them with respect and must take all appropriate steps to prevent any attack on their person, freedom, or dignity.

The term “diplomatic immunity” encompasses two concepts: “inviolability,” which means immunity from the instruments of state power of the receiving state and from harmful interference; and “immunity,” which means immunity from the jurisdiction of the receiving state, whether under criminal or civil law. The concept of “inviolability,” as set forth in Article 29 (1) of the 1961 Vienna Convention, means that a diplomatic official is immune; he or she cannot be arrested or detained.

Therefore, if a preacher or religious teacher delivers a sermon in which their message is filled with hatred, disparages those in authority, denigrates or labels other ethnic groups or races as infidels, or even incites provocation, division, and hostility, they may be charged with the criminal offense of hate speech. There are 11 categories included in this, namely ethnicity, religion, religious sects, beliefs, race, intergroup relations, skin color, ethnicity, gender, people with disabilities, and sexual orientation. These aspects constitute the most fundamental identities that a person cannot choose; in other words, these identities exist from birth or are chosen in accordance with one’s conscience.

Hate speech is not limited to opinions expressing hatred; it can take various forms. There are seven types of actions that fall under hate speech: insults, defamation, blasphemy, offensive conduct, provocation, incitement, and the dissemination of false information.

Insults falling under the category of hate speech are those directed at a person or group based on ethnicity, religion, religious denomination, beliefs, race, skin color, social class, ethnicity, gender, people with disabilities, sexual orientation,

or gender expression. Such insults take the form of incitement to discrimination, hostility, or violence.

There are six forms of such insults: defamation, defamation by written means, slander, minor insults, false accusations, and slanderous allegations. An insult must be committed by accusing someone of having committed a specific act with the intent that it be made known to the public.

Defamation is an act, whether written or spoken, intended to tarnish a person's reputation. Defamation that constitutes hate speech can be committed directly or indirectly and may take the form of an attack on a person's honor or reputation.

Insult and defamation share the same purpose, but insult has a broader scope, whereas defamation is a specific form of insult. Defamation is a false accusation regarding a person's honor intended to be made known to the public. Such accusations may include allegations of adultery, embezzlement, and so on. Defamation is also a form of insult, but in this context, it specifically refers to an insult directed at a person's honor.

An offensive act is an act committed by a person that others consider to be offensive. Upon closer examination, however, it is difficult to categorize certain acts as "unpleasant," since what one person finds pleasant may differ from what another finds so. Therefore, the Constitutional Court, in its ruling, stated that the offense of "unpleasant acts" has been abolished in the context of hate speech, meaning that such acts are not criminal offenses.

Provocation is the act of publicly expressing feelings of hostility, hatred, or contempt toward one or more groups. The term "group" refers to any of the following: ethnicity, religion, religious denomination, belief system, race, skin color, intergroup relations, ethnicity, gender, people with disabilities, sexual orientation, or gender expression.

Inciting is the act of influencing a person or group to encourage or urge them to do something. Inciting in the context of hate speech refers to inciting a person or group to discriminate against or show hostility toward another individual or group.

The spread of false news, commonly known as "hoaxes," refers to information that is disseminated but is factually incorrect. The dissemination of false news is intended to cause division and hostility among individuals and groups. The dissemination of false news can also be interpreted as fraud—derived from the word "tipu," meaning to deceive—which refers to dishonesty, falsity, or lies intended to mislead.

Article 242 of Law No. 1 of 2023 states that any person who, in public, expresses feelings of hostility, hatred, or contempt toward one or more groups of the Indonesian population based on race, nationality, ethnicity, skin color, gender, mental disability, or physical disability, shall be punished by

imprisonment for a maximum of 3 (three) years or a fine of up to Category IV, namely 200 million rupiah.

Article 243(1) states that any person who broadcasts, displays, or posts text or images so that they are visible to the public, or plays a recording so that it is audible to the public, or disseminates such content via information technology, containing statements of hostility with the intent that the content be known or made more widely known to the public, directed against one or more groups or segments of the Indonesian population based on race, nationality, ethnicity, skin color, religion, belief, gender, mental disability, or physical disability, resulting in violence against persons or property, shall be punished by imprisonment for a maximum of 4 (four) years or a fine of up to Category IV, namely Rp200 million.

Article 14 of Law No. 1 of 1946 states that (1) anyone who, by disseminating false news or announcements, causes unrest among the people, shall be punished by imprisonment for a maximum of ten years; (2) any person who disseminates news or issues a statement that may cause unrest among the people, while knowing or having reason to believe that such news or statement is false, shall be punished by imprisonment for a maximum of three years.

Article 15 states that “any person who disseminates uncertain, exaggerated, or incomplete news, while knowing or at least having reason to suspect that such news will or is likely to cause public unrest, shall be punished by imprisonment for a maximum of two years.”

The provision on hate speech on social media and electronic systems was previously regulated under Article 28(2) in conjunction with Article 45(2) of the ITE Law. However, these provisions have now been amended by Article 28(92) in conjunction with Article 45A(2) of Law No. 1 of 2024. The text of Article 28(2) of Law No. 1 of 2024 regarding hate speech is as follows: “Any person who intentionally and without authorization distributes and/or transmits Electronic Information and/or Electronic Documents that are inflammatory in nature, incite, or influence others in a manner that gives rise to hatred or hostility toward specific individuals and/or social groups based on race, nationality, ethnicity, skin color, religion, belief, gender, mental disability, or physical disability.” The act referred to in Article 28(92) of Law No. 1 of 2024 is punishable by imprisonment for a maximum of 6 years and/or a fine of up to 1 billion rupiah. This is stipulated in Article 45A(2) of Law No. 1 of 2024.

Legal protection for preachers or speakers in delivering religious sermons is essentially a constitutional guarantee provided by the state as a form of respect for freedom of religion, freedom of expression, and freedom to convey religious teachings. However, this protection is not an absolute right. The freedom to preach is limited by the obligation to respect the human rights of

others, maintain public order, foster interfaith harmony, and comply with applicable laws and regulations.

In the context of sermons containing hate speech, the state does not provide protection for actions that violate the law. If a preacher intentionally delivers a sermon containing insults, provocation, or incitement to discriminate against or commit violence toward specific individuals or groups based on ethnicity, religion, race, social group, or other identities, such acts may be classified as hate speech and subject to legal liability in accordance with applicable laws and regulations. In such circumstances, the legal protection provided by the state is directed more toward ensuring the perpetrator's procedural rights—such as the right to a defense, a fair trial, the presumption of innocence, and due process of law—rather than serving as a justification for the content of the sermon that violates the law.

On the other hand, law enforcement actions against religious preachers suspected of hate speech must be conducted objectively, professionally, proportionally, and without discrimination. Law enforcement officials must clearly distinguish between the dissemination of religious teachings, criticism, religious counsel, or differences of opinion—which are still protected by law—and statements that explicitly contain hatred, hostility, discrimination, or incitement to violence. This approach is essential to ensure that law enforcement does not lead to the criminalization of legitimate da'wah activities, while simultaneously protecting the public from the negative effects of hate speech.

Thus, legal protection for preachers must be understood as protection of the right to engage in da'wah responsibly, not as protection for actions that violate the law. Dakwah carried out in accordance with Islamic values—which prioritize wisdom, good counsel (*mau'izhah hasanah*), respectful dialogue (*mujadalah billati hiya ahsan*), and respect for human dignity—will continue to be guaranteed legal protection. Conversely, preaching that turns into a means of spreading hate speech, provocation, or incitement that threatens national unity and the rights of others may be subject to sanctions in accordance with the principles of the rule of law and the provisions of applicable laws and regulations.

Conclusion

In essence, there is no special protection for preachers or speakers in delivering their sermons; everyone is equal before the law and has the right to express their opinions. However, if their opinions violate the law—such as through hate speech—they may be subject to sanctions in accordance with the principles of the rule of law and the provisions of applicable laws and regulations.

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