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ANALYSIS OF THE NORMATIVE LAW ENFORCEMENT OF THE CRIME OF INSULTING THE STATE SYMBOL: CASE STUDY OF THE INSULT TO THE STATE COAT OF ARMS BYZASKIA GOTIK AND HABIB RIZIEQ

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**ANALYSIS OF THE NORMATIVE LAW ENFORCEMENT OF THE
CRIME OF INSULTING THE STATE SYMBOL:
CASE STUDY OF THE INSULT TO THE STATE COAT OF ARMS BY
ZASKIA GOTIK AND HABIB RIZIEQ**

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ABSTRACT

Cases of insulting the national emblem are increasing and attracting attention. A number of cases of allegations of insulting the national emblem have brought up a number of names, from celebrities, religious and community leaders, teenagers and students, to organizations. Two cases that were busy were allegations of insulting the national emblem by Zaskia Gotik and Habib Rizieq, which appeared at a similar period. Various studies regarding the alleged humiliation of the state symbol by Zaskia Gotik and Habib Rizieq have been widely studied. However, most of the studies focused on linguistic and communication perspectives. Unlike previous studies, this paper intends to examine the aspects of criminal law enforcement in both cases. To answer the research problems raised, the author uses important concepts in punishment and also the theory of legal certainty. This study is a normative juridical study with secondary data as material for analysis. This research reveals that law enforcement in cases of alleged insulting the state symbol by Zaskia Gotik and Habib Rizieq provides legal certainty because of the existence of corridors or guidelines in declaring the act guilty or not legally. The corridor refers to Law no. 24 of 2009 which regulates the symbols of the state, one of which is the symbol of the state, both regarding the meaning, prohibition, and threat.

KEYWORDS: State Symbol, Actus reus, Mens Rea, Criminal Act, Punishment, Legal Certainty, Law Enforcement

INTRODUCTION

In the last few years, the phenomenon of insulting the national symbol has been taking place and has attracted attention. This case has also drawn a number of names from celebrities, community and religious leaders, teenagers and students, to organizations. Two names that have been sued and invite public attention because they are considered insulting the national symbol, namely Zaskia Gotik (Surkianih / Zaskia Shinta) and Habib Rizieq (Habib Muhammad Rizieq bin Hussein Shihab).

The alleged case of insulting the national emblem by Zaskia Gotik was reported by the NGO Corruption Supervisory Commission on March 17, 2016 and also DPD member Fahira Idris on March 18, 2016. The report is based on an incident that occurred on a private television station. At that time, Zaskia Gotik was asked to answer the question of when the proclamation

of Indonesia was announced and what was the symbol of the fifth principle of Pancasila. Zaskia Gotik then answered August 32 (by crossing out the previous answer after the dawn call to prayer) and ducks nungging for each of these questions (Teresa et al., 2017).

The alleged case of insulting the state symbol by Habib Rizieq was reported by Sukmawati Soekarnoputri on October 27, 2016. The report is based on Habib Rizieq's remarks in a video clip of a lecture that took place in 2011 at the Gazebo Square in Bandung City. Habib Rizieq in the video clip says "Sukarno's divine Pancasila is on the buttocks, while the Pancasila of the Jakarta Divinity charter is in the head" (Primagara & Agustin, 2018).

Zaskia Gotik and Habib Rizieq have reviewed the allegations of insulting the national emblem by a number of researchers. However, most of these studies still focus on studies from a communication and linguistic point of view. R Budiawan and RF Mualafina, for example, studied the controversy over the speech of the artist Zaskia Gotik in the case of insulting the state symbol from a forensic linguistic perspective. T Sobari and I Hamidah examined the comparison of news texts on seaword. com and Liputan6. Com about the news about the humiliation of Pancasila by Habib Rizieq Sihab using a discourse analysis perspective. Unlike the previous research, this research actually wants to see and examine the (criminal) aspects of law enforcement in the alleged case of insulting the state symbol. According to the author, the aspect of law enforcement in the case of alleged defamation of the national emblem is important for several considerations.

First, cases of allegations of insulting the national emblem are becoming more frequent. Apart from dragging the names Zaskia Gotik and Habib Rizieq, there are also examples of other cases such as insulting the national emblem by GP (24), residents of Mempawah, West Kalimantan, insulting the state symbol by Sahat S Gurning in North Sumatra through his Facebook account, to the conversion of Garuda Pancasila as the state symbol of facing right to the front then makes it the logo of the organization as is done by Paguyuban Tunggal Rahayu in Garut, West Java. Taking into account this trend, it is very important to study how to look at the aspect of law enforcement in the alleged case of insulting the emblem as regulated in legislation. This cannot be separated from the efforts of law enforcers to protect the state symbol, which is one of the identity, honor and existence of the nation.

Second, like several other countries such as the Philippines, Thailand, Portugal, France, Indonesia are countries that already have regulations on the protection of state symbols (Pratiwi & Wijaya, 2017). The state symbols in question are the flag, language, national anthem, and national symbols. This is regulated in Law no. 24 of 2009 concerning Language, Flag and National Emblem, as well as the National Anthem. It contains the meaning, prohibition, and even the threat of punishment if it is proven that they have committed inappropriate acts against the symbols of the state, including one of the symbols of the state. To see how legal certainty works, namely whether this law is implemented consistently, it is important to observe the law enforcement process for alleged insulting the state symbol. This will provide an overview of how the law enforcement process related to insulting the state symbol runs, whether it is in line with statutory regulations so as to provide legal certainty or not.

Through this paper, the author wants to examine how law enforcement in the alleged case of insulting the state symbol by taking the case study of Zaskia Gotik and Habib Rizieq. With this paper, the authors hope to contribute to legal studies, particularly in relation to law

enforcement related to the criminal act of insulting the state emblem.

CONCEPTUAL AND THEORETICAL FRAMEWORK

Coat of arms

The definition of a state symbol in statutory regulations can be seen in the amendments to Article 36A of the 1945 Constitution. Based on this article, the national symbol of Indonesia is Garuda Pancasila with the motto Unity in Diversity. This is reaffirmed in Article 1 paragraph 3 of Law no. 24 of 2009 concerning Language, Flags, and National Symbols as well as the National Anthem by mentioning the same meaning. However, in Chapter IV Articles 46 to 50 of Law no. 24 of 2009 is further explained in terms of the Unitary State Symbol of the Republic of Indonesia. The national emblem is in the form of the Garuda Pancasila whose head turns straight to the right, a shield in the form of a heart hanging by a chain on Garuda's neck, and the motto Unity in Diversity written on a ribbon that is gripped by Garuda (Hangkiho, 2017). The shield had a beak, wings, tail and claws which embodied the development force. Each Garuda has 17 wings, 8 hairy tails, 19 hairy tails, and 45 hairy necks - which symbolize the announcement of the proclamation of independence for the Republic of Indonesia. In the middle of the shield is a thick black line depicting the equator to symbolize that Indonesia is an independent and sovereign state crossed by the equator.

On the shield there are five spaces that embody the basis of Pancasila. The five spaces referred to, namely (a) the basis of the one and only Godhead symbolized by the light in the middle of the shield in the form of a five-pointed star; (b) the basis of Just and Civilized Humanity represented by a chain with round and square eyes at the lower left of the shield; (c) the basis of the Indonesian Union - represented by the banyan tree on the upper left of the shield; (d) the basis of the Popular Guided by the Wisdom of Wisdom in Consultation / Representation symbolized by the head of the bull on the upper right of the shield; and (e) the basis of Social Justice for All Indonesians represented by cotton and rice on the lower right of the shield. In Law no. 24 of 2009 also explains that the national emblem uses the main color consisting of (a) red on the upper right and lower left of the shield; (b) white color on the upper left and lower right of the shield; (c) golden yellow color for all Garuda birds; (d) black color in the middle of the shield shaped like a heart; and (e) natural colors for all symbol images.

Criminal Actions Against the State Coat of Arms

Criminal acts in the Criminal Code (KUHP) are known as *stratbaar feit*, namely actions that are prohibited by law so that anyone who violates the prohibition is subject to criminal sanctions or penalties (Manulang, 2013). Referring to this definition, insulting the state symbol can be said to be an act or a criminal act. This is because insulting the national emblem is prohibited by law and those who violate it can be subject to sanctions or penalties. This is expressly stated in the Criminal Code Article 154a which says:

"Anyone who defecates the national flag of the Republic of Indonesia and the coat of arms of the Republic of Indonesia is punished by a maximum imprisonment

of four years or a maximum fine of five thousand rupiahs."

In the process of law enforcement against criminal acts against the state symbol, Article 154a of the Criminal Code does not stand alone. Article 103 of the Criminal Procedure Code states that a criminal act may be applied to an act of which the crime is determined according to law, general regulations or ordinances unless the law stipulates otherwise. In this case, the *lex specialis derogat legi generalis* principle is contained.

In the context of criminal acts against the state symbol, Law no. 24 of 2009 is a *lex specialis* or special rules, which are categorized as laws outside the Criminal Code with criminal sanctions. To explain the state symbol as referred to in Article 154a of the Criminal Procedure Code, it can refer to the definition of a state symbol as described in UU no. 24 of 2009. Likewise, the elements of the criminal act. In Article 57 of Law no. 24 of 2009 states that everyone is prohibited from:

- (a) scribbling, writing, painting or defacing the National Coat of Arms with the intention of tarnishing, insulting, or degrading the honor of the State Coat of Arms;
- (b) use the National Coat of Arms which is damaged and does not match the shape, color and size ratio;
- (c) make a symbol for individuals, political parties, associations, organizations and / or companies that are the same or resemble the National Coat of Arms; and (d) use the National Coat of Arms for purposes other than those provided for in this Law.

For those who do this (prohibition) can be punished as regulated by Article 68 of Law no. 24 of 2009. For everyone who is proven to have committed an act as stated in point (a), followed by a criminal threat, namely imprisonment for a maximum of 5 (five) years or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). As for those who are proven to have committed acts as referred to in points (a), (b) and (d) previously mentioned, they will be punished with imprisonment of up to 1 (one) year or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

Criminal Theory

In the theory of punishment applies the principle of *Geen Straft Zonder Schuld*. This principle means that a person cannot be convicted without any mistakes (Sinaga, 2016). Therefore, a person who can be held accountable in criminal law must be seen and studied whether the person is really proven to have made a mistake (Sinaga, 2016).

Another thing that is important to note is the principle of legality. With this principle, no act is prohibited and is punishable by punishment if it is not determined in advance in the legislation. As said Von Feurbach, a scholar of German criminal law, there is no offense, no crime without prior regulation (*Nullum delictum nulla poena sine praevia lege*). Therefore, in order to determine the existence of a criminal act, the regulations governing it must first be in place (Jafar, 2016). Thus, the violation or error that occurs can be considered as an act against the law. Furthermore, they can be sentenced to criminal penalties in accordance with the articles that govern them.

Before imposing a sentence or a criminal sanction, it must also be noted that even

though he commits a criminal act, not always the person concerned can be convicted. To be convicted, the requirements of punishment must be fulfilled. In the theory of punishment, an act is considered to have violated the law and can be subject to criminal sanctions if two elements are fulfilled. These two elements are the conditions for punishment. The first is *actus reus* (*delictum*) and the second is *mens rea* (Hamzah, 2010).

Actus reus is an element of physical action (physical element). The act in question is an act against the law or violates criminal law and there is no justification. *Mens rea* is a mental element. The mental element in question is mental attitude or intention. The perpetrator when doing the action, for example the existence of planning, malicious intent, and deliberate (A. Farid, 1995). Both of these elements must be fulfilled in punishment before imposing sanctions. Even though the act fulfills the formulation of a criminal (offense) in the statutory regulations, *mens rea* is not proven, it may not fulfill the requirements for imposing a sentence.

In the context of enforcing the law for insulting the state symbol, these two elements of punishment also apply. From the forms of actions that are prohibited against the state symbol as previously explained, the elements of the penalty can be seen. First, namely the act of scribbling, writing, painting, or destroying the National Emblem and second, namely with the intention of tarnishing, insulting, or degrading the honor of the State Emblem. The first is an element of *actus reus*, while the second is an element of *mens rea*.

In order to be punished by an article regulating an act that is prohibited from being carried out on a state symbol, a person who is suspected of having committed such an act must be proven to have fulfilled all the elements of the crime, namely either *actus reus* scribbling, writing, drawing, or damaging the State Coat of Arms - and elements of *mens rea* with the intention or deliberately tarnishing, insulting or degrading the honor of the state symbol and those criminal elements need to be proven) (Hangkiho, 2017).

Proof

In the context of fulfilling the criminal requirements for perpetrators of insulting the state symbol, law enforcers must be able to prove the existence of *actus reus* and *mens rea* (Lamintang & Lamintang, 2010). Proof is important before deciding on a sanction or punishment for the perpetrator. In the context in Indonesia, the evidence system adopted is negative proof (*Negatief Wetelijk Stelsel*) (Harahap, 2010). This system of proof is guided by the evidence determined by law and the judge's conviction in giving a verdict on whether or not the guilt charged against the defendant is proven or not. To be able to prove the guilt of the accused, the evidence must be evidence that is justified or valid according to law. So proof cannot be done immediately.

Article 184 of the Criminal Procedure Code states the legal evidence. Namely (1) testimony of witnesses, (2) expert statements, (3) letters, (4) instructions, and (5) statements of defendants. The evidence that is justified and has the power of proof are only these five pieces of evidence. Beyond the fifth the evidence means that it has no binding value and strength. In the process of law enforcement against criminal acts of the state symbol, investigators are also bound by the provisions of the procedure and evaluation of evidence as determined by the law.

To be able to impose a sentence on a person, there must be at least two pieces of

evidence out of the five pieces of evidence regulated by the law. If this is fulfilled, then the material truth is obtained from the valid evidence and from there the defendant can be found guilty or not. However, if it turns out that from the results of the investigation, there is not enough evidence to charge the suspect / defendant, the investigator can terminate the investigation. This is regulated in the Criminal Procedure Code in Article 109. In addition to the incident being investigated it turns out that it is not a criminal act or termination by law (such as *nebis in idem*, the suspect has passed away, or because the criminal case has expired), termination of an investigation can also be carried out for reasons of insufficient evidence. existing (Teresa et al., 2017).

Legal certainty

According to Utrecht, legal certainty contains two meanings (Marzuki, 2009; Syahrani, 1999). First, there are general rules. This makes the individual know what actions are allowed or not to be done. Laws can become corridors, guidelines, or norms of action which violates the rules and is not. Second, there is legal security for individuals from arbitrariness. Because the law has provided certainty about what is allowed and what is not, this can prevent individuals from being abused as well as provide security and certainty.

Legal certainty provides clarity. Laws through statutory regulations must be regulated clearly, firmly, and do not conflict with one regulation. Through legal certainty, the law enforcement process does not become obstructed, it can be carried out clearly and in a corridor. Multiple interpretations, doubts, or actions that are subjective to the rules can be avoided. Clarity of rights and obligations according to law can also be implemented.

Without legal certainty, it is difficult to determine what actions are permissible or not, violating and not, so this also complicates the law enforcement process. On the other hand, with legal certainty, law enforcement will be guaranteed and guarantee certainty because it has clear guidelines. This clear guideline is regulated appropriately in the legislation from this aspect subject, object, to the threat of punishment. With this clarity, law enforcement can provide legal certainty based on law. So what is being done is enforce the law, not "using the law" (to use the law). In law enforcement, there is a will for the law to be upright (Nitibaskara, 2006).

METHODOLOGY

This research is a normative juridical study, which describes how the positive law correlates with this research material (Soerjono and Mamudji, 2011). The data used is secondary data, namely data derived and collected from document / literature studies (Soerjono, 2011). The materials are then classified into three types. First, in the form of primary legal materials such as laws and regulations that are relevant to research problems such as Law no. 24 of 2009 and the Criminal Code. Second, secondary material in the form of books on legal and criminal theories. Third, tertiary materials such as those from electronic media or internet sources (online media, etc.), especially in connection with cases of alleged defamation of the state symbol.

This study has limitations (limitations) in terms of data types. The data presented is

limited to secondary data and does not display primary data such as direct interviews with parties who are appointed as case studies in this paper. The delimitation or limitation of this research area is a case around the issue of insulting the national emblem, not insulting other state symbols such as language, the national anthem, or the flag. In conducting data analysis, it is divided into 3 activities that occur simultaneously, namely the stage of data reduction, data presentation, then verifying and drawing conclusions (Patilima, 2007).

RESULTS AND DISCUSSION

The Case of Zaskia Gothic

The alleged insult of the state symbol by Zaskia Gothic stems from the incident when Zaskia Gothic wrote an answer on a clipboard. At that time, he was asked about on what date the proclamation of Indonesia was announced and what was the symbol of Pancasila from the fifth precept (Ikhsan et al., 2017). This incident occurred on the Dahsyat program, aired on RCTI, on March 15, 2016. As a guest star - with other guest stars Julia Perez and Ayu Tingting - Zaskia Gotik answered the question with an answer on August 32, by previously replacing. The answer after the dawn call to prayer for the question of the date of the proclamation of Indonesia was echoed and the duck was singing for the question of what the symbol of Pancasila from the fifth principle.

For this incident, Zaskia Gotik was reported to the police by the Corruption Watch Community NGO on charges of insulting the national emblem based on Law no. 24 of 2009. The day after, on 17 March 2016, Zaskia Gotik was again reported by DPD member Fahira Idris. Fahira Idris reported Zaskia Gotik to Polda Metro on charges of Article 154a of the Criminal Code regarding the desecration of the flag and symbol of the Republic of Indonesia in conjunction with Article 155 of the Criminal Code.

Responding to the report from the Corruption Supervisory Community NGO, the police then made a police report number: LP / 210 / III / 2016 / PMJ / Ditreskrimsus (Tarandung, 2017). In connection with the police report, the police conducted an investigation and the results of the investigation have been upgraded to the investigation process. During the investigation, witnesses were examined. There were more than 20 witnesses who were questioned by Polda Metro Jaya investigators. These witnesses are the parties who were at the time of the incident. There were Julia Perez, Deny Wahyudi, Raffi Ahmad, Ayu Ting Ting, Syahnaz, Ayu Dewi, and several other witnesses. In addition, expert witnesses were also summoned from language experts, experts from the Press Council, the ministry of law and human rights, and experts in criminal law.

From the results of the examination and the facts gathered, it was stated that it was true that the event was on television media (RCTI). From the available evidence, it is stated that Zaskia Gotik's act is proven, but it is not a criminal act. This is because based on Articles 57 and 68 of Law no. 24 of 2009, the criminal element referred to as an unlawful act is to cross, write, draw or damage the national emblem, while Zaskia Gotik's action is to write on a blank sheet on August 32 and duck nungging. Zaskia Gotik did not cross, write, paint or damage the national emblem, namely Garuda Pancasila. Therefore, Zaskia Gothic's deeds do not fulfill the

elements of *actus reus* or actions that are suspected of violating the law regulated by law concerning the prohibition of the state symbol.

What the Gothic Zaskia did was also not with the intention of tarnishing, insulting, or degrading the honor of the National Emblem. The incident that was suspected of Zaskia Gothic happened in the context of filling an entertainment program, not something that had been planned or had the intention of insulting the national emblem. Hence, the *mens rea* element (evidence of ill will to defile, insult or demean the national emblem) is not fulfilled in the case of Zaskia Gothic's alleged insult of the state emblem.

In order to be subject to criminal sanctions, as explained in the terms of punishment, Zaskia Gothic's alleged insulting of the state symbol must be proven that it fulfills all the criminal elements, both *actus reus* and *mens rea*. However, because these criminal elements were not fulfilled, the evidence obtained by investigators was not sufficient to prove Zaskia Gothic's guilt. Based on Article 109 paragraph (2) of the Criminal Procedure Code, because there is insufficient evidence, the alleged case of insulting the state emblem by Zaskia Gothic was stopped, precisely on October 31, 2016, in which investigators issued an Order to Stop Investigation (SP3).

In connection with Fahira Idris's report that reported Zaskia Gothic using Article 154a and Article 155 of the Criminal Code, Article 154a of the Criminal Code has been answered in Article 63 paragraph 2 of the Criminal Code. In this case, *Lex specialis derogat legi generali* applies, namely the principle of legal interpretation which states that special laws (*lex specialis*) override general laws (*lex generalis*). So, when there is a legal incident related to the issue of insulting the state symbol, it is shown in the state symbol law, namely Law no. 24 of 2009. Based on the police investigation as previously explained, Zaskia Gothic was not proven to have insulted the national emblem.

As for the criminal report under Article 155 of the Criminal Code from Fahira Idris, this article has been revoked by the Constitutional Court (MK) so that it does not apply. As the principle of legality, no act is prohibited and punishable if it is not stipulated in legislation. Therefore, complaints based on this article cannot be forwarded.

The Case of Habib Rizieq

The alleged case of humiliating the state emblem by Habib Rizieq stems from a video recording of Habib Rizieq in his speech in West Java at Gasibu Square, Bandung City, in 2011. In the widely distributed video recording, Habib Rizieq said, "Sukarno's Pancasila divinity is in buttocks, while Pancasila the Jakarta Divinity charter is on the head".

For this incident, on October 27, 2016, Sukmawati Soekarnoputri reported Habib Rizieq for allegedly insulting the state symbol as well as defamation. That article reported is Article 154a of the Criminal Code concerning the criminal act of defamation of the state symbol and Article 320 of the Criminal Code concerning defamation of a person who has died. Sukmawati reported with LP / 1077 / X / 2016 / Bareskrim.

On November 22, 2016, the case of alleged humiliation of the state emblem by Habib Rizieq was transferred to the West Java Regional Police. The West Java Regional Police began investigating on November 25, 2016. The witnesses were then examined, including expert

witnesses (language, philosophy, history, cyber) from December 2016 to early January 2017 (<https://nasional.tempo.com>). Habib Rizieq was examined as a witness at the West Java Regional Police on January 12, 2017 and on January 30 was named a suspect (Primagara & Agustin, 2018) on January 30, 2017, but was not detained because of the threat of under 4 years of sentence.

Investigators again summoned Habib Rizieq to be examined as a suspect. Because the summons on 7 February 2017 were not present, the recall was made on 10 February 2017. Habib Rizieq was again absent. Habib Rizieq fulfilled the summons as a suspect to undergo initial examination on February 13, 2017. After the initial investigation, the police transferred the Habib Rizieq case to the West Java High Prosecutor's Office on May 2, 2017. However, the Habib Rizieq case files were returned by the West Java High Prosecutor's Office of approximately two weeks later because it is considered incomplete. On May 4 2018, officially, the case of alleged insulting the state symbol by Habib Rizieq was stopped by the West Java Regional Police (<https://tirto.id>).

In enforcing the law on the alleged insulting of the state symbol by Habib Rizieq, the police have taken mechanisms such as conducting investigations and investigations and examining witnesses to find evidence that is deemed valid under the law. Although Sukmawati reported Habib Rizieq with Article 154a of the Criminal Code, to prove the alleged insult to the national emblem, the police cannot be separated from Law no. 24 of 2009. This law is a *lex specialis* or law that specifically regulates the symbols of the state, one of which is the symbol of the state.

The Habib Rizieq case was stopped because investigators saw insufficient evidence. As the conditions of punishment, a person can be sentenced if he meets the elements of *actus reus* and *mens rea*. From the Habib Rizieq case, elements of *actus reus* or actions that are against the law, namely insulting the state symbol, have not been proven. This is because the state symbol is based on Law no. 24 of 2009 is in the form of Garuda Pancasila whose head turns straight to the right, a shield in the form of a heart hanging by a chain on Garuda's neck, and the slogan *Bhinneka Tunggal Ika* written on the ribbon that was gripped by Garuda. Prohibited actions are (a) crossing, writing, painting, or destroying the state symbol with the intention of tarnishing, insulting, or degrading the honor of the state symbol; (b) use the defective national emblem that does not match the shape, color and size ratio; (c) make a symbol for individuals, political parties, associations, organizations and / or companies that are the same or resemble the symbol of the state; and (d) use the state symbol for purposes other than those provided for in this law.

From these forms of prohibition (*actus reus*), Habib Rizieq's actions which were reported as criminal incidents of insulting the state symbol cannot be categorized as such. This is because in this case, Habib Rizieq did not mention the Garuda Pancasila as the state symbol as regulated by law. Habib Rizieq also did not cross, write, paint, or damage the country's emblem. From the point of view of *mens rea* or the intention of tarnishing, insulting, or degrading the honor of the symbol of the state is also not proven. Habib Rizieq's lecture which then went viral with the words "Pancasila Sukarno's divinity is on the butt, while Pancasila is the Jakarta Charter of Godhead" was in the context of discussing the history of Pancasila, which was contained in his academic work (thesis). This academic language is brought into verbal

language. The satirical language and the Betawi dialect emerged because Habib Rizieq lived in a Betawi environment. So he said, in Soekarno's first thought the divinity was in the butt (tail / at the end). So it is not intended to tarnish, insult, or demean the honor of the national emblem, nor to attack Bung Karno as a deceased person, but merely a matter of thoughts / ideas. Because the evidence that includes elements of actus reus and mens rea is not fulfilled, based on Article 109 paragraph (2) of the Criminal Procedure Code, investigations can be stopped. Bareskrim through the West Java Regional Police has stopped investigating the alleged case of insulting the state symbol with the suspect Habib Rizieq (<https://tirto.id> accessed October 2020).

Law Enforcement and Certainty in the Case of Zaskia Gotik and Habib Riziq

Protection of the national emblem is a concern for the identity of the nation. Therefore, Indonesia regulates the state symbol and prohibited actions and criminal threats against the prohibited act. This is regulated in general in Article 154a of the Criminal Procedure Code and specifically in Law no. 24 of 2009. The existence of a regulation regarding the state symbol becomes a legality aspect in the process of prosecuting the state symbol criminal act. As the principle of legality in punishment, a person cannot be punished or convicted without prior regulation. Through the regulations regarding the state symbol, the process of taking action against illegal (criminal) acts against the state symbol can be carried out. This also shows the existence of legal certainty both for law enforcers because they have a statutory reference in enforcing the law and for citizens because they know what actions can and should not be taken on the national emblem.

If a citizen has not committed an act against the law, according to the principle of *Geen Straft Zonder Schuld*, he cannot be convicted because there is no mistake. In the end, this also creates legal certainty for law enforcement and citizens. However, if a person is suspected of having violated the law, criminal sanctions cannot be imposed without evidence. Such proof must be based on evidence that is deemed valid by law and fulfills the elements of the criminal requirements, namely actus reus and mens rea. If in a law enforcement process such as an investigation, there is no sufficient evidence (elements of actus reus and mens rea), in the name of law, the investigation can be stopped.

In investigating and examining cases of alleged insulting the emblem by Zaskia Gotik and Habib Riziq, the police have investigated and investigated. Examination of witnesses in seeking evidence provided in the law to find material truth in order to determine whether the parties can be found guilty or not has also been carried out. To find a criminal element so that the reported party can be found guilty of alleged insulting the state symbol, the police use Law no. 24 of 2009. In it, there are regulations regarding the state symbol, either meaning, prohibition or threat. The articles explaining the state symbol in the law serve as guidelines for the police to determine the elements of the crime committed by the reported party. From the results of the examination and investigation, both cases are not proven to have insulted the state symbol, both from the actus reus and the mens rea elements as stipulated in Law no. 24 of 2009. For the sake of legal certainty, as stipulated in the Criminal Procedure Code, investigators terminate this case because there is not enough evidence.

In the law enforcement process, the alleged case of insulting the state symbol by Zaskia Gotik and Habib Riziq illustrates the existence of legal certainty. Legal certainty refers to a clear, consistent and consistent law enforcement. Legal certainty is very important in law enforcement. Law enforcement is essentially the main pillar of a rule of law. With the existence of regulations regarding the state symbol covering the meaning, prohibition, threat of crime, this provides corridors and guidelines in law enforcement regarding cases of state symbols. This certainty is not only for the law enforcement process, but also for the reporters and those reported in cases involving the state symbol.

CONCLUSION

Law enforcement on the alleged case of insulting the state emblem by Zaskia Gotik and Habib Rizieq has been carried out by law enforcement by referring to the applicable laws and the principles of punishment. The law in effect to carry out investigations into elements of criminal acts against the state symbol refers to Article 154a and Law no. 24 of 2009. Law no. 24 of 2009 is *lex specialis*. In this law what is meant by the state symbol is specifically regulated so that the phrase state symbol contained in Article 154a refers to the sound of the article contained in UU no. 24 2019. The national emblem in question is the Garuda Pancasila, a shield in the form of a heart hanging by a chain on Garuda's neck, and the motto Unity in Diversity written on a ribbon that is gripped by Garuda. In Law no. 24 of 2009 also regulates prohibitions and threats to anyone who commits inappropriate acts against the state symbol.

With the existence of these laws and regulations, the law enforcement process can run with certainty, consequence, and clearly so that legal certainty can be upheld. To process allegations of violation or insult to the state symbol by Zaskia Gotik or Habib Rizieq, the articles governing the state symbol in Law no. 24 of 2009 is used as a corridor or guidance to determine whether there is a criminal act or not from the actions of Zaskia Gotik or Habib Rizieq. The elements of the criminal act include *actus reus* - namely crossing out, writing on, drawing on, or destroying the State Coat of Arms - and elements of *mens rea* that is, with the intention of tarnishing, insulting, or degrading the National Emblem of honor.

In the cases of Zaskia Gotik or Habib Rizieq, based on the investigation and examination of witnesses by the police, sufficient evidence was not found. Thus, neither Zaskia Gotik nor Habib Rizieq could be found guilty of insulting the national emblem. As in the principle of punishment, a person cannot be punished or convicted if there is no mistake. It is also regulated in the Criminal Procedure Code that investigators can stop an investigation if there is insufficient evidence. In the absence of sufficient evidence, the cases of alleged insulting the state symbol by Zaskia Gotik and Habib Rizieq were stopped for legal certainty for the reported.

In the future, the authors view, the government, law enforcers and other stakeholders together need to disseminate and educate the public about the state symbol. After all, the state symbol is the identity and honor of the nation. Knowing, recognizing, and respecting the national identity such as the symbol of the state needs to be done by every citizen. Apart from avoiding the insult of the state symbol, whether intentionally or not, this is also to bind our common identity as a nation.

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