

# **CHAPTER I**

## **AN INTRODUCTION TO A STUDY OF INDONESIA'S ANTI BLASPHEMY LAW**

### **1.1 Background of the problem**

The protection of freedom of religion or belief (FoRB) is a fundamental human right for all individuals, as it contributes to the recognition and defense of human dignity. Conversely, the violation of FoRB can have detrimental effects on human rights. As human rights are interdependent and linked, the realization of the right to FoRB ensures the fulfillment of other rights. Moreover, individuals who feel that their safety is threatened due to their beliefs may also face a jeopardized right to life. Thus, the sense of safety of citizens is also compromised. On the other hand, individuals who are able to freely choose and practice their religion or belief can live in peace and security without fear of persecution or discrimination.

To ensure the respect, protection, and fulfillment of all human rights, including FoRB, a democratic nation that upholds the rule of law is necessary. Without a robust democracy, the different branches of government (executive, legislative, and judicial) cannot optimally perform their responsibilities, leading to a breakdown of the checks and balances between these branches and neglect of the public interest. In non-democratic states, the branches of government serve as mere symbols to maintain autocratic rule. Human rights are only used to present an image of respect for human dignity to the international community, while constitutions and laws are employed to justify the violation of these rights instead of safeguarding and guaranteeing them for citizens. The political system serves the interests of the autocrat, and lawmakers develop flawed regulations that Scheppele (2018) calls autocratic legislation. Under autocratic legislation, the rule of law exists only in words, as courts merely serve to legitimize human rights violations instead of establishing justice or providing aid to victims.

Indonesia's anti-blasphemy statute is an example of autocratic legislation that poses a serious threat to the right to FoRB. Despite several countries revising their policies on FoRB, Indonesia still enforces the Anti-Blasphemy Law (ABL), which significantly obstructs the right to FoRB. This controversy has sparked debates over

the past decade (Blitt, 2011; Buruma, 2007; Danchin, 2010; Dundon and Rollinson, 2011; Fagan, 2019; Fiss and Kestenbaum, 2017; Graham, 2009; Siddique and Hayat, 2008; Theodorou, 2016; Uddin, 2015). However, the international community has responded to this issue in various ways, such as removing, revising, making the law inactive, or further reinforcing it. Countries such as Norway<sup>1</sup>, Iceland<sup>2</sup>, Denmark<sup>3</sup>, and Canada<sup>4</sup> have abolished their ABLs as this improves their respect for human rights and fundamental freedoms (Fox and Sandler, 2005). Australia, the United Kingdom, and the United States have revised their ABLs to meet high standards, made them inactive, or abandoned them in practice<sup>5</sup>. Other countries<sup>6</sup> that considered their ABLs to be violations of human rights, restricting the right to FoRB and freedom of expression, and threatening democracy, have revoked them.

Moderate religious groups, human rights defenders, and scholars have extensively examined the Indonesia Anti Blasphemy Law (IABL) and made recommendations based on their findings. Their studies suggest that the IABL is inconsistent with the International Human Rights Law (IHRL) (Crouch, 2015, 2014, 2011; Graham, 2009; Lindsey and Pausacker, 2017; Marshall, 2018a; Menchik, 2014a; Tømte, 2012; Uddin, 2015), infringes on religious freedom, and penalizes various minority religious groups with harsh penalties for allegedly defaming the state-recognized orthodox religion. Despite these recommendations, the Indonesian government persists in enforcing the law to this day. Although several proposals have been put forward to encourage Indonesia to abolish or amend the anti-blasphemy law, these attempts have not been successful.

Initially, a proposal to replace the anti-blasphemy legislation was introduced in the legislature, but it disappeared in the recent decade along with the 2009

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<sup>1</sup> In Norway, the blasphemy law was removed from the Penal Code in 2005.

<sup>2</sup> In Iceland, the blasphemy law was repealed in 2017. Id.

<sup>3</sup> In June 2017, the Danish Parliament repealed its blasphemy law. See USCRIF, 2017. Id.

<sup>4</sup> In Canada, the blasphemy law was repealed in 2018. <https://end-blasphemy-laws.org/> Accessed on January 26, 2017. Id

<sup>5</sup> Among the four British constituent countries, namely England, Northern Ireland, Scotland, and Wales, defamation laws have been rejected in 2008 in England and Wales. Even though in Scotland and Northern Ireland the same rules remain in the law but are rarely predicted. See <https://end-blasphemy-laws.org/countries/europe/united-kingdom/>

<sup>6</sup> The Office of the United Nations High Commissioner urges States that have blasphemy laws to repeal. See Rabat Plan of Action on the Prohibition of advocacy of national, racial, or religious hatred, 2015, 5.

Constitutional Court judgment on judicial review of the anti-blasphemy statute. In 2009, some individuals who had been wrongly convicted under the IABL, backed by various human rights NGOs, submitted a petition to the Constitutional Court of Indonesia Republic (CCIR) requesting a judicial review of the IABL. The CCIR, in a series of decisions, has urged the Indonesian Parliament to modify the IABL. At least four decisions highlight the need to revise the 1965 Anti-Blasphemy Law, including Decision No. 140/PUU/VII/2009, accentuated by No. 84/PUU-X/2012, and No. 56/PUU-XVI/2017. However, the CCIR adopted an ambiguous stance by concluding that the IABL is flawed in legal substance and subject to multiple interpretations. Nonetheless, they decided that the IABL is constitutional and necessary for preserving public order. The CCIR says:

*The Court decided, the law on the Prevention of Blasphemy does not limit a person's belief (forum internum), but only limits statements of thoughts and attitudes according to one's conscience in public (forum externum), which deviates from the principles of religious teachings adhered to in Indonesia, issuing feeling or committing acts which are essentially hostile to, abusing or defaming a religion adhered to in Indonesia.<sup>7</sup>*

Crouch (2011) and Tømte (2012) have argued that the Indonesia Anti-Blasphemy Law (IABL) is not consistent with the 1945 Constitution and the fundamental principles for safeguarding human rights upheld by the Indonesian government. Although the Constitutional Court has recognized the legal ambiguities of the IABL, the Indonesian Legislative Body (DPR) has not made any efforts to amend the IABL and instead has added articles on crimes against religion in the Bill of Criminal Code, thereby strengthening the legal position of the IABL. Despite public protests and postponement of the criminal code bill ratification, the Indonesian government continues to enforce the IABL, and the number of blasphemy cases processed by the court has increased (Santoso, 2020). This study will examine the evolution of the anti-blasphemy statute since the Constitutional Court's judgment and analyze the socio-political implications of the law.

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<sup>7</sup> See Constitutional Court Decision No. 56/PUU-XVI/2017, p. 537.

Furthermore, the strengthening of the IABL has significantly affected attempts to reform the law to enhance the right to religious freedom, particularly in the Ahok and Meiliana cases, where the law's inherent flaws have allowed for the politicization of religion. The exploitation of the IABL for political objectives has enabled hate-spin strategies, which have had a damaging impact on the politics of religion. The hate-spin approach has not only benefited political parties but has also encouraged law enforcement officials to make false allegations against those accused of blasphemy, thereby disregarding the rule of law. In these circumstances, the state's weaponization of political parties and law enforcement with anti-blasphemy legislation legitimizes continued violations of the right to religious freedom.

The issue of whether to amend or repeal the blasphemy legislation cannot be resolved using a normative perspective alone. Instead, it is essential to investigate the social implications of the sociopolitical factors that underlie the tightening grip of this law. The Constitutional Court's justification for refusing to overturn the Anti-blasphemy Law was the fear of a legal void, which it believed could incite public outrage and promote horizontal conflict between religious believers. However, this assertion by the Constitutional Court requires further investigation to determine whether the repeal of the anti-blasphemy statute would actually increase horizontal conflict by creating a legal vacuum.

To explore the phenomenon of vigilantism (Main Hakim Sendiri/MHS) in relation to the situations of Gafatar, Ahmadiyya, and Meiliana, this study examines the causes of the MHS phenomenon in blasphemy trials. The study investigates whether MHS has always been associated with the inability of the court to provide justice, and why individuals who have been falsely accused of blasphemy are often the subject of vigilante actions. The study also investigates the influence of growing Islamic populism on MHS and whether there are other factors that contribute to it. Additionally, the study explores who are the true supporters of the implementation of the anti-blasphemy law.

Furthermore, this study argues that, from a philosophical standpoint, the existence of the anti-blasphemy statute cannot be discussed apart from the state's connection with religion. The protection of human rights requires a sovereign state that can fulfill this responsibility, as individual efforts will not be sufficient. Given the

nature of FoRB as a negative right, a state that safeguards FoRB should adopt a non-interference approach and not limit faiths. The concept of secularity, which positions the state not to intervene in the religious matters of its inhabitants, is viewed as a reasonable choice for the best realization of the right to freedom of religion.

Menchik (2014b) states that the Indonesian government considers the Islamic Blasphemy Law (IABL) crucial in upholding the State ideology of Godly Nationalism, maintaining interreligious tolerance, preventing horizontal conflicts, and avoiding a repetition of the dark history of anti-religious movements. Crouch (2012) points out that historically, the IABL was endorsed to avoid the mass killings of innocent people and Islamic leaders conducted by the Indonesian Communist Party in 1965 from recurring. Crouch's socio-legal study in 2012 found that the law is maintained to prevent the recurrence of past religious conflict, and revoking the law would result in a legal vacuum for charging criminal offenses related to blasphemy. Conservative and moderate Muslim groups, such as Front Pembela Islam (FPI), Nahdlatul Ulama (NU), and Muhammadiyah, support the maintenance of the law.

This study will examine the enforcement of the IABL and update previous research by considering the current sociopolitical context during the second term of Joko Widodo's presidency, in which there has been an increase in the number of blasphemy cases (Pratiwi, 2019). Recent studies suggest that some blasphemy cases, such as Ahok and Meiliana, have been politicized to gain public support for local elections (Marshall, 2018b), and these cases, along with Ahmadiyya and Gafatar cases, have triggered various levels of vigilante actions against minority groups (Andreas, 2019). In response to the increasing number of blasphemy cases, the government expanded the definition of blasphemy in the Bill of Criminal Code Article 304 to 309 (Harsono, 2019). However, there has been limited research on the enforcement of the IABL, both inside and outside the court, and no studies on the variety of community responses to this issue. This research aims to explore the factors and actors that have shaped the enforcement of the IABL in each period in-depth.

The implementation and progress of the Indonesian Blasphemy Law (IABL) are influenced by various factors beyond the legislative process. Scholars have suggested that conflicts stemming from accusations by dominant religions against minority

religions, as well as challenges related to the enforcement of the law, are shaped by the complex relationship between religion and politics in the country, the rise of Islamic populism, and political manipulation of religious issues (Salim et al., 2003; Marshall, 2018b).

High-profile blasphemy cases in Indonesia have demonstrated the complex interplay between religion, politics, and law enforcement. In some cases, perpetrators who publicly apologized had their cases discontinued at the police level, while conservative Islamic groups have reported new blasphemy cases and demanded that the perpetrators be brought to justice (Hilmi, 2018)<sup>8</sup>. Identity politics have also played a role in shaping public reactions to blasphemy cases, with the political narrative around the case of Ahok, a Chinese governor of Jakarta, centered on issues of race and perceived economic oppression by the Chinese (Marshall, 2018a; Tehusijarana, 2018).

Despite a decision by the Constitutional Court of Indonesia to maintain the IABL, public responses to recent blasphemy cases have often been marked by hostility, hatred, and violence, leading to further discrimination and human rights violations (Harsono, 2019; Prud'homme, 2010). The prolonged enforcement of the IABL, combined with the ambiguity of legal policies for addressing its flaws, presents a significant challenge for Indonesia in its efforts to respect human rights<sup>9</sup> and uphold the rule of law<sup>10</sup>.

The discussions on ABLs are always linked to the relationship between state and religion. An-Naim (2008), who promotes secularism for Islamic countries, indicated that the states' neutrality towards religions requires the states to prohibit religious laws to become positive laws regulating the public's life. He argues that:

*To be a Muslim by conviction and free choice, which is the only way one can be a Muslim, I need a secular state. By a secular state, I mean one that is neutral regarding religious doctrine, one that does not claim or pretend to enforce Sharia [...] simply because compliance with Sharia cannot be coerced by fear of the state institution or faked to appease their official (p.1).*

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<sup>8</sup> See the case of Sukmawati who apologizes after her poem that compares Adzan with the Kidung, Javanese lyrics, and hijab with konde, Javanese women's hairstyle was considered insulting Islamic religion.

<sup>9</sup> See Chapter X of Indonesia Constitution Article 28A to 28J.

<sup>10</sup> See Article 1, Paragraph 3 of the 1945 Indonesia Constitution.

An-Naim has defended the notion of heresy and argued that it is beneficial for the advancement of Islamic civilization. However, Durham and Scharffs (2019) dispute the notion that an extreme secular state is always preferable for religious freedom. In a strictly secular state, where there is a complete separation between the state and religion, religious practices in public spaces are often prohibited. Such a state can still harbor discriminatory and repressive attitudes towards religion.

An-Na'im's theory of secularism emphasizes the neutrality of the state towards religion. Secularism requires that the state should not adopt religious laws as positive laws to regulate public life. An-Na'im contends that in a secular state, state neutrality towards religion is crucial since it is only by separating religion and the state that Sharia can have a positive and enlightening role in the lives of Muslim communities and society as a whole. An-Na'im believes that a lower degree of identification of the state-religion relationship is better for protecting FoRB in Muslim countries. Muslim countries should not implement Sharia principles or rules as positive law to regulate public interests, even though these principles and rules are a part of Sharia. An-Na'im argues that religious doctrine and practice should not be used as a basis for the formulation of law or public policy, except where they have been accepted as a common ground and adopted in the country's Constitution. However, An-Na'im does not provide further clarification on the meaning of this exception.

According to Scharffs (2017), secularity differs from secularism. Secularity is "an approach to religion-state relations that avoids identifying the state with a particular religion or ideology (including secularism itself) and seeks to provide a neutral framework capable of accommodating various religions and beliefs." Secularism, in contrast, is "an ideological position committed to promoting a secular order." Scharffs contends that secularism is an ideology that can lead to over-restriction towards FoRB.

This study will use a socio-legal approach to understand the sociopolitical dimensions of the IABL enforcement and its impact towards the violations of the right to religious freedom. This study aims to explain the development of the IABL and the rationale behind the belief that repealing it poses a significant threat that could instigate acts of vigilantism or "*main hakim sendiri*." Moreover, this research will explore the extent to which the judicial enforcement of the IABL is influenced by the politicization of religion or the rising Islamic populism in Indonesia.

## 1.2 Objectives of the study

This study aims:

1. To assess if the IABL and its enforcement uphold the principle of the Rule of Law.
2. To examine factors and actors that shaped the enforcement of the IABL.
3. To examine whether populism of religions and political manipulation of religions influence the enforcement of the IABL.
4. To identify the character of blasphemy cases that lead to vigilante acts or “*main hakim Sendiri*”.
5. To determine indicators, the extent to which the Government of Indonesia is either a secular state or a non-secular state.

## 1.3 Research questions

This study focuses on answering the following research questions:

1. How and why is the enforcement of the IABL influenced by populism and politicization of religion?
2. What indicators show that the enforcement of the IABL is influenced by populism and politicization of religion?
3. Why is the enforcement of the IABL reflecting the relationship between state and religion of Indonesia?

## 1.4 Originality of the Study

In the past two decades, several studies have been conducted on the Blasphemy Law in Indonesia, but their research objectives and analytical approaches differ from those of the present study. Al-Khanif (2008), Margiyono et al. (2010), Arifin (2010), Noorsena (2012), Arief, B.N. (2012), and Muktiono (2021) conducted normative studies using a top-down approach to analyze the law and court decisions. These studies assessed the conformity of existing regulations with international human rights norms and standards. Al-Khanif's (2008) study, for example, analyzed blasphemy cases of Ahmadiyya from the perspective of International Human Rights Law. Margiyono et al. (2010) reviewed the arguments of the judges of the Constitutional Court during their examination of the Anti-Defamation Law. Noorsena (2012) focused on



normatively reviewing blasphemy cases to reformulate Article 156a of the Criminal Code, which is often used as the basis for criminalizing blasphemy. Arief, B.N. (2012) conducted a comparative study of blasphemy offenses in Indonesia with other countries. Muktiono's (2021) study also used a normative approach to study the importance of the principle of non-discrimination in cases of blasphemy in Indonesia.

However, Arifin's (2010) study used a limited sociological approach to examine the judge's considerations on the statements of religious figures in court in the Shia vs. Sunni case. This present study, on the other hand, adopts a socio-legal approach to analyze the sociopolitical dimensions of the IABL enforcement and its impact on the right to religious freedom. The study aims to explain the development of the IABL and the reasons why its supporters believe that its abolishment would be dangerous, including cases of vigilante attacks or "*main hakim sendiri*." The study also investigates whether the Courts' enforcement of the IABL is influenced by the politicization of religion or populism of Islam in Indonesia.

This study adopts an interdisciplinary approach to investigate the enforcement of blasphemy cases in Indonesia. By considering various factors, such as the political situation, sociological background, and legal structure, the study aims to offer a more comprehensive perspective than previous studies that merely analyze legal construction from a top-down or normative approach. The interdisciplinary approach also reveals the gap between the idealistic level of law and its practical implementation in the field, which cannot be uncovered by a normative approach. For instance, the study examines the reasons behind the recent strengthening of the Anti-Defamation Law and its potential manipulation for political purposes. Furthermore, the study investigates the role of religious populism in strengthening the Blasphemy Law and its enforcement and the possible influence on the judges' decisions in blasphemy cases.

In contrast to this study, previous studies, such as those by Al-Khanif (2008), Margiyono et al. (2010), Arifin (2010), Noorsena (2012), Arief (2012), and Muktiono (2021), use a normative approach to analyze the conformity of domestic legal norms with international human rights standards. Although Crouch (2014) also adopts a socio-legal approach, his study focuses on the conflict between the Muslim and Christian communities in West Java, neglecting the judge's considerations and the factors influencing their decisions, which are important aspects of this study.

Therefore, this study aims to contribute to the existing literature by adopting an interdisciplinary approach that explores various factors that affect blasphemy cases' enforcement, including the judges' considerations and the law's practical implementation.

Efendi (2017) has conducted a study on the judicial process in Indonesia, however, it focuses on the controversial aspects of court decisions in general criminal cases at the appeals level using a construction approach. In contrast, this study employs a hermeneutic and case approach to explore law enforcement studies on blasphemy cases and examine the extent to which judges' considerations are influenced by legal and sociopolitical factors. While Kamil, A. (2012) has conducted a study on the independence of courts in deciding cases in general, this study focuses on the independence of courts in blasphemy cases to reveal the various sociopolitical dynamics that surround them, including the phenomenon of *eigenrichting* carried out by vigilante groups. Therefore, this study aims to identify indicators that reveal the pattern of relations between the state and religion in Indonesia.

### **1.5 Systematics of writing**

The findings of this study are presented in a comprehensive and structured manner across seven chapters. The introductory Chapter I contextualizes the research problem and delineates the philosophical, sociological, and juridical issues pertinent to the topic. This provides the basis for formulating the research questions and objectives. The chapter further outlines the theoretical and conceptual frameworks that underpin the study and serve as a guide for developing research design and methods, as well as an orientation to answer the main research problems. Finally, it offers a systematic overview of the content that will be presented in each chapter.

Chapter II details the research design, which is informed by a socio-legal approach, allowing the author to examine the problem from an interdisciplinary perspective, going beyond the legal approach. It employs a comprehensive range of political, social, and legal approaches to answer questions that cannot be addressed through doctrinaire legal methods. Thus, data collection includes not only laws and court decisions but also interviews with relevant sources related to the selected cases. The chapter emphasizes the originality of the research and its contribution to previous

studies, highlighting both areas of divergence and intersection for further research. It also stresses the significance of the study for advancing both scientific knowledge and practical application. The chapter underscores the importance of research ethics as a guideline for conducting the study, particularly the principle of 'do no harm.'

In Chapter III, the development of the enforcement of the Blasphemy Law in Indonesia is analyzed from the perspective of the dynamics of legal developments. The chapter covers the periodization of Sukarno's Guided Democracy from 1955-1965, the Suharto Period from 1965-1998, and the Reformation Period from 1999 to the present. The purpose is to investigate to what extent the enforcement of the Blasphemy Law is influenced by legal developments and how it affects the rule of law. It is essential to understand the current legal development of the blasphemy law before discussing its implications on the social, political, and legal dynamics of the state. Furthermore, the chapter examines the recent decisions issued by the Constitutional Court when reviewing the Anti Blasphemy Law. The author argues that these decisions failed to protect human rights effectively, thereby weakening the protection of freedom of religion in Indonesia. The ambiguity in the Constitutional Court's decisions is analyzed, which recognizes that the blasphemy law is constitutional but also potentially discriminatory against religious minority groups.

Chapter IV discusses the political manipulation of religion in the enforcement of the Blasphemy Law in Indonesia, focusing on the cases of Ahok and Meiliana. The author argues that the Blasphemy Law is often used as a tool for political purposes during elections, and judges fail to recognize this phenomenon. The judge's failure to interpret the legal norms of the blasphemy law accurately and prove the importance of the 'intention' element resulted in broad translations of the 'blasphemy' norm and using the majority religious institutions' reference in imposing sanctions. Additionally, the Meiliana case illustrates how the legal process was delayed during an ongoing political election process and continued by punishing Meiliana, resulting in a lack of a fair trial.

Chapter V examines the concept of Main Hakim Sendiri or Eigentrechting and how the populism of religion affects the enforcement of the Blasphemy Law. The chapter argues that hardliner Islamic groups have infiltrated moderate Islamic groups, causing moderate Islamic groups to defend the sustainability of the repressive and

discriminatory Blasphemy Law actively. Moreover, the chapter analyzes to what extent the Courts have been affected by the virality of cases such as Ahok, Gafatar, Meiliana, and Ahmadiyya, followed by Main Hakim Sendiri, to identify the factors and actors influencing its occurrence.

Chapter VI provides a detailed analysis of the Anti-Blasphemy Law in Indonesia, highlighting the relationship between religion and the state. Despite the 1945 Constitution stating that Indonesia is not a religious state but a state based on the rule of law, it is important to examine the extent to which current laws prevent the state from interfering in the religious affairs of citizens or allow for laws that restrict or punish certain religious groups. The chapter argues that the interpretation and enforcement of the blasphemy law by lawmakers, public policies, and law enforcement agencies have constructed a relationship between the state and religion in Indonesia. This construction has the potential to either support or hinder the right to freedom of religion, and thus requires further examination. The chapter also examines the development of law and the constitution, placing the relationship between the state and religion in the context of constitutional law in Indonesia. The application of the blasphemy law in cases such as Ahok, Gafatar, Meiliana, and Ahmadiyya offers a more comprehensive explanation of how pseudo-secularity between state and religion is strengthened under the Anti-Blasphemy Law, posing a threat to the right to freedom of religion.

Chapter VII serves as a concluding chapter, evaluating the current political and legal policies in Indonesia to reform the blasphemy law and the extent to which such efforts lead to the full protection of the right to freedom of religion. The chapter begins by providing a conceptual framework for law reform and the meaning of achieving full realization of the right to freedom of religion. It then discusses the division of public support between amending and abolishing the law. The fourth section of the chapter reveals that the blasphemy law not only targets religious minorities but also the majority. The fifth section examines the political policy of law towards half-hearted reform of the Anti-Blasphemy Law. The chapter concludes by summarizing the key findings and recommendations for future research.

## **CHAPTER II**

### **RESEARCH DESIGN: A SOCIO-LEGAL STUDY APPROACH WHILST REFORMING INDONESIA'S ANTI BLASPHEMY LAW**

#### **1.1 Introduction**

The study of blasphemy laws (BLs) has been approached from legal and social perspectives. However, neither approach alone satisfies the public's demand for prolonging the implementation of BLs given the numerous arguments behind this policy. The top-down approach, which claims that BLs are incompatible with international human rights law (IHRL), and the bottom-up approach, which examines public perception towards freedom of religion and belief (FORB) and the effect of polarization of public perception of BL towards its enforcement in court, do not fully address the issue. Therefore, a socio-legal study that uses both a top-down and bottom-up approach needs to be considered (Banakar, 2019; Langford, 2018; Macaulay et al., 2007; McConville and Chui, 2017).

According to Langford (2018), a legal approach on human rights hardly explores the socio, cultural, and political contexts where the law is applied. Thus, a multidisciplinary approach, which involves various scientific disciplines, is necessary to solve complex problems. This study advocates for a socio-legal study as an alternate multidisciplinary approach that can bridge the gap between the law in textbooks and the law in action.

It is urgent to examine the effect of the enforcement of BLs on social order, as well as the effect of social order towards the implementation of BLs. This will help the reformation of BLs to gain public support. This study will focus on Indonesia as a case study since Indonesia is a multi-religious country that still applies BLs. Despite Indonesia's move towards becoming a democratic country in 1998 and its ratification of the International Covenant on Civil and Political Rights of 1966, and the embedding of FORB and freedom of expression (FOE) norms in the 1945 Amendment of the Indonesian Constitution, the prolonged enforcement of BLs remains controversial and invites criticism from various circles, questioning Indonesia's commitment to upholding the principles of democracy and human rights.

## **1.2 Reflection on Socio Legal Research for Indonesia's Anti-Blasphemy Law**

Undoubtedly, various juridical legal studies in Indonesia have highlighted the conceptual weaknesses and ambiguity of blasphemy laws (BLs). However, these studies have been limited and do not account for non-legal factors such as social, cultural, political, and historical contexts, which may influence the legal order. For example, a number of scholars have used the International Human Rights Law (IHRL), particularly the International Covenant on Civil and Political Rights (ICCPR), to scrutinize the Indonesia blasphemy law (IBL). The criticism of the IBL has been triggered by Law No. 1/PnPs/1965 on the Prevention, Misuse, and/or Desecration of Religion, which was passed by the authoritarian regime and reinforced by the reformation regime in Indonesia (Crouch, 2011; Tømte, 2012).

Numerous studies have concluded that the BL in Indonesia is a vague legal concept that leads to discrimination against minority religious groups (Menchik, 2014a) and protects the majority religion, particularly Islam (Bagir, 2013; Crouch, 2014). Furthermore, Nalle (2017) argues that the IBL fosters horizontal conflicts and violence and undermines the neutrality of the state in relation to religion, as it allows the government to interpret religion.

In this section, weaknesses of the normative and social approaches of blasphemy laws (BL) are explored, with at least three reasons identified for the former and two for the latter. One of the main criticisms of the normative approach is its top-down perspective, in which Western scholars, often echoed by international non-governmental organizations, employ the doctrinal legal approach of international human rights law (IHRL) to study BLs (Langford, 2018). However, such studies are limited in their ability to analyze to what extent certain countries are able to harmonize their domestic laws with IHRL, specifically the International Covenant on Civil and Political Rights (ICCPR). Countries that maintain BLs are often accused of violating the right to freedom of religion and freedom of expression, as enshrined in Article 18 and Article 19 of the ICCPR. Unfortunately, such studies often fail to examine the historical, political, or social context in which defamation laws are applied in different countries. In many Muslim-majority countries, such as Indonesia or Malaysia, BLs have taken on various forms that restrict religious freedom and

democratic principles (Fagan, 2019; John Witte and Green, 2009; Uddin, 2015). However, these scholars have not adequately examined local values and norms, such as maintaining public order, promoting tolerance, protecting national interests or security, or preserving public morality, which are recognized in IHRL under Article 18 (3) and Article 19 (3) of the ICCPR. Hence, it is less acceptable to employ a top-down approach that refuses to consider the domestic context when analyzing BLs.

Moreover, such studies have not been able to bridge the gap between laws in the books and laws that apply in society. For instance, research conducted by Crouch has demonstrated that BL has created discourse within and outside the court, leading the public to submit a judicial review of the blasphemy law to the Constitutional Court. The discussions related to BL continue inside and outside of the court (Hosen, 2004). Within the court, judges have interpreted the law extensively. In several cases spanning from 2004 to 2014, the court concluded that any individual or group who publicly declares atheism or receives a divine revelation or teaches deviant beliefs are not permitted under the state ideology of Pancasila or the 1945 Constitution of Indonesia. The first principle of Pancasila and Article 29 of the Constitution obligates every citizen to believe in one and only God; otherwise, they will be deemed as disrupting public order. In 2009, this discourse was escalated to the Constitutional Court when judges received a request for judicial review.

In this section, two arguments are presented for the weakness of the social and normative approaches to studying blasphemy laws (BLs), with three reasons outlined for the latter. One of the primary limitations of the normative approach is that it is often a top-down, legalistic perspective, wherein scholars, particularly in the Western world, use the International Human Rights Law (IHRL) framework to examine BLs. Studies following this approach are limited to determining whether countries conform to IHRL, specifically the International Covenant on Civil and Political Rights (ICCPR), with countries that maintain BLs typically being accused of violating the freedom of religion and expression under Articles 18 and 19 of the ICCPR. However, such studies fail to consider the historical, political, and social contexts in which defamation laws are applied in various countries, such as Indonesia and Malaysia, where BLs have transformed into various concepts that restrict religious freedom and democratic principles. Local values, such as maintaining public order, tolerance, national interest

or security, and public morality, that permit limitation clauses under Article 18(3) and 19(3) of ICCPR are also not thoroughly examined. Hence, the top-down approach of rejecting BLs without taking into account the domestic context is less acceptable. Moreover, this approach is unable to bridge the gap between the written law and its practical application.

On the other hand, research by Crouch indicates that the BL has generated discourse within and outside the court, leading to public judicial reviews of the law. Within the court, judges have interpreted the law broadly, with several cases from 2004 to 2014 concluding that individuals or groups who espoused atheistic beliefs, received a revelation from God, or taught deviant ideas were not permitted under the state ideology of Pancasila or the 1945 Constitution of Indonesia. The discourse was escalated to the Constitutional Court, which suggested revising the law since it was substantially flawed by many interpretations and no longer coherent with the constitution or the human rights standard adopted by the government. However, no study has yet explained why Indonesian courts continue to apply the BL in various cases or why parliament has not replaced it with another law, or what factors prolong or support its cancellation.

Moreover, the state ideology of Godly nationalism promotes the protection of only orthodox religions, leading to social conflicts, especially between Islam and Ahmadiyya, that reveal Indonesian Muslim communities' support for intolerance and rejection of secular democracy and theocracy. Menchik's (2014a) social studies claim that interpretations of religion outside the teachings of orthodox religion, monopolized by established religions recognized by the government, are deemed insulting, polluting, or demeaning, making the perpetrators liable for criminal offenses. However, Menchik does not examine the effect of these perceptions on the formation of legal orders by judges in court or vice versa.

These monodisciplinary studies have several shortcomings. First, they fail to comprehensively describe the gap between the written law and empirical reality in the field beyond the legal context. Second, the rigid IHRL approach underappreciates the power and existence of local laws that have long been rooted in and obeyed by society. Third, a legal approach to BLs does not address the local context where BLs are implemented and how social order influences legal order. Likewise, the social



approach, while studying public perception towards freedom of religion and belief (FORB), does not delve deeper into the reasons and contexts behind the enforcement of the law. Therefore, a multidisciplinary approach, such as a socio-legal approach, is needed to examine the public discourse in diverse populations such as Indonesia, as suggested by Habermas (1987).

### **1.3 Rational for chosen methodology of socio-legal study approach**

Interdisciplinary studies, according to Langford (2018), have the advantages of demanding a wealth of knowledge across sciences, thus minimizing the weaknesses in which the knowledge referred can contribute to one another and bridging existing weaknesses. Although, it also contains weaknesses associated with descriptive discussion, but using two balanced directions will contribute to the improvement of the two disciplines used (p.5).

In a diverse society, intolerance actions and inter-religious conflicts have caught serious attention at both international and domestic level as it hurts human dignity in the building of common understanding among different religions or beliefs (van Boven, 1991). Many kinds of violence and discrimination against race, religion or tribe differences have been leading to the failure of the social system and the burst of horizontal conflict in the community (Grim and Finke, 2010). To prevent the same case appearing in the future, a democratic constitutional law has been developed (Habermas and Rehg, 2001). In modern society, a constitution has an important role and should be designed as a legal fundamental commitment of the state to establish social welfare, social justice (Rawls, 2009), and to ensure human rights protection (Freeman, 1990). Some responsive regulations, as a part of democratic political configuration, will eventually achieve an ideal rule of law, keeping a good social order and maintaining the principle of equality before the law (Philippe Nonet et al., 2017).

The merging of normative and empirical studies in the study on human rights does not only stop when constitutions, statutes, jurisprudences, and institutions are evaluated, but it is important to study how human and political behaviour as well as other contexts effect to the law (Langford, 2018, p. 9,10). This approach starts from determining norms, identifying facts, and reviewing facts based on norms. The discourses within a society emerge during political changes from authoritarian into a

democratic regime (Somer, 2019). Countries that successfully overcome the challenges and move forward to reconstruct a democratic constitutional law will be faster to reach a milestone in the direction towards sustainable development for its citizen (Bossel, 1999), developing an inter-religious understanding and general awareness of religious diversity, challenging Indonesian society, in many times and at multiple scales (Bagir, 2013). Failure to leap forward the challenges, however, will bring the nation to the verge of backwardness and even could lead to country disintegration (Kunovich and Hodson, 2002). The discourses within a society emerge during political changes from an authoritarian into a democratic regime (Somer, 2019).

Some legal scholars believe that a socio-legal study is expelled from legal studies because of some reasons. However, a socio-legal study is getting popular among legal scholars and has been recommended to be used to study a very new topic or a sensitive topic or an issue related to the needs of the people in a large number such as law reform. Historically, a socio-legal study become a tool to bridge the gap between what the law is and what the law should be. There are some reasons why scholars apply socio-legal research in their studies and why the socio-legal approach is the best alternative approach to assessing the reform of BL to uphold democracy and the rule of law.

First, according to Banakar (2019), a socio-legal study is an interdisciplinary field of study (p.10) in a broader context of social and political to generate empirical evidence to answer research questions (McConville and Chui, 2017). The meeting point between social science and law becomes very important to be used in studying complex and sensitive issues such as Blasphemy's law. This is because basically the law does not work in a vacuum room. Laws are applied by and for the community. The process of the BL's formation itself is influenced by various aspects of politics, economics, social and culture.

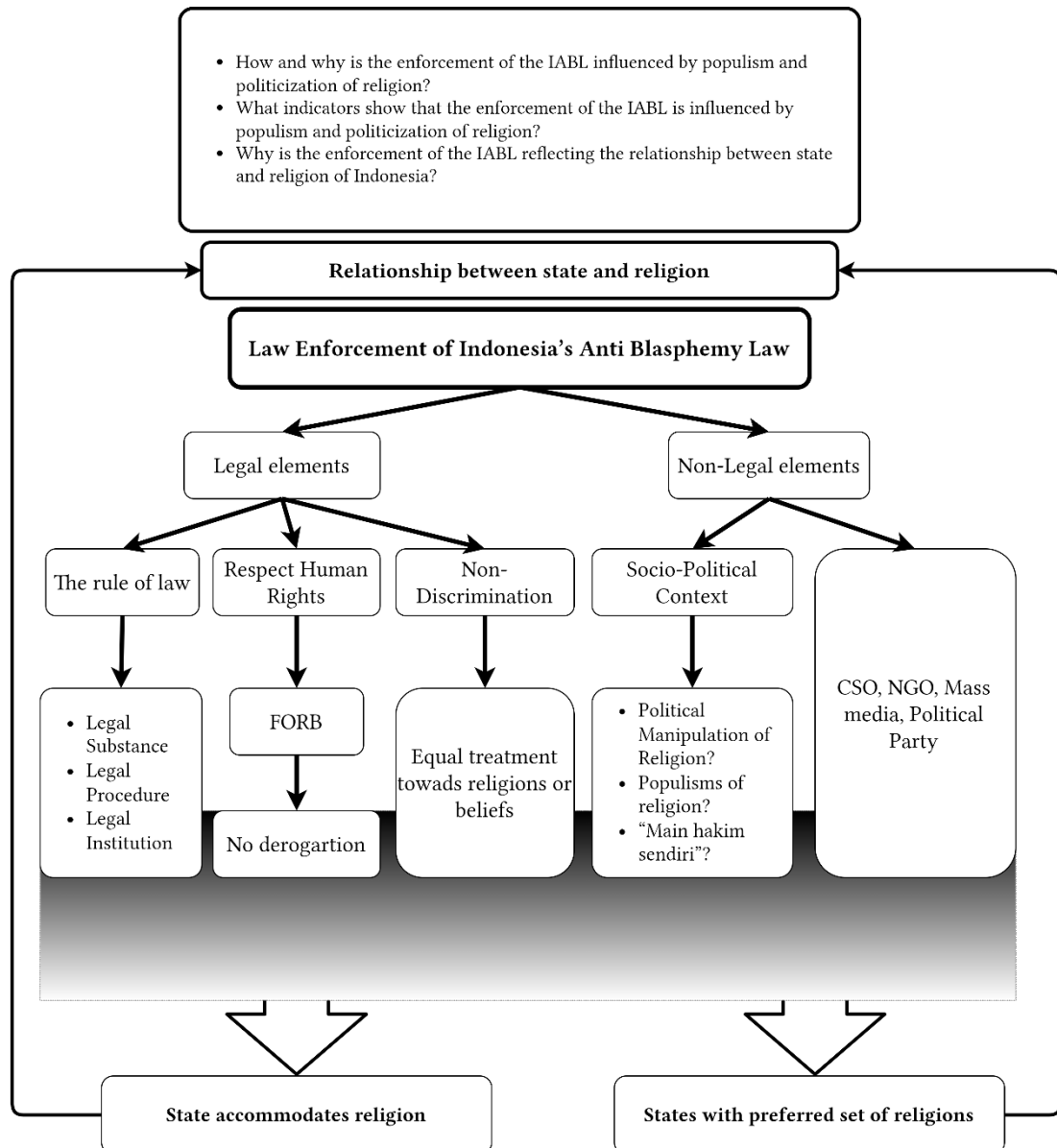
Second, Nelken (1986) argues that a socio-legal approach can be used to demonstrate the gap between the law in a book and the law in action (Macaulay et al., 2007). In this sense, it is very urgent to examine the implementation of BL in Indonesia from both legal and non-legal context, to understand the operation of law in society (Galligan, 1995) or scope and application of understanding law by reference primarily to case law (McConville and Chui, 2017). A socio legal approach aims to study the

collective juridical experiences or to examine how the law works, treat the norms as empirical data to explain the law (Gurvitch, 1947, p. 30) and to evaluate legal rules and or legal system through studying between rules formulated by statute or judicial decisions and the conduct of citizens. Therefore, to understand the gap between the contents of BL and empirical facts in the field in responding to the law need to be studied, such as through the study of judges' decisions on blasphemy cases and how they affect towards or are influenced by the social order of the community.

Third, a socio-legal study conducts in both top-down and bottom-up (Banakar, 2019, p. 5). Although IHRL is accepted as a minimum standard of achievement for respect for human rights, IHRL also provides a space for domestic law to regulate norms of restrictions on such rights that are non-absolute by considering several aspects such as to maintaining public order, national security, public health, or public morality. Thus, a top-down approach, that places IHRL as the only norm that must be implemented, is not enough. But, how to build a balance between domestic legal norms and international legal norms needs to be examined. It means that each country may apply standards limitation of FOE and the right to manifest the religion. However, the limitations should compliance with international human rights standards in which the limitations should be proportional, necessary and does not discriminate others (Durham, 2011). The delay to reform BL is related to some aspects that make a country face some difficulties on reforming the law. A law is a political product that related with political, social, economic, and cultural context when the law has been enacted. Therefore, the effort of amending the law should also consider those aspects. The ambiguity of the blasphemy concept and the lack of public understanding towards the concept cause public polarization. This is where socio-legal study accommodates these two approaches in a balanced way.

To answer the problem formulated above, this study will use a socio-legal studies approach which according to Phillip Selznick, whom Lon Fuller influences, that socio-legal studies aim to study the meaning of legality and what conditions affect legality of a law. In a socio-legal study, an interdisciplinary approach needs to be carried out by looking at all important aspects, including the non-legal aspects (Banakar, 2019; Bedner and Vel, 2010). Therefore, this study will examine the legal aspects of the anti-blasphemy law, and non-legal aspects that might influence the development and

enforcement of the anti-blasphemy law, such as the relationship between religion and politics, religious populism, and the politicization of religion. Therefore, this study



departs from the following theoretical and conceptual as follows as describe in figure 1.

#### 1.4 Significance of the study

This study aims to contribute to the understanding of the sociopolitical context surrounding the enforcement of Indonesia's blasphemy law (IABL) in relation to the right to freedom of religion or belief (FoRB). It seeks to expand existing knowledge in

this area by adopting a socio-legal approach that considers the factors and actors that influence the enforcement of the law.

Previous studies on the IABL have predominantly taken a top-down normative perspective of Human Rights Law. However, this study aims to provide an additional understanding of the gap between the IABL and its enforcement by examining the sociopolitical context that shapes the application of the law.

The data collected and findings from this study can be useful for law enforcers who examine blasphemy cases. Specifically, it highlights the potential for misused application of the IABL to deprive citizens of their fundamental rights. Therefore, the study emphasizes the importance of courts prioritizing the rule of law, protection of rights, and aspects of justice that uphold humanity in blasphemy cases. Furthermore, this study can also contribute to the field of social science by improving the performance of legal systems.

In terms of legislative impact, the findings of this study may help legislators understand that the vague concept of the IABL has a significant impact on the vulnerability of legal certainty and justice in its enforcement. This study argues that reforming the cryptic, repressive, and discriminatory anti-blasphemy law can prevent Indonesia from becoming an authoritarian regime that violates citizens' rights. The data, findings, and results of this study can enrich academic studies and assist in formulating legal norms that have high standards and provide a complete picture of the development of the law on blasphemy and its enforcement. By doing so, legislators can prevent public debate or vigilante action from threatening democratization.

Overall, this study seeks to expand the knowledge base on the sociopolitical context surrounding the enforcement of the IABL and its impact on FoRB. It aims to provide insights for law enforcers and legislators to promote human rights and uphold the rule of law while enhancing legal certainty and justice in Indonesia.

### 1.5 The research tools: Case studies

This study uses a case studies approach of a selected number of blasphemy cases, namely the Ahok case,<sup>11</sup> the Meiliana case,<sup>12</sup> the Gafatar (Millah Abraham) case,<sup>13</sup> the case of Ahmadiyya and the case of Bambang Bima.<sup>14</sup> Each case will be discussed in depth to support the arguments provided in each chapter. Although there are cases that have similarities in one aspect, other aspects make these cases different and unique.

This study focuses on the Blasphemy law in Indonesia. Since Indonesia is a country based on a rule of law that recognizes multi-religions, where Muslims make up most of the population, 88% of the total population of over [265] millions (Davis and Robinson, 2006). This complexity, coupled with dynamic sociopolitical conditions and the history of the development and implementation of the IABL, which has experienced ups and downs and changes in time, are challenging conditions for the protection of the FORB. The reason for selecting the four cases, besides the reasons mentioned in the research method above, is that the Ahok case,<sup>15</sup> a Chinese Christian, represents the Jakarta area, Indonesia's capital city, where the people are multicultural, more open and have a higher educational background. Ahok's case contains very strong political nuances where Islamist groups mobilized the masses and used the

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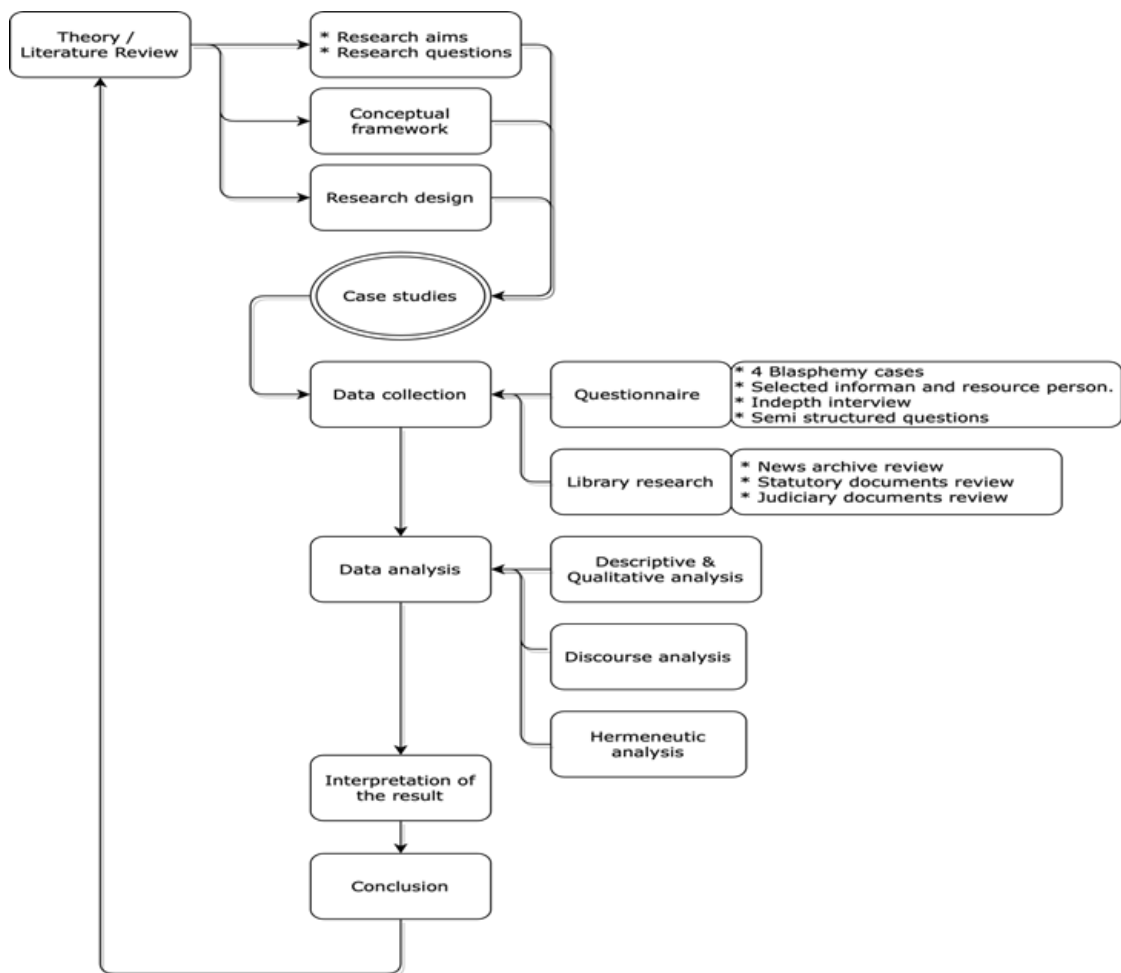
<sup>11</sup> See Verdict No. 1537/Pid.B/2016/PN JKT. UTR and Verdict No. 11PK/Pid/2018.

<sup>12</sup> See Verdict No. 784/PID/2018/ PT.MDN.

<sup>13</sup> See Verdict No. 1107/PID.Sus/201/PN.Jkt.Tim.

<sup>14</sup> See Verdict No. 56/PUU-XV/2017; Verdict No. 312/Pid.B/2011/PN Srg; Verdict No. 314/Pid B/2011/PN.Srg.

<sup>15</sup> See Verdict No. 1537/Pid.B/2016/PN JKT. UTR and Verdict No. 11PK/Pid/2018.



issue of blasphemy to confront Ahok in the 2019-2024 Governor election, so Ahok was sentenced to 2 (two) years in prison, and he lost in the 2019 local election.

The case of Ahmadiyya,<sup>16</sup> a new religious movement, in Cikeusik, Pandeglang, Banten of West Java represents a conservative religious society. The Ahmadiyya case is influenced by various forms of violence from vigilante groups and how hardliner groups get support from local and central governments to issue public policies to stigmatize the Ahmadiyya as a deviant group, even though formally the Ahmadiyya is a legitimate religious organization. In the end, the court sentenced the Ahmadiyya leader to several years in prison and continued to ban the activities of his followers.

In the case of Gafatar,<sup>17</sup> in Kalimantan, the members come from various Indonesia regions with middle to lower economies. The case of Gafatar is like the case of the Ahmadiyya, which is also characterized by various forms of violence by

<sup>16</sup> See Verdict No. 56/PUU-XV/2017; Verdict No. 312/Pid.B/2011/PN Srg; Verdict No. 314/Pid B/2011/PN.Srg.

<sup>17</sup> See Verdict No. 1107/PID.Sus/201/PN.Jkt.Tim.

vigilante groups. Gafatar, which initially invited his followers to be independent and has been supported by many parties, was eventually accused of being affiliated with Millah Abraham, whose leader was once considered a heretic and was still serving time when this case emerged.

In the case of Meiliana,<sup>18</sup> a Chinese Buddhist woman, live in Tanjung Balai Medan where people are heterogeneous and have a strong Malay culture character by upholding customary principles, “*Adat bersendikan Syarak, Syarak bersendikan Kitabullah*” or “the tradition is based on Sharia, and the Sharia is based on the Koran”. Meiliana’s protest to a neighbour mosque for a too loud call of praying was considered blasphemy against Islam. The Meiliana’s case is related to the politicization of religion and economic sentiment, where Meiliana as a Buddhist minority and of Chinese descendants is part of identity politics for hardliner Islamic groups to accuse Meiliana (Suryadinata, 2019: 5-6). This case was also coloured by the Vigilante group's attack on the Vihara Temple, where the Vigilante group used the excuse of protecting religion from Meiliana's actions, which were considered insulting to Islam. The difference between the decision of the first instance court that ruled Meiliana acquitted and the decision of the Appellate Court which sentenced her to 1.5 years is interesting to examine to what extent the Court was affected by the politicization of religion and identity politics that occurred.

This study will also examine the case of Bambang Bima, an 18-year-old Muslim man from Surabaya who found guilty before the District Court of Surabaya after he uploaded an alter song of “*Aisyah, the Prophet’s wife*” when he was drunk. Apart from the Defendant being Muslim, his case was not widely debated by the public, nor was it highlighted by the media. The court sentenced the Defendant to 7 months and a fine of 500 million rupiah. Why the sentence was much lighter than in other cases, and the extent to which the court was influenced by the sociopolitical dynamics that occurred at that time, need to be studied further.

Using these case studies approaches, this study will explain a complete picture of the sociopolitical context of the enforcement of the IABL and various gaps that occur between the blasphemy law and its enforcement in practices to answer the research problems.

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<sup>18</sup> See Verdict No. 784/PID/2018/ PT.MDN.



## **1.6 The period of study**

This study is a continuation of the previous study conducted by other researchers, such as Melisa Crouch (2012), to examine blasphemy cases in the last decade, with the consideration that various circumstances have changed a lot, both from a legal, political, and social perspective. This study will examine the enforcement of IABL for the 5 (five) blasphemy cases that occurred between 2008 (after the enactment of the IET Law) and 2020 from the final decisions of the cases, in-depth interviews of the parties involved, studies of various relevant secondary and tertiary data.

## **1.7 Data collection: in-depth interview and semi structured interview**

This study will interview the two kinds of sample, (1) experts and (2) informants. This study interviews the experts, such as the Commissioner of National Commission of Women, justices of the Supreme Court, justices of the CCIR, human rights experts, the Chairman of Indonesian Lecturers Consortium), parliamentarians, staff of National Human Rights Commission and Human Rights NGOs who worked the judicial review process of the IABL and have knowledge about the blasphemy law, the former head of YLBHI – Jakarta). While for the experts, these interviews will be conducted using open-ended questionnaire and aim to provide valuable insights into this study about the party's experiences with the cases that shape the IABL enforcement, identify actors who push the strengthening of blasphemy laws and explore public views for defending, revising, or deleting the IABL. This in-depth interview to be conducted face-to-face with the sources. However, during the Covid-19 pandemic, interviews will be through other online media, such as zoom, skype, email, or other related applications.

This study also interviews the informants and the victims who experienced and involved in blasphemy cases, such as such the perpetrators or the victims of religious minority groups as the target of blasphemy cases. Meanwhile, views regarding the existence of the anti-blasphemy law and its enforcement from various parties that it is not possible to conduct direct interviews for various reasons, namely from the government officers, the lawyers, but not limited to members of minority religious groups, members of Indonesia Ulama Council (MUI), a member of hardliners Islamic

Groups, such as Front Pembela Islam (FPI), public prosecutors, lawyers, executive staff from the largest Islamic organizations, such as Nahdlatul Ulama (NU) and Muhammadiyah, information is extracted from various secondary sources such as documentary videos published by the mass media, videos of an interview on the parties involved, and the societies that have been published by various media, including YouTube channel officials and news from Islamic organizations, FPI, and others. The various views of the Management of Moderate Islamic Organizations such as Nahdlatul Ulama and Muhammadiyah were obtained through the statements they submitted to the Constitutional Court during the review of the Anti-Defamation Law.

This study collects Indonesia's anti-blasphemy laws and its derivative regulations, various human rights standards and treaties ratified by Indonesia, and the Judges verdicts of blasphemy cases from library research. There are various statutes and legal documents that will be reviewed in this study, namely the Law No. 1/PNPS/1965 concerning the Prevention and Eradication of Religious Abuse and/or Defamation (hereinafter the 1965 IABL) and the 1981 Criminal Code of Indonesia (hereinafter the 1981 CCI) of Article 156a, as well as the Law No. 11 Year 2008 concerning the Information and Electronic Transaction (hereinafter the IET Law) and various public policies related to blasphemy cases. Legal documents to be reviewed in this study are all Judges verdicts that related to the cases as mentioned above, including the decisions of the Constitutional Court on blasphemy law 140/PUU-VII/2009, No. 84/PUU-X/2012, No. 56/PUU-XVI/2017, and No. 76/PU-XVI/2018. All statutes, legal documents, and jurisprudence concerning anti-blasphemy are part of case studies and will be classified and critically analysed for their meanings, implications, and impacts on justice and the religious rights of certain groups of religions to answer whether the legal policies on blasphemy in Indonesia are compatible with the IHRL in which Indonesia has ratified.

### **1.8 Analysis of the data**

Since the socio-legal approach is a combination of doctrinal research and empirical research, this research is preceded by a document study to take an inventory of various regulations and policies related to anti-blasphemy law to examine the extent to which the substance of the regulation is consistent or does not conflict with one

another, as well as to what extent the findings this affects the rights of religious minorities in practice by looking at the enforcement of the Indonesia's Anti Blasphemy Law. The legal documents that become the material for all are laws and regulations related to the law of blasphemy, court decisions in related cases will be analysed using doctrinal approach. Legal analysis needs to be done first to evaluate legal rules and or legal system through studying the relation between rules formulated by statute or judicial decisions and the conduct of citizens. Then the findings of legal analysis will be studied further to find empirical data in the field. This is to further examine whether religious populism, the politicization of religion, and "*main hakim sendiri*" are the main factors that support the strengthening of the anti-blasphemy law in Indonesia. Tamanaha (2011) mentions the principle of connectedness and emphasizes that "the law is related to everything in society", namely "history, culture, human and material resources, religious and ethnic composition, demographics, knowledge, economic condition, and political" (214-219), where legal development itself is related to aspects of culture, ethnicity, religion, and law (184). Using case studies approach, this study aims to gain empirical data, examines juridical experiences on various blasphemy cases, to understand the law and how the norms are treated (Gurvitch, 1947, p. 30) and how the law be applied to certain context to be criticized to evaluate on how it works. Thus, to answer the problems in this study, various empirical data, court experiences in deciding cases of blasphemy, as well as various existing regulations and policies will be studied and will be used to explore and understand the sociopolitical dynamics that occur as well as the factors and actors involved and whether these sociopolitical dynamics influencing the enforcement of anti-blasphemy laws in Indonesia. First, the extent to which political manipulation of religion places the Anti-Defamation Law as a tool to eliminate political competition and whether this affects the courts in formulating legal considerations and making decisions in blasphemy cases. Second, the extent to which identity politics characterized by religious populism influence the courts (judges) in criminalizing religion.

Data of this study will be analysed using descriptive qualitative, hermeneutic, and cross discourse analysis. According to Van Dijk, the discourse analyses mean how the legal norm or sociopolitical context surrounding the cases encourage and influence

the Court to make such decisions. Because referring to Heidegger, every text is related to the context when and in what condition it was written. Then, referring to (Miles and Huberman, 1994, p. 30), the collected data will be reduced and presented by first classifying or categorizing data based on themes that emerge systematically then from the notes of the case studies, the research findings are generated. Then, this study will elaborate on the connection between the theory and the research findings to find the conclusion.

### **1.9 Research ethics**

This study's objectives probably brought moderate risk to the researcher when conducting the interview and when the interview questions are not carefully formulated. This study could suddenly go viral on social media, leaving no space for the researcher to defend itself against public criticism. At that point, the law enforcement officers could be arresting the researcher only to subdue the public reaction. However, the research is still possible for several reasons: Although this blasphemy law is quite sensitive, many scholars have discussed this issue at various forums. Second, this research obtains most of the data from secondary data resources such as news, judge verdicts, legislation, local regulations that can be accessed openly through the Parliament's, Supreme Court's, or Constitutional Court's website. This study could risk rejection, particularly from the respondent of minority groups of religions who may hesitate to participate in this research to avoid the psychological or social discomfort or may have a prejudice or feeling of discrimination against them. Therefore, the researcher must obtain their voluntary participation consent before asking them for the survey.

For the success of the study, to reduce the risk and referring to the guiding principles of "do no harm", this research will be conducted based on some aspects:

1. The methods of research will be well-thought-out before the field research starts. For example, interviewing key persons such as judges, experts, public officers, the leader of minority religious groups, can minimize the risk rather than an open survey to ordinary people. For online interviews, the researcher will use more secure online-platforms to safeguard the identity of participants and researchers, as well as to reduce data leaking. To ensure the confidentiality of data or

information shared and the privacy of conversations, the researcher will use Signal app which is a safer and more secure online platform than most messengers because of a process called end-to-end encryption and Zoom meeting at participants and researcher's convenience.

2. To avoid deception, the researcher will introduce herself openly, and the aims of the research will be well explained before the interview to all participants to obtain either a written and signed form of consent or verbal consent.
3. To respect and protect participants' privacy, all participants will be anonymous, and the researcher will keep the data anonymous. To ensure confidentiality, the data obtained will be saved in a personal external drive.
4. The data will also be collected from the experts in human rights law, and the NGO concerned with the religious freedom issue so that the identity of vulnerable subjects from minority groups of religions remain covered.
5. Finally, for safety reasons, the researcher should not put herself in the way of harm, whether it is political, physical, or psychological harm. The researcher will not discuss the teachings of each religion or belief.

To ensure the researcher's neutrality, the researcher will guarantee that all analysis of the data is free of bias from the researcher's background, position, or perspective and based on valid data or evidence that is trustworthy and legitimate. Although the risks involved in this research may be greater than the benefits for religious minority groups, this study also allows their voices to be heard. The other parties could understand what pressure's victims are experiencing and feeling. This opportunity can ease the burden that they have buried and do not get a solution. Their contribution will provide significant input to optimize the protection of FoRB in Indonesia.

This study also ensures the confidentiality of all participants. Any information related to participants' identities, such as names, genders, addresses, and positions, will not be revealed. This study uses certain abbreviations or fake names or codes to label them and ensure that nobody is identifiable within the research. The transcript of the interview will use the label. The interview will be conducted at the venue or time in which the subject feels safe and confident to be interviewed, either recording their opinion or taking a note. This study will use the code system with categorization

such as gender and age, not mentioning their name or the address. To guarantee nothing happened to the respondents, I will make sure that only I can access the data, and I will destroy them after two years.

### **1.10 Conclusion**

Many studies with a legal approach have shown that BL is not compatible with IHRL. Indonesia's need to reform BL is unavoidable. But legal studies do not adequately answer why there is still public polarization in Blasphemy's legal reform efforts. Social research on the perception of Indonesian people regarding religious freedom does not adequately answer this issue. Research that explores the difficulties of reaching national consensus to change laws or explore the reasons behind prolonged law enforcement, whether it is related to social or political aspects, needs to be studied further. There are no single concept of what defamation means. Some people believe that defamation is hate speech. Others believe that defamation protects a religious system or symbol does not protect people as individuals. The concept of defamation of ambiguous religion can lead to public discourse that needs to be studied.

These various understandings can hamper efforts to make new laws. The tendency of religious defamation laws to criminalize minority religious groups with severe punishment must be stopped, while alternative non-criminal settlements need to be explored and elaborated. Indonesia's ideology as a country that believes in One God should not be translated as state interference in the choice of religion and belief of everyone. State restrictions on the right to manifest religion must be directed at limiting the spread of hatred that undermines tolerance while still considering the proportionality of punishment. The court as a state institution is the final institution expected by the community to resolve their problems. Social-legal studies are needed not only to identify human rights norms, facts, and how norms apply to facts, but also to understand the gap between Blasphemy's legal content and empirical facts in the field in responding to the law. It needs to be studied how judges' decisions affect and are influenced by the social fabric of society.

## **CHAPTER III**

### **CONTESTING THE CONSTITUTIONALTY OF THE INDONESIA'S ANTI-BLASPHEMY LAW THROUGH THE LENS OF THE RULE OF LAW**

#### **2.1 Introduction**

Before investigating whether or not the enforcement of blasphemy legislation is influenced by the politization of religion, as is usually done by many researchers using a socio-legal study approach, an examination of the characteristics of the present evolution of Indonesia's Anti-Blasphemy Law (IABL) is required (Bedner and Vel, 2010). The author is guided by the early findings of this technique to critically assess the trajectory of legal enforcement on blasphemy cases and the socio-political elements surrounding it. Following recent legal developments, the continued existence of IABL is fraught with difficulties. Since the IABL is no longer solely aimed at bringing order to society and creating harmonious relations between religious adherents, the IABL must not violate citizens' human rights in accordance with the rule of law and the recognition and guarantee of human rights in the 1945 Indonesia Constitution. As a result, using the law as an instrument to prohibit someone from exercising their rights must be constitutional, which means that it must be proportionate and non-discriminatory, in addition to being in conformity with the Indonesia Constitution of 1945.

Essentially, the topic of IABL is to determine if its growth leads to full respect and preservation of every person's right to religious freedom or, on the contrary, undermines the right to religious freedom itself. As a result, it is not enough in this chapter to explain the faults of the anti-blasphemy legislation itself; the creation of subsequent laws and policies, such as the Law on Informatics and Electronic Transactions, which incorporates norm on blasphemy through electronic media, must also be analysed. This includes central government policies, local government policies, and the fatwa of the Indonesia Ulema Council, which continues to deepen the grip of the blasphemy legislation.

So, why does Indonesia care about its citizens' right to religious freedom? There are at least two explanations for this, which are legal philosophy and empirical considerations. In legal theory, one of the goals of the state is to defend the whole

Indonesian country via the preservation of human rights. This is consistent with the goal of developing International Human Rights Law (IHRL), which is to urge all nations to respect, defend, and fulfil their citizens' human rights. As a result, it is quite legitimate for every Indonesian citizen to expect the ruling government to consistently respect, safeguard, and fulfil their right to religious freedom. Citizens do not want the existence of laws produced by the state to be used to legitimize state authorities acting arbitrarily or even prohibiting them from exercising their chosen religious rights. As a result, Articles 29, 28E, and 28I specifically indicate that the right to freedom of religion or belief (FoRB) ensures the right of every individual to explore, accept, change, and realize their own choice of religion or belief without confronting any interference either in the public or private arena. The state may limit a person's religious expression as long as the limitation is based on a legitimate legislation and is done proportionally without discriminating against certain religious groups. However, what has occurred in Indonesia with the implementation of the Anti-Blasphemy Law, which is being bolstered by numerous additional rules, is going in the opposite way. The existence of the anti-blasphemy statute has encouraged law enforcers to unduly restrict the freedom to religious expression through various laws and regulations. These laws have diverse interpretations and discriminatory clauses that might damage the fundamental right to expression by criminalizing utterances deemed blasphemous to religious symbols, doctrines, or anything pertaining to the government's principal faiths.

The issue of the freedom of religion in Indonesia remains a global concern from an empirical standpoint. Indonesia remains on the SWL (Special Watch List) category in the Annual Report issued by USCIRF on April 26, 2022.<sup>19</sup> This signifies that the right to religious freedom in Indonesia has not improved since the previous assessment. This is consistent with different studies presented by multiple local non-governmental organizations, such as the SETARA Institute (Yosarie et al., 2021),<sup>20</sup> (Harsono, 2019),<sup>21</sup>

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<sup>19</sup> See <https://www.uscifr.gov/news-room/releases-statements/uscifr-releases-2022-annual-report-recommendations-us-policy>

<sup>20</sup> Jemaah Ahmadiyya Indonesia (JAI) is a minority religious group whose constitutional rights are often ignored by the state. The neglect of JAI's rights is not only allowing the state to interfere with the implementation of worship and the construction of places of worship, but also the birth of various legal products that are discriminatory against JAI. /

<sup>21</sup> Andreas Harsono reports that the right to freedom of religion in the Jokowi era is still in poor condition, unlike what he promised during the campaign. Indonesia's 'Religious Harmony' regulation did not have any impact,



and PSHK,<sup>22</sup> which essentially claim that although the constitution protects the right to freedom of religion and worship, and Indonesia has signed the ICCPR, which guarantees FORB, religious intolerance, religion-based discrimination, and violence against religious groups continue to exist and tend to rise at the level of implementation. In the majority of instances, the police arrest and accuse individuals who are deemed to be defaming the state's establishment faiths or members of minority religious organizations who are deemed to be defiling the state's primary religions (Harsono, 2019). Under the guise of defending and safeguarding the country's official religion from insults or harassment (Lindsey and Butt, 2016), intimate relationships between the government and adherents of the majority faith are sometimes utilized for political infidelity by adopting discriminatory public laws. Since the right to FoE is not an absolute right,<sup>23</sup> the government and the people, echoed by the Constitutional Court of the Republic of Indonesia, usually think that IHRL rules and policies regulating the censoring of offensive comments or critiques are legitimate. Nevertheless, the ABLI that restrict the right to FoE are frequently overly stringent, unclear, and discriminatory. Rather than curbing instances of hate speech, these laws endanger the substance of the basic right or even harm democracy.

This chapter seeks to assess how the Blasphemy Law, which has been strengthened by numerous judgments of the Constitutional Court of the Republic of Indonesia, is able to represent the formation of the rule of law as stipulated in Article 1(3) of the 1945 Indonesian Constitution. Or, conversely, the Constitutional Court has overlooked the flaws of the blasphemy statute, resulting in unclear judgements that undermine the rule of law.

This chapter begins with a discussion of the historical backdrop of the establishment of the rule against blasphemy and the reasons why, during the old age, the regulation was developed by a presidential decree as opposed to a statute,

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so 15 organizations sued the regulation that hindered the freedom of worship of various religious minority groups.

<sup>22</sup> The Center for the Study of Law and Public Policy (PSHK) in its study reports that minority religious groups can be categorized as vulnerable groups who are often victims of violence and discriminatory actions. Therefore, PSHK wants to develop an anti-discrimination advocacy strategy for vulnerable groups. See <https://pshk.or.id/publikasi/laporan-studi-pengembangan-strategi-advokasi-antidiskriminasi-bagi-kelompok-rentan-di-indonesia/>

<sup>23</sup> See various arguments stated by the government and religious organizations when agreeing to maintain the ABLI in the Constitutional Court Decision Number 140/PUU-/2009; 84/PUU X/2012; 56/PUU-XVI/2017.

including whether an emergency was the primary factor in its construction. Then, how the legislation against blasphemy strengthened during the new order and reformation periods. This chapter presents the most recent developments in the examination of the previous Anti-Blasphemy Law by analysing in depth the different judgments of the Constitutional Court, namely Nos. 140/PUU-VII/2009, 84/PUU-X/2012, and 76/PUU-XVI/2018, studying the arguments of the petitioners and respondents, as well as the considerations of the judges in their conclusions and conducting in-depth interviews with several relevant sources. These findings will illustrate why the enforcement of blasphemy laws has been challenging in the subsequent chapters. In its various decisions, the Constitutional Court has acknowledged that this law is normally flawed but has also repeatedly argued that ABLI is constitutional because the right to religious expression is in line with Article 28J of the 1945 Constitution (UUD 1945), which states that the right to religious expression is not an absolute right and can be limited by ABLI in order to maintain tolerance and protect public order.

This equivocal approach of the Constitutional Court influences the way subordinate courts examine and decide blasphemy cases. The Court's stance impacts politicians' willingness to amend the legislation. If the Constitutional Court, as the guardian of human rights, has ruled the Anti-Blasphemy Legislation to be constitutional, there is no legal justification for parliamentarians to continue revising the law. Due to the absence of a new the IABL replacement bill in Indonesia, the primary reason for the Court's reluctance to abolish the legislation is a lack of evidence suggesting that society may descend into chaos and disorder when some individuals commit blasphemy. The Constitutional Court will thus retain the IABL until a new statute is ready to replace it. In the first place, the Constitutional Court does not believe that Indonesia currently has criminal laws that control public order and prevent unlawful behaviour in society. The dominant religious group views vigilante action against acts of blasphemy to have a legal foundation, as evidenced by the fact that the IABL has been the source of societal upheaval since its passage.

There are five parts to this chapter. The first section gives a theoretical and conceptual framework for understanding the theory of the rule of law, what it means for a law to be constitutional, what religion is and why people have the right to

freedom of religion, and how proportional rights can be limited. The second part covers the flaw-ridden historical development of the Blasphemy Law. The act was initially intended to address the emergency scenario of horizontal disagreements amongst faiths under the direction of the September 30 revolution movement, hence its growth throughout the Soekarno era was dependent on executive authority under Guided Democracy. The last section analyses how this genetic abnormality became a permanent law during Suharto's dictatorship.

In the third section, the author examines the anti-blasphemy legislation that was in effect under Suharto's authoritarian rule (i.e., from 1965 to 1998), when the concepts of state-sanctioned and state-approved religions were first conceptualized.

The fourth section discusses how the blasphemy law, which has historically contained flawed norms but has been strengthened by the ratification of related laws, is still used as a basis for law enforcement to punish those who practice religions or hold beliefs that are insulting to the existence of religions practiced in Indonesia or teach religious teachings that are heretical.

It is shown in the fifth section that the constitutionality of a law that is supposed to uphold the principles of proportionality and without discrimination is in question due to the Constitutional Court's ambiguity in its various decisions regarding the judicial review of the Anti-Defamation Law.

## **2.2 Theoretical and conceptual Framework**

### **2.2.1 Theory Rule of Law**

Using the rule of law philosophy, this study contemplates digging deeper into whether or not the anti-blasphemy statute supports or hinders the freedom of religion. Article 1 (3) of the 1945 Constitution of Indonesia states that Indonesia is a nation governed by the rule of law. Furthermore, the right to freedom of religion is protected and respected according to Articles 29, 28E, and 28I. Nonetheless, Article 28J allows the government to restrict how a person exercises their religious freedom. By departing from the Rule of Law (ROL) framework, this research will analyse the Indonesia Anti-Blasphemy Law (IABL) and give answers to the posed problems.

Researching the law is at the heart of the field of socio-legal studies. Understanding the amount to which external influences, such as social and political dynamics, can undermine court independence and influence judges in interpreting law and determining cases requires knowledge of the rule of law, which includes legal content, legal institutions, and legal procedures. According to Friedman (1975), law is a sophisticated system that integrates institutionalized law, substantive law, and public understanding. During the development of law, its legal contents and procedures must be systematically discussed with related institutions, such as law enforcement agencies, and the community's awareness and culture must be taken into account. This principle was proclaimed by the Indonesian National Law Development Agency (BPHN).

Elements of procedure, elements of substance or contents of law, and elements of institution are the three pillars upon which Bedner and Vel (2010)'s rule of law theory rests (p.22-23). This research will follow the conceptual frameworks established by Bedner and Vel (2010) by examining the impact of IABL enforcement on the ROL's substance of law, legal procedure, and legal institutions, as well as taking into account additional factors like social, political, cultural, religious, and public aware-ness. This study borrows the framework of “The Rule of Law led Governance” (ROLGOM) developed by Bedner and Vel but differs from it with various changes that so-called ROLFORB (the Rule of Law for Freedom of Religion) to meet the aims to be attained in this study. This study must also consider the role of the Constitution through judicial review of cases of blasphemy, as well as other state institutions involved in anti-blasphemy legislation, in order to adhere to the framework added by Vel, namely the existence of a supervisory agency other than the implementing agency (Bedner and Vel, 2010).

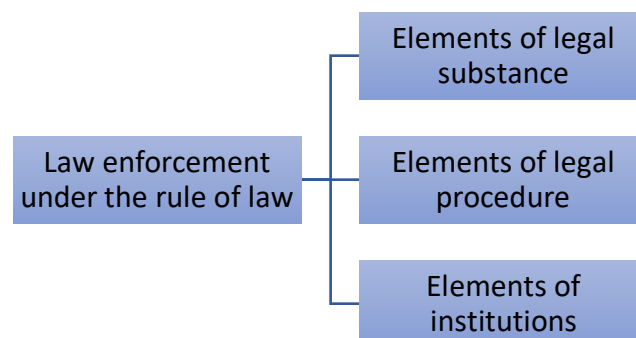


Figure 3. Three Elements of Law Enforcement under the Rule of Law

#### **a. The element of substance or content of laws**

The element of substance or content of legislation will be studied using two indicators, with reference to Bedner (2010). The law and its execution must preserve the notion of justice as a prerequisite. For instance, by determining if the case studies demonstrate that the IABL does not just safeguard the interests of dominant religious groups, but also punishes religious minorities; Additionally, if the punishment inflicted on the group of blasphemers or the brutality, they endured is proportional to the errors they made. Second, the legislation and its execution do not infringe the religious liberty of any individual. For instance, whether individuals were prohibited from practicing their own beliefs in the private and public spheres, and maintained their religions, or whether they were pressured to abandon their belief and adopt other religions or beliefs. Whether they were let to reside on their own property, or if the State supported the vigilante's efforts to force them to leave. In order to examine the compatibility of the IABLs with the IHRL, the cases and judicial decisions will be analysed in accordance with the ICCPR article 18<sup>24</sup> and General Comment Number 22,<sup>25</sup> as Indonesia is obligated to respect and protect the principles of FORB, i.e., the right to adopt, renounce, and change religion, the right to establish a place of worship, the protection of the right to worship from coercion, and the equal treatment of all religions and beliefs.

#### **b. The element of legal procedure**

The element legal procedure evaluates three indicators, the first of which is whether the legislation applies broadly rather than targeting certain groups. Bedner refers to Raz's description of this character as the law. This implies that a law must apply to everyone, be easily understood by society, and not provide room for authority to misuse it for objectives that are against the public interest. The actions of the government are subject to the law, and discretionary acts and policies must be justified. Consequently, it is vital to examine the history of IABL, which first focused solely on the post-revolutionary emergency of the Communist Movement of 1965.

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<sup>24</sup> ICCPR opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976, Art. 18 (3). Indonesia has ratified the ICCPR through the Law Number 12 Year 2005.

<sup>25</sup> CCPR General Comment Number 22; Article 18 (Freedom of Thought, Conscience or Religion), General Comment Article 18, UN HRC, 48<sup>th</sup> session (30 July 1993).

Nonetheless, a specific set of individuals has always advocated for its enforcement up until the present day. Bedner (2010) also argued that the existence of the law ought to foster clarity and stability in society, rather than uncertainty and stress. The second indicator of the legal procedural aspect is “state activities are subject to the law” (58-59). This study will investigate whether restrictions on the freedom of individuals to express or display their religions or beliefs are founded on a high level of restriction. The restriction must be set by legislation, taking into account relevant goals and proportionate criteria, without any purpose to discriminate against a particular religious group (see Article 18 (3) of the ICCPR and General Comment 22 of the ICCPR). For instance, the government's actions and policies that emanate from various institutions, such as the Coordination and Surveillance Bodies of Traditional Beliefs (Bakorpakem), the Indonesia Ulama Council (MUI), and the Freedom of Religious Community Forum (FKUB), will be evaluated to determine the extent to which these policies were legitimate and based on the law, whether the institutions were acting neutrally or were merely acting as an extension of the government that was pushed by Second, if the government's activity in imposing the IABL is based on general principles or whether there are exception clauses that allow the state to penalize activities that offend sentiments or defame religions practiced in Indonesia via the threat of penalty.

According to Bedner (2010), the third indication is 'formal legality,' and this study will investigate whether the legal standards of the IABL and their derived regulations are clear, explicit, and consistent, or if they are open to numerous interpretations and often change. Moreover, what is the community's perception of the line? Do people comprehend what behaviours are genuinely forbidden or justified according to the IABL, or do they have trouble understanding them? Does the IABL satisfy the remaining formal legality requirements, particularly the extent to which legal standards are nondiscriminatory? As further references, this research cites the concept of proportionality outlined in Article 18.3 of the ICCPR, which states that the state shall not abuse the restriction clause in the name of preserving national interests. Moreover, a state may have the power to impose restrictions through domestic legislation (Altwickler, 2018; Fraser, 2019). The restriction itself must be strict with a clear interpretation, regulated by law, and used for the stated purpose in the

agreement (Debeljak, 2008; McDonagh, 2013). Therefore, although FoRB restrictions are permitted under Article 18 (3) of the ICCPR, the standard re-strictions must not violate the rights guaranteed under Articles 1, 2, and 4. Special attention will be paid to Petcharamesree (2013) if participants of the ICCPR misuse the formulas “in accordance with the law” or “as provided for by law” contained in certain provisions, such as articles 18 and 19 of the ICCPR, and thereby violate international human rights standards by using national law (p.53).

### **c. Legal Institutions**

In addition to the substantive components elaborated earlier, the rule of law is also concerned with legal institutions and the manner in which the law is enforced to protect human rights (Waldron, 2010, p. 2; Fuller, 1969; 162). In this study, it is necessary to investigate the fair trial and legal due process. Referring to Bedner (2010), the factor of law enforcement assesses whether blasphemy cases are adjudicated with impartiality and independence.

The notion of a fair trial may be traced back to case studies demonstrating how legal institutions uphold the suspect's right to a legal defence, including how judges listen to their views equally. The impartiality and independence of the judiciary in judging blasphemy cases will be analysed, with a focus on instances that have generated a great deal of public controversy and on how the courts have responded to the linked social and political forces. Therefore, the experiences of religious minority groups that have been punished under the blasphemy legislation and other non-legal factors must be investigated. Were 'vigilante' assaults committed, and were these acts omitted? Whether the Judges were affected by extraneous pressure.

In addition, according to the concept of due process of law, the state is obligated to ensure that the domestic courts' law enforcement procedures are compliant with IHRL. In this study, pertinent legal problems and facts pertaining to blasphemy cases will be discovered and studied to determine if the judges appropriately constructed and decided the criminal case in their conclusions. Whether the judge's ruling adhered to the appropriate standards of the Indonesian Criminal Procedure Law, i.e., whether it was backed by adequate evidence. In every case resolved, it is vital to assess the extent to which the rule of law is upheld. In addition, institutions safeguarding human

rights and the constitution, such as the ICCR and KOMNAS HAM, must be evaluated to determine if they adhere to the ROL's guiding principles.

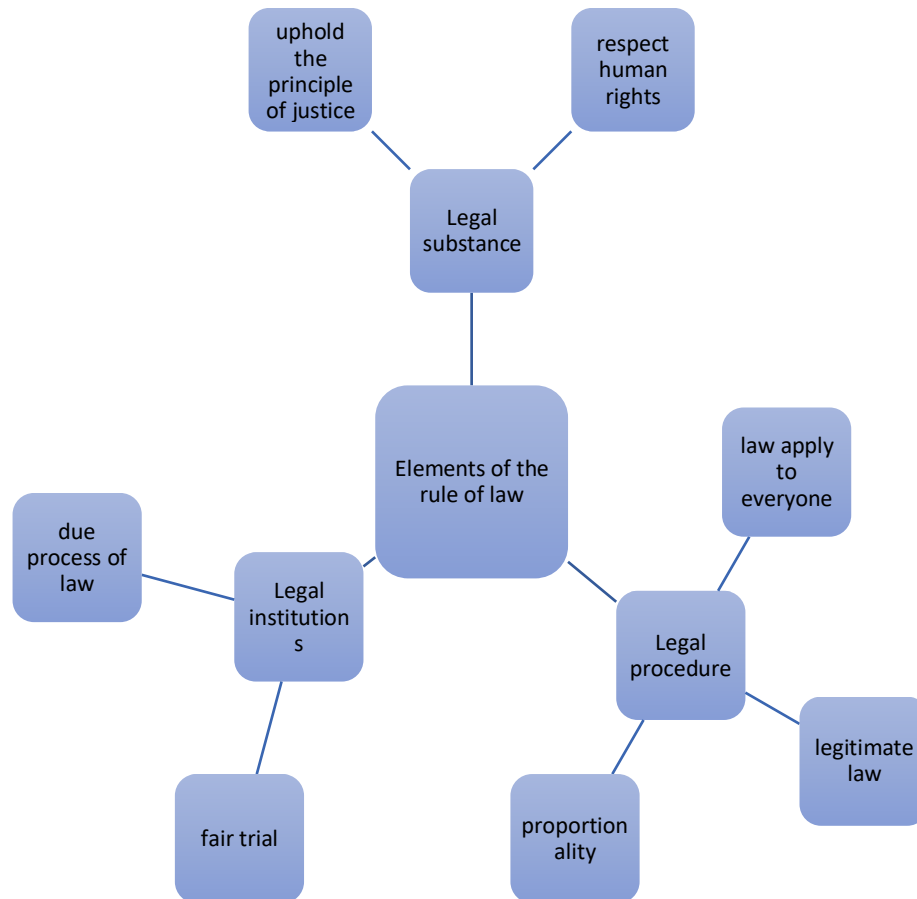


Figure 4. Elements of the Rule of Law

The discussion in Chapter 3 concentrates on the element of legal substance, one of the three aspects of a rule of law stated above. While the other two parts, namely legal procedural elements, and institutional elements, will be discussed in following chapters.

### 3.2.2 Constitutionality of Laws

In general, the constitutionality of a statute or a law is the condition that laws adopted by Parliament are following an applicable constitution or the condition in which a particular norm is determined valid under the Constitution (Arato, 2012). For instance, when a country ratifies numerous international human rights instruments, domestic law must no longer clash with constitutional protections of human rights in order to meet the rule of law norm. Moreover, the existence of law must not infringe upon the



fundamental rights of individuals, and the establishment of law should not just restrict the behaviour of citizens to make them orderly and law-abiding. Citizens' rights shall be restricted only in accordance with the law, in a fair manner, and without any desire to discriminate against any group. When people's rights are severely limited, the rule of law is clearly not being followed.

Unconstitutional laws are those whose wording or intent run counter to or violate the document that serves as the basis for our government. Through the process of judicial review, the judicial branch—typically the Constitutional Court or Supreme Court—interprets legislation and decides whether or not they violate the Constitution. Several sources state that the CCIR typically applies the Austrian model developed from the Hans Kelsen theory (Arato, 2012). In this framework, the Constitutional Court evaluates whether or not a statute of law was formed in accordance with the country's constitution. The CCIR has the authority to declare an entire statute or section of a statute invalid and void, with its rulings applying to and binding all persons and entities (*er-ga omnes* effect) (Asshiddiqie, 2016).

It is important to clarify the constitutionality of the ABLI so that it can realize the basic objectives of the right to FoRB without discriminating against other groups on the basis of their religion, as is allowed under Article 4 of the ICCPR. In Article 4, it is made clear that the right to be free from discrimination is inviolable and cannot be waived, even in times of emergency (Henkin, 2009). In accordance with Article 18 of the ICCPR, no one has the right to discrimination based on religion or belief, and everyone has the right to freedom of religion or belief. The State must ensure that all individuals are afforded the same protections under the law and its systems, free from any limitations or restrictions that would make it impossible for any one person to exercise their rights. Articles 27, 28I, and 28H of Indonesia's Constitution from 1945 also clearly protect the values of non-discrimination and equality (Eddyono, 2016), much like the IHRL does. Therefore, the CCIR must take into account both principles while evaluating human rights issues, as they constitute the foundation of the human rights framework.

Considering that the ABLI is in line with government efforts to stifle religious expression, the guidelines for doing so are the exclusive topic of this research. The right to FoE is not an absolute right like FoRB (Smet, 2011a). When it comes to

enforcing prohibitions, a country can use any legal means it deems fit (Fraser, 2019). The limitation itself, however, must be legally permissible and utilized only for the agreed-upon purpose. Dworkin claims that labelling someone's perspective as insulting is the same as declaring that person's opinion is not "worthy of equal respect." (Debeljak, 2008). Therefore, no one may be penalized because of the desire to express his or her religion or belief, provided that the person's religious expression does not support an incitement of hate towards other faiths or belief systems (Article 20 (3)) or endangers the lives or safety of others. Article 19 (3) and Article 20 (3) of the ICCPR outline the possible extent of legal restrictions of FoE,<sup>26</sup> and the UN Economic and Social Council developed the Syracuse Principles on the Limitation and Derogation Provisions in the ICCPR,<sup>27</sup> which were accepted by the UN General Assembly through GC No. 22.<sup>28</sup> It is hoped that by adhering to these principles, the member states would be better able to grasp the rules and prevent any misunderstandings when incorporating them into their own laws.

Using a summary of Article 19 (3), the Syracuse principles, and UNGC No. 22, Durham and Scharffs elaborate on four steps a court must take to limit the right to freedom of religion and speech. In the absence of proof in any of these four categories, the case should be dismissed, and the defendant discharged in accordance with the law (Durham, 2011).

The first step is the restrictions must be set out in the law. There are two parts to this requirement: the structural and the qualitative. It was a necessary formality that the State's intervention be sanctioned by law. To be constitutionally permissible, a legislation must be passed by law making organizations in accordance with a recognized procedure. The rule of law is a qualitative factor that constrains. Because of the need for the regulations to be clear and their lack of retroactivity, capital punishment and other forms of arbitrary punishment are restrained. For the restriction

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<sup>26</sup> Article 19 (3) of the ICCPR provides FoE's limitation clause: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputation of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals." (*Stressing added*)

<sup>27</sup> See the UN Doc E/CN.4/1985/4, Annex 1985.

<sup>28</sup> See UN Human Rights Committee, General Comment 22 (48), adopted by the UN. Human Rights Committee on 20 July 1993. U.N.Doc.CCPR/C/21/Rev.1/Add.4 (1993).

of a right to “be consistent with the goals and purpose of the Covenant,” see above (Durham, 2011).

Next, we have Phase Two. Only in public settings are these prohibitions enforced. This is all explained in further detail in the Rabat Plan of Action (RPA).<sup>29</sup> The RPA (2011) suggests that the court look at the speaker's social standing before deciding whether or not the speaker's public statements are intended to offend certain groups. Second, there must be some connection between the object, the speech topic, and the listeners for the action to have any meaning. Third, this entails determining the extent to which harm is possible, regardless of whether incitement occurs in the near future.<sup>30</sup> In a private setting, a person cannot be penalized for expressing themselves openly, which brings us to our fourth point. That “the statemen circulated in a confined context or generally accessible to the general public” is the fifth criterion for determining whether or not a speech is public in character. Finally, the social and political climate should be present and apparent when the speech was given and circulated.<sup>31</sup>

Third, the “necessity test” requires that at least one of the following goals, including (a) keeping public order, (b) defending people's morality, (c) protecting public health, and (b) protecting and respecting the rights of others, be met by the limits. Although Durham maintains that the limitation must be tested on a case-by-case basis when exercising such limitation, the state cannot violate the fundamental right to “freedom of thought, conscience, and religion,” and the state cannot prefer to only protect one religion by imposing arbitrary punishment to hold back the racial mixing that would otherwise occur (Durham, 2011). The most crucial aspect is that limiting reasons should be limited solely to the stated grounds and unambiguous interpretation.<sup>32</sup> For the most part, you can't use any of the extended limitation

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<sup>29</sup> To end discrimination against minority religions, in 2013, the UN of General Assembly adopted the Rabat Plan of Action (RPA) on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination hostility, or violence. (See United Nations General Assembly A/HRC/22/17/Add.4).

<sup>30</sup> The RPA documents, p.11.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid., 374 and the General Comment 22 (48), *ibid.*

justifications that aren't explicitly mentioned in Articles 19 (3) or 20 (2) to put a cap on your liability.<sup>33</sup>

In the last phase, the limits must pass the “proportional test,” which requires that they ensure everyone is treated fairly when taking into account the severity of the punishment they would face. Overall, Freedom of Expression is not an unqualified right. On the other hand, in a democratic society, everyone has an inherent and inalienable right to FoE. Therefore, the right to FoE can only be limited by a strict requirement, having a necessary and certain purpose, without any means to discriminate against others, in accordance with the procedures for legitimization limitation outlined in IHRL, and without diminishing the fundamental rights guaranteed by Articles 18, 19, and 20 of the International Covenant on Civil and Political Rights (ICCPR). To what extent these limitations have been embraced by the ABLI and followed by the CCIR will be examined in further detail when we analyse the legal flaws.

### **3.2.3 Defining Religion and the Right to Religious Freedom**

#### **a. Defining Religions or beliefs in Indonesia**

To conduct a study on the development of the IABL, it is necessary to analyze the definition of religion further. The word "religion" has its roots in Ancient Greek and has two meanings: (1) the belief in the existence of a god or gods and the actions connected to their worship, and (2) one of the faith systems founded on the belief in a specific deity or gods.

Defining religion is challenging, as noted by the Brief Encyclopedia of the Philosophy of Religion, due to several factors. Firstly, religion is a deeply personal belief that varies significantly between individuals, making it difficult to generalize.

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<sup>33</sup> See also Art. 9 (2) of the European Convention of Human Rights and Art. 8 Asian Declaration of Human Rights. Similar within Article 8 of the Asian Declaration of Human Rights (ADHR) articulates that a state can only limit such rights if the limitation has been determined by the statute made by legislation to guarantee basic human rights and freedoms and respect the rights of others. The limitation must be considered as one of the conditions, namely (a) protection national security; (b) taking care of public order; (c) protect public health; (d) protect public morals; (e) achieving community welfare. Compared with the limitation requirements contained in the ICCPR, the criteria of limitation in the AHRD seems more lenient because it adds another aspect of “achieving public welfare” as one of the considerations that can be used to make restrictions. Meanwhile, the AHRD does not provide a concrete definition. Thus, this loose limitation can be interpreted broadly by each country. Therefore, the extended limitation in ADHR by adding one aim to “achieving community welfare” is not in line with the Art. 19 (3) of the ICCPR.

Secondly, it is hard to provide an unbiased definition of religion as definitions can be influenced by one's faith. Lastly, a theological or philosophical approach is needed to understand religion fully, rather than a sociological or ideological perspective that considers religion as an individual preoccupation unrelated to societal dynamics.

However, the term "religion" is used in various treaties in international human rights law, which do not provide a definition but describe it as "belief" in a broad sense. The United Nations Human Rights Committee's General Comment No. 22 clarifies that Article 18 of the Covenant on Civil and Political Rights protects theistic, non-theistic, and atheistic views, as well as the freedom not to accept a religion or belief. The Committee's interpretation of religion emphasizes that it is not confined to established faiths and encompasses all views held by members of a community, ancient or modern, theistic or non-theistic.

Governments' growing trend of adopting a literal interpretation of religious texts cannot be separated from the Human Rights Committee's view. This trend justifies discriminatory practices based on faith, which threatens the freedom of religion and belief as a human right.

The research conducted by Pew Research Centre that Grim and Finke (2010) refer to was carried out in 230 different nations, where they identified five "majority" faiths, which included Buddhism, Christianity, Hinduism, Islam, and Judaism, as well as four "minority" faiths. The first category consists of religious believers, such as Ahmadiyya, Shi'a, and Jehovah's Witnesses. The second category is composed of folk or traditional religions, which include several mythological beliefs in Indonesia. The third category comprises many individuals who do not associate with any particular religion, including adherents of the Bahá'í faith, Shintoism, Sikhism, Zoroastrianism, and others (p.136). Due to the lack of a standard definition of religion, such categorization of religion is understandable.

According to Section 3 of the Equality Act 2006 (Equality Act 2006, Chapter 3), the term "religion" implies any faith under British law, while "any religious or philosophical belief" serves as the only formalism for belief (believe). The absence of religious or spiritual practice is sometimes included in discussions of religion and belief. This research employs the term "religion" in a broad sense, taking cues from

International Human Rights Law, which encompasses all forms of religious or spiritual beliefs, both established and unconventional.

However, this is not the case in Indonesia, where there is no explicit definition of a “recognized religion” under the law. It is worth noting that under Indonesia's legal system, established religions have a different status than traditional or sectarian faiths. To prevent the spread of folk religions or traditional religious systems in Indonesia, whose teachings were deemed to contradict the fundamental principles of recognized religions, Soekarno implemented the Indonesian Anti-Birth Law (IABL) and Article 156a of the Indonesian Criminal Code to safeguard the established religions and beliefs. Article 1 of the Indonesian constitution recognizes Islam, Protestant Christianity, Catholicism, Hinduism, and Buddhism as the official faiths of the country. However, this does not mean that the government prohibits other religions, including Baha'i, Shinto, Judaism, and many more. When President Gus Dur's administration came into power after the Reformation Period, Confucianism was included, bringing the total number of legally recognized faiths to six. The cases of blasphemy chosen for this study provide an overview of how the Indonesian judiciary formulates religions, how the vagueness of the norms of the Blasphemy Law affects judges in formulating the offense of blasphemy of religion, and how the judiciary's formulation of religions relates to the criminalization of certain religions.

Religious intolerance has been on the rise in Indonesia. Despite the first tenet of Pancasila, which is meant to ensure religious freedom by embracing variety, becoming a “homogeneous ideology of One God,” it has led to religious intolerance in Indonesia (Lindsey and Pausacker, 2017, p.9). Minorities continue to face prejudice, whether through the stigmatization of ‘deviant’ groups, the activation of fatwas declaring certain religious groupings ‘deviant,’ or the punishment of individuals who are seen as defiling religion (Qurrata A’yun, 2020, p. 335; Sihombing et al., 2012). Despite Indonesia's acceptance of International Human Rights treaties and the acknowledgment of human rights values in the 1945 Constitution, religious freedom has not improved. Lindsey and Butt (2016) report that instead of striking down the IABL, the Constitutional Court only declared that it is not in conflict with the Constitution (p.37). This suggests a need for further research on how people's

understanding of divine ideology affects the IABL and its enforcement and whether doing away with the IABL might be detrimental to society.

The IABL was created to safeguard "faiths adhered to in Indonesia," with Islam, Catholicism, Christianity, Hinduism, Buddhism, and Confucianism being included in the category of "recognized faiths" for religious practices in Indonesia. The problem with this rule is that it imposes penalties not only on those who do not adhere to officially recognized faiths and traditional beliefs but also on those who do not believe in any religion or traditional belief system at all. Furthermore, Article 4 and Articles 1 and 2 of the 1965 IABL's exclusion and limitation towards unrecognized faiths may cause them to be classified as "heretical religions." This classification will supersede competing religious tenets, whether they are traditionalist views or alternative religious tenets like Ahmadiyya, Shia, or Gafatar. Given this, it is essential to investigate whether the Courts in the four cases treated minority religions fairly or unfairly, whether stigmatization language was used in the Court's decisions, and whether the Court had a specific reason for punishing perpetrators who practiced their own beliefs.

To address religious intolerance in Indonesia, there is a need to re-examine the role of the IABL in safeguarding religious freedom. This requires considering how the IABL impacts religious minorities who do not adhere to officially recognized faiths and those who do not believe in any religion or traditional belief system at all. It is also crucial to assess the fairness of the Court's treatment of minority religions and whether the Court's decisions use stigmatizing language. More research is necessary to investigate how people's understandings of divine ideology affect the IABL and its enforcement and whether doing away with the IABL may have harmful consequences for Indonesian society.

#### **b. The right to FORB as Human Rights**

Human rights, as posited by natural law theory, are considered inalienable and intrinsic to every individual on the planet, but they are often dismissed as idealistic abstractions that are difficult to uphold in practice. The United Nations has adopted various international human rights laws, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and its

Optional and Additional Protocols, along with nine core human rights conventions, which have transformed human rights from abstract concepts into concrete and formal law.

In a talk, Manfred Nowak emphasized the obligation of the state to uphold human rights through action. James W. Nickel defined human rights as claims made by individuals who have rights to others that are obligated or responsible for protecting those rights. The rights holder claims benefits, freedoms, or protection, while the responsibility bearers have two types of obligations: positive duties and negative duties. Positive duties require the state to take action to preserve the human rights of its citizens, such as issuing policies or legal regulations to fulfil the right to health, providing a budget for building infrastructure and hospitals, and employing medical personnel.

On the other hand, negative duties require the state to refrain from acting in a specific way to prevent the violation of its inhabitants' rights. For instance, in the case of the right to religious freedom, the state is required to stay out of people's private religious practices. The rights to freedom of religion or belief may be restricted, diminished, or revoked if the state enacts legislation or policies pertaining to religion and worship that differ from the rights recognized by international human rights laws.

The freedom of expression and freedom of religion or belief are two fundamental human rights recognized by international documents such as the UDHR and the ICCPR<sup>34</sup>. General Comment No.22<sup>35</sup> on the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief<sup>36</sup> and General Comment No.34<sup>37</sup> on Freedom of Religion or Belief are crucial resources for States to consult in protecting these rights.

Heiner Bielefeldt, a renowned scholar, emphasized the importance of protecting religious freedom as an inalienable human right. Bielefeldt identified two aspects of

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<sup>34</sup> See International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) [hereinafter ICCPR] art. 18(3)

<sup>35</sup> It's proclaimed by the General Assembly of the United Nations on November 25, 1981. See INTERNATIONAL INSTRUMENTS, *supra* note 13, at 490.1

<sup>36</sup> See GA res.No.36/55/1981 UN

<sup>37</sup> See GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966)



the freedom of religion or belief: the forum-internum and the forum-externum. The forum-internum refers to the internal dimension of religious freedom, such as an individual's personal beliefs, thoughts, and conscience. The forum-externum refers to the external dimension of religious freedom, such as an individual's ability to practice their religion freely and associate with any religious group or none. Both aspects of the freedom of religion or belief are protected by international law and cannot be challenged by any government.

Article 18 guarantees individuals the right to worship, teach, and observe their religion. However, the state may impose reasonable restrictions on these freedoms in certain circumstances. Nevertheless, these restrictions must be carefully crafted to ensure that they do not violate basic rights or discriminate against any particular group. The protection of religious freedom is crucial since disregarding it may lead to the disregard of other rights. Therefore, States must take measures to safeguard this right and prevent any form of intolerance and discrimination based on religion or belief.

The right to freedom of expression (FoE) is not an absolute right, and its scope may be restricted in some circumstances. The International Covenant on Civil and Political Rights (ICCPR) articles 19, 21, and 22<sup>38</sup> provide guidance on the limitations that may be imposed on religious speech or manifestation (Smith, 2007: p.268). However, FoE is a fundamental human right that should never be curtailed by any nation. While states may use domestic law to limit FoE, such restrictions must be enforceable, clear, governed by law, and serve the agreement's stated purpose (Debeljak, 2008; McDonagh, 2013). Censoring viewpoints because they are considered disrespectful is equivalent to declaring that those perspectives are not worthy of equal respect (Dworkin, 1980: p.51). Therefore, no one should be punished for their thoughts, beliefs, or imaginations (Medlow, 2017: 2345).

Despite Indonesia's democratization process in 1998, the number of blasphemy charges has increased. Indonesia has signed and ratified eight out of nine human rights treaties and five international instruments related to Freedom of Religion or Belief (FORB), including the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Vienna Convention on

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<sup>38</sup> See GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966)

the Law of Treaties. These international instruments highlight Indonesia's commitment to uphold its international obligations and protect the right to FORB. The United Nations Charter guarantees human rights and basic freedom for all individuals, irrespective of their color, gender, language, or religion, and Indonesia has a responsibility to ensure that these rights are respected (OHCHR, 2021).

Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights, and General Comment Number 22 require Indonesia to respect and safeguard the principles of FORB, including freedom of religion or belief, freedom of assembly and association, and freedom from persecution. These rights encompass the freedom to adopt, renounce, or change religion, as well as the freedom from interference with religious exercise and coercion in the exercise of religious practice (OHCHR, 2021). It is essential that Indonesia respects and protects these principles to guarantee the right to FORB for all its citizens.

The rule of law is a fundamental principle in protecting and defending human rights. In analyzing the creation and implementation of Indonesia's Blasphemy Law (IABL), it is important to consider the extent to which human rights, particularly the freedom of religion or belief (FORB), are protected. Indonesia is bound by the International Covenant on Civil and Political Rights (ICCPR), which sets limitations on FORB when it intersects with other rights such as freedom of speech or education, as well as other General Comments of the ICCPR.

Since its reformation phase in 1998, Indonesia has amended its Constitution four times to promote regional autonomy, protect human rights, and improve checks and balances among the executive, judiciary, and legislative branches. The freedom of religion or belief is safeguarded under Articles 28E, 28I, and 29 of Indonesia's Constitution of 1945. However, it is crucial to investigate how much weight the court has given to International Human Rights Law (IHRL) in considering blasphemy cases. The Vienna Convention of 1969 on the Law of Treaties establishes a general rule that states are obliged to comply with their treaty obligations, which includes IHRL. Evidence of Indonesia's dedication to these obligations can be found in the treaty's domestic enforcement determination.

Although Indonesia is legally obligated to ensure that everyone is fully protected under the freedom of religion or belief, concerns have arisen regarding the IABL's implementation and its potential to stifle religious freedom. While applying the IABL, the court considers secondary rules, such as those issued by non-state organizations like the Indonesian Ulama Council (MUI), the Forum for Interreligious Harmony, or ministerial decisions. The IABL's continued relevance has been reinforced by the passage of Law No. 11 of 2008 on Electronic Information and Transactions (IET Law), specifically Article 28. According to Article 28(2), anyone who deliberately and without right transmits information designed to generate a sense of animosity or enmity based on ethnicity, religion, or race in specific areas, is punishable by law.

Given these circumstances, this research delves deeper into the question of whether the creation and application of the blasphemy legislation violates the most fundamental standards that protect the freedom of all citizens to practice their faiths freely. In cases where delegated rules substantially conflict with the Constitution, the court tends to give less weight to constitutional standards and IHRL that have been incorporated into positive Indonesian law. It is important to explore how the courts rely only on restrictions created by non-state organizations like the MUI when resolving blasphemy cases.

### **3.3 Examines the Historical Persistence of Indonesia's Anti-Blasphemy Law**

#### **3.3.1 During the Guided Democracy of Soekarno: An Emergency Law Aim to Prevent National Disintegration.**

The Indonesian Blasphemy Law (IABL) has a historical background that dates back to the period of guided democracy<sup>39</sup> under President Soekarno. Presidential Decree No. 1/PNPS/1956 was signed on January 20, 1965, which aimed to minimize social conflicts between conservative citizens and non-religious groups, including atheists. The government considered these groups to be against Pancasila, Indonesia's founding

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<sup>39</sup> During the period of "Guided Democracy" under President Soekarno, the President Stipulation No. 1/PNPS/1965 was established as a means of maintaining the functionality of the state. Soekarno's regime was characterized by a concentration of power in the executive branch, which allowed the President to issue Presidential Stipulations (Penetapan Presiden/PNPS) or Presidential Directives (Peraturan Presiden) through the exercise of executive power. Thus, Law No.1/PNPS/1965 was enacted through a Presidential Stipulation rather than an Act (Undang-Undang). However, in 1969, the Indonesian government upgraded the status of this law to that of national legislation by enacting Law No. 5/1969 (Ismail, 1994).

ideology, and believed that their existence could threaten protected religions, national security, and the unity of the nation<sup>40</sup> (Sihombing, 2008).

During this time, Indonesia was in a period of guided democracy, following President Soekarno's Decree of July 5, 1959. Later, Presidential Decree No. 150 of 1959 further strengthened this period by ordering the return to the 1945 Constitution and forming a Provisional Consultative Assembly and a Provisional Supreme Advisory Council<sup>41</sup> as soon as possible.

The events of the 1965 communist revolution created a sense of fear among the Indonesian people, who did not want a similar incident to occur again (Arief, 2012; Crouch, 2011). This led to the issuance of Provisional People's Consultative Assembly of the Republic of Indonesia No. XXV/MPRS/1966, which prohibits the teachings of communism, Leninism, and Marxism, which promote non-religious ideology and can be considered as blasphemy of religion.<sup>42</sup>

Since then, Presidential Decree No. 1/PNPS/1956 has changed its title to Law No. 1/PNPS/1965, also known as the Indonesian Blasphemy Law (IABL). The law remains the same, despite the changes in its title. It is worth noting that Indonesia, Malaysia, and Pakistan are predominantly Muslim countries<sup>43</sup>, and their blasphemy laws are not original. These laws have different historical contexts.

In Indonesia, the blasphemy laws consist of two components. The first is President Stipulation No. 1/PNPS/1965 concerning the Prevention of Abuse and/or Defamation of Religion (Law No. 1/PNPS/1965), signed by President Soekarno on January 20, 1965.<sup>44</sup> The second is the corporation law, known as Indonesia's Criminal

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<sup>40</sup> The Indonesian expert Edward Omar Sharif Hiariej explained that PNPS was issued by President Soekarno on January 20, 1965. Exactly two weeks after the massacre of Muslims in Madiun. here was a sadistic murder when the kiai (Ulama) and santri (Islamic students) were praying at dawn, the Koran was trampled upon, torn apart as a form of blasphemy. Retrieved at <https://www.jawapos.com/nasional/hukum-kriminal/14/03/2017/begini-awal-mulanya-pasal-penodaan-agama>.

<sup>41</sup> See Keputusan Presiden Nomor 150 Year 1959 concerning Back to UUD 1945. Announced at Lembaran Negara Nomor 75 Year 1959. See also Mahfud M.D., 2001. *Dasar dan Struktur Ketatanegaraan Indonesia*, Jakarta: Rineka Cipta, p. 99.

<sup>42</sup> Provisional People's Consultative Assembly of the Republic of Indonesia No. XXV/ MPRS / 1966 concerning the dissolution of the Indonesian communist party. Statement as a Prohibited organization throughout the territory of the Republic of Indonesia for the Indonesian Communist Party and prohibiting any activities to spread or develop communist / Marxist ideals or teachings.

<sup>43</sup> See Tabel 1. Chapter I. According to its Constitution, both Malaysia and Pakistan are Islamic countries, while Indonesia is not, even though Indonesia is the biggest Muslim population in the world.

<sup>44</sup> The President Stipulation No. 1/PNPS/ 1965 was enacted under the "Guided Democracy" of Soekarno. He was maintaining the state by took over the legislative power and tried to ensure that state was functioning. The characteristic of Soekarno's regime was close to an absolute power which according to the President Decree,

Code Article 156a, which adopted its concepts from the Netherlands, the colonizing country.

Soekarno's decision to declare Indonesia in a state of emergency was motivated by two conditions. First, the fall of Ali Sastroamidjojo's Cabinet prompted him to use martial law as a reference basis to form a new cabinet and appoint himself as the supreme commander of the armed forces (Mardani, 2019). The cabinet formed by Soekarno was called the Gotong Royong Cabinet and consisted of major parties, including PNI, Masyumi, NU, and PKI. Djuanda Kartawijaya was appointed as chairman, and several people outside political parties became ministers (Fealy, 1998). However, the Gotong Royong Cabinet did not receive support from some political parties such as Masyumi, the Catholic Party, and the Indonesian People's Party.

Second, the emergency condition arose due to the Darul Islam (DI)/Indonesian Islamic Army (TII) rebellion, which aimed to establish an Islamic state. The Conference of Muslims in West Java in 1948 gave birth to the idea of establishing the Islamic State of Indonesia (NII), which was motivated by the disappointment of the Islamic fighters over the Renville agreement (Dewanto, 2011). The rebellion began when the Dutch invaded Yogyakarta and announced the fall of the Unitary State of the Republic of Indonesia (NKRI) and the birth of the NII, making West Java the de facto area of the NII. Kartosoewirjo, the leader of the rebellion, was a follower of traditional Islam and had succeeded in encouraging the proliferation of religious sects to hundreds of groups (Gus Sholahuddin, 2011; Dewanto, 2011).

The government was concerned about the rise of traditional beliefs, which it considered to be contrary to the Pancasila Precepts I "Belief in One the Only God" and article 29 of the 1945 Constitution "A State based on One the Only God" (Kahin, 1952). The Kartosuwirjo rebellion, which was finally suppressed in 1962, had killed 22,895 people, destroyed 115,822 houses, and caused state losses of more than Rp. 650 million (Fealy, 1998).

Therefore, Soekarno issued Presidential Decree PNPS No. 1/PNPS/1965 to secure the country from rebellions caused by deviations or misunderstandings in the

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the President had the power to released Presidential Stipulation (Penetapan Presiden/ PNPS) or Presidential Directive (Peraturan Presiden). Therefore, the Law No.1/PNPS/1965 was enacted through President instead of Act (Undang-Undang). It was later in 1969, the government elevated it to the status of national legislation through the enactment of Law No. 5/1969.

interpretation of a particular religion in Indonesia. This decree aimed to prevent the rise of traditional beliefs and uphold the state's foundation based on the belief in one and only God (Mardani, 2019).

In 1957, Indonesia was facing two major political crises which prompted President Sukarno to declare a state of emergency. The first crisis was the fall of the Ali Sastroamidjojo Cabinet, which led to the appointment of Sukarno as the supreme commander of the armed forces and member of the formation board to form a new cabinet under martial law. This new cabinet was called the Gotong Royong Cabinet and included major political parties like the PNI, Masyumi, NU, and PKI. However, it did not receive support from other political parties such as the Catholic Party and the Indonesian People's Party (Dewanto, 2011).

The Darul Islam (DI)/Indonesian Islamic Army (TII) rebellion in Indonesia was a significant crisis that aimed to establish an Islamic state. It was triggered by the dissatisfaction of Islamic fighters over the Renville agreement, which they believed did not protect the citizens of West Java. In 1948, the Conference of Muslims in West Java, attended by 160 representatives of Islamic organizations, gave birth to the idea of establishing the Islamic State of Indonesia (NII)<sup>45</sup> (Dewanto, 2011). The rebellion was led by Kartosuwirjo, a follower of traditional Islam who believed in mysticism and succeeded in encouraging the proliferation of religious sects to hundreds of groups<sup>46</sup> (Gus Sholahuddin, 2011; Dewanto, 2011).

The DI/TII rebellion gained momentum when the Dutch invaded Yogyakarta, the nation's capital, and declared the fall of the Unitary State of the Republic of Indonesia (NKRI) and the birth of the NII, making West Java the de facto area of the NII. The Soekarno government was alarmed by the DI/TII rebellion, which caused significant losses to the state, including the deaths of 22,895 people, the destruction of 115,822 houses, and losses exceeding Rp. 650 million<sup>47</sup>. In response to the crisis, President Sukarno issued a Presidential Decree (PNPS No. 1/PNPS/1965) aimed at securing the

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<sup>45</sup> At this conference it was also agreed to establish the Indonesian Islamic Army (TII), the Imamah Council (Council of Ministers), the Fatwa Council (Supreme Advisory Council), and the drafting of the Qanun Azizi (Basic Constitution).

<sup>46</sup> Notes from the Ministry of Religions Affair in 1953 mentioned that there were 360 groups of believers that made the significant role for the General Election Year 1955.

<sup>47</sup> On today's value, equal to IDR 63,612,750,112 or USD 4,362,416

country from rebellions caused by deviations or misunderstandings in the interpretation of a particular religion in Indonesia (Dewanto, 2011).

The rise of traditional beliefs was seen by the Soekarno government as being contrary to the Pancasila Precepts I, "Belief in One the Only God," and Article 29 of the 1945 Constitution, "A State based on One the Only God." The Presidential Decree allowed the government to take measures to curb the spread of these beliefs and maintain the unity of Indonesia. The state of emergency was lifted in 1962 after the DI/TII rebellion was suppressed, but its impact on Indonesia's political and social landscape continued for years to come (Dewanto, 2011).

The DI/TII rebellion was a significant event that demonstrated the potential threat of religious-based movements in Indonesia. It highlighted the need for the Indonesian government to prioritize religious harmony and maintain the unity of the country. The rebellion also had long-lasting effects on the social and political landscape of Indonesia, underscoring the importance of addressing issues of discontent and ensuring equal protection and opportunities for all citizens. Understanding the historical context and factors that led to the DI/TII rebellion is crucial in developing effective strategies to prevent similar crises in the future.

### **3.3.2. During New Order of Soerharto: Maintining A Flawed Law for Power**

During Soekarno's guided democracy, the status of the 1965 PNPS was converted into law and subsequently strengthened through various legislative measures. However, the legitimacy of the PNPS was called into question due to its origin as a decree made solely by the President. The MPRS Decree Number XIX/MPRS/1966 addressed this issue by providing the opportunity for the review of state legislative products not aligned with the 1945 Constitution, such as the 1965 PNPS, to become fully legitimate laws. This decree mandated that the DPR conduct a comprehensive review of all legislative products that were intended to improve the 1945 Constitution. According to the decree, Presidential Decrees and Presidential Regulations that aligned with the conscience of the people and served to secure the national revolution would be accepted as valid laws. Those that failed to meet these requirements would be declared invalid.<sup>48</sup> The DPR was required to complete this review process within two years.

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<sup>48</sup> See Article 2 Tap MPRS No. XIX/ MPRS/ 1966.

The socio-legal and political-ideological environment of the period between 1950 and 1965 was focused on developing national law, which required a decision between implementing legal pluralism or pursuing national law unification (Wignjosoebroto, 1994). The acceptance of the 1965 PNPS as a legitimate law was based on Oemar's proposal. Oemar argued at the 1963 National Seminar on offenses against religion that all religious adherents in Indonesia had the same right to practice their religion and that everyone was obliged to respect the religious rights of others. This was a critical aspect to ensure that Indonesia, as a pluralistic country, avoided religious conflict.

*“[...] Tidakkah pengakuan sila Ketuhanan Yang Maha Esa sebagai kausa prima dalam Negara Pancasila, dengan pasal 29 UUD 1945 yang harus menjadi dasar dalam kehidupan agama di Indonesia, membenarkan bahkan mewajibkan penciptaan delik-delik agama dalam KUHP? [...]. Agama dalam kehidupan dan kenyataan hukum kita merupakan faktor fundamental, dapatlah dimengerti apabila faktor tersebut dapat digunakan sebagai landasan kuat dihidupkannya delik-delik agama.”* (*“[...] Doesn't the acknowledgment of the precepts of One the Only God as the prime cause states in the Pancasila, with article 29 of the 1945 Constitution which must be the basis of religious life in Indonesia, justify and even oblige us to create the religious offenses in the Criminal Code? [...] Religion in our life and legal reality is a fundamental factor, so it can be understood if this factor can be used as a strong basis for bringing religious offenses to life.”*)

Oemar's idea is none other than to ensure that first, as a Pancasila's the rule of law, it is necessary for the State to ensure that the precepts of Pancasila and Article 29 of the 1945 Constitution are properly implemented. Second, so that Indonesia does not become a secular state that separates religion from the state as has happened in liberal countries. In terms of line Oemar views as follows:

*“[...] Negara hukum kita berdasarkan Pancasila, yang bukan Negara agama, berdasarkan “Einheit” antara agama dan negara dan yang tidak menganut “separation” dalam batas-batas yang tajam dan strict, seperti dianut oleh negara-negara barat, dan negara-negara sosialis yang bahkan mengikutsertakan sanctie pidana pada azas “separation” tersebut...”* (*“[...] Our rule of law is based on Pancasila, which is not a religious state, based on “Einheit” between religion and the state and which does not adhere to “separation” within sharp and strict boundaries, as adopted by western countries, and socialist countries that even include criminal sanctions on the principle of “the separation [...]”* (Adj, O., 1983: 50).

According to Oemar, the protection of religion is of utmost importance due to three reasons. Firstly, religion is a legal interest that must be safeguarded, as per the



Friedensschutz theory or the "religious interconfessional joy." Secondly, the protection of religion aims to secure citizens' feelings of safety, in line with the Gefühlsschutz theory or the "holiest inner life of the community." Finally, the state must protect religion as a legal interest, in consideration of the Religionschutz theory or the "cultural property of religion and the immense idealism that emerges from it for a large number of people" (p.50).

Following the provisions of TAP MPRS No. XIX and Oemar's ideas, Presidential Decree No. 1/1965 was converted into a law via Law No. 5/1969, under the condition that there were improvements, changes, or additions to the material, which would be utilized for the formation of the succeeding law. However, as of the time of this study, Law no. 1/PNPS/1965 has not been altered, expanded, or had any material added to it. While the 1965 PNPS Law received formal approval from the two authorized institutions for drafting laws, namely the President and the DPR, the law itself has not been perfected as mandated by Law Number 5 of 1969.

During the New Order period, Suharto's administration maintained the IABL and strengthened it by adding Article 156a to the Indonesia Criminal Code. Article 4 of the IABL, in conjunction with Article 156a of the 1981 ICC, states:

*To be punished with a maximum imprisonment of five years whoever deliberately in public expresses feelings or commits an act: which are principally hostile, misuse or desecrate a religion held in Indonesia; with the intention that people would not adhere to any religion, which has believed in the One Supreme God.*

The Indonesian Anti-Blasphemy Law (ABL) was intended to protect "religions adhered to in Indonesia" from actions deemed hostile, misused, or desecrated, but it lacks a clear definition of those terms (Crouch, 2014). The ABL narrowly defines "religions adhered to in Indonesia" as the recognized religions, which include Islam, Catholicism, Christianity, Hinduism, Buddhism, and Confucianism. Religions other than these five could be labeled as "heretical religions"<sup>49</sup> according to Article 4, Article 1, and Article 2 of the 1965 ABL.

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<sup>49</sup> Article 1 of the 1965 Defamation Law prohibits individuals from publicly expressing, advocating or seeking public support for religious interpretations or activities in Indonesia that "resemble" those of another religion and deviate from its main principles. Article 2 stipulates that if such blasphemy is committed by an individual, the government can issue a warning to cease such acts. However, if it is committed by an organization or group adhering to traditional beliefs, the government has the authority to dissolve the organization or declare it a banned or deviant sect. According to Article 2, (1) individuals violating the provisions of Article 1 shall be ordered and strongly warned against their actions in a joint decree of the Minister of Religion, the

The ABL was strengthened in 2008 when the Indonesian government ratified the Law Number 11 of 2008 on Electronic Information and Transaction (EIT Law) in conjunction with previous laws. However, from 1965 to 1988, the ABL was rarely used by Indonesia's courts. During the reign of the New Order, the applications of the ABL were frequently used in the court. According to Crouch's record, from 1988 to 2012, at least 130 people were convicted using the ABL. From 2012 until 2018, there were 66 cases that were decided by the court (Pratiwi, 2021).

The enactment of the Law No. 1/PNPS/1965 aimed to reduce social conflict between conservative religious groups and non-religious, belief groups, and atheists that were in conflict with the First Sila of Pancasila<sup>50</sup>. These groups were perceived to threaten the established religion, national security, or cause national disintegration (Densmoor, 2013)<sup>51</sup>. The 1965 communist movement and revolution became a dark history that frightened Indonesian society and they want to avoid a similar incident from happening again (Arief, 2012). This event led to the issuance of the Provisional People's Consultative Assembly of the Republic of Indonesia No. XXV/MPRS/1966, which banned the teachings of communism, Leninism, and Marxism<sup>52</sup>. The revolution also prompted President Soekarno to resign from his office and gave the mandate to Soeharto to replace him<sup>53</sup>. From then on, the administration law under President Soeharto's administration or the "New Order" was changed.

The 1965 Presidential Decree on the Prevention of Abuse and Blasphemy of Religion (PNPS) was utilized by President Soekarno as a means of controlling belief systems that posed a threat to the power and existence of the Republic of Indonesia.

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Minister/Attorney General, and the Minister of Home Affairs. (2) If the violation in paragraph (1) is committed by an organization or religious sect, the President of the Republic of Indonesia can dissolve the organization and label it as a prohibited organization/sect, upon consideration from the Minister of Religion, the Minister/Attorney General, and the Minister of Home Affairs.

<sup>50</sup> Pancasila consists of 5 Sila (Principles). The first Sila states: "Believe in God the Almighty."

<sup>51</sup> The Indonesian expert Edward Omar Sharif Hiariej explained in the Ahok's case that PNPS was issued by President Soekarno on January 20, 1965. Exactly two weeks after the massacre of Muslims in Madiun, here was a sadistic murder when the kiai and santri were praying at dawn, the Koran was trampled upon, torn apart as a form of blasphemy. Retrieved at <https://www.jawapos.com/nasional/hukum-kriminal/14/03/2017/begini-awal-mulanya-pasal-penodaan-agama>.

<sup>52</sup> Provisional People's Consultative Assembly of the Republic of Indonesia No. XXV/ MPRS / 1966 concerning the dissolution of the Indonesian communist party. Statement as a Prohibited organization throughout the territory of the Republic of Indonesia for the Indonesian Communist Party and prohibiting any activities to spread or develop communist / Marxist ideals or teachings.

<sup>53</sup> On 11 March 1966 President Sukarno was forced by the Army generals to sign a letter transferring power to General Suharto. In Indonesia, Sukarno's letter was known as 'Super Semar', an abbreviation of 'Surat Perintah Sebelas Maret' (Letter of Order of the 11 March). However, from a Javanese Shadow puppet (wayang) story, Semar is a royal servant known for a powerful spirit and strength.

The PNPS was based on the First Principle of Pancasila, which stipulates belief in one God, and Article 29 of the 1945 Constitution, which allows for the prohibition of deviant beliefs or teachings that insult the five recognized religions: Islam, Protestant Christianity, Catholicism, Hinduism, and Buddhism. The purpose of the decree was to ensure state security and the success of the national revolution by preventing abuse and blasphemy of religion and maintaining public peace<sup>54</sup>.

However, the primary aim of the 1965 PNPS was not to protect religions, but rather to suppress belief systems that posed a threat to the unity of the Republic of Indonesia. The decree was used as a tool to eliminate beliefs that endangered the state, and it was not revoked even after the state of emergency, which had been imposed to subdue Kartosoewirjo (DI/TII) in 1962, was lifted.

### **3.3.3 During Reformation Era: A Repressive Law to Protect a Preferred Set of Religions**

The Reformation era in Indonesia, marked by the fall of Suharto in 1998, had significant impacts on the development of the Anti-Defamation Law. The legal politics that took place during this period influenced the evolution of the law, particularly in relation to the 1965 PNPS Law. Despite the need for amendments and improvement, the 1965 PNPS Law remained unchanged until the reformation era, and its norms were reinforced by various new laws and public policies at the local level (Kusumawijaya & Chozin, 2018).

The prohibition of blasphemy in Indonesia is regulated not only by Law No.1/PNPS/1965 concerning Anti-Defamation of Religion but also by various articles in the criminal code. Despite being enacted in 1965, this law has never undergone any substantial changes, although its substance has been strengthened by the addition of provisions to the criminal code. Law No.1/PNPS/1965 consists of only four articles. Article 1 prohibits actions that are considered blasphemy of religion. Articles 2 and 3 provide for administrative sanctions if blasphemy is committed by an organization or a sect of belief. Article 4 orders a new article, Article 156a, to be added to the criminal code (Kusumawijaya & Chozin, 2018). Following texts are the full content of the four articles:

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<sup>54</sup> See Consideration of PNPS No. 1 Year 1965.

Article 1: “Everyone is prohibited from intentionally telling in public, recommending and seeking public support, to interpret a religion adhered to in Indonesia or to carry out religious activities that resemble religious activities from the main points of religious teachings.”

Article 2: “(1) Whoever violates the provisions in Article 1 is given an order and a stern warning to stop his actions in a joint decision of the Minister of Religion, the Minister/Prosecutor General and the Minister of Home Affairs. (2) If the violation referred to in paragraph (1) is committed by an organization or sect of faith, the President of the Republic of Indonesia may dissolve the organization and declare the organization or sect as a prohibited organization/cult, one after the other after the President has received consideration from the Minister of Religion, Minister/Prosecutor General and Minister of Home Affairs.”

Article 3: If, after taking action by the Minister of Religion together with the Minister/Prosecutor General and the Minister of Home Affairs or the President of the Republic of Indonesia according to the provisions in Article 2 against a person, organization or sect of belief, they still continue to violate the provisions in Article 1, then the person, adherent, member and/or member of the management of the organization concerned from that sect shall be sentenced to a maximum imprisonment of 5 years.”

Article 4: “In the Criminal Code, a new article is issued which reads as follows: Article 156a.” “Criminalized by a maximum imprisonment of five years whoever intentionally publicly expresses feelings or commits an act: a. basically hostile, abusing or blaspheming against a religion professed in Indonesia; b. with the intention that people do not follow any religion, which is based on the belief in the One God.”

The Anti-Defamation Law in Indonesia prohibits intentional public expressions, recommendations, or seeking public support to interpret a religion adhered to in Indonesia or to carry out religious activities that resemble religious activities from the main points of religious teachings. Violators of the provisions are given an order and a stern warning to stop their actions, and if committed by an organization or sect of faith, the President of the Republic of Indonesia may dissolve the organization and declare it as a prohibited organization/cult. Those who continue to violate the provisions may be sentenced to a maximum imprisonment of 5 years. Additionally, a

new article in the Criminal Code criminalizes anyone who intentionally publicly expresses feelings or commits an act that is hostile, abusive, or blasphemous against a religion professed in Indonesia or intends to discourage people from following any religion based on the belief in the One God. The maximum imprisonment for violating this provision is also 5 years.

The Indonesian law on the prevention of the defamation of religion prioritizes the use of administrative sanctions over criminal sanctions, as stipulated in Articles 1, 2, and 3 of the law. The prohibited actions include advocating or seeking general support for carrying out religious interpretation or deviant religious activities. Bagir Manan emphasized the need for a gentle approach in dealing with violators, with warnings being the first resort and criminal sanctions being imposed only if violations persist. If an organization commits a violation, it can be dissolved, and members of the management or adherents of the organization can be punished with a maximum of five years imprisonment.

While Articles 156 and 156a of the Criminal Code specifically prohibit criminal acts against religion, there are other provisions in the code that also prohibit such acts, including Articles 175, 176, 177, 503, 530, 545, 546, and 547. However, these articles are multi-interpretative and do not provide clear limitations. It is unclear what is meant by a statement that creates "feelings of hostility, hatred and contempt" or "blasphemy". The principle of legality in criminal law requires clear formulation of articles to prevent subjective interpretations by law enforcers and to avoid sanctions being imposed arbitrarily.

Moreover, Article 156a of the Criminal Code protects only the six religions recognized in Indonesia: Islam, Protestant Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. This means that other religions and sects of belief do not receive the same protection, and the provisions of this article may target them. Therefore, law enforcers should exercise caution and apply Article 4 only in cases where the act seriously endangers state security and has gone through the administrative procedures as regulated in Articles 2 and 3.

The insertion of Article 156a in the Indonesian Criminal Code created the concept of blasphemy of religion, which was not present in the original provisions of Article 156. While Article 156 prohibited statements of hostility, hatred, or insults

against groups in Indonesia, Article 156a specifically prohibited interpreting religious teachings adhered to in Indonesia. It is important to note that Article 156a was inserted in the Criminal Code only twenty years after it officially became Indonesian positive law through the enactment of Law No.1/PNPS/1965. As Sidharta (2007) explains, the insertion of Article 156a of the Criminal Code was ordered by Article 4 of the same law.

Prior to the insertion of Article 156a, cases of blasphemy were rarely processed, and the concept of blasphemy only had an administrative impact as referred to in the provisions of Articles 2 and 3. However, the insertion of Article 156a made blasphemy a more repressive offense. The provision shifted the focus of the 1965 PNPS from the security of the state and national revolution to the protection of religion. This shift was significant because the Anti-Defamation Law of 1965 was originally enacted to address disturbances in state security.

Although Article 156a is included in Chapter IV of the Criminal Code, which covers "Crimes against Public Order," not "crimes against religion," it has been used primarily to criminalize blasphemy. This implementation of the law has been discriminatory and has violated the right to freedom of religion, as it has resulted in the criminalization of minority religions. The tendency in blasphemy cases in Indonesia has been to prioritize the application of Article 4 in conjunction with Article 156a of the Criminal Code, as seen in the cases of Ahok, Meiliana, Gafatar, and Ahmadiyya.

It is important to understand the historical context and purpose of the formation of the Anti-Defamation Law of 1965 to properly interpret the provisions of Article 156a. The law was originally intended to address disturbances in state security during a time of revolutionary movement and rebellion to establish a new state. However, this context no longer exists, and the law's application today is irrelevant. The insertion of Article 156a in the Anti-blasphemy Law after the reformation has made the law more repressive and oriented solely towards the protection of religions supported by the state.

In conclusion, the insertion of Article 156a in the Indonesian Criminal Code created the concept of blasphemy of religion and made blasphemy a more repressive offense. Understanding the historical context and purpose of the Anti-Defamation Law

of 1965 is crucial for interpreting the provisions of Article 156a properly. The law's application today is irrelevant and discriminatory, violating the right to freedom of religion.

### **3.3.4 During Post Reformation Era: Maintaining Discriminatory Anti Blasphemy Law**

#### **a. The ITE Law: strengthen blasphemy law in cyberspace**

Various criticisms of the application of the law against blasphemy as described above, have not discouraged the legislators to strengthen the legal position of this law. This can be seen from the enactment of the electronic information and transaction law in 2008. The 2008 ITE Law, which was originally intended to prevent illegal electronic transactions and harm the people, has drawn criticism, one of which is because this law has strengthened the legal standing anti-blasphemy which has many weaknesses. Religious minority groups who spread religious teachings that are seen as heretical or criticize mainstream religious teachings through social media or other electronic media will be charged with the articles contained in the ITE Law, Article 28.

Even when this law was amended in 2016, what was at the core of the issue of the existence of Article 28 which strengthened Article 156a of the Criminal Code regarding blasphemy did not undergo significant changes. The crucial issue that is the subject of discussion of the existence of the ITE Law is the emergence of the phrase “hostility” which is difficult to prove and is abstract and depends on the feelings of the complainant. Among the five cases studied in this study, all the defendants were not only charged with Article 156a of the Criminal Code as an article related to the Anti-Defamation Law, but the defendant was also charged with Article 27 and Article 28 of the ITE Law.

#### **b. The debate deadlock on the religious harmony bill**

In August 2019 there was a quite promising development when the Government submitted a draft Law on Inter-Religious Harmony as a bill that is expected to replace the Anti-Defamation Law. According to the former Minister of Religion of the Republic of Indonesia, Lukman Hakim, explaining that the Bill on Religious Harmony

basically contains five main things,<sup>55</sup> namely norms that guarantee religious rights and population rights for Indonesian citizens, especially those who adhere to religions other than Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucius; contains norms that guarantee the establishment of houses of worship or places of worship for all religions, so that it is hoped that there will be no miscoordination between the central and regional governments in issuing policies related to the establishment of houses of worship, contains regulations on religious broadcasting activities so that there is no friction in the community, contains norms for the protection of minority groups from violence; and regulates religious interpretations which are feared to lead to the practice of intolerance.

This bill was proposed by various community groups to follow up on the 2010 Constitutional Court Decision which briefly stated that the Anti-Defamation of Religion Law in Indonesia contains various norms that are multi-interpretable so that if applied, it will potentially lead to discrimination against religious groups or minority beliefs. However, the SETARA Institute stated that the bill could lead to segregation and discrimination, so that until now it is still causing controversy in the community. The chairman of the Setara Institute, Hendaradi stated that “the KUB Bill is not designed to protect victims, but to legitimize the violence that has been perpetrated by certain groups”<sup>56</sup> Meanwhile, the chairman of PP Muhammadiyah, Haedar Nazir, stated that the current regulations were sufficient as a basis for building religious tolerance. The most important thing and not working is how to do advocacy when there are problems or inter-religious conflicts that need to be fixed. On December 30 to [Republika.co.id](http://Republika.co.id) Haedar Nazir stated that “Apply the existing laws so that we can focus on advocacy if there are cases (of religious violence).”<sup>57</sup>

Finally, until now (2022), the Bill on Religious Harmony has stagnated, not being continued. As a result, the Anti-Defamation Law of 1965 continues to be in effect and

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<sup>55</sup> See <https://nasional.kontan.co.id/news/ini-lima-poin-isi-ruu-kerukunan-beragama>

<sup>56</sup> Cited from Berita Satu RUU KUB Dinilai Ancam Kemajemukan Indonesia, Monday 14th Nov 2011, retrieved at <https://www.beritasatu.com/archive/17253/ruu-kub-dinilai-ancam-kemajemukan-indonesia>.

<sup>57</sup> Muhammadiyah's Recommendation to Build Religious Harmony. <https://www.republika.co.id/berita/o061vt346/rekomendasi-muhammadiyah-bangun-kerukunan-umat-beragama>



is applied by law enforcement to punish perpetrators who are reported to be accused of blasphemy, insulting religion, or blasphemy.<sup>58</sup>

**c. The bill of amendment of the criminal code re-includes article of offenses against religion**

Responding to the polemic that occurred against the blasphemy law in 1965, the legislators did not learn from the polemic, and did not even follow up on the decision of the Constitutional Court which gave directions that it is important to revise the blasphemy law because its articles contain norms that are multi-interpretable. Instead of correcting the formulation of Article 4 in conjunction with 156a of the Criminal Code, the legislators proposed a Bill on Amendment to the Criminal Code by adding a new chapter, namely “offences against religion” which had never existed before. The chapter contains 8 articles that regulate “blasphemy of religion” which previously was only regulated in 1 article which is Article 156a of the Criminal Code. Where in the chapter, offenses against religion are divided into two, namely (1) crimes against religion and (2) crimes against religious life.

The first type is regulated in 4 articles, namely Articles 341, 342, 343, and 344. The main objective is to “protect religions” from acts of humiliation. Acts that are categorized as insults to religion are (1) insulting the majesty of God, His Word, and His attributes; (2) mocking, desecrating, or demeaning religion, Apostles, Prophets, the Holy Scriptures, religious teachings, or religious worship.

In the author's view, the Draft Criminal Code strengthens the blasphemy law in Indonesia. First, the problem with Article 156a which basically only protects the religions professed in Indonesia, not protecting “religious adherents” will be continuing to happen. A formulation of article 156a opposes the right to freedom of religion because with the existence of Article 156a, the diversity of religions in Indonesia is threatened and their followers are vulnerable to be criminalized if their teachings are not in harmony with mainstream religions that are protected by the State. In fact, Indonesia is a country where there is a plurality of religions and beliefs. However, the addition of the chapter on “religious offenses” in the Draft Criminal

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<sup>58</sup> SETARA Institute, Religious Harmony Bill, Segregation and Erasing Citizens' Constitutional Guarantees Country. Look at: <http://www.setara-institute.org/en/content/ruu-kub-segregatif-dan-eroding-jaminanconstitutional-warga-negara>

Procedure Code shows that the core problems contained in Article 156a of the Criminal Code have not been corrected. The expansion of meaning that has been carried out by law enforcement in interpreting article 156a of the Criminal Code when punishing followers of minority religions who are considered deviant is formulated in the provisions of articles 341 to 344 of the Draft Law on Amendments to the Criminal Code.

Although the articles of draft law no longer contain an explanatory article that mentions the name of 6 religions recognized in Indonesia, it does not mean that these articles on blasphemy do not threaten the existence of the religions themselves. What if the essence of the religious teachings is indeed different from one another, can these differences be interpreted as insults? This becomes problematic if the Criminal Code criminalizes someone's beliefs that are different from mainstream beliefs held in Indonesia. The prohibition of “insulting” or “mocking” becomes very multi-interpretable if the meaning of the two words itself is very subjective in nature or only depends on the “feelings” of people who feel insulted or ridiculed so that the objectivity of the proof will be very difficult. If such a dispute is an inter-religious conflict, then should the state interfere in inter-religious affairs by punishing those who differ? Isn't the right to choose or believe in a religion the domain of every individual who adheres to a religion that the state should not interfere with, but instead must be protected by the state?

### **3.4 Analysing the Constitutionality of Indonesia's Anti-Blasphemy Law in the Post-Reformation Era Due to a Constitutional Court Decision**

This chapter opens with a consideration of the most recent developments regarding the tightening of the blasphemy legislation in Indonesia. In several instances, members of religious minorities, namely Ahmadiyya, Shi'a, Gafatar who believe that the Anti-Blasphemy Law has violated their constitutional rights have submitted requests for judicial review to the Constitution Court of the Republic of Indonesia (the CCRI). The CCRI can determine whether a law's stipulations or provisions are inconsistent with those of the 1945 Constitution. At least four requests for additional investigation are the subject of this research, notably Decision Numbers 140/PUU-VII/2009, 140/PUU-VII/2010, 76/PUU-XVI/2018, and 84/PUU-X/2012. These four rulings strengthen each

other, establishing that the Law against Blasphemy of Religion is not in conflict with the Constitution of 1995 and is constitutional. This section seeks to criticize and question the ambiguous the CCRI decisions, in which, on the one hand, the CCRI admits that the Law against Blasphemy has multiple interpretations, while, on the other hand, the CCRI states in its various decisions that the Law Against Blasphemy of Religion is constitutional or does not violate the 1945 Constitution.

The clauses of the IABL that restrict the freedom to religious expression fall between the rights to FoE and FoRB. Religious speech may be regulated by the state if it is seen to infringe the rights or freedoms of others as guaranteed in Article 19 (3), or if it is deemed damaging or incites hostility that advocates discrimination against race or religion as protected by Article 20. (2). The right to FoRB is also a fundamental human right guaranteed by Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights, General Comment Number 22 of the ICCPR, and the UN Declaration of 16/18 on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.<sup>59</sup> The essential values of the right to FoRB under Article 18 of the ICCPR may be found in the ICCPR's General Comments Number 22 and the Resolution of 16/18. The ICCPR and its subsidiary treaties are not only legally enforceable rules, but also a common standard that civilized nations have recognized.

According to Heiner, religious freedom is a universal right inherent in every human being that cannot be revoked (Bielefeldt, 2012), as ignoring this right will result in ignoring other rights. Heiner defined the right to FoRB as having two dimensions: forum-internum and forum-externum. The freedom to select, quit, or depart from other faiths is included in the forum-internum; the State is not permitted to deny such rights under Article 4 (2) of the ICCPR. While the forum-externum encompasses the freedom to worship, teach, and practice religion, which the state is permitted to regulate under Article 18, (3). However, these limits must be imposed in a precise and transparent manner, without compromising the substance of basic rights or discriminating against certain religious groups (Bielefeldt, 2012). According to Article

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<sup>59</sup> The UNGA reinforce it with the adoption of the GC No. 34 concerning the limitation of the right to FoE in Paragraph 48 of GC No. 34 states: "Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, [...]."

18 (3), restrictions are acceptable if mandated by law and required to achieve a legitimate purpose such as “the preservation of public safety, order, health, or morality, or basic rights,” and the limitation must meet the proportionality test. The legitimate criterion of limitation must be understood in order to avoid over-limiting of such right, as will be described more in the next section.

In a democratic society, all countries must fully recognize and protect the right to FoE (Howie, 2017). The FoE protects everyone, everywhere.<sup>60</sup> It is protected at the international level by the Universal Declaration of Human Rights (UDHR)<sup>61</sup> and the International Covenant on Civil and Political Rights (ICCPR),<sup>62</sup> namely in Articles 19 and 20. Both treaties have been established as a common benchmark for achieving human rights safeguards for all people everywhere.<sup>63</sup> Other tools include the United Nations General Comment (UNGC) No. 34.<sup>64</sup> These texts encapsulate all of the ideas, beliefs, principles, norms, and laws that international communities, including Indonesia, have accepted and implemented.

According to Article 19 of the UDHR and Article 19 (1) of the ICCPR:

*“Everyone has the right to [FoE]<sup>65</sup> [...] [that] includes the right to seek, receive and impart information and all ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of Art, or through any other media of his choice”.<sup>66</sup>*

According to Scanlon, the term “freedom” denotes that each individual has the autonomy to autonomously determine what the people should think and do (Scanlon,

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<sup>60</sup> Global Trends in NGO Law, *A quarterly review of NGO legal trends around the world*. See the UN General Assembly Resolution 59(1), December 14, 1946. See ICNL, *The Right to Freedom of Expressions: Restriction on Fundamental Rights*, Vol.6,1. Retrieved at <http://www.icnl.org>.

<sup>61</sup> Global Trends in NGO Law, *A quarterly review of NGO legal trends around the world*. See the UN General Assembly Resolution 59(1), December 14, 1946. See ICNL, *The Right to Freedom of Expressions: Restriction on Fundamental Rights*, Vol.6,1. Retrieved at <http://www.icnl.org>.

<sup>62</sup> See the ICCPR was adopted by General Assembly resolution 2200A (XXI) of 16 December 16, 1966, entry into force 23 March 1976, and ratified by 165 countries. It is available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) [hereinafter ICCPR].

<sup>63</sup> See the ICCPR was adopted by General Assembly resolution 2200A (XXI) of 16 December 16, 1966, entry into force 23 March 1976, and ratified by 165 countries. It is available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) [hereinafter ICCPR].

<sup>64</sup> The UNGA reinforces it with the adoption of GC No. 34 concerning limiting the right to freedom of expression.

<sup>65</sup> See Art. 19(1) of the UDHR states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Subsequently, in Article 19 of the ICCPR states (1) Everyone has the right to hold an opinion without any interference. (Stressing Added).

<sup>66</sup> See Art 19(2) of the ICCPR. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of Art, or through any other media of his choice. (Stressing Added).

1972). Consequently, government activities that suppress an individual's views, opinions, or beliefs expressed through various media violate Article 19 of the ICCPR, unless IHRL grants a good justification. Especially if this measure solely targets political opponents of the government or other minority groups through different types of restriction or prosecution. This is because the right “to seek, acquire, and disseminate information or ideas of whatever type” is equally protected and may only be restricted under Article 19 (3) or Article 20 (2). (3).

The restriction of FoRB is similar to the restriction of the right to FoE, therefore their applicability will overlap (Howard, 2017; Uddin, 2015), and defending the right to FoE would enhance the practice of FoRB. On the other hand, both rights may potentially conflict with one another and limit one another (Mondal, 2016). Moreover, the right to FoE is a prerequisite for the enjoyment of other rights, and the limitation of FoE should not violate other rights, such as the right to FoRB (Schmitter and Karl, 1991), as a state may apply restrictions through its domestic legislation, such as anti-blasphemy laws (ABL).<sup>67</sup>

Summarizing Article 19 (3), the Syracuse principles, and UNGC No. 22, Durham and Scharffs elaborates four stages that the court must carry out in limiting the right to freedom of religion and expression. The limiting policy should pass those four stages of test respectively and thoroughly, and when the policy fails the test, the defendant should be released on behalf of the law (Durham and Scharffs, 2019).

Stage I. The restrictions must be set out in the law. This requirement consists of two elements, a formal element, and a qualitative element. A formal element requires that the State interference be legally authorized (Durham, 2011). Legally authorized means that the law is enacted by law-making bodies, through a legitimate process, and not contradictory with the respective State's Constitution. The most important is that the limitation on the right should “be compatible with the objects and the purpose of the Covenant.”<sup>68</sup>

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<sup>67</sup> According to Black Law Dictionary, blasphemy is defined as “Any oral or written reproach maliciously cast upon God, His name, attributes, or religion [...] It embraces the idea of detraction, when used towards the Supreme Being, as “calumny” usually carries the same idea when applied to an individual [...]” (155-56).

<sup>68</sup> See UNGC No. 22 Para. 9.

Stage II. The restrictions are only for violations committed in public. The explanation of this aspect can be found in the Rabat Plan of Action (RPA).<sup>69</sup> The RPA (2011) recommends that the court consider first the status or position of the speaker in the society, particularly when he or she speaks in public, whether the speech is intentionally targeted to certain groups. Second, the speaker's intention means that the action requires a relationship between the object, speech subject, and the audience. Third, whether the likelihood or imminence of incitement happens, this means that some degree of risk of harm must be identified.<sup>70</sup> Fourth, "publicly" means that the speaker cannot be punished if the expression is done in a private room. Fifth, the speech should be considered as public nature, which means that "the statements circulated in a restricted environment or widely accessible to the general public." Lastly, the context should be prevalent with social and political conditions when the speech was delivered and shared.

Stage III. The restrictions must meet the "necessity test" with at least one of the following objectives such as (a) maintaining public order; (b) protecting people's morality; (c) protecting public health; (b) protect and respect the rights of others. Durham reminds that although the limitation must be tested on a case-by-case basis when exercising such limitation, the state cannot breach the fundamental right of "freedom of thought, conscience and religion," and the state cannot prefer to only protect a certain religion with imposing arbitrary punishment to hold back the right to manifest one's religion (Durham, 2011). The most important thing is that the limitation grounds should be strictly related only to the enumerated grounds and with clear interpretation.<sup>71</sup> The extended limitation grounds that are not stated in Art. 19 (3) or 20 (2) may not be invoked to justify a limitation.<sup>72</sup>

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<sup>69</sup> To end discrimination against minority religions, in 2013, the UN of General Assembly adopted the Rabat Plan of Action (RPA) on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination hostility, or violence. (See United Nations General Assembly A/HRC/22/17/Add.4).

<sup>70</sup> The RPA documents, p.11.

<sup>71</sup> Ibid., 374 and the General Comment 22 (48), *ibid*.

<sup>72</sup> See also Art. 9 (2) of the European Convention of Human Rights and Art. 8 Asian Declaration of Human Rights. Similarly, Article 8 of the Asian Declaration of Human Rights (ADHR) articulates that a state can only limit such rights if the limitation has been determined by the statute made by legislation to guarantee basic human rights and freedoms and respect the rights of others. The limitation must be considered as one of the conditions, namely (a) protecting national security; (b) taking care of public order; (c) protecting public health; (d) protecting public morals; (e) achieving community welfare. Compared with the limitation requirements contained in the ICCPR, the criteria of limitation in the AHRD seems more lenient because it adds another aspect of "achieving public welfare" as one of the considerations that can be used to make restrictions. Meanwhile, the AHRD does not provide a concrete definition. Thus, this loose limitation can be interpreted

Stage IV. The restrictions must meet the “proportional test,” which means the restrictions should guarantee equal treatment to everyone considering the proportional punishment and not be prone to discrimination against other minority groups. In sum, FoE is indeed a non-absolute right. However, the right to FoE is fundamental for every human being and essential in a democratic society. Therefore, the right to FoE can be limited only by a strict requirement, having necessary and certain purpose, without any means to discriminate others, following the steps of legitimization limitation under IHRL, and without any means to reduce the essential rights that are protected under Article 18, 19, and 20 of the ICCPR. Whether or not these standard limitations have been fully adopted by the IABL and followed by the CCIR will be discussed further when examining the flaws in the law.

#### **3.4.1 Is the IABL a flawed law?**

The IABL, like other anti-blasphemy laws in many nations, according to Durham and Scharffs (2019) was inherited from its respective colonizers and has been in place for a long time to ban hate speech or religious insult against religious items, holy persons, practices, or beliefs (Nash and Bakalis, 2007). In reality, the IABL tends to restrict the ability of members of religious or philosophical minorities to express their religious convictions, which is incompatible with the IHRL. First, according to Article 20 (2) and General Comment No. 34, the limitation is only permitted if it is “strictly restricted to preventing incitement to discrimination, hatred, or violence” when applied to the external forum of the FoRB.<sup>73</sup> However, persecuting someone because of their religion or belief is deemed aberrant and a violation of Article 18 of the International Covenant on Civil and Political Rights (ICCPR). The freedom of a person to display or express his religious beliefs may be subject to such limitations under Article 18 (3) or 19 (3),

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broadly by each country. Therefore, the extended limitation in ADHR by adding one aim to “achieving community welfare” is not in line with the Art. 19 (3) of the ICCPR.

<sup>73</sup> According to Article 18 (1) of the ICCPR, the right to freedom of religion or beliefs is divided into two dimensions. One dimension is related to the right to hold and change religion. This right is also known as the forum-internum, in which no one or no state can interfere with the liberty of any person to hold or choose the religions or beliefs. The second dimension is the right to manifest the religions or beliefs or known as forum-externum. For example, everyone has the right to practice, worship, teach, and observe the religions or beliefs, either alone or in society, either private or public and could be a subject of such limitation under Art. 18 (3).

but the State is not required to punish the individual unless the speech violates Article 20 (2) and (3) by inciting discrimination, hatred, or violence.<sup>74</sup>

Jeroen Temperman (2015) underlines that Article 19 protects everyone's right to freedom of speech, but the ICCPR does not safeguard a person's right not to have their feelings wounded or offended. However, in *Otto Preminger v. Austria*, the ECtHR<sup>75</sup> determined that protecting the right not to offend others' religious sensibilities constituted a reasonable objective.<sup>76</sup> State intervention in the FoE is permitted if such expression is meant to offend the religious sentiments of others. In this regard, the *Otto Preminger v. Austria* case should be deemed irreconcilable with Article 20 (2), and the defendant should be acquitted (Temperman, 2015).

Moreover, the 2012 Rabat Plan of Action recommends that, when regulating religious speech, States parties to the ICCPR evaluate six factors, namely “context, speaker, intent, content, extent, and possibility of incitement to hatred” (Shepherd, 2017). This strategy strives to defend the freedom of individuals to be free from harmful speech encouraging violence or discrimination against persons of a certain race, religion, or ethnicity, as provided by Article 20. An individual is obviously a right holder from a human rights standpoint. Therefore, Heiner argues that honouring the human dignity of every individual is essential to the protection of human rights. This means treating everyone equally regardless of colour, religion, gender, or other factors (Bielefeldt, 2012).

To create a balance between FoRB and FoE, the anti-blasphemy law's applicability should shift from safeguarding religious symbols or sentiments to defending the rights of persons against incitement to hatred. Further discussion will determine if the IABL's only purpose is to prohibit the promotion of hatred against the

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<sup>74</sup> Article 20 (2) states that: “(1) Any propaganda for war shall be prohibited by law. (2). Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” GC No. 22 and Syracuse Principles states, “No limitation referred to in the Covenant shall be applied for any purpose other than for which it has been prescribed.” In most Western countries, such as in Canada, according to the Canadian Charter of Rights and Freedom section 2(b), the violation of the right to FoE is usually submitted to the civil court rather than to the criminal court. See Also GC No. 22 and Syracuse principles and Article 4 of CERD. Article 4 of CERD states that “States shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.” (Stressing added)

<sup>75</sup> ECtHR stands for European Court of Human Rights.

<sup>76</sup> *Otto Preminger v. Austria*, 19 Eur. H. R. Rep. (ser. A) 34, at ¶ 56 (1994), available at [http://www.echr.coe.int/echr/application\\_number\\_13470/8](http://www.echr.coe.int/echr/application_number_13470/8)).



individual. In addition, it is crucial that the standard limitation of the right be implemented legitimately and proportionately to avoid too restrictive measures that might undermine other fundamental and vital human rights.

Since the IABL corresponds with government measures to limit religious expressions, this study only focuses on examining standards for limiting FoE. Unlike the right to FORB, the right to FoE is not an absolute right (Smet, 2011b). A State is permitted to exercise discretion of restrictions through its domestic law (Fraser, 2019). However, the restriction itself must be strict with clear interpretation, regulated by law, and used for the purpose stated in the agreement (Debeljak, 2008). Therefore, when a person needs to manifest their religion or beliefs, a person cannot be punished because of his/ her belief, imagination, or thought, except if the religious expression of the person advocates an incitement of hatred against other religions or belief (Article 20 (3) or danger other people's life or safety. The permissible scope of legal limitations of FoE described in both Article 19 (3)<sup>77</sup> and 20 (3) of the ICCPR and explains further by the Economic and Social Council of the UN through the adoption of the Syracuse Principles on the Limitation and Derogation Provisions in International Covenant on Civil and Political Rights<sup>78</sup> and adopted by UNGA through the GC No. 22.<sup>79</sup> These principles aim to avoid misinterpretation by the State members and help them understand the provisions when adopting it into domestic laws.

A flawed law is one that is deficient in terms of both its substance and the mechanism used to create it. The defective law is presumed to be legitimate until it is repealed by the legislative body or annulled by the Constitutional Court if its substance is contrary to the country's Constitution. The Constitution of 1945 has been changed four times, with the adoption of the IHRL,<sup>80</sup> which is contained in more than

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<sup>77</sup> Article 19 (3) of the ICCPR provides FoE's limitation clause: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputation of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals." (Stressing added)

<sup>78</sup> See the UN Doc E/CN.4/1985/4, Annex 1985.

<sup>79</sup> See UN Human Rights Committee, General Comment 22 (48), adopted by the UN. Human Rights Committee on 20 July 1993. U.N. Doc.CCPR/C/21/Rev.1/Add.4 (1993).

<sup>80</sup> Many authors indicate that the IHRL is embedded in the provisions of the 1945 Constitution since Indonesia has ratified 9 out of 10 of the core international human rights instruments, such as the ICCPR, the ICESCR, the CERD, the CAT, the CEDAW, the CRC, the CPD, the CMW. See Jimly Asshiddiqie, "Universalization of Democratic Constitutionalism and The Work of Constitutional Courts Today," Constitutional Review 1, no. 2 (March 28, 2016): 1, <https://doi.org/10.31078/consrev121>.

ten sections of Chapter IV of Human Rights, being the most significant. Historically, the IABL was established in 1965, when the 1945 Constitution had not yet embraced human rights legal standards, and their contents have remained unchanged to the present day. Therefore, it may be assumed that the IHRL rules enshrined in the 1945 Constitution were not considered as a reference point in the establishment of the IABL. This section will elaborate on why the IABL is believed to be a flawed statute.

First, the primary purpose of the IABL is to defend religions rather than “religious people” themselves, so that it is reasonable to penalize persons who belong to a religion or belief rather than criticize religions. Although the fundamental concepts of FoRB are expressed in Articles 28D, 28E, 28I, and 29 of the 1945 Constitution, the IABL has distinct ideals and standards. Article 29 states that Indonesia is founded on “Belief in One God, the Almighty.” Article 1 of the IABL views this as homogenous religion, in which no one may advocate for atheism or interpret the religious teachings of the major faiths differently (Lindsey and Pausacker, 2017). Moreover, Article 18 of the UDHR and Article 18 of the ICCPR defend a person's freedom to remain religiously neutral or to believe in their own faith. As opposed to avoiding the inciting of hatred, several cases determined under the IABL simply penalized those who offend religious symbols or have differing doctrines from the major religions. Consequently, it would not conform with the IHRL, as it just protects the religious system or personal sentiments of others (Temperman, 2015).

Second, the IABL has no clear definition of what constitutes religious defamation. Article 1's vague definition of defamation of religions has a very broad application. At least five deeds might be called religious blasphemy: (a) Insulting a religion; (b) convincing someone to be an atheist; (c) disturbing a religious ceremony or creating noise near a place of worship; (d) insulting a cleric while conducting a ritual; and (e) criticizing the teaching of religion, including criticizing other religious activities. The IABL is established in accordance with Law No. 1/PNPS/ 1965 and Articles 156a and 157 of the Indonesian Criminal Code. In 2008, Indonesia enacted the IET Law and bolstered the IABL by adding Article 28 Paragraph 2 to Article 28. While Paragraph 2 of Article 45a may be used to punish hate speech, Nonetheless, the Court seldom implements the later provisions.

As elaborated in previous section, to qualify as an incitement to hatred under the Rabat Plan of Action (RPA), a statement must satisfy the following criteria: “context, speaker, intent, substance, extent, and likelihood of incitement to hatred.”<sup>81</sup> The only individual who may be accused with hate speech is a leader who purposefully incites his audience to attack another person based on their hatred of his religion or race while speaking in public at a public assembly. In reality, therefore, the Court exclusively criminalizes actions or statements that qualify as blasphemy under Article 1 of the IABL, rather than hate speech. The five types of blasphemy listed above aim to preserve the “feelings of the major faiths’ adherents.” Whether one is humiliated depends on the sentiments of the others. Therefore, each form’s interpretation rests on the subjectivity of the judge who analyses the deed. Each form is open to interpretation (Crouch, 2011).

In the case of Gafatar, Musadeq, a key leader of Gafatar, was sentenced in the East Jakarta District Court under Article 28 (2) of the EIT Law, which stipulates, “[...] *a remark that incites enmity is criminal [...]*.” However, there is no precise description of “hostility sentiments.” The term is overly vague and might be subjectively construed by the authorities. The court failed to establish whether the act of Gafatar could be classified as a hazardous expression or encouraged the assault of particular groups, as required under Article 20 of the International Covenant on Civil and Political Rights (ICCPR). The court’s judgment was intended to ‘maintain public order’ in accordance with the precepts of Islam and Christianity, the two major religions recognized by the state. However, all offenders are criminalized based on vague legislation and punished severely.

In addition, the CCIR’s judgment number 140/PUU-VII/2009 upheld the ambiguity of the IABL and declared that “*the substance of the Law on the Prevention of Blasphemy against Religion has to be modified in terms of the form of regulation, formulation, and legal principles.*” Moreover, the court declared that “*the need for a revision of the Law on the Prevention of Blasphemy Against Religion, both within the formal framework of law and in content, in order to have more clear material aspects that will not lead to ambiguity in reality*” (Crouch, 2011). Another ruling numbered 76/PUU-

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<sup>81</sup> To end discrimination against minority religions, in 2013, the UN of General Assembly adopted the Rabat Plan of Action (RPA) on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination hostility, or violence. (See United Nations General Assembly A/HRC/22/17/Add.4).

XVI/2018 and 84/PUU-X/2012, reflected the same position. The CCIR concludes that the statute in dispute does not restrict the freedom to believe, but rather restricts public religious speech that is antagonistic, abusive, or desecrates the religion practiced in Indonesia. Nonetheless, the term 'abuse or blasphemy' is frequently used to describe heretical religious doctrines that differ from the six major faiths embraced in Indonesia. In the instance of Ahmadiyya or Shia, who were the applicants in judicial review cases 76/PUU-XVI/2018 and 84/PUU X/2012, respectively, the CCIR finds that the IABL is employed to respect and safeguard the faiths from such aberrations. The influential Ulama can determine whether or not such teachings are aberrant. Contrary to the RPA, anybody can be charged with blasphemy under the IABL, even if they are not a prominent personality whose statement is not intended to incite his followers to detest other religious groups and conduct acts of violence.

Thirdly, the IABL contains discriminatory provisions since it exclusively applies to or targets members of religious minority groups. Article 1 of the Law defines the term "religions" as the six government-recognized religions: Islam, Hinduism, Buddhism, Christianity, Catholicism, and Confucianism. According to law enforcement's interpretation of Article 1, the legislation solely protects these major religions. Consequently, faiths other than these six are frequently excluded from the protection of the law. Evidently, in various blasphemy trials, more than 150 individuals from minority religious groups were convicted and criminalized under the ABL (Andreas, 2019).

In numerous decisions, including numbers 140/PUU-VII/2009, 84/PUU X/2012, and 76/PUU XVI/2018, the CCIR has stated that the IABL does not prohibit a person from holding beliefs that differ from other religions or beliefs; however, the IABL does restrict how these beliefs may be expressed in public or disseminated to others. The Court believes that, pursuant to Article 28J and the IHRL, religious speech can be restricted by law. It is true that FoRB and FoE limits also apply to the IHRL, Article 18 (3), and Article 19 (3) of the ICCPR. However, the CCIR disregards the fact that the FoRB has two components: the forum-internum, which cannot be limited under any circumstances, and the forum-externum, which can be limited. While the Court has strictly construed Article 28J of the 1945 Constitution, it does not distinguish between the forum-internum and the forum-externum, both of which may be limited by the

State. This view is problematic since neither the Constitution nor the IABL expressly define the normal ban on religious speech. The four phases of legitimate and proportional limits under GC No.22, namely, the legitimacy test, the necessity test, the proportionality test, and the non-discrimination test, are not considered by the CCIR (Durham, 2011).

The Court's analysis was extremely unclear and inconsistent since, on the one hand, the court asserts that the IABL protects those with diverse religious or philosophical beliefs. The CCIR overlooked the fact that shortcomings in law enforcement and legal content cannot be separated. In blasphemy cases, the government is not impartial. First, the government, through the Ministry of Law and Human Rights, requested that the Indonesian Ulama Council issue a fatwa on heresy against Gafatar. Secondly, the government issued a letter of prohibition to Gafatar, stating that the dissemination, interpretation, and activities of Gafatar deviate from the main points of Islamic teachings. In terms of permitted limitations on the right to FoE, notably the legality test, Durham (2011) asserts that neutrality is a prerequisite for satisfying the legality test. However, as there is no such limiting criterion listed in the IABL, the legality test cannot be used to Gafatar. As a result, several courts have condemned Gafatar's followers.

Article 156a of the Indonesian Criminal Code was applied in all blasphemy trials, and the culprits were found guilty of “issuing emotions or carrying out deeds that degraded a religion in Indonesia.”<sup>82</sup> If Gafatar was accused of disrupting public order by applying coercive regulations to its devotees in order to impose its new teachings and renounce their former beliefs, then the Court must establish this. Therefore, the court has not deviated from its primary objective of “safeguarding the sentiments of the majority of faiths,” but it has never examined “the feelings of Gafatar adherents.” In this case, the court could not comprehend the distinction between the forum-internum and the forum-externum with regard to the right to FoRB. The court should conclude its investigation of this case and pronounce the defendant’s innocent. However, this has never occurred in blasphemy trials in Indonesia, with the exception

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<sup>82</sup> See Banda Aceh District Court Decision Number 80 / Pid.B / 2015/PN Bna on behalf of defendant T. Abdul Fatah Bin T. Muhammad Tahib; Decision of the Jantho District Court number 03 / Pid.C / 2015 / Pn-jth dated 6 February 2016)

of situations with strong political undertones, beginning with the police ceasing their investigation (Tehusijarana, 2018).

In light of the arguments supporting the IABL's shortcomings, this section explains why the IABL's legality must be reconsidered. In general, the constitutionality of a statute or legislation is the condition that laws established by Parliament comply with the relevant constitution or the condition that a certain norm is deemed constitutionally legitimate (Arato, 2012). When the content of legislation violates or conflicts with the Constitution, they are unconstitutional. Typically, the judicial branch, such as the Constitutional Court or Supreme Court, interprets legislation and determines whether a statute or law is unconstitutional through the process of judicial review. According to several sources, the CCIR often employs the Austrian model based on Hans Kelsen's thesis. According to this paradigm, a Constitutional Court review of a statute of law seeks to determine whether the laws passed by the legislative body are consistent with the nation's constitution. On this issue, the CCIR has the authority to declare a portion of the law null and invalid, and its rulings have an *erga omnes* impact, binding all persons and organizations (Asshiddiqie, 2018).

The State is obligated, through its law and system, to treat all individuals equally, without any interference, limitation, or other conditions that make it difficult for any individual to exercise this right (Henkin, 2009). Articles 27, 28I, 28D, and 28H of the Indonesian Constitution of 1945 expressly protect both the nondiscrimination and equality values (Eddyono, 2016). Consequently, there is no dispute that these principles constitute the fundamental human rights principle that the CCIR must examine while assessing human rights issues.

The CCIR has supported the principles of nondiscrimination and equality in a number of significant cases in the past. First, in judgment number 97/PUU-XVI/2016, the Court invalidated a provision of the Residency Law that prevented traditionalists from acquiring resident identification cards and family cards. The Court held, "*Restrictions based on religious convictions that result in differential treatment of citizens are discriminatory.*"<sup>83</sup> This consideration is comparable to the preceding decisions, including 070/PUU-II/2004, 27/PUU-V/2007, and 024/PUU-III/2005. In addition, the Court has invalidated discriminatory laws in other cases, such as the decision number

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<sup>83</sup> See the Decision Number 97/PUU-XIV/ 2016, 53.

011-017/PUU-1/2003, in which the Court ruled that Article 60s of the General Election Law, which prohibited former Communist Party members from running for office, is a form of discriminatory policy that contradicts Articles 27, 28D of the 1945 Indonesian Constitution. In decision number 006/PUU-IV/2006, the Court ruled that Article 2c and 3 of the Law of Commission Reconciliation and Rehabilitation were in conflict with the constitution because they discriminated against victims of past human rights violations by preventing them from claiming their right to compensation and rehabilitation unless they were willing to forgive the criminals. In the instance of the IABL, however, the CCIR disregarded the fundamental principle of nondiscrimination. The CCIR argues that if a restriction on the freedom to religious expression is imposed by law, then the restriction is justified, regardless of whether or not it results in discriminatory treatment of specific religious groups.<sup>84</sup> In this regard, the CCIR has utilized the Particular Constitutionalism theory, which interprets the Constitution's enshrined Human Rights principles in a restrictive meaning.

In contrast to numerous other decisions in which the Universal Constitutionalism approach was adopted, in the instance of judicial review of the IABL, the CCIR said repeatedly that religious expression is not an absolute right and that the IABL is a lawful statute limiting rights: *"The Court simply compares the provisions of the statute to the 1945 Constitution."*<sup>85</sup> The court also said, *"The Law for the Prevention of Religious Blasphemy is still necessary and has no problem with the 1945 Constitution's protection of human rights."*<sup>86</sup> The judgment is based on Article 28J of the 1945 Constitution and is limited to communication with the IHRL accepted by Indonesia. The CCIR did not address the IABL's flaws, which may have been sufficient grounds to declare it illegal.

According to the CCIR, *"the anti-blasphemy law threatens anybody who openly shows enmity against other religions or who communicates divergent doctrines to the major religions."* However, as previously discussed, the definition of blasphemy is so broad that it has become too generic and a typical weapon for criminalizing minority religious groups. Criminalization becomes evident when it includes minority faiths

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<sup>84</sup> Ibid., 277-279; 288.

<sup>85</sup> See the Decision Number 140/ PUU/2010, p.294.

<sup>86</sup> Loc. Cit.

because the government or the dominant religion feels under assault by adherents of the minority religion.

In addition, with reference to Article 18(3) of the ICCPR and Article 20(2) and (3), the IABL should focus on religious statements that incite discrimination against other religious groups and not on limits on one's beliefs. The diverse religious views between Islam and Protestantism, Protestantism and Catholicism, and Islam and Hinduism are a sort of variety that has been embraced by Indonesians for a long time due to the country's social diversity. Society may embrace the multiplicity of schools within a religion without using it as a justification to persecute other diverse groups. However, the state does not need to restrict the beliefs of its citizens, since the main six faiths have flourished due to the freedom of their adherents to choose, accept, and practice their beliefs without governmental sanction or punishment.

Lastly, there is little question that hate speech against any religion should be prohibited and offenders punished. As a correction to the Resolution on Anti-Defamation (of Islam), Resolution No. 16/18 underlines that all member states should confront acts of intolerance against all religions and beliefs, not only Islam.<sup>87</sup> In the meanwhile, but the government must also respect all religions and beliefs equally. Indonesia is among the nations that continue to preserve and implement anti-blasphemy legislation. Although the UPR findings in documentation rounds I, II, III, and IV urged that Indonesia repeal or amend the Anti-Defamation Law quickly, Indonesia did not comply. However, based on the above information, Indonesia is reluctant to declare that the IABL is unconstitutional or needs to be changed. As a member of the Organization of Islamic Cooperation, which started Resolution 16/18, Indonesia should increase its efforts to implement it. The purpose of the Combating Blasphemy Act is to safeguard faiths or religious symbols, not individual rights. In accordance with international standards, Indonesia should take urgent action to abolish the IABL and change its draft Criminal Code by changing the punishment of blasphemy to the criminalization of inciting to discrimination, hatred, and violence.

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<sup>87</sup> In 2011, the United Nations Human Rights Council (UNHRC) adopted its landmark Resolution 16/18 to combat intolerance and discrimination based on religion or belief. UNHRC Resolution 16/18 was historic as it "corrected" the 1999 UNHRC Resolution on Defamation of Religion by putting the rights of individuals at the centre of the protection regime.



Based on the above analysis, it is evident that the Constitutional Court does not completely comprehend the notion of the rule of law highlighted in Article 1 paragraph 3 of the 1935 Constitution. The flaws in the blasphemy law's legal essence were not examined in depth by the Constitutional Court. The Court also does not comprehend that the history of legal standards might depart from the most fundamental constitutional rights provided by the Constitution. The history of legal substance is a crucial issue that might lead to a law's loss of validity. If a legislation loses its authority, it can no longer be utilized to restrict the rights of citizens.

The Constitutional Court maintains that deficiencies in the substance of legislation are not the court's purview, but rather the legislative branch's. This viewpoint is erroneous. How can the Court allow a legislation to remain in effect if its implementation violates the rights of citizens? How is it possible that the Court just disregarded the inalienable right to freedom of religion? Doesn't the constitutionality of the anti-blasphemy statute imply that minority religion members will continue to be threatened with penalty by the law's implementation? What will happen to citizens if the legislature fails to adopt a replacement law immediately? Wouldn't minority religion adherents continue to face criminalization?

This confusing Constitutional Supreme Court ruling indicates that the Court's independence is being questioned. As an institution with the designation of defender of human rights, the court's judgment regarding the blasphemy legislation demonstrates that it has failed to protect the freedom of religion of its inhabitants. The Court is likewise entangled in religious (Islamic) populism, since every time the anti-blasphemy statute is reviewed in court, visitors to the hearings invariably support the law's defence. There were also demonstrations in front of the courtroom. The Court failed to educate the public on the significance of respecting the freedom of every person to choose, embrace, and believe in their own religions and/or beliefs without interference from any party, including the state.

### **3.5. Conclusion**

After reviewing all aspects of the rule of law, namely elements of law content, elements of process, and elements of enforcement agencies, it can be determined that while the history of the establishment of the anti-blasphemy legislation is cloaked in

an emergency scenario to avoid horizontal confrontations between religious groups on a wide scale and to preserve state security from the efforts of organizations that want to build their own state, this political backdrop failed to prevent the anti-blasphemy law from becoming a tool of repression. In order that the fundamental flaws of this law continue to be embraced and even strengthened. This is exemplified by the increase of regulation and enforcement of blasphemy laws in order to prosecute religious minorities, despite the fact that they have no intention of separating from the Unitary State of the Republic of Indonesia or establishing a separate state.

The vagueness of the Constitutional Court's ruling that the Anti-Blasphemy Law is constitutional demonstrates that the court has failed to fulfil its role as a defender of human rights. Human rights legal rules that guarantee and preserve the right to religious freedom are insufficient for the Court to analyse the constitutionality of a statute appropriately. The inability of the Constitutional Court to comprehend the need of proportionate and non-discriminatory restrictions in restricting the right to religious expression is a democratic setback that will endanger the right to religious freedom and run counter to the values of the rule of law. The multiple horizontal disputes that precede the implementation of the Blasphemy Law are insufficient grounds for the Constitutional Court of the Republic of Indonesia to re-examine and nullify its binding force.

The judgement of the Constitutional Court stressed that the anti-blasphemy legislation does not violate the constitution; hence, the attempts of law-making institutions to consider potential revisions to the law to replace the anti-blasphemy statute ceased. The political climate does not need amendments to the anti-blasphemy statute. The several rulings of the Constitutional Court examining the blasphemy statute demonstrate that the Court affirmed its finding that the law was constitutional. The drafting of the provisions in the ITE Law increases the blasphemy provision of the Anti-Defamation Law, which is not surprising. The Criminal Code Measure, which should clarify the ambiguity of the blasphemy legislation, has published a new chapter on religious offenses, which suggests that if this bill is enacted, the idea of blasphemy would be strengthened. Thus, the state of Indonesia has equipped the Constitutional Court with the blasphemy statute in order to degrade human rights, notably the citizens' right to religious freedom and religious expression.

## **CHAPTER IV**

### **POLITICAL MANIPULATION OF RELIGION: A HATE-SPIN STRATEGY DRIVES BLASPHEMY LAW ENFORCEMENT TRAPPED IN FAKE OFFENSIVE FABRICATION**

#### **4.1 Introduction**

The phenomena of law enforcement against religious blasphemy not only threatens the right to religious freedom, but it also weakens the basis of democracy by disregarding the rule of law. Several publications on Indonesia's anti-blasphemy legislation have highlighted normative legal study throughout the past decade (Cohen, 2018; Crouch, 2011; Fiss and Kestenbaum, 2017; Prud'homme, 2010). These scholars are particularly critical of the normative flaws inherent in the Legislation Against Blasphemy of Religion, where the substance is inconsistent with international human rights law, resulting in discriminatory treatment of minority religious groups and a danger to religious liberty. In addition, the author includes in chapter III the most recent developments in the anti-blasphemy statute following the Constitutional Court's ruling that the measure does not violate the constitution. This recent development has solidified the anti-blasphemy law's position. Existing normative flaws are no longer seen as significant. As though efforts to amend this statute were no longer necessary.

This chapter seeks to investigate how the tightening of the anti-blasphemy statute affects law enforcement procedures. In addition to major legal issues, might sociopolitical elements affect the application of the blasphemy law? To what degree is political manipulation of religion behind Indonesia's widespread prosecution of blasphemy cases?

A'yun (2020) asserts that conservative Muslim organizations were able to persuade legislators that blasphemy in the shape of liberal concepts or religious pluralism poses a significant threat to Islam (the majority) (p.1). Moreover, blasphemy can spark interfaith conflict, which disturbs public order and threatens Indonesian unity. However, opportunistic politicians regard this trend reversal as a chance to gain the support of the (majority) Muslim population for their political cause, and hence favour the continuance of the anti-blasphemy law.

A'yun briefly mentioned at least three blasphemy trials that were impacted by politics, including the *Ahok*, *Meliana*, and *Saleh* instances (p.6). During the election for Regional Head of DKI Jakarta, in which Ahok was a candidate, the politics of the Ahok affair became apparent. Ahok was accused of blasphemy [against Islam] when he stated that politicians frequently utilize Quran Surah Al-Maidah verse 51 (QS Al Maidah 51) to fool the people or persuade the public not to elect non-Muslim leaders. Ahok's comments was deemed a blasphemy of the [Islam] faith, thus the Conservative Islam organization politicized his case using the anti-blasphemy statute. The sooner he punishes Ahok, the more advantageous it will be for the Islamic Conservatives who want Anis Baswedan, Ahok's political opponent, to win. In the meanwhile, the Meiliana case (2016) was postponed by two years until 2018 since it clashed with municipal elections. According to A'yun, the Anti-Blasphemy Law is being politicized via two types of state religious relations:

*“[First], the politicization of blasphemy cases. Many blasphemy accusations in Indonesia are made during electoral contest and create opportunities to merge the goals of religious groups and political elites. [Second], Through efforts to maintain the blasphemy law. The narrative of protecting religion, public order and national unity have often been articulated by both conservative Muslim groups and politicians to legitimize the continued existence of the law” (2020: p.1-2).*

Moreover, Tyson (2021) who supports previous studies (Sihombing et al., 2012) Aminah and Roziqin (2015); Prayoga (2015); Halili (2016); and Cohen (2018) argues that in the blasphemy trial of Ahok, the panel of judges could not meet the independence and impartiality of the court because religious authorities, including Islamic mass organizations, exerted pressure during the judicial process that significantly influenced the content of the judges' decision (p.19). In his analysis, Tyson employs a logocentric method that reveals how the law enforcement procedure in the Ahok case has been strongly impacted by political pressure from conservative Islamic groups and the MUI.

Nevertheless, neither A'yun (2020) nor Tyson (2021) provide a comprehensive description of how the political manipulation of blasphemy cases influenced law enforcement in relation to three important aspects of the rule of law, as stated by Bedner (2010), namely the suitability of legal substance, procedures, and legal

institutions, as the Author explained in Chapter II. These three factors are the subject of this investigation. By departing from the three elements of the rule of law and referencing John Paul Marshall's (2018b) theory of political manipulation of religion and George Cherian's (2016) theory of hate-spin, this study seeks to determine whether the Courts, in the case of Ahok and Meiliana, have been incarcerated into political manipulation of religion, thereby allowing the hate-spin strategy to find its way. This study intends to enhance and update the results of A'yun (2020) or Tyson (2021) about the independence and impartiality of the judiciary in Ahok's blasphemy cases, as well as the findings of Aminah, Siti, and Roziqin (2015), who examined the blasphemy cases that happened between 2012 and 2014.

The contemporary situation, as studied in Chapter III, demonstrates that the Anti-Blasphemy Law of 1965 and its expanded rules include normative flaws. The Constitutional Court of the Republic of Indonesia has urged since 2009 that the definition of blasphemy be changed so that it is not open to many interpretations and contains no discriminatory provisions. However, the Valid Court opted to issue a vague ruling and said that the Anti-Defamation Statute did not violate the constitution, or in other words, that the act is constitutional (Pratiwi, 2021). Prior to the writing of this paper, the dynamics of legal politics did not need such a shift. The inadequacy of the Anti-Blasphemy Law has been exacerbated by the publication of the Electronic Information and Transaction Law, notably Articles 27 and 28, which are frequently utilized to prosecute individuals accused of blasphemy via social media. The ambiguity of the Constitutional Court's ruling proclaiming the validity of the Anti-Defamation Law, which has legal flaws, must be reconsidered since the Court is unaware of the consequences of its ambiguous decision. This study has been extensively discussed by the author in chapter 3, conducted at the Constitutional Court of Indonesia Republic's International Conference in 2021, and published in a Constitutional Review titled *Rethinking the Constitutionality of Indonesia's Law Against Defamation of Disabled Religions* (Pratiwi, 2021).

Thus, based on the legal method as provided in Chapter III, the author identifies normative issues in the Anti-Defamation Law's history and recent developments. These discoveries give guidance for subsequent chapters, including what will be investigated in depth in this Chapter IV, in order to answer the question “why?” A

question that cannot be solved only by a normative approach from the top down. A question that can only be answered accurately using interdisciplinary approaches (Banakar, 2019) by examining empirical evidence (McConvelli & Chui, (2017)) to understand the gap between law in book and law in actions (Macaulay et al., 2007; Nelken, 1986), specifically by exploring the socio-political dynamics surrounding law enforcement against religious blasphemy, especially in the cases of Ahok and Meiliana. In this part, we will explore the extent to which the vagueness of the existing idea of blasphemy legislation has allowed the courts to become entangled in political manipulation of religion through hate-spinning methods. This indicates that the court fails to defend the principles of the rule of law because it lacks a shield to protect it from the onslaught of socio-political dynamics, hence sacrificing features of impartiality and fair trial. As indicated in Chapter I, the interdisciplinary method in question is the socio-legal approach, which enables the Author to draw from political science, sociology, and other disciplines without abandoning legal science, which is the foundation for the entrance of socio-legal studies (Banakar, 2019). Consequently, this method enables the author to analyse the acquired data in order to answer the issue statement on the application of the anti-blasphemy statute, which is the subject of this study. Too far, the author has conducted interviews with more than 25 sources and experts, as well as consulted several court rulings in order to comprehend the court's verdict, as well as numerous rules and public policies. Tertiary data gathered from amicus curiae briefs submitted to the Court by numerous NGOs working on human rights concerns, various mass media publications, and video documentaries are indispensable and enhance our study.

This chapter will be organized as follows: the first section, titled “Political Manipulation of Religion and Hate Spin, A Conceptual Framework,” will outline the conceptual framework of the political manipulation theory of religion in Marshall's perspective and the idea of hate-spin in Cherian's view (2016). By referencing Marshall and Cherian's theory, the second part with the subtitle “Blasphemy Law Enforcement: When the Court is Stuck in the Political Maelstrom” intends to examine each element of the Rule of Law and how hate-spinning has become a sophisticated strategy of political brokers so that law enforcement agencies are unaware they are supporting it. This section is subdivided into the following subsections: (a) The Case of Ahok and

Meiliana, Politics and Religion are Two Sides of the Same Coin; (b) Accusing the perpetrators of blasphemy with a multi-interpreted and discriminatory anti-blasphemy law; (c) Courts Allow Non-Legal Institutions (the MUI) to Direct Decisions on Blasphemy Cases and Forget the Principle of Fair Trial The final section is titled "Allegations Without Proof: A Cycle of Hatred Brings Political Victories to Opponents." This section discusses how Ahok and Meiliana's punishment undermines the rule of law and affects the right to religious freedom in Indonesia by granting substantial political victories to their opponents. In the final segment, there will be a conclusion.

### **3.5 Theoretical and Conceptual Framework**

#### **3.5.1 Theory of political manipulation of religion in Indonesia**

Fox (2019) and Marshall (2018b) claim that politics and religion are interwoven, which means that politics influences religion and *vice versa*. This can be seen from three factors: (1) the role of religion in government, how public policies support religion, and how the government is influenced by religion in the formation of public policies; (2) the role of religion in people's lives, namely by examining how religion is expressed in the public sphere, both by individuals and by public officials; (3) how religious institutions affect power and society; and (4) how individuals are perceived as religious (p.15).

Salim and Azzra (2003) and Marshall (2018b) explained the ambiguity of Indonesia's state-religion connection in the Indonesian context. According to Salim and Azzra (p.1-2), the relationship between the state and religion grew greater throughout the reformation period, as evidenced by four factors. First, Islamic political parties such as PPP and PBB have included Islamic doctrine as a replacement for Pancasila ideology. Second, numerous provinces began to adopt Sharia ideals into local legislation, with Aceh province being one of the pioneers of this approach. Third, the rise of Islamic extremist organizations. Fourth, the beliefs of the hardliner Islamic movement were encouraged by easing the government's hold on the press so that the underground publisher of Sabili (a hardliner monthly journal with over 100,000 subscribers) could become a legitimate publisher. Salim and Azzra (2003) emphasized that it is insufficient to evaluate the level of Islam's politicization in Indonesia based

solely on these four indicators, but that scholars should also consider the level of Shariah law adopted into civil law by a state, which can be observed in all policies: “the relationship between Islam and politics depends greatly on the extent to which the state implements sharia.” Salim and Azzra drew the conclusion that the relationship between Islam and the state of Indonesia is perpetually unstable and fluctuates between high and low points depending on the regime. In addition, they urged that, in order to eliminate interreligious disputes in Indonesia, a process of law unification involving the elimination of all laws that discriminate against Islam adherents and the adoption of a universal law that applies equally to everyone should be implemented (p.6). This research will determine if a law unification process or the application of Sharia law in some regions of Indonesia was driven by the political goals of the government (state interests) or whether there is a popular interest in applying Sharia law (p.15).

Furthermore, Marshall (2018b) argued that interreligious conflict and the criminalization of religion are not the result of religion, but rather the politics of religion (political manipulation of religion). First, the government's treatment of faiths and its interpretation of religious liberty have fluctuated from time to time. Only under the Gus Dur administration, a former President of Indonesia, had advocated for religious liberty after the reformation. In the meanwhile, both the SBY Administration (2004-2014) and the Jokowi Administration (2014 to the present) tend to support governmental policies that restrict religious freedom. The government's predisposition to defend the IABL notwithstanding the Constitutional Court's 2009 ruling that the anti-blasphemy statute is open to several interpretations and has punished numerous religious minorities demonstrates this support (p.86). Second, despite Indonesia's claim to be the most tolerant Muslim nation, where the 1945 Constitution protects the right to religious freedom (see Articles 28E and 29), the government continues to enact legislation that restrict religious freedom. The implementation of the anti-blasphemy law as a basis for the state to legitimize its actions to criminalize minority religious groups deemed “heretical,” such as Ahmadiyya, Shia, and Gafatar, encourages extremist groups to commit intimidation, violence, and attacks against other groups that exhibit these “deviants” (p.87-89). Marshall also revealed that the anti-blasphemy law allows the state to borrow the



hands of non-state institutions, such as the MUI, to produce public policies that criticize the binding force of the anti-blasphemy law and sharpen the restriction of the right to religious freedom, via fatwas on heretical teachings. MUI pronounced Ahmadiyya to be a deviant religion, and in 2016 it declared Gafatar to be a heretical sect. In the Ahok case, MUI issued a fatwa declaring that Ahok had desecrated Islam (Marshall, 2018b).

Marshall has not previously analysed the extent to which public pressure on the development and implementation of the IABL may be gleaned from public discussions and the responses of conservative groups, which is the purpose of the present study. The vague nature of the blasphemy legislation, according to Telle (2017), creates the prospect of a monopoly on the interpretation of state-sanctioned faiths and transforms religious law into a positive law that criminalizes minority religions that are deemed aberrant. Therefore, the purpose of this study is to examine whether the court, when examining blasphemy cases: (1) only uses the interpretation of the majority religion (Islam) as a basis for deciding cases; (2) does not use IHRL standards in deciding cases; or (3) whether the state entangles itself with religious doctrine by adopting majority religious teachings (i.e., Islam) and making these interpretations a positive law to punish other religions.

Referring to the theory of the relationship between religion and politics advanced by Durham and Scharffs (2019), Jonathan Fox (2019), Salim & Azzra (2003), and Marshall (2018b), the purpose of this study is to examine the history of the development and enforcement of the Blasphemy Law and the extent to which it represents the pattern of the relationship between religion and the state. This study will investigate the extent to which court rulings in anti-blasphemy cases are impacted by political manipulation of religion as a result of the political constellation that existed when the case arose. For example, by (1) identifying court considerations that interpret the Blasphemy Law based on certain religious values or teachings; (2) identifying the role of religious institutions that influence judges in deciding cases; and (3) identifying cases in which the court imposed a harsh verdict and cases in which the court imposed a light sentence.

### **3.5.2 Hate Spin Theory**

Before examining the extent to which political manipulation of religion employing a hate-spin tactic influenced the enforcement of the Ahok and Meiliana blasphemy cases, this section will examine respective conceptual frameworks. According to Paul Marshall (2018), political manipulation of religion is defined as the attempts of some parties to use religion as a tool to further the group's political objectives by maximizing all available resources and it is a widely held belief that disputes between faiths stem from religion itself (Marshall, 2018b). This is conceivable, yet extremely uncommon, and according to Marshall, disputes between religions result from the political exploitation of religion. Marshall provides several instances that religion has been exploited for political ends, including:

- 1) The political manipulation of religion presumes the presence of religion while simultaneously being both political and religious.
- 2) Religion can only be manipulated politically if it is existent and significant enough to be manipulated.
- 3) It is common in the political manipulation of religion is often carried out by those whose religion is weak or shallow, and done despite opposition from religious leaders.

This study employs Marshall's theory of political manipulation of religion to determine whether its indications are present in the cases of Ahok and Meiliana. Obviously, this is insufficient; it is required to investigate why the judiciary did not abandon the unlawful Anti-Defamation Law and how, according to Cherian George (2016), hate-spin spreading. Hate spin has occurred in the United States with Christians, in India with Hindus, and in Indonesia with Muslims, according to Cherian George (2016). According to George, hate spin has become a political tactic manufactured as a sophisticated instrument of campaigns (planned misleading propaganda) (p. 4) to paralyze political foes through identity concerns. Hate spin, according to Cherian, is “manufactured vilification or anger employed as a political technique” (p.4). This hate spin tactic is processed in such a manner that opportunistic organizations or hardliner groups exploit the same sentiments harmed by the dominant religious group to seek large support, with the aid of online communication medium that travels swiftly and unfiltered (p.6).

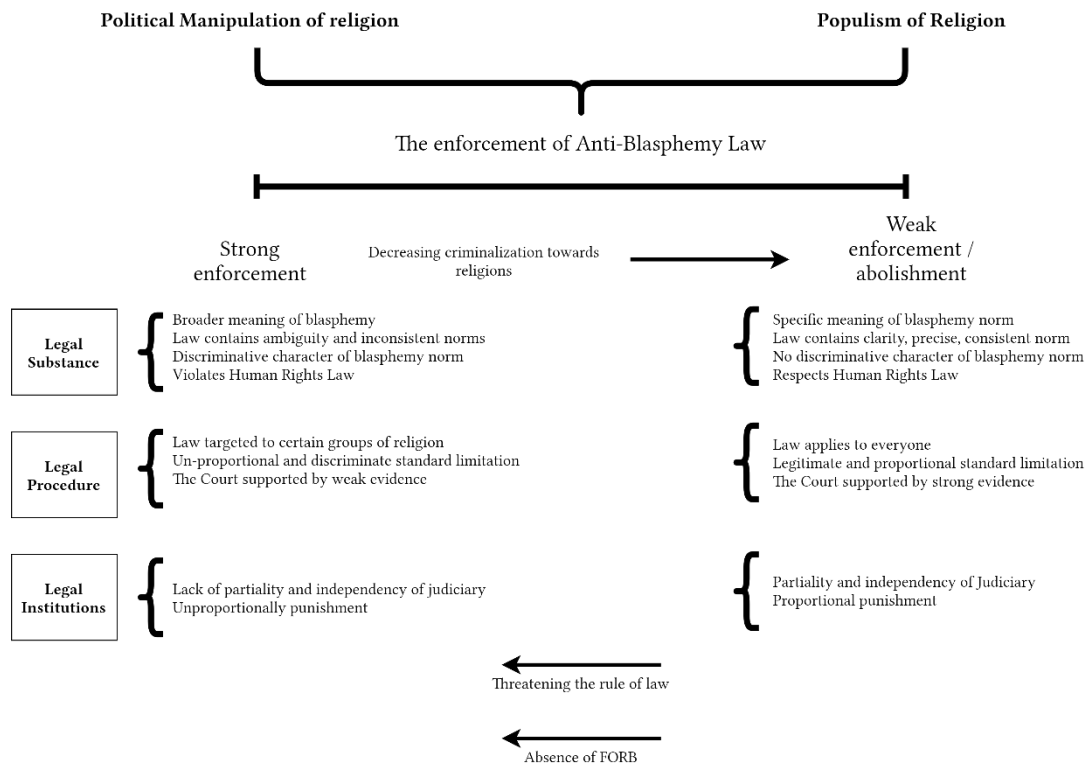
Cherian's perspective on Hate Spin differs from that of the majority of people, who believe that intolerant circumstances occur organically (p.4). Cherian believes that political opportunists deliberately manufacture hatred as a sophisticated campaign strategy to win political contests, because sensitive issues related to religion are believed to be capable of attracting the sympathy of the majority religion, thereby generating massive support and marginalizing opponents (p.5). Cherian defines hate spin as the exploitation of group identity to mobilize supporters against political opponents, where right-wing groups organize vilification or offense-giving through incitement to hatred and acceptance of offenses (indignation or offense-taking) through anger, where this anger is viewed as an acceptable violation. It is an identity-politics instrument that exploits democratic space to further an agenda that undermines democratic principles (pp. 17-19).

Cherian argues that the Internet and Google have created new opportunities for cross-border hate networks (p. 4; p. 64). Cherian picked three countries with diverse religious majorities to demonstrate that hate twists are highly probable in any religious community that overemphasizes its identity and is intolerant of other minority groups. In the United States, for instance, where the majority of the population is Christian, some aspects of religious freedom fuel worries of a real Islamic danger and subsequently disseminate anti-Muslim vitriol into mainstream politics. Cherian sees a similar situation in Indonesia, where extremist Muslim organizations continue to advocate for the eradication of sects and religious minorities under the excuse that they have tainted the religion (Islam) in order to build a growing atmosphere of intolerance. Then, in India, extremist right-wing organizations backing the politician Narendra Modi incited communal riots and academic repression in the name of defending their Hindu nationalist agenda.

Governments, according to Cherian, should safeguard vulnerable populations by forbidding incitements to prejudice and violence. However, laws that attempt to safeguard the sensibilities of believers from all offensive utterances always fail. They equipped the agency's offensive efforts with legal firepower. Antidiscrimination legislation and a commitment to religious equality would provide more effective protection for communities than mistaken attempts to shield them from shame.

This study examines the extent to which political opposition groups supported by hardline Islamic groups have used hate spin to increase the level of religious intolerance they feel by inciting a large number of people to react, become angry, and even fight it by inciting hate speech against the opponent. This study aims to refute Cherian's assertion that the hate cycle occurs because it is supported by those who fear national instability (p.22). Instead, this study indicates that law enforcement's failure to implement the rule of law opens the public to the justification or criminalization of fabricated religious blasphemers, thereby providing a support channel for hate spin.

Abandoning the conceptual framework of the three elements of the rule of law (Bedner, 2010), namely the element of legal substance, the element of legal procedural, and the element of legal institutional as depicted in the diagram below, the data are collected from court rulings, interviews, laws, and public policies that relate to the cases. First, the extent to which the legal content of the Anti-Defamation Law serves as the primary foundation for courts to determine cases based on persuasive evidence. Second, the extent to which judicial proceedings in blasphemy prosecutions are founded on a fair trial. Third, the extent to which law enforcement institutions (legal institutions) play a significant role in the administration of justice in blasphemy cases. The data will be analysed using a socio-legal approach based on Marshall's (2018) theory of political manipulation of religions in conjunction with Cherian George's (2016) hate spin theory, with a focus on how political manipulation of religions affected the enforcement of the Ahok and Meiliana cases. Consequently, it is essential to examine in depth every element of the rule of law (legal substance, procedural, and institutional); the extent to which the courts complied with it or otherwise ignored it, so that the courts are caught in a cycle of political manipulation of religion or unwittingly support the cycle of hatred through the decisions they make. The rule of law and freedom of religion in Indonesia are more at risk the more intense the judge's desire to punish, even while the legislation itself includes defective legal standards. The analysis process for these cases follows the flow chart figure 5.



### 3.6 Blasphemy Law Enforcement Fallen into Political Maelstrom

In order to understand that the law enforcement process in the Ahok as well as Meiliana cases are influenced by political manipulation of religion, the Author follows Marshall and Cherian theories to describes that ‘the Case of Ahok and Meiliana, Politics and Religion are Two Sides of a Coin’ meaning that both cases have political and religious dimensions that are interrelated and manipulated in such a way manufacturing hate-spin strategies to achieve ongoing political goals.

#### 3.6.1 Politics and religion are two sides of a coin.

Referring to Marshall's view, that “religion can be politically manipulated only if it is both present and significant enough to be manipulated”, this section analyses the extent to which the Ahok and Meiliana cases meet significant reasons to be categorized as the political manipulation of religion. So, the first thing that needs to be seen is how these two cases are related to inter-religious conflicts and related to politics, both of which are manipulated.

First, in the Ahok case, inter-religious conflicts arose at the same time as the election for the Regional Head of DKI Jakarta. Both politics and religion have significant enough influence to be manipulated. Ahok, who initially had high electability before the blasphemy case, turned around significantly, where Ahok's electability declined sharply when the blasphemy case continued to be rolled out. In fact, hard-liner Islamic groups have continually urged the court to sentence Ahok.

During the case, it was continuously marked by public pressure to punish Ahok, who was commanded by the 212 Movement led by RHA. Likewise, the Meiliana case which occurred at the same time as the DKI Jakarta Pilkada (election) due to the 2017 Simultaneous Election. In summary, the chronology of the Ahok and Meiliana cases can be described in the table 1 below:<sup>88</sup>

*Table 1. The chronology of the case of Ahok*

Time	Chronology of the case	Socio-Political Dynamics
Sept 27 <sup>th</sup> , 2016	Ahok made a working visit, made a speech in front of the people of the Kepulauan Seribu, conveyed the grouper breeding work program, alluded to the DKI Local Election of 2017.	Ahok's position as the Acting Governor of DKI Jakarta, which has been recorded since September 21, 2016, is registered as a Candidate for Governor of DKI Jakarta against his rivals Anis Baswedan and Yudhoyono in the 2017-2022 Pilkada. Ahok is paired with Drs. H. DJAROT SYAIFUL HIDAYAT, MSi as a candidate for Deputy Governor of DKI Jakarta.
Sept 28 <sup>th</sup> , 2016	The DKI City Government uploaded a video of Ahok while speaking in the Kepulauan Seribu with a duration of 1 hour 40 minutes.	
Oct 6 <sup>th</sup> , 2016		Budi Yani uploaded video footage of Ahok to various social media, with the addition of the provocative narrative "Blaming Religion". The video went viral.
Oct 6 <sup>th</sup> , 2016 – Nov 2016.	After watching Budi Yani's video (not the original video), Ahok was reported by various Islamic organizations to the Criminal Investigation Department with a total of 14 reports, on charges of blasphemy.	
October 9 <sup>th</sup> , 2016		The DKI Jakarta Indonesian Ulema Council (MUI) issued a letter of reprimand to the defendant which reads: Do not take any actions and statements or comments that can disturb the lives of the people of DKI Jakarta in general, and Muslims in particular.
October 10 <sup>th</sup> , 2016	Ahok knows that there is an incomplete narration and provocation from Budi Yani's video, but Ahok still apologizes to the public	
October 11 <sup>th</sup> , 2016	The National Police conducts Preliminary Examination of the reporting witnesses.	The Indonesian Ulema Council (MUI) issued the Religious Opinion and Attitude of the Indonesian Ulema Council number: Kep-981-a/MUI/X/2016

<sup>88</sup> See also Liputan6.com. Kronologi Ahok Ditetapkan Sebagai Tersangka. Nov 16, 2016, 11: 56 WIB. Retrieved from liputan6.com on May 16, 2022.

Time	Chronology of the case	Socio-Political Dynamics
		which essentially justifies Ahok's statement as a blasphemy of Islam and recommends to the Government and law enforcement institutions to take firm action against Ahok.
October 15 <sup>th</sup> 2016	Police carry out the case.	
October 16, 2016	Police issued a warrant for Ahok's investigation to be named a suspect.	
November 4 <sup>th</sup> , 2016		The demonstration of Defending the Qur'an was attended by 200,000 people at the Hotel Indonesia roundabout area, attended by various political figures, Chairman of the MPR Amin Rais, Deputy Speaker of the DPR Fahri Hamzah, Fadli Zon, Ahmad Dhani, religious leader Rizieq Shihab (chairman of FPI) demanded that Ahok punished. The demonstration ended in chaos, 2 residents and 79 police officers were injured. <sup>89</sup>
December 2 <sup>nd</sup> , 2016	Ahok is not arrested	The community, led by the Islamist Hardliners groups, held an Action to Defend Islam at Monas, to guard the Ahok case. The big Islamic organizations NU and Muhammadiyah did not encourage their citizens to join the demonstration.
December 13 <sup>th</sup> , 2016	Ahok was tried for the first time at the North Jakarta District Court	
December 20 <sup>th</sup> , 2016	Ahok's second trial was held.	The public demonstrated in front of the court demanding that Ahok be imprisoned. <sup>90</sup>
April 20 <sup>th</sup> , 2017	The prosecutor read out the charges with a sentence of 1 year in prison with 2 years -probation for Ahok.	
April 25 <sup>th</sup> , 2017	Ahok reads the Memorandum of Defense "Still Fighting Even though they are slandered"	
May 8 <sup>th</sup> , 2017		The Anti-Ahok action by several hard-liner Islamic organizations who are members of the United Islamic Ummah Movement continues to demand the punishment of Ahok. The speech was carried out in front of the court and threatened if Ahok was released they would carry out a revolution. <sup>91</sup>
February 17 <sup>th</sup> , 2017.		The Dhikr and Tausiah action at the Istiqlal Mosque were attended by various political figures such as the General Chair of PAN Amin Rais, Former Minister of Education M. Nuh, Governor candidate Agus Harimurti, Governor candidate Anis Baswedan, Deputy Governor Candidate Sandiaga Uno (Ahok's rival) and was also attended by former MPR chairman Hidayat Nurwahid, former Minister of the Economy Hatta Radjasa, and FPI leader Rizieq Shihab.
May 9 <sup>th</sup> , 2017	Ahok was found guilty of blasphemy and sentenced to 2 years-probation.	

<sup>89</sup> See Merdeka.com "Penyebab Demo 4 November, Tuding Pimpinan Institusi hingga Manuver Politik.", August 30, 2021. See also Detik News. 79 Polisi Terluka Saat Rusuh Demo 4 November, Paling Parah Tertusuk Bambu., Nov 4<sup>th</sup>, 2016.

<sup>90</sup> See Detik News. Masa Anti Ahok Ramaikan PN Jakarta Utara. Dec 20<sup>th</sup>, 2016.

<sup>91</sup> See Detik News. GUIB Jatim Aksi Anti Ahok, Risma Turun Tangan, May 08<sup>th</sup>, 2017.

The table 1 describes how the religious and political dimensions are strongly figure out in the Ahok case. Religious issues can be seen that Ahok's case is like a conflict between Islam and Christianity, where Ahok as a Christian is accused of insulting Islam, when criticizing the opportunist leader candidates who often take refuge behind QS Al Maidah verse 51 so that Muslims do not choose non-Muslim leaders. The hate-spin begins since Ahok's speech was uploaded; Budi Yani (the follower of Hardliner Islam) has quoted Ahok's speech with a provocative narrative that Ahok has tarnished Islam. Budi Yani, a week after the video of Ahok's speech was uploaded, uploaded a 30-second snippet plus a provocative comment and posted it on his Facebook page on Friday, October 6, 2016. The transcript of the video says: "Blame of Religion?" ...Father and Mother (Muslim voters) ...being lied to by Al Maidah...and will go to hell (you too) are deceived ... "It seems there will be something wrong with this video" By using the internet and social media, the video footage with the provocative narration went viral and succeeded in making public anger. Political brokers who have close ties to religious (Islamic) leaders and politicians use the issue that Ahok has tarnished Islam to mobilize the public with ostensibly true incitement to hatred, namely in the form of demonstrations of the anti-Ahok movement.

Political brokers, hardline Islamic groups, are indeed taking advantage of the moment with a hate spin strategy, as if Islam is being targeted by Ahok. A strategy that was sophisticated and successful enough that the Indonesian Ulema Council immediately issued a fatwa declaring Ahok blasphemy against Islam and asking law enforcement to punish Ahok. This can be seen in the real support of various politicians and their supporting oligarchs who were present at the Anti Ahok demonstrations, under the pretext of protecting Islam or Al-Qur'an. Of course, not all Islamic organizations and their followers support the movement. At least the largest Islamic organizations, namely NU and Muhammadiyah, do not recommend their members to attend the demonstrations that are held.

*Table 2. Meiliana case: list of events related to Meiliana case and its surrounding socio-political dynamics*

Time	Chronology of the case	Socio-Political Context
July 29 <sup>th</sup> , 2016	Meiliana protested to Nazir Masjid [Kasidi] about the very loud sound of Adzana from Al Maksun Mosque. "Sis, please tell the uak, lower the mosque's voice, Sis, my ears hurt, it's noisy. Sis in the past the sound of our	Meiliana is an ordinary housewife, Buddhist and of Chinese descent.



Time	Chronology of the case	Socio-Political Context
	mosque was not that big, right, now it's a bit bigger.”	
29 Juli 2016 sekira pukul 10.00 Wib	The Witness Kasidik met with the Head of BKM, SJAJUTI on Jalan Bahagia, Tanjungbalai Selatan Subdistrict, Tanjungbalai City, and said “Pak SAYUTI, the Chinese are in front of our house, how can we ask for the volume of our mosque to be reduced”. Then Witness SJAJUTI replied “yes never mind I will come to the mosque later we will talk at the mosque”	
pukul 16.00 Wib selesai	After the Azhar prayer, Witness Kasidik met with Witness SAHRIR TANJUNG and said “Er, the Chinese in front asked to reduce the volume of this mosque, his ears were noisy, what's the solution” then Witness SAHRIR TANJUNG replied “yes, we'll let you know later, Mr. Lobe and Mr. Dai Lami”	
Pukul 19.00 wib	After Maghrib Prayer, Witness Kasidik met with Mr. ZUL SAMBAS, Witness HARIS TUA MARPAUNG aka PAK LOBE and Witness DAILAMI then Witness Kasidik said “how is this China in front asking for the volume of the mosque to be turned down” then Mr. ZUL SAMBAS, Witness HARIS TUA MARPAUNG Alias PAK LOBE and Witness DAILAMI answered “let's go to his house”,	
	Isya prayer, the husband of the Defendant, Witness LIAN TUI, came to the mosque to apologize but at that time the people around were telling stories to each other so that the community became crowded.	
21.00 Wib	Witness SJAJUTI Alias SAYUTI together with the Head of the Environment came to the Defendant's house and took the Defendant to the Kelurahan Office.	At around 23.00 WIB, the people were crowded and shouted “burn... burn” then shouted “Allahu Akbar, Allahu Akbar” and because of the Defendant's actions, Witness ALRIFAI ZUHERISA Alias ALDO and Witness BUDI ARIYANTO along with other masses damaged the Defendant's house and the monastery / Pekong in Tanjungbalai City.
2 Desember 2016		Witness HARIS TUA MARPAUNG, Witness Drs. DAILAMI, M.Pd. and Witness Rifai made a Statement Letter dated December 2, 2016, regarding asking the Police to conduct an investigation against Ms. MELIANA who we considered to have committed harassment, blasphemy and expressed hatred towards Islamic Religious Worship activities at Masjid Al-Maksum Jalan Karya Tanjungbalai and signed at on the stamp of six thousand.
14 Desember 2016,		The United Independent Student and Community Alliance (AMMIB) submitted a letter to the Chair of the MUI Tanjungbalai City with Letter Number: Ist/038/B/AMMIB-TB/XII/2016 dated December 14, 2016, regarding Requesting Audiences and MUI Fatwas Regarding Allegations of

Time	Chronology of the case	Socio-Political Context
		Religious Blasphemy. By An Ethnic Chinese Named MELIANA.
19 Desember 2016		Tanjung Balai City MUI has held a meeting of the DP Fatwa Commission. MUI Tanjungbalai City and decided to request a fatwa from the DP. MUI North Sumatra Province for the blasphemy by issuing Letter Number: A.056/DP-2/MUI/XII/2016
14 Desember 2016		United Independent Student and Community Alliance (AMMIB) Number: Ist/038/B/AMMIB-TB/XII/2016 dated 14 December 2016, Request an Audience and MUI Fatwa related to blasphemy committed by an ethnic Chinese named MELIANA
	Paused	
January 24 <sup>th</sup> , 2017		The Tanjung Balai MUI Commission refused to issue Meiliana's Fatwa. However, the hard-liner Islamic groups FUI, HTI, Al-Washilah, AMMIB continue to press the FATWA of the INDONESIA ULAMA ASSEMBLY (MUI) in NORTH SUMATERA Province Decree Number: 001/KF/MUI-SU/I/2017 dated January 24, 2017, regarding blasphemy of the Islamic religion BY SUDARI MELIANA IN TANJUNGBALAI CITY and recommends law enforcement to carry out legal proceedings.
August 13 <sup>th</sup> , 2018	Public Prosecutor started to prosecute Meiliana under the letter No. Reg. Case: PDM-05/TBALAI/05/2018 dated August 13, 2018.	The Meiliana case coincided with the Anti Ahok action in the Jakarta Local Election. Various anti-blasphemy movements are ongoing and have influenced the legal process in the Meiliana case.
August 21st, 2018	Verdict 1612/Pid.B/2018/PN Mdn, Meiliana is guilty of "committing a criminal act intentionally in public to express feelings or commit an act which is essentially hostile, abuse or blasphemy against a religion professed in Indonesia [...] with a sentence of imprisonment for 1 (ONE) YEAR 6 (SIX) MONTHS reduced while the Defendant is in temporary detention." <sup>92</sup>	
27 Agustus 2018.	The Defendant's Legal Counsel has submitted a request for an appeal as stated in the Deed of Appeal made by the Registrar of the Medan District Court Number 200/Akta.Pid/2018/PN Mdn	
Kamis, tanggal 25 Oktober 2018	The High Court upheld the decision of the Court of first instance. Considerations of the Court of First Instance are taken over and considered by the Court of Appeal. <sup>93</sup>	Various agencies sent Amicus Currie for the court to consider not convicting Meiliana: Letter from the Indonesian Judicial Monitoring Society (MaPPI) Faculty of Law, University of Indonesia (FHUI) Number 258/UN2.F5/MaPPI/BI/IX/2018

<sup>92</sup> See Court Decision No. 1612/Pid.B/2018/PN Mdn

<sup>93</sup> See Court Decision Nomor 784/Pid/2018/PT MDN, p. 15.

Time	Chronology of the case	Socio-Political Context
		<p>dated September 10, 2018, regarding the submission of the Amicus Curiae. Letter from the Institute for Criminal Justice Reform regarding Non-Criminal Complaints, published in September 2018.</p> <p>Letter from the Indonesian Women's Coalition (KPI) Number 160/RKP/KPI_SETNAS/IX/2018 dated 29 September 2018 regarding the delivery of Amicus Curiae.</p> <p>Letter from the Coalition of Civil Society Concerns for Tolerance, Promotion of Human Rights and Equitable Development, dated 26 September 2018, regarding Amicus Curiae's Cover Letter.</p> <p>Letter from the Islamic Community Alliance (AUI) of Tanjung Balai City, Number: Istimewa/013/B/AUI-TB/IX/2018 dated 17 September 2018 regarding Introduction.</p> <p>Letter from the Commission for Disappeared Persons and Victims of Violence (KontraS) Number: 421/SK-KontraS/X/2018 dated October 12, 2018, regarding File Amicus Curiae;</p>
March 27, 2019	Meiliana's Cassation Application was rejected by the Supreme Court. Decision No. 322/K/PID/2019	

Source: Cited from various sources by the Author

The table 2 shows that political conditions that are quite boiling in Jakarta, have flowed unstoppably around the Meiliana case which emerged at almost the same time as the Ahok case. At least the table 2 also explains how the Meiliana case has a religious as well as political dimension, so it was played for the sake of the regional elections in Medan. Meiliana, who only protested to the loud sound of the call to prayer, was twisted as if Meiliana, a Chinese Buddhist, forbade the call to prayer in the mosque. This spin of hatred very quickly inflames public anger even within hours. The apology from Meiliana's husband and the mediation that was held failed to resolve the conflict. The MUI, which initially refused to issue a blasphemy fatwa by Meiliana, finally succumbed to the wishes of political brokers because they felt that Islam had been polluted.

In general, cases of blasphemy involving religious leaders or figures end with the perpetrator apologizing to the public.<sup>94</sup> But Ahok and as well as Meiliana are different

<sup>94</sup> For example, Sukmawati, she is the younger sister of Megawati Soekarno Putri (former president of the Republic of Indonesia). Sukmawati was twice accused of blaspheming Islam because first, in 2018, she read a

cases. Ahok's apology, which was made on October 10, 2016, did not get acceptance in the public's heart, this was marked by the ongoing reports of accusations of blasphemy or blasphemy against Ahok. While Meiliana, her husband, Lian Tui was asking for apologize to Islamic societies in the Mosque, but angered mass continues to damage of Meiliana's house and several Buddhist temples.

It is difficult to say that the complainants had no political motivation to defeat Ahok in the DKI Jakarta local election.<sup>95</sup> Even though Ahok had opposed this when stating his testimony in court. Many people think that the Ahok case is political. For example, the day after Ahok was named a suspect, the DPRI proposed the right of inquiry to revoke Ahok's nomination as a candidate for governor in the 2017 election.<sup>96</sup> Every effort was made by political brokers so that Ahok was found guilty by the court. While Ahok had opposed it when he gave his testimony in court and said that he had no intention of insulting or tarnishing Islam. But the Ahok case was spined in such a way with various hatred to convince the public that Islam had become a victim of blasphemy. Incitement to hatred was then carried out by political brokers, gaining support from politicians and clerics, mobilizing the masses to conduct anti-Ahok demonstrations so that Ahok was punished. Apart from the fact that Anis Baswedan was a good Candidate for Governor, Ahok's punishment would bear sweet fruit for

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poem entitled "Indonesian Mother" at the 29th anniversary event Anne Avantie Berkarya has been accused of blaspheming Islam where Sukmawati said that the bun is more suitable for Indonesian women than the hijab. Second, in 2019 Sukmawati was again reported to have committed blasphemy because she answered a question in a forum about which one is better Al Quran or Pancasila as well as comparing the Prophet Muhammad and Soekarno. Both the first and second cases were both reported to the Criminal Investigation Department as a criminal act of blasphemy (Islam). However, Criminal Investigation Agency (BAREKRIM) closed the case by stopping the investigation because it did not have sufficient preliminary evidence. See [Tempo.co.id.Penyelidikan Kasus Puisi Sukmawati dihentikan, ini alasan polisi.](https://nasional.tempo.co/read/1098712/penyelidikan-kasus-puisi-sukmawati-dihentikan-ini-alasan-polisi) <https://nasional.tempo.co/read/1098712/penyelidikan-kasus-puisi-sukmawati-dihentikan-ini-alasan-polisi> (accessed on June 19th, 2022). See also [mysharing.co. Kasus Dugaan Penghinaan Nabi oleh Sukmawati Dihentikan.](http://mysharing.co/kasus-dugaan-penghinaan-nabi-oleh-sukmawati-dihentikan-tidak-adilnya-hukum-di-negeri-ini-semakin-jelas/) <http://mysharing.co/kasus-dugaan-penghinaan-nabi-oleh-sukmawati-dihentikan-tidak-adilnya-hukum-di-negeri-ini-semakin-jelas/> Meanwhile, a well-known cleric, Ustad Abdul Somad, who said "The cross is inhabited by the genie of the heathen, because of the statue that hangs on it. Likewise, the red cross symbol on the ambulance, it's an infidel' symbol" for answering questions from the recitation participants was finally reported to have tainted Christianity. UAS was not willing to apologize, but MUI appealed to the Police Chief not to punish UAS and take non-legal or familial paths. See also <https://www.medcom.id/nasional/hukum/5b2Gjmek-polisi-tolak-laporan-dugaan-penistaan-agama-terhadap-abdul-somad>

<sup>95</sup> See Kompas.com. Ahok-Djarot Resmi Jadi Cagub dan Cawagub. Retrieved at <https://megapolitan.kompas.com/read/2016/10/24/17044601/ahok-djarot.resmi.jadi.cagub-cawagub>. (Accessed on June 19th, 2022).

<sup>96</sup> See Kompas.com. Kasus Ahok Memunculkan Dinamika Hak Angket Di DPR. Retrieved from <https://nasional.kompas.com/read/2017/02/14/07441161/status.ahok.munculkan.dinamika.hak.angket.di.dpr>. (Accessed on June 19th, 2022).

Anis Baswedan's victory. Blasphemy as a tool to get rid of Ahok can be said to be very successful.

Marshall argues that in the process of political manipulation of religion, it is usually due to the support and large role of religious leaders where this role gets quite significant support from groups, most of whom do not fully understand the essence of religion. In addition to what Marshall said, this study also finds additional indicators. The Author argue that it is not enough just to see how religious leaders support in manipulating religious issues for political purposes, but it is important to evaluate to what extent the courts are powerless to maintain their independency and impartiality when facing political or public pressures and how this situation force into court processes and decisions to become far from the principle of the rule of law and fair trial.

The process of law enforcement in the Ahok case starts from reporting until a court decision has permanent legal force. Ahok's case was reported by the Indonesian Ulema Council (MUI) South Sumatra, Habib Novel Chaidir Hasan, was reported to the Criminal Investigation Agency (Bareskrim) LP/1010/x/2016 on charges of violating Article 156a of the Criminal Code in conjunction with Article 28 paragraph (2) of Law Number 11 2008 concerning Electronic Transaction Information with the threat of five years in prison.<sup>97</sup> Then followed by Muhammadiyah Youth who participated in reporting Ahok with the report number TBL/4846/X/2016/PMJ/Dit Reskrimum. 2016/PMJ/Directorate of Crime.<sup>98</sup> Ahok was accused of blaspheming Islam because of his statement:

*"[...] this [local] election is being pushed forward, so if I am not elected, I will stop it in October 2017 so if we run this program well, ladies and gentlemen, even though I am not elected as governor, this story will inspire you, so it doesn't matter. Don't worry, ah... later if you don't vote, Ahok's program will be disbanded, no... I'm until October 2017, so don't trust people, you can just in your heart you can't choose me, right? right, being lied to using Al-Maidah 51, various kinds of things are the rights of parents, so if you feel you can't be elected because I'm afraid to go to hell because of being fooled like that, it's okay papa, because this is your personal call, ladies and gentlemen, this program just goes on, So ladies and gentlemen, you don't have to feel bad, in your*

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<sup>97</sup> See BBC Indonesia. Pelaporan Ahok Atas tuduhan menghina agama dan pemilu. October 2016. Retrieved from [bbc.com](http://bbc.com).

<sup>98</sup> See Kompas.com. Ahok Dilaporkan Dua Organisasi ke Polda Metro Jaya. October 7th, 2016. 19:20 WIB.

*conscience you can't choose Ahok, you don't like Ahok, but if you accept the program, it's not good, so I owe you a debt of gratitude, don't you have a bad feeling, you'll die slowly from a stroke."*

Ahok's statement, which was a criticism of a political figure who abused Surah Al-Maidah verse 5 to defeat a non-Muslim leader candidate, was processed in such a way that it must be used as a tool to bring the case to court. So Ahok got a criminal sanction. So Ahok lost in the political contestation for the governor election. This can be seen from the first, as in the previous explanation, how religious (Islamic) leaders continue to persuade the public and declare Ahok as a perpetrator of blasphemy, who deserves to be punished. Second, how did the same attitude not occur when Ahok's criticism with a similar substance was written in a book published several years earlier, where there was no political context that prompted Ahok to question Ahok on the issue of blasphemy. This is where the spin of hatred finds its momentum.

The politicization of the Ahok case strengthened, when the law enforcement process continued to be intervened with various demonstrations urging the court to punish Ahok. The politicization of Ahok's blasphemy case reached its peak when a demonstration was held and was attended by various political and religious figures. Even the largest Islamic organizations in Indonesia, namely Muhammadiyah and NU, indicated that the 212 Demo has "political intention".

*"PB NU institutionally did not participate in this movement. This means that all NU members (nahdlyin) remain calm and do not participate in this movement. We have our way (own)."*<sup>99</sup>

Second, in the case of Meiliana, the conflict between religions depicted is between Buddhism as a representation of Meiliana and Islam. Meiliana's case emerged when Meiliana was accused of blasphemy against Islam after she complained about the loud sound of the Adhan coming out of the prayer room in front of her house. Meiliana complained that Toa's voice was so loud that he and his family were disturbed. The complaint was submitted to one of the managers of the mosque. However, this criticism was met with the opposite, where Meiliana was accused of blaspheming religion. The movement against Meiliana ensued. The movement to

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<sup>99</sup> Sekretaris Jenderal Pengurus Besar NU, Helmy Faishal Zaini. BBC News. "Bersifat Politis", NU dan Muhammadiyah tidak ikuti Aksi 212 di depan DPR. February 17th, 2017.

demand that Meiliana be punished continues to be mobilized by mass organizations even though the Meiliana case does not have enough evidence.

Law enforcement's scepticism was evident from the time the investigation process in the Meiliana case was stopped for two years because the police did not have enough evidence to make her a suspect. However, after the MUI intervened in the law enforcement process with the issuance of the FATWA OF THE INDONESIAN ULAMA ASSEMBLY (MUI) NORTH SUMATERA Province Decree Number: 001/KF/MUI-SU/I/2017 dated January 24, 2017, regarding blasphemy of ISLAM BY MELIANA SAUDARI IN THE CITY TANJUNGBALAI and recommended law enforcement to punish Meiliana. Then suddenly the Public Prosecutor No. Reg. Case: PDM-05/TBALAI/05/2018 dated August 13, 2018. Weak evidence in the Meiliana case, and the fact that Meiliana did not fulfil the element of intent to desecrate the religion [Islam] was in fact ruled out by the Court be it PN, PT, or the Supreme Court. The public was angry and burned several Buddhist temples in the area.

Political dimension appeared when the Meiliana case coincided with the local election agenda. Meiliana's protest because of the loudly volume of Adzan sound to the Mosque staff, which was originally only for internal staff, has gone viral and caught the public's attention. Peace efforts attempted by the National Commission for the Protection of Women did not bring good results. The act of vigilantism was regretted by the leader of the Muhammadiyah, Haidar Nazir, as a representative of moderate Islam. Nazir appealed to the public to have a mature attitude in dealing with inter-religious conflicts. Nazir gave an example that in the case of Meiliana, people who criticize about the sound of the call to prayer being too loud and disturbing should not be treated as a form of blasphemy against religion.

*"However, we as religious people need to maintain tolerance in living in a pluralistic society. However, Nazir also deplored the unfair attitude of the people, when criticizing the sound of the call to prayer on the one hand but not criticizing the sound of loud music. But Nazir gave the view that when Meiliana's case had gone to court, then Muhammadiyah would respect whatever the court's decision was."*

The hate spin as stated by George (2016) has occurred in the Meiliana case. Meiliana, who initially only protested that the call to prayer was too loud and asked to be lowered directly in a private room to the mosque staff, has been twisted by elements who did not hear Meiliana's complaint directly with the statement that

“There is a Chinese forbidding the call to prayer” thus sparking the anger of the people who in the end they attacked, damaged, and burned a number of Chinese houses of worship in Tanjung Balai. In addition to the hate-spin, the Court is also trapped in identity politics, where apart from the Court not having strong evidence about Meiliana's remarks that tarnished religion (Islam), the Court only relies on the evidentiary process from witnesses who did not hear and see what happened, as well as the MUI Fatwa which non-binding. Meiliana without sufficient evidence was sentenced to 1 year and 6 months in prison, while the vandals and looters of the monastery were only sentenced to between 1-4 months in prison. A fair justice system has also been ruled out by the Court.

From the view of the leadership of Muhammadiyah, it shows that the role of the court to enforce laws that contain justice, benefit, and legal certainty is the central point in deciding blasphemy cases. The professionalism and impartiality of the court in upholding the principle of the rule of law is the spearhead to assess whether the court is sterile from political influence outside the court or on the contrary, the court is involved in a political vortex that surrounds cases of blasphemy. At least A'yun (2020) and Tyson (2020) in their study both confirmed that there was political manipulation in the blasphemy case in the Ahok and Meiliana cases. This study corroborates their findings by adding new findings on how the court entered the vortex of power politics when enforcing the Anti-blasphemy Law in the Ahok and Meiliana cases.

Thus, if we refer to Marshall's view that both the Ahok case and the Meiliana case have a political dimension as well as a religious dimension. In addition, political manipulation of religion occurred where the court's decision significantly brought benefits to certain political forces where the imprisonment of Ahok and Meiliana in their respective cases significantly brought victory to Ahok and Meiliana's rivalry in the ongoing political contestation. However, to examine in depth the extent to which the court is involved in the vortex of political manipulation of religion, the next study will explain how Ahok and Meiliana were charged by the Court with a law that substantially contains legal defects. Second, how the court found them guilty of blasphemy without the support of sufficient evidence. Third, how the court bases its



decision to punish the defendant by relying on the legal considerations of a non-legal institution [MUI] without compiling its own legal considerations.

### 3.6.2 Accusing the blasphemy perpetrators under discriminatory law

This section examines how ambiguous regulations can open space or become a channel for political manipulation of religion, namely by managing hate spin. Ahok and Meiliana are just two of hundreds of people in Indonesia who have been convicted under the Anti-Blasphemy Law (2019).<sup>100</sup> Law enforcement of the Anti-Defamation of Religion Law continues to attract public attention because this Law is considered to have weaknesses, especially when the Ahok and Meiliana cases are rolling, the Constitutional Court of the Republic of Indonesia has stated in its *ratio-decidenti* that the Anti-Defamation Law contains legal norms that have multiple interpretations because “[...] the Court is of the opinion says that the Anti-Blasphemy Law [...] in terms of the form of regulation, formulation, prevention-legal rules need to be perfected.”<sup>101</sup> The Constitutional Court also provides the view that the Anti-Defamation Law needs to be revised, especially on articles that have multiple interpretations so that they do not cause interpretations by law enforcement subjects which in the end can discriminate against certain religious groups.<sup>102</sup> Although the Constitutional Court of the Republic of Indonesia on the one hand stated that the Anti Blasphemy Law was constitutional or did not conflict with the 1945 Constitution of the Republic of Indonesia,<sup>103</sup> the Constitutional Court also acknowledged that the Anti Blasphemy Law had multiple interpretations.<sup>104</sup> This was also conveyed by one of the judges of the Republic of Indonesia who stated that:

*“The Constitutional Court, as explained in its Decision Number 140/PUU-VII/2009, states that the substance of the Law on the Prevention of Blasphemy of Religion is in line with and does not conflict*

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<sup>100</sup> See also Amnesty International (2019). Prosecuting Beliefs in Indonesia. <https://www.refworld.org/pdfid/547593d04.pdf>

<sup>101</sup> See the *Ratio Decidenti* of the Constitutional Court Decision Number 140/PUU-VII/2009, p.298.

<sup>102</sup> See also Various legal experts who stated that the Anti-Defamation Law, both in a formal and material scope, in order to have clear elements so as not to cause multiple interpretations in practice were also supported by legal experts such as Andi Hamzah, Azyumardi Azra, Edy OS Hiariej, Emha Ainun Nadjib, Siti Zuhro, Jalaludin Rakhmat, Ahmad Fedyani Saifuddin, Taufik Ismail, and Yusril Ihza Mahendra and the Constitutional Court agree on this even though they do not have the authority to do so. Ibid., p. 304-305.

<sup>103</sup> Ibid., p.306.

<sup>104</sup> Ibid, p. 304-305.

*with the constitution, but in terms of the form of regulation, formulation, legal rules need to be improved.”<sup>105</sup>*

The MKRI judge in the interview also admitted that in various decisions related to the judicial review of the Anti-Defamation Law, the MKRI indicated that the law had multiple interpretations. In this case, the Constitutional Court Judge is of the view that:

*“Regarding the existence of multiple interpretations of the UUAPA [Anti-Blasphemy Law] because the law is a product of the past that still uses terminology at the time the product was formed. However, this does not mean that the UUAPA material is unconstitutional. It remains only to encourage lawmakers to hasten changes to the UUAPA in accordance with the development of current needs”.<sup>106</sup>*

The ambiguity of the Constitutional Court's decision has made the legislative body, the House of Representatives of the Republic of Indonesia, not feel it is important to amend the Anti-Defamation Law. So that since the Constitutional Court's decision Number 140/PUU-VII/2009 or for a decade and a half until now, there has been no attempt by the DPR to make immediate changes to the Anti-Defamation Law. The impact is that the Ahok case that occurred in 2016 and the Meiliana case that occurred in 2017, both occurred after the Constitutional Court's decision, criminalization of both still occurred. Thus, both Ahok and Meiliana were charged with blasphemy against religion but were processed using the articles of the Anti-Defamation Law which had multiple interpretations.

This is very unfortunate by human rights and religious freedom activists in Indonesia. They have made various efforts to annul Article 156a of the Criminal Code, which is an article that is often used by prosecuting perpetrators of blasphemy, including the articles that Ahok and Meiliana are accused of. The Director of LBH Jakarta, Alghiffari Aqsa, stated that:

*“The use of Article 156a of the Criminal Code against Ahok is ironic but real, the DPR and the Government have not complied with the recommendations of the Constitutional Court's decision and the judicial review of the Anti-Defamation Law (UU No.1/ PNPS/1965)*

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<sup>105</sup> Written interview with an anonymous Judge of the Constitutional Court of the Republic of Indonesia on 23 February 2022.

<sup>106</sup> Ibid.

*which became the basis for the birth of Article 156a of the Criminal Code concerning blasphemy”<sup>107</sup>*

According to Alghiffari, in terms of substance, Article 156a of the Criminal Code has multiple interpretations, so its use should be avoided to criminalize someone.

The question is, why do both MKRI and LBH Jakarta say that the Anti-Defamation Law has multiple interpretations? Although the Constitutional Court did not provide detailed reasons for this, or only simply saw this because the Anti-Defamation Law is an old legal product, at least the consequences of an old product are substantially irrelevant to the current laws and regulations. This applies in Indonesia, including the articles in the 1945 Constitution which have been amended and various human rights instruments that have been ratified by Indonesia.

The author in this case will analyse to what extent the Anti-Blasphemy Law, particularly in Article 156a of the Criminal Code has multiple interpretations and how does this potentially give rise to acts of discrimination against the followers of minority religions, particularly in Ahok and Meiliana case? Looking at the political background of the two cases, Ahok and Meiliana, to answer whether law enforcement in the blasphemy case against Ahok and Meiliana is influenced by religious manipulation of politics? One of the indicators found in this study is firstly that both Ahok and Meiliana were indicted by the Anti-Defamation Law, which has been declared by the Constitutional Court of the Republic of Indonesia as a multi-interpretation law, so that if enforced, it can lead to discriminatory actions (Pratiwi, 2021). The word “blasphemy” has a broad and ambiguous meaning (Crouch, 2011). It is regulated in six provisions namely in Article 156a Criminal Code *juncto* in Article 4 of Law No. 1/PNPS/ 1965, in Article 156a of the Indonesia Criminal Code, and in Article 27 and 28 (2) of the Law of EIT.

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<sup>107</sup> On April 15, 2007, the Jakarta Legal Aid Institute launched the Amicus Curiae (the friends of Court) in the case of alleged blasphemy against Ahok. See LBH Jakarta. April 15, 2017. LBH Jakarta Ajukan Diri Sebagai Amicus Curiae Kasus Dugaan Penodaan Agama. Retrieved from <https://bantuanhukum.or.id/amicus-curiae-pada-perkara-penodaan-agama-sdr-basuki-tjahaja-purnama-alias-ahok/> accessed on 17th June 2022. See also Tempo.co April 15, 2017. In Ahok’s blasphemy case, LBH Jakarta Defends Ahok. Retrieved from <https://en.tempo.co/read/866518/in-ahoks-blasphemy-case-lbh-jakarta-defends-ahok>; Accessed on 17th June 2022.

*Table 3. Definition of blasphemy under various positive laws.*

<b>Border definition of blasphemy under various regulations</b>	
(1)	whoever intentionally in public interpreted established religions or act resemble the main doctrine of professed in Indonesia, <sup>108</sup>
(2)	deliberately express <sup>109</sup> hostility, hate, or insult feelings or committing acts against the religions professed in Indonesia, <sup>110</sup>
(3)	deliberately express hostility with the purpose to convince people do not adhere any religion professed in Indonesia, <sup>111</sup>
(4)	engage hostile action, exercise non-believing of God,
(5)	without right distributes and/or transmits and/or makes electronic information and/or documents accessible that contains insulting and/or defaming content. <sup>112</sup>
(6)	Deliberately and without right disseminates information aimed to inflict hatred on individuals and/or certain groups or community based on ethnic groups, religions, races, and inter-groups. <sup>113</sup>

Sources: Cited from various regulations, namely Law No. 1/PNPS/ 1965, in Article 156a of the Indonesia Criminal Code, and in Article 27 and 28 (2) of the Law of EIT.

First, the definition of blasphemy in Indonesia is very broad and ambiguous in which open interpretation could be done by the law enforcement (Crouch, 2015). In Indonesia, blasphemy under Article 156a Criminal Code has five elements: (i) whoever, (ii) intentionally (Lamintang, 2003) ,<sup>114</sup> (iii) express feelings or committing acts (iv) in public (v) insult or defame against religion professed in Indonesia; The first element (i) “whoever” means that the law can be applied to every subject of law that is “a human being”. Anyone can be a suspect in an act of blasphemy. But this element is covered by the fifth element “insult or defame feelings or committing acts against established religions.” The fifth element (v) insult or defame against established religions becomes an ambiguous clause because the definition of the word “express feelings” is not given by the Law No. 1/PNPS/1965. This interpretation then become a

<sup>108</sup> See Article 1 of the Law No. 1/PNSP/1965 states that: “Every person is prohibited from intentionally in public to recount, recommend, and strive for public support, to conduct an interpretation on a religion that is adhered to in Indonesia or to perform religious activities that resemble religious activities from the central doctrines of a religion”.

<sup>109</sup> The word ‘express’ here could be in spoken or written or else. See Article 156a of the Indonesia Criminal Code.

<sup>110</sup> See Article 156 of the Indonesia Criminal Code states that: “Whoever in public express a sentiment of hostility, hate or insult against one or several groups of the people of Indonesia, faces imprisonment of as long as four years or a fine of at most four thousand five hundred rupiah.”

<sup>111</sup> See Article 4 of the Law No. 1/PNPS/1965

<sup>112</sup> See Art. 27 (2) of the EIT Law

<sup>113</sup> See Art, 28 (2) of the EIT law.

<sup>114</sup> In most cases to define the word “intentionally” the Court refers to the explanatory of Memorandum (Memorie van Toelechitn/ MvT) of the Criminal Code in which a person can be found to have intent if they deliberately purposed to commit an act willingly and knowingly and the outcome brought about by the act”. see also several court decisions of blasphemy cases in Indonesia.

monopoly of the majority religion through the decision of the MUI or other policies. In this sense, the definition of the word “insult or defame” becomes very subjective and bias.

In the case of Ahok, the second element, the element of intentionality, is an element that cannot be proven in the second case. First, in the Ahok case, the court simply took the contents of the MUI Fatwa aside and ignored the fact that the Prosecutor could not prove the element of intent and the fact that the witnesses presented were incompetent because they did not see and hear Ahok's speech in the Kepulauan Seribu. Public prosecutor in Ahok case violated Article 156a of the Criminal Code, namely “intentionally publicly expressing feelings or committing acts which are essentially hostile, abuse or blasphemy against a religion professed in Indonesia”.

The Public Prosecutor, including the court, ignored the Constitutional Court's decision which indicated that the contents of Article 156a of the Criminal Code have multiple interpretations because the measure is emotional and only protects the religion professed in Indonesia, which is interpreted as limited to 6 religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism (Pratiwi, 2021). This shows that judges of Criminal Court in Ahok case are less professional in understanding the *erga omnes* nature of MKRI's decisions that should be considered by all state institutions, including the Criminal Court. In fact, in Ahok case, the Criminal Court have continued to apply Article 156a of the Criminal Code which has multiple interpretations to indict Ahok.

Furthermore, the court ignored the “intentional element” to insult or defame, which should be the main element that must be proven to declare someone guilty. Legal facts appeared at the trial found that Ahok had no intention to insult Islam or Ulama. Ahok has explained in detail how his life and daily life are close to Islam, and he respects Islam very much. Ahok admitted that his speech, which was cut in part from his whole speech of 1 hour 40 minutes, meant to criticize prospective leaders who misused Surah Al-Maidah verse 51 in their campaign so that people would not vote for a leader candidate like him (Chinese-Christian). The same thing has been written in his book entitled Changing Indonesia. In this case, Ahok conveyed his knowledge and experience when Surat Al-Maidah was used as a tool by certain individuals to win elections, to gain power so that people did not choose non-Muslim

leaders, like him because they were unable to compete with the vision, mission of the program and their integrity. So according to Ahok, the political campaign methods that hide behind the sanctity of Surah Al-Maidah verse 51 are the context in which Ahok criticizes religious manipulation for political purposes.<sup>115</sup>

*[....] I didn't say insulting the Koran, I didn't say the Koran was stupid, I said to the people of Pulau Seribu, don't be fooled by cowardly racists, do you think if you say now, use that holy verse to not vote for me, please no Don't vote for me, my experience in 2003 was in politics, I found political opponents who were racist and cowardly always used that verse to fool people not to vote for me, so there is something wrong in the Quranic verse, it's not in the wrong context, that's not the context, don't vote for Christians. jews are your friends your friends, it has been translated so you say I interfere in religion, my religious affairs are elementary school junior high school for nine years so I found many racists and cowards using holy verses in the Koran, it means it's not like that it's played out like that or for example there are cowardly racists from the Christian side, he also uses a verse I forgot in the Bible what he said this, ki You have to help everyone, especially brothers and sisters in the faith. It's also used to fool Catholic Christians in the church, so they don't vote for non-Christians and non-Catholics, that's what I mean by what I said to the people on Pulau Seribu, so there are Christians too, so that's what I mean. when we talk, I want to ask ISIS is it fooling us with different verses, it's clear that if we say ISIS is heretical, fooling people who are misled by the Koran, are we insulting the Koran, insulting the Koran, which is a mockery of ISIS? That cowardly racist who insults the holy book of the Koran because the Koran never teaches Islam like that, Islam teaches so peace can accept us not being the leader of the imam, this is the administrator of the story of the prophet Muhammad. What the Defendant meant was to cut it out, try to take the video in full. The Defendant told the people of Pulau Seribu not because the Defendant is doing 80 20 business for fish farming, later you are bound to have to choose the Defendant.<sup>116</sup>*

On the other hand, all witnesses are not in favour of Ahok,<sup>117</sup> including MUI, because they are incompetent witnesses which they did not hear, see, or attend in person when Ahok gave a speech.<sup>118</sup> The witness only watched a short video that had

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<sup>115</sup> See Ahok, *Merubah Indonesia.*, p.40

<sup>116</sup> See the Court Verdict p.557-558.

<sup>117</sup> The Reporting Parties and Witnesses are Witness Habib Novel Chaidir Hasan, Witness Muchsin alias Habib Muchsin, Witness Gusjoy Setiawan, Witness Syamsu Hilal, S.Sos., Witness Pedri Kasman, SP., Witness Hj. Irena Handono, Witness Muh. Burhanudin, Witness H. Williyudin Abdul Rasyid Dhani, S.Pd., Witness Muhammad Asroi Saputra, Witness Iman Sudirman, Witness Ibnu Baskoro, and the late Witness Drs. Nandi Naksbandi, MA.

<sup>118</sup> See the testimony of the Witnesses in court in the verdict.

been cut by Budi Yani and the provocative narration affixed in the video “Defamation of Religion”. Budi Yani, a week after the video of Ahok's speech was uploaded, uploaded a 30-second snippet plus a provocative comment and posted it on his Facebook page on Friday, October 6, 2016. The transcript of the video says: “*Blame of Religion?...Father and Mother (Muslim voters)...being lied to by Al Maidah...and will go to hell (you too) are deceived...*”<sup>119</sup> In an open dialogue organized by the Indonesia Lawyers Club on TVOne on Tuesday, (11/10/2016), Budi Yani said “*I admit my mistake, in my transcript I was 'deceiving by using'. So that's the word that's not in my transcript*”.<sup>120</sup> Other witness in favour of Ahok also presented these facts at the trial and the expert's statement. Academic analysis was also submitted by various institutions within the *Amicus Curiae* which was sent to the court during the trial. But the panel of judges did not consider this at all. The Court supported the other Witnesses against Ahok who were interpreting the original Ahok's sentence, “don't get fooled by someone, using the surah Al-Maidah verse 51” [“*Jangan mau dibohongi orang, pakai Al-Maidah Ayat 51*”]<sup>121</sup> and cut off the sentence into “get fooled by Surah Al-Maidah Verse 51” [“*Dibohongi oleh Surat Al-Maidah Ayat 15*”], where the phrase “don't get fooled by someone” which refers to some politicians was removed, and the word “using” which indicates that Al-Maidah is being misused by politician, also got deleted. In addition, the witnesses also stated that the word “someone” was interpreted subjectively as “the Ulama”, so that Ahok was accused of not only insulting the Qur'an but also insulting the Ulama.<sup>122</sup> At trial, the witness admitted that this interpretation was their subjective interpretation, without confirming it with Ahok. Thus, Ahok has been charged with Article 156a which has multiple interpretations so that either the element of intentionality or the element of insulting feelings is interpreted subjectively by the Court. In the case of Meiliana, she also has the same fate as Ahok. Meiliana was charged with Article 156a of Criminal Code for committing blasphemy, because

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<sup>119</sup> See Herianto Batubara, Budi Yani Akui Salah Transkrip Ucapan Ahok Soal Surat Al Maidah Ayat 51. <http://www.analisariau.com/2016/12/pengakuan-mengejutkan-budi-yani-saat.html> accessed June 19th, 2022.

<sup>120</sup> See Analisis Riau.com. Pengakuan Mengejutkan Budi Yani Saat Hadir Di ILC. Retrieved from <http://www.analisariau.com/2016/12/pengakuan-mengejutkan-budi-yani-saat.html> (Accessed on June 18th, 2022).

<sup>121</sup> See Court Decision No. 1537/Pid B/2016, p. 596.

<sup>122</sup> See the testimony from the MUI leader stated in the Court.

protesting the loud call to prayer was deemed to have damaged the feelings of Muslims. In this case, what is meant by “hurt feelings” of religion adopted in Indonesia is very subjective, depending on whether the people feel hurt or not.

Second, there is no clear definition the scope of limitations consideration means. Justified restrictions on the rights are defined clearly with clear considerations and objectives under Article 28J (2) of the Constitution, such as (1) limitation should be restricted by law, (2) to maintain public order, (2) protecting public health, or (3) maintaining national security, and (4) in accordance with morality, religious values; (5) considering the protection of the right of others. Restrictions must also guarantee the treatment of everyone equally and without discrimination. However, these legal guarantees are subject to more, and more broadly interpreted, limitations than those permissible under international human rights law and standards, particularly the ICCPR) The right to freedom of expression, thought, conscience and religion can be limited by other considerations established by law, including morality.

In both the Ahok case and the Meiliana case, it is not clear what legitimate goals can be used as an excuse to limit the expression or critical opinion they experience in religious life with other religions (Islam). Ahok's criticism of unscrupulous politicians who abuse QS Al-Maidah to achieve their political goals in an instant certainly cannot be said as a statement that endangers national interests, public order, public health, or public morals. Likewise, Meiliana, who criticized the sound of the call to prayer being too loud. The excessive response to the views of both gave rise to disturbances in public order because it had sparked greater public anger due to the distortion of information that was intentionally made to distort the actual information with hatred towards both.

The opposite condition was visible in the practice. The Blasphemy law has opened a door for the government and or legal officers including the court to restrict the rights with pseudo considerations and goals such as protecting certain established religions or certain political interests. In the end, the application of the blasphemy law received a lot of criticism because it was considered only to benefit certain groups or religions and to lead discriminatory treatment of minority groups.

This limitation is an extension of what is described in General Comment No. 34 of the ICCPR, because in Article 28J does not distinguish between restrictions on the



right to freedom of religion and the right to freedom of expression. So that the reasons for national security can be used to limit a person's right to freedom of religion. Second, restrictions on FoRB and FoE can be done by paying attention to religious morals. The morality of religion used as a reference by the state is only religious values recognized by the Indonesian government. If the restrictions contained in Article 28J of the Constitution are adopted in the Blasphemy Law, then the case of blasphemy will be decided more fairly. Unfortunately, the Blasphemy Law does not explicitly list the limitation conditions contained in Article 28J, because the Blasphemy Law is a product of an old law that was born long before Article 28J exists. This means that the Blasphemy Law has substantially not been in accordance with the development of constitutional law in Indonesia. Therefore, in its application, the Panel of Judges including the Supreme Court has never used the reasons for such restrictions in its legal considerations in examining blasphemy cases. Most judges in several blasphemy cases in Indonesia use the reasoning of “disrupting public order” in punishing blasphemy perpetrators (Pratiwi, 2021).

In the Ahok and Meiliana cases, the judge of the Central Jakarta District Court and the Court of Medan District Court respectively had found them guilty and criminalized them. In both cases, the Courts have ignored the legal weaknesses of the Anti-Defamation Law. In various cases, the Director of YLBHI who has accompanied many cases of blasphemy stated that:

*“Law enforcers do not have technical instructions in examining blasphemy cases, most cases of blasphemy are followed up after the case has gone viral in the media, and under the pretext of maintaining public order the reported cases are then followed up.”*

Therefore, in various cases, the reason for “public order” is the main reason for acting against cases of blasphemy. Meanwhile, the definition of public order itself is also a debatable aspect because law enforcers use the criteria of “viral in the media” as an element of disturbance to public order. Law enforcers, either the police or the public prosecutor, did not examine the element of 'intentional' in examining and following up on cases of blasphemy. Therefore, although various legal experts have stated that what Ahok and Meiliana did not contain an element of intent, but it is not important in conducting investigations into these cases. Courts are more concerned about the insistence of a small part of the public who continue to want perpetrators of

blasphemy to be punished, rather than presenting decisions that prioritize the principle of the rule of law. In the Ahok case, Trimoelja's attorney D. Soerjadi, S.H., et.al., stated in his plea that:

*The Public Prosecutor acknowledged and confirmed that the Defendant had not committed blasphemy/blasphemy as alleged to the Defendant so far and therefore proved that the Defendant was not a blasphemer/religious blasphemer. Based on the above, should it still be forced that the Defendant insulted a group? Even though there is no intention to be hostile or insulting to anyone and there is no evidence that the Defendant has expressed feelings or committed acts that are hostile or insulting, abuse or blaspheme against religion or insult a group,<sup>123</sup>*

In contrast to hate speech cases in various countries, law enforcers have clear standards to determine whether a person's report against another person accused of blasphemy must meet the legal and proportional limiting standards, but in cases of blasphemy, the police, prosecutors, and judges does not have a standard to determine the case. In practice, what law enforcers use is to interpret the articles in the Blasphemy Law subjectively. That when confirmed to the judge, whether the difference between blasphemy and hate speech and blasphemy, the judge replied that there was no difference between blasphemy and hate speech or blasphemy.

The former chairman of YLBHI in an interview stated that “The Anti-Defamation Law only deals with the term “blasphemy” not “blasphemy”, but in Ahok's case, it was politicized, and it was said that Ahok when criticizing the person who took refuge behind QS Al-Maidah verse 51 as “blasphemy of religion”. In my opinion, this is a “hate spin” against Ahok, to gain public support that Ahok has insulted Islam.”<sup>124</sup>

The same thing was stated by the expert of the National Human Rights Commission compiled the SNP (National Standard Procedure) on the Right to Freedom of Expression and it was officially submitted to law enforcement agencies. However, Komnas HAM cannot guarantee the extent to which the NSP is applied by law enforcers when receiving reports, prosecuting, or examining cases of blasphemy.<sup>125</sup>

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<sup>123</sup> See the Judicial Decision No. 1537/Pid.B/2016/PN.Jkt Utr., p. 2.

<sup>124</sup> Interview with Asfinawati, SH., a former chairman of YLBHI on May 2022. The Indonesian Legal Aid Foundation is an NGO that has defended many defendants in cases of blasphemy against the Eden Community, Shia, Ahmadiyya, and Gafatar, etc.

<sup>125</sup> This statement was conveyed by one of the Expert Staff of the National Human Rights Commission when discussing the Second Amendment to the Electronic Information and Transaction Bill, where the provisions of

When the Ahok case emerged, the POLRI made Ahok as a suspect. In the opinion of POLRI uses several regulations, the most important legal instruments used as the basis for law enforcement to make Ahok a suspect were namely: the Anti Blasphemy Law, The Criminal Code, the Law of IET, and various other regulations that support. At the time this case emerged, Ahok was not in custody. However, the wave of public pressure demanding that Ahok be tried is quite large.

The results of an interview with a former of Chairperson of the Indonesian Legal Aid Foundation (YLBHI), Aswinawati, SH., that legal efforts have been made several times so that articles deemed to violate human rights are declared to have no binding force, but MKRI in several of its decisions continues to state that the Anti-Defamation Law does constitutional or does not conflict with Constitution.<sup>126</sup>

Why charging Ahok and Meiliana of blasphemy can be considered discriminatory? According to the Modern Dictionary of Sociology, discrimination is defined as unbalanced treatment of individuals, or groups, based on categorical or distinctive attributes such as race, nationality, religion, or membership in a particular social class.<sup>127</sup> The principle of non-discrimination is important and adopted in almost all international human rights treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination<sup>128</sup> and the Convention on the Elimination of All Forms of Discrimination against Women. This principle applies to everyone and prohibits discrimination based on sex, race, colour, religion, etc.

The principle of non-discrimination relates to the principle of equality as defined in Article 1,<sup>129</sup> of the UDHR: “All human beings are born free and equal in dignity and rights.” The use of the term “all human beings” means that everyone has the same rights, or in other words, no one may be denied his or her rights or be treated differently according to, for example, race, colour, sex, language, religion, politics, nationality or origin, level of wealth, birth, or another status. The use of the term that

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Articles 27 and 28 are often used in conjunction with Article 156a of the Criminal Code to ensnare blasphemy of religion using the internet.

<sup>126</sup> See MKRI Decision Number 76/PUU-XVI/2018; Decision No. 56/PUU-XV/2017; Decision No.84/PUU-X/2012; Decision No. 140/PUU-VII/2000.

<sup>127</sup> Theodorson, G.A., and A.G. Theodorson. 1979. A Modern Dictionary of Sociology. New York: Barnes and Noble Books. See UN Charter (see note 1), Art. 1(3).

<sup>128</sup> This Convention has been ratified by Indonesia since 25 May 1999 with ratification through Law Number 29 Year 1999 and Law Number 40 Year 2008 concerning Elimination of Race and Ethnic Discrimination.

<sup>129</sup> See also Art. 2, 4, and 7 of the UDHR.

denotes the principle of universality is also found in several other human rights conventions such as the ICCPR and The International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>130</sup> In Article 27 of the ICCPR, the State in which ethnic, religious, or linguistic minorities exist, such as in Indonesia, persons belonging to such minorities shall not be denied the right, in community with the other members of their group. Because under this Article, they have the right to enjoy their own culture, to profess and practice their own religion, or to use their own language. In the case of Ahmadiyya that happened in Indonesia as a minority group of religion, their rights to practice their own religion should be protected by the State. To punish them because they practice their own religions are contradictory with Article 27 of the ICCPR. These State's obligation towards minority religions is also guaranteed under Article 1 (1) and Article 2 (1) of the General Assembly Declaration 47/135.

The characteristic of blasphemy law in Indonesia gives more protection towards a certain religion such as established religions, Islam, is incompatible with international human rights law. They also considered unconstitutional because the principle of non-discrimination is also guaranteed by its Constitutions. Blasphemy laws in that countries are failed to ensure that every citizen has an equal position before the law, regardless of their religion. A person who are the member of non-established religion could be in a fear to manifest their religions of beliefs or to express their opinion. The high number of prosecutions for blasphemy cases in Indonesia,<sup>131</sup> put the countries under criticism.

As mentioned earlier, the BL of Indonesia has a purpose to protect the established religion;<sup>132</sup> Meanwhile, Indonesia is a multi-religions country that has over 300 beliefs. Many beliefs are not protected under the Law. There are some cases in which the minority religion such as Ahmadiyya or Islam Shia are prosecuted under the Law. In the other case against minority groups, Tajul Muluk, the leader of Islamic Shia, was convicted for the spreading of Shia doctrine because the teachings were contradictory

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<sup>130</sup> The ICCPR using the word "every human being" in Chapter 6, and the word "everyone" in Art. 9 paragraph (1), 12 (1) (2), Art. 14 (2), (3) and (5), Art. 16, Art. 17 (2), Art. 18 (1), Art.19, and Art. 22. While the term "all person" (? All person sounds awkward) is used in Art. 10 (1), 14 (1), 26, "anyone" in Art. 6 (4), Art. 9 (2-5) and "no one" in Art. 6.7,11,15 and 17 (1). Similarly, CESCR Art. 2 says ".... Everyone is entitled to all rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political, or another opinion, national, or social origin, property, birth, or other status."

<sup>131</sup> In Indonesia, the number of prosecutions for blasphemy cases from 1965 to 2017 are 76 cases.

<sup>132</sup> See the explanation of Article 1 of the Law No.1/PNPS/ 1965.

with the main teaching of Islam (Sunni). Both Indonesia Constitution of 1945<sup>133</sup> and the BL are not specifically provided for Islam Sunni. No provision in both mentions the word Islam (Sunni).

The Constitutional Court's decision is *erga omnes*, that it is a binding not only on the litigants but also on all state institutions and society in general. Because the Constitutional Court's decision on the Blasphemy Law has indicated that the Law contains norms that have multiple interpretations, it is a legal and moral obligation for lawmakers (President and DPR) to immediately revise the Blasphemy Law. Legal enforcers (police, prosecutors, courts) have a moral and legal obligation not to use articles in the Blasphemy Law to punish someone. However, the Constitutional Court's decision that has been produced in more than a decade is not used as a guideline or reference for law enforcers in examining cases of blasphemy.

The trial of Ahok and Meiliana cases are known to have no solid legal basis because both cases were referring the Indonesia anti-blasphemy law, which contains multiple interpretations and does not provide legal certainty. The accusations directed against the Defendants cannot be proven validly. So, it can be said that the violation of the law in this case was not due to the fault of the Defendants. The Constitutional Court in several of its legal opinions has indicated that the Blasphemy Law is a flawed law (Pratiwi, 2022), where the main reason is the lack of clarity in the formal and material aspects of the law which can lead to different interpretations so that the use of this article can create legal uncertainty in the law. in practice or can lead to discriminatory actions or the criminalization of religion. However, the ambiguity of the decisions of the Constitutional Court, which in its various decisions stated that the Anti Blasphemy Law is constitutional, and its substance does not conflict with the Constitution, is a confusing and risky attitude for the occurrence of various forms of discrimination and criminalization of a person in the future. The Constitutional Court has forgotten that it is the formal and material defects of a law that causes bad legal practice, so that the view of the Court which overrides that it is as if the balancing of existing regulations has nothing to do with the formal aspects and substance of the Law is ambiguous and difficult to understand.

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<sup>133</sup> See Article 29 of the Indonesia Constitution of 1945.

### 3.6.3 Court abandoned from the principle of fair trial.

Previous sub-section discussed of how social and political dynamics allows the courts to apply anti-blasphemy laws that are flawed in deciding blasphemy cases, then in this section the Author focuses on examining the socio-political context that affects courts in implementing the criminal justice system. This aspect is to see how far the fair trial principle has been uphold or otherwise ignored by the court. Is the criminal justice system upheld by the court in deciding cases of blasphemy, or does the court allow non-legal institutions such as the MUI to direct judges where decisions should be taken to ignore the presence of competent witnesses or weak evidence.

Previous studies have stated that one of the fundamental problems in enforcing the blasphemy law is that the MUI fatwa is used as the main basis for determining whether in a case there has been blasphemy, blasphemy, or insulting religion (Crouch, 2015; Tyson, 2021). Fatwas, which are generally formal legal advice on religious issues for Muslims, are compiled by authoritative Islamic jurists, but are not legally binding, creation and production of fatwas, and the extent to which fatwas are regulated by Indonesian country (Hooker, 2003). However, as non-official law source, after the reform era, more and more fatwas were issued to declare a deviant religious sect or an act or statement of someone who had tarnished religion and became the main basis for courts in deciding cases of blasphemy (Crouch, 2015). Recognition of Islamic law in the pluralistic legal system in Indonesia only focuses on family law.<sup>134</sup> But, with the adoption of MUI fatwas by the courts in cases of blasphemy, Islamic law was expanded into criminal law (Crouch, 2015). Related to the existence of the MUI fatwas, this section will analyse in depth, especially in the cases of Ahok and Meiliana, to what extent the court places the MUI fatwa in its legal considerations and what the implications are for the criminal justice system so that it is able to present a fair decision for the defendant. Meaning that, whether the court proportionally places and refers to the MUI fatwa in determining the defendant's guilt, or whether it is used as the only basis for determining the defendant's guilt even though the elements of the criminal act are not fulfilled. The extent to which the socio-political context in

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<sup>134</sup> The Indonesia Religious courts have the competence to resolve family law issues between Muslims, such as marriage, inheritance, wills, and grants made based on Islamic law, as well as waqf and Sadaqat (vide article 49 of Law Number 3 of 2006 Amendments to Law Number 7 of 1989 on Religious Courts).

adopting the MUI fatwa increases confidence in the courts so that they are so confident in punishing Ahok and Meiliana.

Fair trial is a human right for everyone.<sup>135</sup> Fair trial contains two important aspects, namely that everyone is treated equally before the law, and everyone must be presumed innocent before a court decision has permanent legal force.<sup>136</sup> To realize these two aspects, it is important to ensure that the court has independency and impartiality in deciding cases so that the Court decides cases based on the evidence present at the trial which is supported by competent witnesses.

In Ahok case, the judges in his legal considerations strengthened the testimony of the witness who did not have the competence, the judge based his judgment on the “feelings” of the witnesses which stated that “the witness felt that the Defendant's words had tarnished Religion”, so it was not based on the real consequences of the Defendant's actions were at the locus delicti where Ahok gave a speech there were three witnesses namely Yulihardi, Jaenudin, and Sahbudin. They confessed that they were not aware of the blasphemy committed by Ahok when delivering his speech. It was also revealed in court that during or after Ahok's speech, none of the people present felt insulted or felt hostile. This strengthens the argument that if the consideration is “hurt feelings” then witnesses who have the competence to be witnesses do not feel “hurt feelings”. This measure of offence is basically the “feelings” of each Witness which is subjective and abstract,<sup>137</sup> so it seems out ruling to categorized as an act that violates Article 156 or 156a of the Criminal Code.

The MUI in a statement submitted by Mak'ruf Arif stated that Ahok's problem was only a matter of ethical issue.

*“The Defendant's statement that Al Maidah is unethical and inappropriate because the person concerned is not a Muslim, the meaning is that the Defendant should not discuss Al Maidah because she is not a Muslim, so when she discussed it, it was disproportionate so that we considered it unethical”*

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<sup>135</sup> See Article 14 of the International Covenant on Civil and Political Rights. See also Article

<sup>136</sup> See OHCHR. Chapter 6 THE RIGHT TO A FAIR TRIAL: PART I – FROM INVESTIGATION TO TRIAL retrieved from <https://www.ohchr.org/sites/default/files/Documents/Publications/training9chapter6en.pdf>, p. 251.

<sup>137</sup> Ibid, Witness Novel, Witness Gusjoy, Witness Habib Muchsin, Witness Syamsul Hilal, Witness Fedri Kasman, Witness Irana, Witness Muh Burhanuddin, Witness Willyudin Abdul Rashid Dhani, Witness Muhammad Asrori Saputra, Witness Nurkholis Majid at the Court Decision Ibid, p. 8-48.

On the contrary, he also testified different thing, in another court session i.e.: “Ahok's words are a form of blasphemy that deserves to be punished”. However, the Court ignored those legal facts. After the interlocutory decision was read by the judge on December 27, 2016, the Court declared Defendant Ahok's objection to the prosecutor's indictment and his attorney's defense unacceptable. The Court also ordered that the Public Prosecutor's Indictment No. Reg. PDM-147/JKT.UT/12/2016 On December 1, 2016, for the examination of case 1537/Pid.B/2016/PN.JKT.UTR. on behalf of Defendant Ahok to continue.

Interestingly, in cases of blasphemy, including the cases of Ahok and Meiliana, they have been found guilty since their statements were judged by the public as blasphemy towards Islam. Then, this was reinforced when the MUI issued a fatwa stating that Ahok with his speech in the Kepulauan Seribu defamed religion (Islam). The same thing happened to Meiliana, where the MUI issued a fatwa stating that Meiliana who protested that the call to prayer was too loud was also concluded to be blaspheming the religion of Islam. If this is a trial by the community, it is quite understandable because ordinary people do not understand the law. However, it will be a big question if the public stigma, or advice from non-legal institutions such as the MUI is taken over entirely by a court that is supposed to uphold the principle of presumption of innocence.

If the MUI concludes that Ahok or Meiliana's actions have violated religion, then it is not automatically sufficient for the courts to base its decision on the MUI statement. The Courts need to respect the principle of the presumption of innocence. The court must examine carefully and thoroughly whether the elements of the crime charged by the Public Prosecutor have been described and proven completely and thoroughly. The court also needs to examine all witnesses, whether the witnesses presented have the competence to have their testimonies heard, because they heard and saw first-hand what happened., for instance, are the statements of witnesses consistent with each other or are they contradictory? The legal facts were then carefully considered by the judge. If the elements of a criminal act are not proven, the evidence is insufficient, the witnesses are lack of competency, then even if the public has stigmatized the Defendants as guilty, the court must impartially and



independently decide the case according to the facts that appear in court in accordance with their sense of justice.

This study finds that in the cases of Ahok and Meiliana, the court allowed itself to be dictated by a non-legal institution, namely the MUI and public pressure to punish them. Ahok and Meiliana not only suffer from public stigma, but as citizens of a minority (Chinese) with a minority religion (Christian - Ahok and Buddhist-Meiliana) the presumption of guilt situation that is disseminated in various electronic media coupled with the birth of the MUI fatwa (a quasi-state institution) has make both treated unequally before the law. Both put their trust in and expect justice to come from the court. "So, when it's a legal case, I've left it to my lawyer, my legal advisor, also to the panel of judges," said Ahok.<sup>138</sup> At the end, both did not get justice because the fair trial was not present in their trials.

The court seems to be more submissive to the content and recommendations of the MUI fatwa. The North Jakarta District Court ultimately based its decision by referring to the MUI Fatwa which was issued on Tuesday 11 October 2016 signed by the General Chairperson of MUI Dr. KH. Ma'ruf Amin and Secretary General Dr. H. Anwar Abbas, MM. MA. The MUI fatwa on the Ahok case in principle contains five points, namely:

*First: Al-Quran surah Al Maidah verse 51 explicitly prohibits making Jews and Christians as leaders, this verse is one of the arguments for prohibiting non-Muslims as leaders; Second: Ulama are obliged to convey the contents of the letter Al Maidah verse 51 to Muslims that choosing a Muslim leader is obligatory; Third: Every Muslim is obliged to believe in the truth of the contents of the letter Al Maidah verse 51 as a guide in choosing a leader; Fourth: Stating that the content of the letter Al Maidah verse 51 which contains a prohibition on making Christians and Jews as leaders is a lie, is unlawful and includes blasphemy against the Qur'an; Fifth: To state that the Ulama who conveyed the argument of Surah Al Maidah verse 51 regarding the prohibition of making non-Muslims as leaders are lies, is an insult to Ulama and Muslims.*

Based on the foregoing, the statement of Mr. Ir. Basuki Tjahaja Purnama is categorized as: 1. Insulting the Quran and or 2. Insulting Ulama, which has legal

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<sup>138</sup> See Nasional (January 6th, 2017). Ahok pasrah apapun hasil pengadilan. Retrieved from <https://nasional.kontan.co.id/news/ahok-pasrah-apapun-hasil-pengadilan>.

consequences. Not limited to giving a judgment on Ahok's statement, MUI in its fatwa also recommends:

(1) The government and society are obliged to maintain harmony in the life of religion, society, nation, and state; (2). The government is obliged to prevent blasphemy and blasphemy against the Qur'an and Islam, and not to allow such acts; (3). Law Enforcement Officials are obliged to take firm action against anyone who tarnishes and desecrates the Qur'an and Islamic teachings or insults Ulama and Muslims in accordance with applicable laws and regulations; (4). Law Enforcement Officials must be proactive in carrying out law enforcement firmly, quickly, proportionally, and professionally by paying attention to the sense of justice in the community so that people have confidence in Law Enforcers; (5). The public is asked to remain calm and not to take vigilante actions and submit to law enforcement officials in addition to monitoring blasphemy activities and reporting to law enforcement officials.

The court on its decision favoured the guidelines in the MUI fatwa ruling that Ahok's statement which stated that

*“The content of Surah Al-Maidah verse 51 concerning the prohibition of making non-Muslims as leaders in the context of the election of the Governor of DKI Jakarta, is an insult to one group of Indonesian people. This is in line with the Religious Opinions and Attitudes of the Indonesian Ulema Council (MUI) dated October 11, 2016, Number 5”.*

The question is why the court can refer to the MUI decision as a legal basis in the blasphemy case. This is because since 2008, the law of anti-blasphemy in Indonesia is extended on other regulations and it becomes stronger and wider than before. Extended regulations show that the definition of blasphemy is ambiguous, and they could open the room to insert some new norms or produce some subjective interpretation; These examples of the extended regulations caused the ambiguity and less clarity of the BL like on Table 4.

*Table 4. Various Extended Non-Legal Binding Regulations of the Indonesia-Anti Blasphemy Law*

Primarily Law	Extended regulations or policies
(1) Article 1, 2, 3 of The Law Number 1/PNPS/1965 on the Prevention of Abuse	1. The Law of Electronic Information and Transaction as amended by the Law Number 19 Year 2016 Article 27, 28

Primarily Law	Extended regulations or policies
and/or Defamation Religion. <sup>139</sup> (2) Article 156a of Indonesia Criminal Code Number 1 Year 1981	2. Joint Decree of the Minister of Religion Affairs, the Minister/ Attorney General and the Minister for Home Affairs. <sup>140</sup> 3. Each established religion could release the decree to decide whether the act is considered as deviant. In Islam, the court refers to the letter from the Indonesia Ulama Assembly. <sup>141</sup>

MUI's influence in the courts in cases of blasphemy was even acknowledged by MUI Chair Ma'ruf Amin who stated that:

*The MUI is limited to Religious Opinions, and the breaker is Law Enforcement, and the police follow up and according to the Police fulfil the elements of a criminal act so that the Defendant is designated as a suspect, and is followed up by the Public Prosecutor, has also fulfilled the elements so that he is made a Defendant. The process has been carried out and it is MUI's wish so that there will be no anarchy and commotion in the community.*

The MUI recommendation expects Ahok to be punished under the pretext of preventing riots. In this case the presumption of innocence has been ruled out, a fair trial has been abolished, because the MUI has said Ahok has insulted religion and scholars and it was simply followed by the Court. The courts are in no way concerned that the impartiality and independence of the courts are at stake. This kind of intervention does not rule out the possibility that the court will enter the vortex of power politics. These indications are read by various academics and non-government institutions who are concerned about the rampant intolerance and the threat of religious freedom along with the strengthening of the conservative Islamic movement in Indonesia.

<sup>139</sup> Most of blasphemy cases in Indonesia have been indicted under the Article 156a of Indonesia Criminal Court such as the Court Decision No. 744/Pid.B/2009/PN. Mdn Jo. No. 1334K/Pid/2010 on behalf of Defendant Alega Mosees, the Court Decision No. 1537/Pid.B/2016/ PN.Jkt.Utr. on behalf of Defendant Basuki Tjahaja Purnama / Ahok the Court Decision No. 69/Pid.B/ 2012/PN.Spg on behalf of Defendant Tajul Muluk, and many others. But some of them are convicted under the Law of EIT Article 28 such as the Court Decision No. 391/ pId. Sus/ 2016 on behalf of Defendant Agung Handoko, the Court Decision No. 10/Pid. Sus/ 2013/ PN. Pt. on behalf of Defendant Muhamad Rokhisun, the Court Decision No. 45/Pid. B/ 2012/ PN.MR on behalf of Defendant alexander Aan, and many other cases. See Cekli Pratiwi, id. Appendix.

<sup>140</sup> See Article 2 (1) of the Law No. 1/PNPS/ 1966 that states "Whoever violates the provision mentioned in article (1) is given the order and stern warning to discontinue their actions in a joint decree of the Minister of Religion Affairs, the Minister/ Attorney General and the Minister for Home Affairs."

<sup>141</sup> See the Case of Tajul Muluk in 2012, the Sampang District Court No. 69/Pid. B/ 2012/ PN. Spg, the court to prove that the act of the defendant is constituted deviate or misleading from the main teachings of Islam, refers to the fatwa of Sampang District Indonesia Ulama Assembly No. A-035/MUI/Spg/I/2012. The court also refers to the Statement of PCNU (Nadhatul Ulama Branch Committee) of Sampang District Number: 255/EC/A.2/L-36/I/2012.

The political propaganda scenario by accusing Ahok of being the perpetrator of blasphemy has been fabricated in such a way by Budi Yani by cutting Ahok's video and then adding provocative sentences so that anyone (Muslim) is willing to counterattack Ahok even in the form of hate speech and mobilize non-political institutions to be trapped in this sophisticated scenario. The political goals of winning votes that were engineered by political brokers through the punishment of Ahok were not read easily but were successfully realized. These knots may not have been realized by the rivalry of Ahok, Anis Baswedan, or by the Court that decided the case. But this kind of hate spin slowly and surely divides unity and undermines the rule of law which in the end destroys the democracy that is being developed by Indonesia.

Referring to Marshall's theory which states that “[it is] common in the political manipulation of religion is often carried out by those whose religion is weak or shallow, and done despite opposition from religious leaders.” In Ahok's case, the author sees that Muslim conservative groups have been at war with Ahok for a long time because of conservative views that do not like non-Muslims as leaders. This is exacerbated by Ahok's very controversial policy when he was governor of DKI replacing Joko Widodo. The Anti-Ahok movement continues to be exhaled, even more so when the axis of the twist of hatred has been lit, where Ahok has earned the title as a person who tarnishes Islam. Political is about timing. The reporters of the Ahok case were the secretary of the Islamic Defenders Front (the FPI), namely Habib Novel Chaidir Hasan alias Novel Bamukmin, Gus Joy, and the Grand Imam of the DKI Jakarta Islamic Defenders Front (FPI), Habib Muchsin Alatas, where they are affiliated with the FPI. When Ahok was acting Governor to replace Joko Widodo, FPI often clashed with Ahok because FPI was considered arrogant in carrying out its da'wah. On the other hand, FPI claimed that various policies of Ahok against Islamic religions.

Therefore, the momentum of reporting Ahok with the Blasphemy Law and the massive movement mobilized by the FPI was not a coincidence. Second, although Ahok has often made similar criticisms of politicians who manipulated QS Al-Maidah Verse 51, for example, the same criticism was conveyed in the electronic book written by Ahok with the title *Merubah Indonesia*, as well as various other speeches, which were also acknowledged by Witness Habib Novel, however, reporting on Ahok for blasphemy was only done when Ahok ran as a candidate for Governor of DKI Jakarta

in the 2018 Local Election. This movement continues to gain support from a mass audience who is easily influenced and does not understand religion as deeply as religious leaders as indicated by Marshall. The Mass Movement of 112 and the 212 Movement was selling well like a sugar ring that was present to accompany the local election event even though the two biggest moderate Islamic organization such as Muhammadiyah and the NU never recommended their followers to engage the actions. Even the Indonesian Ulema Council is not aware of being in the hate spin trap. This is as emphasized by the Chairman of the Indonesian Ulama Council, Kyai Haji Mak'ruf Amin, in the trial of the Ahok case as follows:

*"The form of the product that was issued previously could be in the form of Tausiyah, an Appeal or Appeal, but the form of Religious Opinions and Attitudes is new this time."*<sup>142</sup>

Ahok was found guilty by the Court Decision Number 1537/Pid.B/2016/PN.Jkt Utr. Ahok was dissatisfied with the decision of the Court of first instance, so Ahok submitted a review to the Supreme Court. However, the decision of the Supreme Court is not much different from the decision of the First Level Court, where the Supreme Court through its decision declared Ahok guilty of committing blasphemy against Islam and sentenced Ahok to a prison sentence for two years.

Sophisticated political propaganda that uses religious issues as a weapon has succeeded in the Ahok case, so it is possible that the political manipulation model of religion will continue to be utilized by political brokers to achieve its goals. This is a challenge for Indonesia to present a law that upholds the principle of the rule of law so that it does not contain a gap for political spirit to enter. Courts need to enforce fair trials and stay away from destructive corrupt practices.

The Anti-Defamation Law does not clearly state the meaning of blaspheming religion or blaspheming religion. In general, blasphemy can be interpreted broadly ranging from insulting religious scriptures, insulting the Prophet, insulting God, insulting religious symbols. Meanwhile, the word insulting itself is left to the subjective feelings of those who feel insulted. Whether it's insulting the holy book, insulting the Prophet, insulting God, then what determines is religious figures, which in Indonesia is determined by the Indonesian Ulema Council. In the Ahok case, as well

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<sup>142</sup> See Court Decision, Ibid, p.117.

as other cases, it is the MUI that will be the final determinant of whether someone's actions or words fall into the category of abuse or blasphemy. Law enforcers, police, prosecutors, and judges are only rubber stamps if legal aspects are completely ruled out, as in the cases of Ahok and Meiliana. The Law itself never mention about what are constituted by deviant religions. In the case of Ahmadiyya, the court referred to the letter from the Indonesia Ulama Assembly (the MUI/Majelis Ulama Indonesia) when deal with the deviant groups of Islam.<sup>143</sup> The MUI is not a state institution and never been pointed in the BL. The decision of the MUI is not legally binding. But the court used it as legal resources to make a binding decision.

In addition to the Ahok case, the Meiliana case has similarities because the momentum for the 2017 simultaneous regional leader election has an impact on the Ahok case to the Meiliana case. Political manipulation in the blasphemy case of Meiliana is a template for the Ahok case which was successfully duplicated by a local political broker. Several hardline Islamic organizations continue to press for Meiliana to be punished. Mass organizations flocked to report Meiliana's case to the police. The MUI, which initially refused to issue a fatwa against Meiliana, was urged to issue a fatwa calling for Meiliana's actions to be a form of blasphemy and made recommendations for law enforcement to immediately follow up the legal process against Meiliana. Community intervention against law enforcement agencies in the blasphemy case carried out by the MUI is nothing new in the Meiliana case because the same thing happened in other blasphemy cases. Doubts over the impartiality of the court are also evident from the lack of sufficient evidence that Meiliana committed blasphemy. The witness presented did not have any recordings or other evidence showing that Meiliana's statement tainted Islam, other than Meiliana's protest the sound of the call to prayer being too loud. The stages of legal procedures that are not fully carried out by law enforcement in the Meiliana case show that the Court ignores procedural justice. The fact that then adds to the argument that there are indications of corruption in the court is that when the Corruption Eradication Commission

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<sup>143</sup> See the Case of Tajul Muluk in 2012, the Sampang District Court No. 69/PI.d. B/ 2012/ PN. Spg, the court to proof that the act of the defendant is constituted deviate or misleading from the main teachings of Islam, refers to the fatwa of Sampang District Indonesia Ulama Assembly No. A-035/MUI/SpG/I/2012. The court also refers to the Statement of PCNU (Nahdlatul Ulama Branch Committee) of Sampang District Number: 255/EC/A.2/L-36/I/2012.

arrested four judges in the OTT operation in various regions, one of them was named Wahyu Prasetyo Wibowo, one of the judges who tried Meiliana's case.<sup>144</sup>

Unlike the Gafatar case, which does not contain political overtones, the court's decision is still based on the MUI fatwa as the only consideration. Gafatar was found guilty as mixing the teachings of Islam, Judaism, and Christianity and propagate it towards their followers in Aceh, the court referred to the policy declared by the Government of Aceh, the Iskandar Muda Military Commander, the Provincial Police Chief, and the provincial office of the Ministry of Religious Affairs. Again, these administrations have no authority to make the law that contradictory with the law or constitution above its. The court found him guilty by referring the MUI as the doctrine was considered being heretical against Islam (Sunni). In the case of the Gerakan Fajar Nusantara/ GAFATAR (Nusantara Sunrise Movement), the defendants (T. Abdullah Fattah, Fuadi Mardhathilla, Ridha Hidayat, and Althaf Mauliyul Islam) are found guilty under Art. 156a of Indonesia Criminal Code for mixing the teachings of Islam, Judaism, and Christianity.

The unclear concepts regarding blasphemy, blasphemy, and insulting religion in the Anti-Defamation Law allow the court to interpret subjectively, even referring to the interpretations given by various extended regulations that are non-legally binding, including the MUI fatwa on blasphemy. These various regulations open space for subjective interpretations of blasphemy cases, such as the Ahok and Meiliana cases. The expansive space for interpretation is vulnerable to the manipulative efforts of certain groups, even for the purpose of attracting sympathy and mass support organized by opportunist political groups. As a diverse country, of course, the attitude of intolerance, insulting, tarnishing the religions in Indonesia that have existed for a long time and is recognized and upheld by the community cannot be tolerated. The law must provide legal certainty so that Bhinneka Tunggal Ika based on Pancasila is maintained, for the sake of the unity and integrity of Indonesia. Religious leaders are expected to be mature in dealing with cases of intolerance so that dialogue approaches must be prioritized. These views are widely shared by Professor Haidar Nazir.<sup>145</sup>

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<sup>144</sup> See Merdica.com "Salah satu Hakim yang ditangkap KPK adalah pengadil Meiliana di kasus penistaan agama." August 28th, 2018.

<sup>145</sup> Interview with Professor Haidar Nasir, July 1st, 2022 at Muhammadiyah Central Office at Cik Ditiro Street, Yogyakarta.

This kind of political manipulation of religion is regretted by the Moderate Islamic Organization, Muhammadiyah, it should not have happened. Muhammadiyah feels it is important to revise the Anti-Defamation Law as directed by the Constitutional Court in its various decisions, so that legal certainty in blasphemy cases is guaranteed, and the politicization of blasphemy cases no longer occurs. Nazir stated that:

*“Muhammadiyah’s opinion, as based on Pancasila and the 1945 Constitution, adherents of every religion should respect and tolerate each other with other religions. Of course, statements or actions that desecrate, insult, or incite hatred against religions or adherents of other religions cannot be justified. Therefore, because Muhammadiyah has never formulated a definition of blaspheming, insulting, or inciting hatred, it is necessary to have a law that more clearly regulates this matter so that the law is not easy to politicize, as was the case with Ahok.”<sup>146</sup>*

Meanwhile, political brokers continue to synergize with hardline Islamic groups in politicizing the Ahok case. Various rallies and joint prayers between political party leaders attended by hard-liner Islamic figures received extraordinary support from the sympathetic community because they felt that their religion had been insulted. Of course, this political manipulation of religion does not have the support of the largest moderate Islamic groups in Indonesia, namely NU and Muhammadiyah. However, it cannot be denied that there are organizations under them that provide support outside the organizational policy line. FPI chairman Habib Rizieq Shihab in his oration during the mop of 112 state:

*“In connection with the issuance of the MUI decision which states that Ahok has insulted Islam and tarnished the Koran, the ulama who are members of the Islamic defender action demand that the Indonesian government, especially law enforcement, must quickly process the law. Ahok is related to blasphemy.”<sup>147</sup>*

HRS also urged the Indonesian National Police to immediately make Ahok a suspect by saying that

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<sup>146</sup> Interview with Professor Haidar Nasir, Ibid.

<sup>147</sup> Cited from <https://www.republika.co.id/berita/nasional/umum/16/10/14/of0woo335-fpi-tuntut-ahok-diadili-terkait-penistaan-agama>



*"The president must not protect and defend religious blasphemers," he said, half shouting. "If the president protects and defends religious blasphemers, the president violates the constitution,"*<sup>148</sup>

Ahok's propaganda as a blasphemer was also spread through pamphlets, banners, and social media, with sentences inciting hatred such as: "*Arrest Ahok, if Ahok is freed, it is equal to allow the Qur'an be insulted.*"<sup>149</sup> Shouts of "*Kills Ahok*" were also shouted frequently at the Anti Ahok demonstration on November 4th, 2016, where one of the banners "*Hang Ahok Now.*"<sup>150</sup>

From the expert's point of view, the Constitutional Court, NGOs, and religious organizations have confirmed that the Blasphemy Law is a law that is formally and materially flawed so that it will produce injustice if the court uses a flawed legal basis. The court, which was only guided by the MUI Fatwa to declare Ahok and Meiliana to have committed blasphemy but did not carefully examine the legal facts at the trial, showed that the twists of hatred against Ahok or Meiliana found channels and support when the principle of the rule of law was ignored by the Court. Political brokers who are supported by hardliner Islamic groups (FPI, FUI, etc.) who continue to push through various demonstrations and disseminate information through social media are propaganda that has succeeded in gaining public sympathy and gaining support from the MUI which has the authority or is authorized by the state to determine whether Islam has been tarnished. The massive Anti Ahok movement was also driven by Ahok's arrogance when he led Jakarta. Ahok's policies, which are considered anti-Islamic, have made Muslims feel angry and resentful towards Ahok. Meanwhile, Ahok did not provide a reasonable explanation for his controversial policies, such as prohibited traveling takbirs during Islamic holidays,<sup>151</sup> or banned the sale of sacrificial animals in various places.<sup>152</sup> The public's anger was not quelled by religious figures who were still heard by the public, in fact they seemed to allow the Anti-Ahok

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<sup>148</sup> Cited from BBC News on November 13, 2016. Retrieved from <https://www.bbc.com/indonesia/indonesia-37856872>

<sup>149</sup> Cited from <https://nasional.tempo.co/read/817021/3-700-demonstran-anti-ahok-dari-jawa-barat-bakal-ke-jakarta>.

<sup>150</sup> Cited from <https://www.quareta.com/post/bibit-bibit-radikalisme-di-sela-sela-demo-anti-ahok>

<sup>151</sup> Cited from <https://www.merdeka.com/jakarta/pedasnya-ahok-tolak-keinginan-fpi-takbir-keliling-dki.html>

<sup>152</sup> Cited from <https://www.cnnindonesia.com/nasional/20150908112910-20-77300/ahok-larang-pemotongan-hewan-kurban-sembarangan> See Also Ahok forbade the selling and slaughtering of sidewalk sacrificed animals. Cited from <https://www.bbc.com/indonesia/indonesia-41109052>

movement to continue to grow. This was where law enforcement did not dare to take risks to enforce the rule of law. The court took the safest decision and hoped the tide of public anger subsided. The Courts did not risk how they should enforce the rule of law against political manipulation that undermined the law. The court did not take lessons to teach the public how the law should be enforced, but instead was trapped in the socio-political dynamics that were strengthening at that time.

### **3.6.4 The Court's decision violated the right to religious freedom**

Under international human rights law that explain on Chapter II, the right to freedom of religion is fundamental rights (Art. 18 of the UDHR and Art.18 of the ICCPR).<sup>153</sup> The limitation of such rights should be referred to the General Comment No.22<sup>154</sup> concerning Declaration of the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or belief 1981 (Declaration 1981)<sup>155</sup> and General Comment No. 34. Since many manifestations of religion or belief also fall within the scope of the right to freedom of expression, speech,<sup>156</sup> association, and assembly, this is very urgent to examine the ICCPR art.19, 21, 22.<sup>157</sup>

In Indonesia, restrictions on the right to freedom of religion and expression are regulated in Article 28J of the Constitution. Although Article 28I of the Indonesian Constitution expressly states that “the right to freedom of religion is a right that is non-derogable rights”, but in the official interpretation issued by the Indonesian House of Representatives on the relationship of Article 28I and Article 28J states that the implementation of rights recognized in Article 28I but is limited by Article 28J. This ambiguity that often leads to debate in practice. The limitation of the right to FoR and FoE is also permitted by Article 28J (2) of the second amendment to the 1945 Constitution and Article 23(2) and 73 of the Law No. 39/1999 concerning Human Rights. Article 28J (2) stipulates that:

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<sup>153</sup> See International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) [hereinafter ICCPR] art. 18(3)

<sup>154</sup> It's proclaimed by the General Assembly of the United Nations on November 25, 1981. See INTERNATIONAL INSTRUMENTS, *supra* note 13, at 490.1

<sup>155</sup> See GA res.No.36/55/1981 UN

<sup>156</sup> Uitz, R (2007). Freedom of religion. Council of Europe.

<sup>157</sup> See GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966)

*In exercising their rights and freedoms, every person must submit to the limitations prescribed by law with the sole purpose to guarantee the recognition as well as the respect for the rights and freedom of others and to meet the just demand according to considerations of morality, religious values, security, and public order within a democratic society.*<sup>158</sup>

This justification, however, has three problems. First, this provision allows the State not only to limit the right to manifest the religions but also to derogate the right to choose the religions that have non-derogable characters in which incompatible with Article 4 of the ICCPR.<sup>159</sup> Second, the concept of such limitation allows the State to limit the rights based on “religious values” of the six recognized religions only and ignoring values from other sects or minorities religions that is not stipulated on Article 18 (3) of the ICCPR.<sup>160</sup> Article 28J(2) of the 1945 constitution is often used to justify regulations and bylaws that restrict freedom of expression, thought, conscience and religion.<sup>22</sup> For instance, Article 28J(2), along with the blasphemy law, were used by the Minister of Religious Affairs, the Attorney General, and Minister of Home Affairs when they issued a Joint Ministerial Decree (No. 3/2008) in 2008 which forbids the Ahmadiyya, a religious group who consider themselves a part of Islam, but who, according to many Muslim groups, do not adhere to the accepted belief system from promoting their activities and spreading their religious teachings.

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<sup>158</sup> See also Article 73 of the Law No. 39/1999 has the similar conception.

<sup>159</sup> The International Human Rights Law clearly distinguishes between derogation and limitation. Article 4 of the ICCPR stipulates that the State is not allowed to derogate from rights prescribed in Article 6 (the right to life), Article 7 (the right to be free from torture), Article 8 (the right to be free from slavery), Article 11 (the right to not be imprisonment on the grounds of a civil contract, Article 15 (the right not to be prosecuted under retroactive law), Article 16 (the right to recognition as a person before the law, and Article 18 (the right to religious freedom).

<sup>160</sup> According to the decision of Constitutional Court of Indonesia on the judicial review of the Law No. 1/PNPS/1965 states that “Limitation of human rights on the grounds of “religious values” as stipulated in article 28J (2) of the 1945 Constitution is one of the considerations to limit implementation of human rights. See Decision of the Constitutional Court No. 140/PUU-VII/2009, p276, Supranote No. 16. Retrieved at [https://mkri.id/public/content/persidangan/putusan/putusan\\_sidang\\_Putusan%20PUU%20140\\_Senin%2019%20April%202010.pdf](https://mkri.id/public/content/persidangan/putusan/putusan_sidang_Putusan%20PUU%20140_Senin%2019%20April%202010.pdf)

Table 5. *The right to FoRB and FoE under the Indonesia Constitution of 1945*<sup>161</sup>

Freedom of Religion	The State duty to protect human right	Limitation of the right to FoRB and FoE
According to the second amendment of the 1945 Indonesia Constitution, <sup>162</sup> The right of every person to free embrace a religion and to worship (Art. 28E (1); the right to freedom of religion (28E (2); the right to express views and thought and opinion (Art. 28E (2) (3)); the right to freedom of religion as non-derogable rights (28I (1)); <sup>163</sup>	Article 29 (2). “The State guarantees all persons the freedom of worship, each according to his or her own religion or belief” Article 28I (4) “The protection, advancement, upholding and fulfilment of human right is the responsibility of the state, especially the government.”	Article 29 (1) “The State shall be based upon the belief in the One and Only God.” Article 28J (2) of the 1945 Indonesia Constitution: <sup>164</sup> in exercising the right and freedoms, every person shall observe the limitations as are (1) prescribed by law for sole purposes of guaranteeing the recognition and respect of the rights and freedom of others and of satisfying just demands based upon considerations of (2) morality, (3) religious values, (4) security and (5) public order in a democratic society.

In both the Ahok case and the Meiliana case, there are indications that the Court did not follow proper legal procedures. First, in Ahok's case, if referring to Article 165a of the Criminal Code as the article Ahok is accused of, then Ahok should not have been directly processed through the court but given a warning beforehand. Likewise, the case of Meiliana who criticized the voice of the Adhan, should not enter the realm of blasphemy. Second, that in the Ahok case, the legal process was not based on proper procedures where there was no Investigation Order issued by the National Police, but because of public pressure that was continuously mobilized to punish Ahok, law enforcers had ignored further legal procedures. This is not seen by the judge as a serious problem in Ahok's law enforcement process. Whereas in the Meiliana case, when the Meiliana case was not processed for two years because law enforcement felt that there was not enough evidence, there were various demonstrations demanding that Meiliana be punished, and that's when, after two years of this case, the vacuum was suddenly processed by the Indonesian National Police.

<sup>161</sup> The International Human Rights Law clearly distinguishes between derogation and limitation. Article 4 of the ICCPR stipulates that the State is not allowed to derogate from rights prescribed in Article 6 (the right to life), Article 7 (the right to be free from torture), Article 8 (the right to be free from slavery), Article 11 (the right to not be imprisoned on the grounds of a civil contract, Article 15 (the right not to be prosecuted under retro-active law), Article 16 (the right to recognition as a person before the law, and Article 18 (the right to religious freedom).

<sup>162</sup> The second Amendment of 1945 of Indonesia Constitution enacted in 2000.

<sup>163</sup> Article 4 of Law No. 39/1999.

<sup>164</sup> See also Article 23 (2) and Art. 73 of Law No. 39/1999 on Human Rights and compare to Art. 18 (3) of the ICCPR.

Both Ahok's and Meiliana's lawyers in their pleas emphasized that the Anti-Defamation Law that they were accused of was against the Human Rights Law. However, the court did not give any consideration on this matter. The General Court which tends to be positivistic only considers the articles charged by the Public Prosecutor. The Court closed itself to examine in depth how the relevance of the articles indicted with other provisions in the currently developing statutory regulations, whether they are consistent or not. So that the judges' considerations in general courts in general, including the Ahok and Meiliana cases, are very dry on the considerations of Human Rights Law. Human Rights Law and Indonesia's ratification of the Covenant in the field of Human Rights are placed very far from the judge's consideration.

### **3.7 Criminalization of Blasphemous Signify Political Gains for Opponents**

Referring to Marshall's view, that to mark a religion-based case as containing political manipulation of religion, the case must contain an inter-religious conflict, and at the same time there is a political momentum in which this religious conflict is used as an issue raised in political contestations to win one or the other. one candidate. This study sees that the Ahok case and the Meiliana case illustrate two sides of a coin. On the one hand, the Ahok case illustrates the conflict between Christianity and Islam, while on the other hand, this case occurred during the DKI Jakarta Regional Governor Election. Ahok is the Incumbent Governor who is running again as a Candidate for Governor of DKI Jakarta against Anis Baswedan (Muslim), Former Minister of Education and Culture for Joko Widodo's first presidency. Ahok was accused of blasphemy against Islam because Budi Yani uploaded a video when Ahok was carrying out his work to the Thousand Islands on Tuesday 27 September 2016, where in the video Ahok stated that he did not force people to vote for him in the 2017 Pilkada. On 7 October 2016, Ahok was reported by a cleric named Novel Chaidir Hasan to the Criminal Investigation Department through the report Number LP/1010/x/2016/Bareskrim. Ahok apologized to the public on October 10, 2016, in which he did not mean to insult Muslims. The public did not accept Ahok's apology, then a demonstration in front of the DKI Jakarta City Hall occurred on Friday, October 14, 2016.

If Ahok succeeds in winning the political contestation, then Ahok will continue his leadership as the Governor of DKI Jakarta, which he originally served as PLT from Joko Widodo who become President of Indonesia. The poll results released by Populi Center show that Ahok's electability is superior to Anies Baswedan.<sup>165</sup> This is a threat to Ahok's romance if the public continues to support him. Amid a hot political constellation, a video with a duration of 30 seconds was uploaded by Budi Yani, where in the video Ahok put the statement: "The Blasphemer of Religion". This fabricated hate spin continued to gain support because it has been fabricated by political brokers who are backed by politicians.

Ahok's remarks regarding the verse of Al-Maidah verse 5, which is often manipulated by prospective leaders to reject non-Muslim leaders, are considered by hard-liner Islamic groups as blasphemy (Islam). Ahok is one of the candidates for regional head who comes from a minority group, is Christian and is of Chinese descent. Ahok, who previously served as regent, has experienced the difficulty of winning the political arena if religious issues are manipulated and used as a tool for rivalries to attack him. After the video surfaced, public anger increased. This situation was exploited by Ahok's supporters to continue bringing the issue of blasphemy to the public arena. The 2012 Islamic Defending Action Movement was used as a jargon to attract mass support.

Religious manipulation appeared when a member of a hardliner Islamic group (Budi yani) edited Ahok's speech by cutting off part of his speech, then affixing the sentence "The Blasphemer of Religion" and the video was then disseminated through social media by providing a narrative framing that cornered Ahok. This video cash gave rise to hatred towards Ahok. This twist of hatred will become a significant political force if it is successfully carried out and gains support from the public, not only the public in Jakarta but including the public throughout the Republic of Indonesia. The wave of support from most of the Indonesian people became a significant capital to win the leadership competition in Jakarta, regardless of the qualifications of the candidates. As a result, public mobilization continues to be held to gain massive support as well as high social pressure in rejecting Ahok as a candidate for Governor of DKI Jakarta. Hard-line Islamic groups take advantage of this

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<sup>165</sup> Cited from <https://databoks.katadata.co.id/datapublish/2016/10/07/populi-ahok-paling-layak-dipilih>

momentum to show the public at home that what they are fighting for is a form of defence of the state. Hard-line Islamic groups got the momentum where public support for the demands to imprison Ahok continued to roll in volumes by continuing to hold demonstrations on the streets using Islamic attributes to fill the days in Jakarta.

The socio-political dynamics developed by hardliner Islamic groups received broad public support, where public calls to punish Ahok or Meiliana had an influence on the establishment of the court. Various scientific studies on the weaknesses of the Blasphemy Law were not sufficient to enlighten the Court in deciding the Ahok and Meiliana cases. In the case of Ahok and Meiliana, this study finds that the politicization of religion has strengthened. Hardliner Islamic groups have politicized the religion (Islam) by using the Blasphemy Law as a political tool to achieve their goals. The indication is very strong when Islamist hardliners can take advantage of the flaws of the Blasphemy Law to influence the public, including the courts to punish Ahok and Meiliana. First, the court interprets widely and religiously about what is meant by “blasphemy of religion”. Second, in the cases of Ahok and Meiliana, the court ignored the legal facts that were present at the trial.

### **3.8 Conclusion**

This study does not dispute the findings of Tyson (2021) that law enforcement in blasphemy was “politically motivated and can lead to serious abuses of power”. With in-depth analysis referring to Marshall and Cherian's theory, this study finds that political manipulation of blasphemy cases in Indonesia perceives a channel when the legal substance is vague, the legal procedure ignores fair trial, and the legal institutions that have the authority to adjudicate cases of blasphemy of religion are not independent and impartial. The shortcoming of the rule of law gives a room for political brokers to twist facts to launch hate-spin strategies. This is almost unstoppable when the media also supports it. Ahok and Meiliana are just chess pieces that are bait for the arrogance of power politics that constantly ignores the victims who fall because of the implementation of an irrelevant and outdated anti-blasphemy law for years. If the power that Ahok had at that time as Acting Governor of DKI Jakarta was not enough to give him legal standing to fight for justice or only get equal

treatment before the law, especially Meiliana, she was just an ordinary housewife who had a double minority, namely as a descendant of Chinese and Buddha.

By using the Marshall's indicators of political manipulation of religion, this study finds First, that both law enforcement in the Ahok and Meiliana cases show a strong religious dimension as well as a political dimension. This can be indicated by the two of them being accused of being perpetrators of blasphemy, where Ahok blasphemed religion because he considered that one of the letters in the Qur'an which was often used as a tool by racist rulers in their campaign to influence Muslims not to choose a candidate for leader. Non-Muslims. Meanwhile, Meiliana is considered to have insulted Islam because her criticism of the loud sound of the call to prayer in front of her house has offended the public as if Meiliana had insulted the sound of the call to prayer.

Second, in both the Ahok and Meiliana cases, the twists of hatred fabricated by political brokers have led the judiciary to get caught up in the political arena, namely by continuing to charge Ahok or Meiliana with ambiguous articles of the Anti-blasphemy Law, punishing without fault, ignoring the principle of presumption of innocence, and overriding the independence and impartiality of judges. The cases of Ahok and Meiliana reflect religious intolerance but have been twisted in such a way by spreading biased and untrue information, fabricated through the internet and social media as if it were a statement of hatred against the [Islam] religion. Public anger was then used to strike back through incitement to hatred against Ahok and Meiliana and to take advantage of the judiciary, as if this incitement to hatred found a justification. This hate-spinning strategy is a form of political propaganda to gain sympathy and invite the anger of the masses who then retaliate through real hate speech, either in the form of destroying or burning houses of worship belonging to other religions, as a form of justification.

Third, this study corroborates the findings of Cherian George, that in the Ahok case, his critical statement about unscrupulous politicians who used religious jargon to gain mass support, or Meiliana who protested intolerance in playing a very loud call to prayer, which was originally an ethical problem, is a problem of intolerance between people. Religion that can be resolved through interfaith dialogue, twisted in such a way by political opportunist groups supported by hardliner Islam, to carry out



a strategy of retaliation, namely by carrying out anger, demands for punishment, and even destructive hate speech. The hate loop strategy in the Ahok and Meiliana cases was quite successful in giving political victory to the opposing party and led Ahok and Meiliana to serve their sentences.

In the simultaneous election of regional leaders in 2017, political contestants need the sympathy and support of a majority (Islamic) vote. So, for political brokers to manipulate the Ahok and Meiliana cases is a momentum, playing the case as a hate speech against Islam, using internet technology to influence, then moving the community through various demonstrations. Then undermine the rule of law through the hands of the Indonesian Ulema Council to dictate to the court through fatwas that religious blasphemy has occurred, where this effort at the same time undermines the independence and impartiality of the court when the court no longer applies the principle of presumption of innocence, no longer examines witnesses in a balanced manner, no longer proves all elements of the accused, and no longer prepares fair legal considerations. Political dynamics, threats, and community mobilization inside and outside the courts have blinded and weakened law enforcement.

What Ahok and Meiliana experienced shows that the blasphemy case does not find a fair solution through the courts, even though those accused of doing it, such as Ahok and Meiliana have put their trust in law enforcement and have tried their best to use various judicial channels in Indonesia, starting at the judiciary of the first instance and the last instance; however, the reality that often occurs is legal drama to convince the public that the rule of law in Indonesia is still functioning.

The court's laziness to examine both cases professionally is part of an effort to please Islamist hardliners who are currently popular so that law enforcement work is easier and avoids the risk of public anger. The movement of human rights activists and academics as well as non-governmental organizations that continue to fight for the respect, protection, and fulfilment of human rights, especially the right to freedom of religion, is still placed as a sweetener for democracy that is developing in Indonesia. The pages of the Amicus Curiae (friends of the court) which were expected to be helpful and provide valuable information for the judiciary, were only seen as meaningless attachments to the court's decision and were never considered by the judges. This condition makes it easy for the Court to get caught up in political

manipulation of religion in resolving cases of blasphemy. If this flawed and multi-interpreted law is not immediately remedied and the impartiality and independence of the courts is not respected, and human rights values are not respected, then the judge's decision will fail to achieve the legal objectives as stated by Gustav Radbruch (2004), namely justice, expediency, and legal certainty. The court's decision in the Ahok and Meiliana cases will only add to the arithmetic series of court decisions in Indonesia which have similar problems.

Moreover, the 1945 Indonesian Constitution has received progressive changes in guaranteeing the protection of human rights following the 2nd Amendment to the 1945 Constitution. The right to freedom of religion and belief is guaranteed in Article 29. In principle, it differs from the constitution of Pakistan and Malaysia, even though Indonesia is the country with the largest number of Muslims in the world, Indonesia is not an Islamic country. This is an extraordinary progress and important support for the development of democratization in Indonesia. On October 28, 1928, seventeen years before the independence of Indonesia, the Youth Oath pledging for “one nation, one homeland, one language”, and the Jakarta Charter signed by omitting the sentence of “with the Obligation to carry out Islamic Shariah for its followers”, as a revision of the First Sila of Pancasila in which it became the basis for Indonesia's decision to be the stated based on the rule of law and not an Islamic state.

Even though Indonesia is not an Islamic country, Indonesia is still included in the 21 percent of countries in which if refer to the Professor Cole Durham's study is categorized as a country that are conferred favours onto one or more religions. Indonesian support for established religions is not found in the Constitution. This was found in the Blasphemy Law in the explanation section. The explanation in a law do not actually have binding powers, but because they get legitimacy in the practice of the state, the main protections are only given to the six established religions. That means, stating the explanatory sentence in the Article 1 of the Blasphemy Law as constitutional is easier in the Indonesian context. According to Cole Durham, the pattern of relationship between state and religion could impact to the level of protection of freedom of religion. The more separate between state and religion, the higher level of religious freedom. The characteristic of blasphemy law that is applicable in such countries could define the pattern of relationship between state and

religion on its and describe its level of religious freedom. The State commitments and obligations to protect human rights and fundamental freedoms are stated on Paragraph 4 (f) of Commission on Human Rights and Human Rights Council 6/37 Article 9 (1).<sup>166</sup> “No one within their jurisdiction is deprived of the right to life, liberty, or security of a person, [...] subjected to torture or arbitrary arrest or detention [...] and to bring justice all perpetrators of violation of these rights.” Therefore, the State need to evaluate their domestic law such as BL to be more in line with the international human rights law. Although Indonesia is not a country such as Pakistan and Malaysia, who still imposed the capital punishment and death penalties for blasphemy. The formers should consider the Resolution 1984/50 of Economic and Social Council Resolution, to abolish them, because the capital punishment and death penalty only may be imposed for the most serious crimes such as a crime against humanity, war crimes, slavery, or terrorism. If a country intent to prolong the BL and imposing the capital punishment or the death penalty to the perpetrators, the State is failure to do its obligation under international human rights law.

In addition, this study finds that legal politics in Indonesia still places a very strong relationship between religion and the state, where religion dictates the state to punish religious critics and the state favours a certain religion (Islam) by adopting the MUI fatwa as the only consideration to monopolize the truth. religion. The dynamics of this case show that hardliner Islamic groups do not want changes or repeal of the Anti-Defamation Law. The formation of laws and policies that are currently developing, such as the Bill on the Second Amendment to the Electronic Information and Transaction Law and the Draft Criminal Code (2022) will make these regulations even stronger, coupled with the birth of various regulations at the local government level that is an extension of the Anti-Defamation Law. The ambiguity of the Constitutional Court in its decision which assessed that the Blasphemy Law had multiple interpretations, but it was stated as a constitutional law so that the articles in the Anti-Defamation Law were still used to punish people who were deemed to have blasphemed against religion (Islam).

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<sup>166</sup> See Commission on Human Rights Resolution 2005/40 (Paragraph 4(f) and Human Rights Council 6/37 (paragraph 9 (1).

The Author predicts that in the future, law enforcement, especially the courts, will continue to be trapped in the vortex of political interests, as was the case with Ahok and Meiliana. It is evident that during this study, there have been several cases that have been urged to put the Anti-Defamation Law into effect to punish the perpetrators. If the Anti-Defamation of Religion Law has not provided clear directions and provides a clear definition of what is meant by blasphemy. The absence of a blasphemy standard will open space for law enforcers to make subjective interpretations of what constitutes blasphemy, so that it is easy to be led by political interests that are developing in society. Freedom of religion and democracy are still expensive items under the Anti-Defamation Law regime.

The Author wants to emphasize that both Ahok and Meiliana, the court has entered the vortex of political power because it failed to uphold the rule of law and fair trial. The principle of the rule of law was ignored when Ahok and Meiliana were charged by the Court with a law which the Constitutional Court has issued a multi-interpretation law (Pratiwi, 2021). The impartiality of the court is doubted when the decision is based on the testimony of a witness who does not have the competence as a witness and is based on an MUI fatwa which is not a legally binding source. Meanwhile, the criminal justice system was ruled out by the court where both Ahok and Meiliana were punished not because of their fault, but because of the pressure of hardline Islamic groups and political dynamics that wanted them to be punished. It is undeniable that allowing the court to be dragged into the flow of political manipulation of religion will harm democracy, violate human rights, and undermine the rule of law.

## CHAPTER V

### ***MAIN HAKIM SENDIRI*: RISING POPULISM OF ISLAM AMID UNSECESSFUL ANTI BLASPHEMY LAW ENFORCEMENT IN INDONESIA**

#### **5.1. Introduction**

In a previous chapter, the author described how the courts are trapped in political manipulation of religion when they continue to apply the Indonesian Anti-Blasphemy Law, degrade the fairness of legal procedures, and endorse the semi-state institutions (the MUI) to determine solely the blasphemers at fault without attempting to draw up a fair legal judgment based on the evidence presented in court. Political brokers have successfully exploited blasphemy trials for political benefit by using a narrative based on hatred to capture the sympathies of the majority of voters. Whether the court understood it or not, the condition undermined the cornerstones of the rule of law and posed a threat to religious liberty. These findings call into question the claim that the anti-blasphemy statute is intended to safeguard religion. In reality, the legislation was used for political objectives by a small group of people. The continued application of anti-blasphemy legislation can be regarded as the state weaponizing political parties and law enforcement with these regulations to undermine human rights law. If it is true that the purpose of enforcing the anti-blasphemy law is to safeguard the faiths practiced in Indonesia from insulting or intolerant activities so that horizontal conflicts may not arise, why is every blasphemy case accompanied by vigilante action against organizations accused of defaming religion?

The nature of the rule of law emphasizes that social problems must be addressed by legal means established by law or by leaving the resolution to law enforcers, and not vice versa, by the community through *Main Hakim Sendiri* (MHN). Allowing individuals to take the law into their own hands is a breach of human rights in addition to being illegal. The state, through its law enforcement system, which is obliged to defend the rights of every citizen against acts of violence and arbitrariness, has failed to meet its primary obligation to safeguard the human rights of its citizens if they are victims of vigilante attacks.

This chapter discusses the phenomenon of vigilantism that surrounds accusations of blasphemy against religious minorities, such as the Ahmadiyya, Gafatar, and Meiliana occurrences. This chapter examines, first, why the actions of *Main Hakim Sendiri (MHS)* coincided with the application of the anti-blasphemy statute. The vigilante event is the polar opposite of the rule of law. Even though Article 1 paragraph 3 of the 1945 Constitution states expressly that “the State of Indonesia is a state of law,” the occurrence of vigilante justice continues to be a societal concern that continues to attract public attention. The nature of the rule of law emphasizes that social problems must be addressed by legal means established by law or by leaving the resolution to law enforcers and not, vice versa, by the community through vigilantism. Allowing individuals to take the law into their own hands is a breach of human rights in addition to being illegal. The state, through its law enforcement system, which is obliged to defend the rights of every citizen against acts of violence and arbitrariness, has failed to meet its primary obligation to safeguard the human rights of its citizens if they are victims of vigilante attacks.

The second aim of this study is to find out why people who are accused of blasphemy are often the victims of vigilante actions by looking at the factors and people involved in MHS episodes. The third goal is to find out if the rise of Islamic populism is linked to the actions of vigilantes in blasphemy cases.

Previous research suggested that *MHS* activities typically happened during political transitions (Marzuki, 2017). Or some legal academics perform various studies about *MHS* focused on the perpetrator's criminal liability (Panjaitan and Wijaya, 2018; Rambe, 2018). This study focuses on examining the activities of *MHS* that have escalated over the past decade following the tightening of the anti-blasphemy statute, which the government continues to reinforce. The administration continues to defend the necessity of maintaining this rule in order to prevent horizontal conflict and disruption of public order. In contrast to the execution of the law, social reality is just the reverse. In 2020, USCIRF stated that 76 out of 164 instances of anti-blasphemy legislation being enforced in various nations were accompanied by efforts at public mobilization, threats of violence, and violence. However, in blasphemy cases, vigilantism has changed from spontaneous action to more planned acts backed by the government. Pratiwi, CS., and Sunaryo, S. (2021) contend that vigilante violence

surrounding charges of blasphemy in numerous nations, including Pakistan, Malaysia, and Indonesia, cannot be isolated from structural violence caused by the state through the preservation of legislation.

To study the aforementioned three questions, a theoretical framework pertaining to Islamic populism in Indonesia, the conception of vigilantism, and accounts of the vigilante instances that affected *Gafatar*, *Ahmadiyya*, and *Meiliana* will be provided. Then, using secondary data in the form of research reports and in-depth interviews with related parties, such as law enforcers and minority religious groups, as well as various court decisions in related cases, this study identifies the causes of vigilantism and the actors who support vigilante action. Based on the information about the factors and actors that lead to vigilantism, it is possible to figure out if this has anything to do with the rise of Islamic populism in Indonesia.

## **5.2. Theory and Conceptual Framework**

### **3.8.1 Populism of Islam in Indonesia**

Islamic populism in Indonesia is shown by the increasing popularity of Islamic-ideology-carrying movements in an effort to combat the dominance of western (secular) forces and communist groups, both of which are viewed as ruling the country politics and oppressive economy. Islamic populism in Indonesia manifests itself through the identity-political movement to obtain support from community groups as well as through religiously motivated violence (Hadiz, 2019). Historiographical, this was marked by the emergence of various Islamic organizations to combat Dutch colonialism, including efforts to turn Ethnic Chinese (Eastern Foreigners; outsiders) into common enemies for the Islamic movement (Indigenous; insiders), as Ethnic China was thought to have mastered Indonesia's economic resources. Ideologically, efforts to make Indonesia a Muslim country through the strengthening of Islamic ideology in the text of Pancasila Precept I ("Belief in One Supreme God with the obligation to implement Shariah for its adherents") have been thwarted by the strengthening of secular groups through the establishment of the Jakarta Charter, which succeeded in erasing 7 words from Precepts 1 Pancasila by eliminating the phrase "the obligation to implement Islamic Sharia for its adherents."

In 1965, the power struggle of communism (the Indonesian Communist Party), which had evolved and reduced the function of the Indonesian-Islamic group during the time of the cold war between the Soviet Union and the United States, eventually crumbled. The PKI was overthrown by an Islamic organization that took power, this time with the help of the Indonesian military. Islamic populism pushed Sukarno to pass the 1965 Presidential Decree of Anti-Blasphemy Law to avoid the rebirth of forces that might threaten Islam (Hadiz, 2019).

Furthermore, under Jokowi's reign, Islamic populism has grown once more. Public opinion favoured the removal of *Ahok*, who was seen to have continued to assault the interests of Islamic organizations through the many policies he enacted as Jakarta's governor after Jokowi assumed the presidency. Through the problem of Chinese ethnicity and the stigma of blasphemy and utilizing Law No. 1/PNPS/1965 as a weapon, the election of *Ahok* was thwarted.

This chapter aims to examine whether enforcement of the Anti-Defamation Law increases vigilantism in light of the second argument. This can be determined by identifying the perpetrators of violence during the process of enforcing the anti-religious law, the reason for the violence, and those who argued that the anti-blasphemy law was necessary and that efforts to abolish the *Aquo* law posed a threat to the community, as well as their justifications for this belief. Is this a result of prior trauma (Crouch, 2012), or is it due to other factors, such as the rising popularity of the faith (Islamic) or caused by other factors?

### **3.8.2 Conception of *Main Hakim Sendiri***

Before analysing the circumstances and actors surrounding the *Ahmadiyya*, *Gafatar*, and *Meiliana* situations that caused the *Main Hakim Sendiri*, this part offers a brief description of each case and how the *Main Hakim Sendiri* affects its adherents and society. Then, to what degree do vigilante activities represent the state's inability to prevent violence against its citizens? This description gives guidance for determining the influencing variables and actors engaged in vigilante justice, which the next section analyses. *Main Hakim Sendiri*, or what is called as “*eigentrechting*” in Dutch, is described as trying an accused criminal without recourse to the legal system or taking the law into one's own hands.



According to Merriam-Webster, a vigilante group is “a group of non-police volunteers who decide on their own to combat crime and punish offenders.” According to the former Supreme Court Justice of Indonesia, Sudikno Mertokusumo (1996), *Main Hakim Sendiri* can also be seen as vigilante activities or a type of arbitrary exercise of rights based on one's own desire, without the agreement of the other person involved. In other words, *Main Hakim Sendiri* are the individual application of punishments.

In a community where religion is seen as an honour for its believers, religion and all of its components, including its doctrines, symbols, holy texts, prophets, and religious leaders, are regarded as part of that honour. For some religious members, especially hardline religious devotees, those who assault the honour of their religion are adversaries since they have attacked both their honour and their lives. People who subscribe to extremist religions are deemed deserving of harsh punishments including the death sentence. For some, though, the death sentence is excessive.

However, they are labelled as terrible individuals, thus they should be punished. Moderate religious adherents, on the other hand, believe that religion, religious symbols, and even God do not need to be defended, and therefore consider those who insult religion to be ignorant of the importance of tolerance and respecting differences. For moderate religious organizations, contempt for religion is an infantile attitude founded on ignorance; therefore, punishing the offenders is not the solution, but communication with them will be reconciliatory.

### **3.8.3 *Main Hakim Sendiri* Under Anti-Blasphemy Law Regime.**

#### **a. *Main Hakim Sendiri* Against Ahmadiyya**

Ahmadiyya is a legal entity founded by the Indonesian Islamic Community and was approved by the Ministry of Law in 1953. However, since 1980 the Ahmadiyya has been declared heretical for the first time by the MUI Fatwa, following other fatwas. Since then, Ahmadiyya adherents in various parts of Indonesia, such as in Lombok, West Nusa Tenggara, in Tangerang, in Bogor, in East Java, etc., have often been victims of acts of vigilantism, either in the form of expulsion, death threats, houses worship is burned, etc. Since Ahmadiyya was founded in 1953 until before the MUI Fatwa declared Ahmadiyya heretical (1980), Ahmadiyya adherents lived peacefully side by side with other Muslims. Then the Ahmadiyya were declared heretical by the

MUI because they considered Mirza Gulam Ahmad as the last prophet and possessed a holy book other than the Qur'an. The former chairman of the MUI who once issued a heretical fatwa against Ahmadiyya and currently serves as Vice President of the Republic of Indonesia, Ma'ruf Amin, once told the BBC:

*"Because Ahmadiyya considers there is a prophet after Prophet Muhammad. It's an opinion that can't be disputed anymore. In the agreement of all Muslims in the world, tajdid (reform) is allowed but it is a movement. But if the tajdid then says there was a prophet after the Prophet Muhammad, it is a deviant. It goes beyond the definition of tajdid. carry the name of Islam."*<sup>167</sup>

This has been denied by Ahmadiyya, but this has not stopped MUI from continuing to declare Ahmadiyya as a heretical religion. Ahmadiyya adherents deny the understanding of mainstream Muslims to Ahmadiyya, which states that there is a misunderstanding in understanding Ahmadiyya. This is as stated by JAI spokesman, Yendra Budiandra:

*"The Qur'an is the holy book of the Ahmadiyya Muslim community that must be read and is a guide for life, while the Tazdkirah is like other books of Hazrat Mirza Ghulam Ahmad that are recommended to be read, but not a holy book as in the context religious scriptures. We Ahmadiyya Muslims are the same as following and believing in these criteria, both from the creed, the Pillars of Faith, the Pillars of Islam, and the Holy Qur'an."*<sup>168</sup>

The MUI solution that recommends Ahmadiyya leave Islam is seen as not solving the problem and will be difficult to accept because Ahmadiyya adherents practice Islamic teachings. This was stated by an expert and explained by Alauddin Makassar, Professor DR. Qasim Mathar, a theology lecturer at the State Islamic University (UIN), who stated that:

*"It is impossible for them to be called a religion that is not Islam, for example they are told to take another name. Because their practice of religion is Islam, their mosque and way of praying is Islam. They fast during Ramadan, they go for Hajj too, and so on."*<sup>169</sup>

The wave of rejection of the Ahmadiyya as part of the Muslim community that occurred in Indonesia was also influenced by the rejection that occurred in various

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<sup>167</sup> Rohmatin Bonasir. Kenapa Ahmadiyya Dianggap Bukan Islam: Fakta dan Kontroversinya. BBC-19 Februari 2018. Retrieved from <https://www.bbc.com/indonesia/indonesia-42642858>

<sup>168</sup> Rohmatin Bonasir. Ibid.

<sup>169</sup> Ibid.

countries, such as Pakistan, Malaysia, and among members of the Organization of Islamic Committee, or OIC. Ahmadiyya is a religious sect (Islam) that is most often the target of the main Hakim Sendiri actions. Table 6 contains a list of *Main Hakim Sendiri*, or vigilantism violence against Ahmadiyya in Indonesia. In the case of Ahmadiyya, various MUI fatwas that declared Ahmadiyya a heretical religion immediately received reactions from a hard-line Islamic group calling itself the Islamic Defenders Front.

Table 6. *Main Hakim Sendiri experienced by Ahmadiyya in Indonesia.*

No	Date & Place	Forms of Vigilantism Violence
1	In Cisalada, West Java, in October 2010	A group of people burning of the Ahmadiyya mosque of An Nur. In 2007 there was a Joint Decree at the Ciampea District level, which was signed by the Camat, the MUI, the KUA which stated that there should be no activities of the Ahmadiyya congregation. Then, on Monday, July 12, 2010, thousands of Cisalada residents visited the location of Ahmadiyya followers and refused to build several buildings. The thousands of people asked for the demolition of houses of worship, schools, and the foundations of mosques belonging to Ahmadiyya followers. The foundation of the building belonging to Ahmadiyya followers was dismantled by the local Civil Service Police Unit. On August 9, 2010, there was an incident of throwing stones at one of the children of Ahmadiyya followers. <sup>170</sup>
2	6 February 2011 in Cikeusik, Bogor, West Java.	Hundreds of mobs stormed and killed JAI 3 members killed and 5 injured. In 2000 violence against Ahmadiyya residents increased in West Java. In 2005, the MUI issued a "heretical" fatwa against the Ahmadiyya. Hardliner Islamic groups attack the Ahmadiyya Congregation in Bogor. In 2008 FPI committed acts of violence against Ahmadiyya residents who rejected the Decree of the Three Ministers regarding the prohibition of Ahmadiyya. The Three Ministerial Decree was issued on 9 June 2008 which prohibits Ahmadiyya from carrying out deviant religious activities in public. February 2011, 3 FPI members were killed and 5 injured. 12 criminals 3-6 months in prison, Ahmadiyya followers who defend their lives are sentenced to 6 months. <sup>171</sup>
3.	Friday, February 17, 2012, Cianjur Regency, West Java.	The Nurhidaya Mosque belonging to the Indonesian Ahmadiyya Congregation was damaged by 20 people. The Cianjur Resort Police has named 20 people as suspects, namely residents of Cisaar Village, Cipeuyeum Village, Haurwangi District, Cianjur Regency, West Java. <sup>172</sup>
4.	May 23rd, 2016, in Kendal, Central Java	The Al-Kautsar Mosque belonging to the Indonesian Ahmadiyya Community in Purworejo Village was damaged by a group of residents, even though the construction of the mosque has obtained a certificate and building permit (IMB) since it was built in 2004. <sup>173</sup>

<sup>170</sup> See <https://www.viva.co.id/berita/nasional/180745-pertikaan-ahmadiyah-di-cisalada>. See also ELSAM, "Diskriminalisasi dan Kekerasan Terhadap Agama Minoritas," 22 December 2014, accessed from <http://referensi.elsam.or.id/2014/12/diskriminasi-dan-kekerasan-terhadap-agama-minoritas/>

<sup>171</sup> Ibid.

<sup>172</sup> See <https://metro.tempo.co/read/1520885/mui-depok-ahmadiyah-sudah-berulang-kali-diajak-berdialog>

<sup>173</sup> See BBC.My 25th, 2016. Pengrusakan Masjid Ahmadiyah Kendal Karena Tidak Adad Niat Baik Pusat. [https://www.bbc.com/indonesia/berita\\_indonesia/2016/05/160525\\_indonesia\\_ahmadiyah\\_kendal](https://www.bbc.com/indonesia/berita_indonesia/2016/05/160525_indonesia_ahmadiyah_kendal). See also Kompas. May 23rd, 2016. Peruakan Masjid Ahmadiyah di Kendal Dikecam. Retrieved from

No	Date & Place	Forms of Vigilantism Violence
5.	On May 19-20, 2018, in East Lombok Regency, West Nusa Tenggara.	A group of people attacked, vandalized, and expelled members of the Ahmadiyya Congregation in Grepek Tanak Eat Hamlet, Greneng Village, East Sakra District. <sup>174</sup> The destruction was carried out for two consecutive days. The first vandalism was reported by JAI to the local police, but no action was taken, resulting in a second vandalism on 20 May 2018. On October 1, 2010, the Ahmadiyya Mosque in Cislada was attacked, and burned to the ground.
6.	September 3rd, 2021, in Sintang Regency, West Kalimantan.	Destruction of mosques and burning of buildings belonging to the Ahmadiyya Congregation in Balai Harapan Village, Temunak District, Sintang Regency. <sup>175</sup> 20 heads of families and 74 members of JAI were transferred to another place for safekeeping, 200 people who took vigilante actions on behalf of <i>Aliansi Umat Islam</i> were taken into custody by the Indonesian National Police. <sup>176</sup>

From Table 6 above, it can be seen that vigilante justice against the Ahmadiyya resulted in damage to houses of worship and buildings, the victim suffered minor and serious injuries, the victim died, and Ahmadiyya followers were expelled from their homes.

#### **b. Main Hakim Sendiri against Gafatar**

In 2017, when the Ahmadiyya criminalization case was still ongoing, a new criminalization toward five members of the *Fajar Nusantara Movement* (Gafatar) emerged, where those who were formerly members of the Ajaran Millah Abraham accused to use the Gafatar organization to re-start the heretical teachings of Millah Abraham whose leader, Musadeq, received punishment.<sup>177</sup> For this accusation, Gafatar's followers became victims of vigilante actions carried out by two villages, Moton Panjang Village and Tanjung Pasir Village, in East Mempawah District, Mempawah Regency, West Kalimantan, which they established by clearing forests.

According to Adam, a member of Gafatar, in an interview, he explained that Gafatar was declared in January 2012 with its head office in Jakarta, has 55,000 members, and has branches in 34 provinces in Indonesia. The Gafatar organization

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<https://nasional.kompas.com/read/2016/05/23/16054031/perusakan.masjid.ahmadiyah.di.kendal.dikecam?page=all> Accessed on June 25th, 2021.

<sup>174</sup> See <https://nasional.tempo.co/read/1090715/sekelompok-orang-serang-dan-usir-penganut-ahmadiyah-di-ntb>

<sup>175</sup> Kompas. Kronologi Massa Rusak dan Bakar Bangunan Milik Jemaah Ahmadiyah di Sintang. Retrieved from <https://regional.kompas.com/read/2021/09/03/154505478/kronologi-massa-rusak-dan-bakar-bangunan-milik-jemaah-ahmadiyah-di-sintang>. Accessed on June 20th, 2021.

<sup>176</sup> <https://www.republika.co.id/berita/qyyfvr320/masjid-ahmadiyah-dirusak-begini-tanggapan-ketua-mui>

<sup>177</sup> Interview with a former member of Gafatar, Mr. AD. in August 2021. See also <https://nasional.tempo.co/read/655980/diduga-sebar-ajaran-sesat-anggota-gafatar-terancam-penjara>

received a permit from the Ministry of Home Affairs, but in 2015, the Ministry of Home Affairs rejected the application for an extension of Gafatar's permit, causing its management to disband. In the interview, AD explained that:

*“Gafatar is not a religious organization, members of Gafatar go to West Kalimantan to farm, make Kalimantan a national food barn, we plant rice, vegetables, so that our members have food sovereignty.”<sup>178</sup>*

Table 7. Main Hakim Sendiri experienced by Gafatar

No	Date and Place	Form of Vigilantism Violence
1.	Wednesday on 15-18 <sup>th</sup> January 2016	15 to 18 January 2016, a mob with batons and machetes in Mempawah District, West Kalimantan, approached the Gafatar farmer group and asked Gafatar to leave Mempawah. Terdapat 700 orang anggota Gafatar yang rumahnya dibakar oleh ribuan warga pada Rabu 20 Januari 2016. <sup>179</sup> Atas pembakaran kampung ini, ibu-ibu dan anak-anak ikut menjadi korban. <sup>180</sup> Padahal anggota Gafatar ketika membuka lahan tersebut telah menjual rumah dan harta bendanya dari daerah asal dan bertekad untuk memperbaiki nasib dengan bertani di daerah Kalimantan. <sup>181</sup>
2.	January 19 <sup>th</sup> , 2016.	After crowded burned Gafatar houses, the 1,124 members of Gafatar were evicted from their two villages in Mempawah Regency, West Kalimantan although they have declared their absence from Gafatar membership. This act of eviction was allowed by the local government. They were evacuated at the supplies and transportation complex (Bekangdam) of Kodam XII/Tanjungpura in Pontianak, West Kalimantan. <sup>182</sup>

### c. Main Hakim Sendiri against Buddhism in Meiliana Case

As described in the previous chapter regarding the chronology of the accusations against Meiliana of blasphemy because of her protesting the call to prayer, Apparently, before this case was processed by law enforcement, vigilante action also happened to Meiliana and her family. When the mediation process was ongoing, vigilante groups provoked the residents and continuously carried out the narrative that “Meiliana forbade the Adhan,” thereby causing their anger. In contrast, in a *pledoi* delivered by Meiliana's attorney, who said that Meiliana had never banned the call to prayer, she conveyed to the shop owner in a low tone on July 22, 2016, that: “Sis, the voice of our

<sup>178</sup> Interview with AD, a former member of Gafatar in January 2022.

<sup>179</sup> <https://www.liputan6.com/news/read/2415932/ribuan-warga-bakar-permukiman-gafatar-di-kalimantan-barat>

<sup>180</sup> Interview with Mr Adam. See also <https://www.viva.co.id/berita/nasional/725735-mantan-ketua-gafatar-sesalkan-pembakaran-kampung-gafatar>

<sup>181</sup> [https://www.bbc.com/indonesia/berita\\_indonesia/2016/01/160120\\_indonesia\\_pengusiran\\_gafatar](https://www.bbc.com/indonesia/berita_indonesia/2016/01/160120_indonesia_pengusiran_gafatar)

<sup>182</sup> [https://www.bbc.com/indonesia/berita\\_indonesia/2016/01/160121\\_indonesia\\_gafatar\\_pengungsi](https://www.bbc.com/indonesia/berita_indonesia/2016/01/160121_indonesia_gafatar_pengungsi)

mosque was not that big, now it's a bit bigger, right?"<sup>183</sup> The twists of hatred against *Meiliana* managed to quickly spark public anger for violent vigilantism. Not much different from followers of religions that are considered heretical, such as *Ahmadiyya* and *Gafatar*, followers of minority Buddhist religions like *Meiliana* are very vulnerable to becoming victims of hate crimes.

The Muslim community where *Meiliana* lives ended up taking vigilante action. They not only damaged *Meiliana's* house but destroyed a Buddhist place of worship. The vigilante acts carried out by mobs have damaged the Tri Ratna Temple and the Dewi Samudera Temple on the banks of the Asahan River. At least three monasteries, eight temples, two Chinese foundations, a medical center, and *Meiliana's* house have been damaged. Due to this vigilante act, the police finally named eight suspects for acts of violence and *Meiliana* as a suspect for blasphemy (Islam). The eight suspects were then tried at the Tanjung Balai Court with the head of the Panel of Judges, Ullina Marbun, and in the end they were sentenced to a very light sentence, namely 1.5 months in prison, deducted from the prison term.<sup>184</sup> Meanwhile, *Meiliana* herself was sentenced to 18 months in prison.

### 5.3. Various Factors Influencing *Main Hakim Sendiri* Over Blasphemy Allegation

In general, in Indonesia, local people resort to violence and even warn criminals who manage to steal at crowded place (Syamsiar A., 2005: 94-95).<sup>185</sup> Religious communities are generally angry with immoral business activities such as prostitution or gambling (2006: 203).<sup>186</sup> Previous studies have examined the causes of people doing justice themselves when law enforcement due to public dissatisfaction with the performance of the police or courts in enforcing the law (Goldstein, 2003) or procedural injustice

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<sup>183</sup> This statement was conveyed by Ranto Sibarani, *Meiliana's* attorney, when answering a Tempo reporter's question when asking about the chronology of *Meiliana's* blasphemy case. See Tempo.co. <https://nasional.tempo.co/read/1119663/ini-kronologi-kasus-penistaan-agama-meiliana-di-tanjung-balai>

<sup>184</sup> See District Court Decision of Tanjung Balai No. 461/Pid.B/2016/PN Tjb; No. 457/Pid.B/2016/PN-Tjb; No. 462/Pid.B/2016/PN Tjb; No. 463/Pid.B/2016/PN Tjb, No. 451/Pid.B/2016/PN-Tjb; No. 458/Pid.B/2016/PN-Tjb; No. 460/Pid.B/2016/PN Tjb; No. 477/Pid.B/2016/PN Tjb.

<sup>185</sup> Syamsira, A., (2016). Tinjauan Kriminologis Terhadap Tindakan *Main Hakim Sendiri* (*Eigentrechting*) yang dilakukan oleh Masa terhadap Pelaaku Tindak Pidana. Jurnal Petitem. IV. (2). p 89-99.

<sup>186</sup> Barker, J. (2006). Vigilantes and the State. Social Analysis: The International Journal of Social and Cultural Practice, 50(1), 203–207. <http://www.jstor.org/stable/23181953>

contributed to increased public support for vigilantism (Tankebe, 2009). Tankebe and Asif, 2016) or when the law enforcement process is very slow (Black, 1983), or because political and legal authorities have encouraged vigilante violence (Brundage, 1997; Colombijn, 2002; Handy, 2004). Muhammad Asif & Don Weenink (2022) conducted a study of the vigilante phenomenon in Pakistan and argued that vigilante violence is caused by “fear, righteous anger, and a desire for revenge and punishment that stems from violating moral, sacred commands Durkheimian values.”

It is clear that factors that cause *Main Hakim Sendiri* are very diverse. In addition to flawed law enforcement, vigilante actions are influenced by the socio-political context of a country. The author believes that “morally angry people turn their fears and anger into acts of violence through mobilization and bodily harmony in vigilante rituals. These rituals can restore moral integrity and result in unity within the group.” The author also provides at least several factors that influence vigilante action, namely legal legitimacy, exposure to violence, and the ruler's push for independence (violence). Normatively, vigilante action clearly violates criminal law<sup>187</sup> and violates the accused's right to the presumption of innocence. However, the vigilante case against the accused of blasphemy is not enough just to look at the legal aspect but needs to be explored in depth whether this is related to state intervention on religion.

Why *MHS* can occur in a country that adheres to the rule of law? According to Donald Black is a condition when the social control carried out by the government does not work in accordance with social justice, the people then carry out social control according to their own way (Ali, 2007). Barda Nawawi (1984), an expert on Indonesian criminal law, mentions several factors that cause vigilante acts and forms of vigilantism (p.37). Learning from the experience faced by the followers of *Ahmadiyya* and *Gafatar* described at earlier section, hundreds to thousands of adherents of this religion were subjected to different vigilante acts, including as evictions, expulsions, the demolition of houses of worship, physical assault, the confiscation of property, the dissolution of places of worship, and even death. Even in the *Meiliana* case, vigilante action was not limited to Meiliana alone; Buddhist sites of worship that had nothing to do with the *Meiliana* case were also targeted.

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<sup>187</sup> See. Article 351 and 170 of Indonesia Criminal Code.

Incitement from fellow members of the community to participate in judging the alleged perpetrator, emotions within the community against the alleged perpetrator's actions, feelings of lack of trust by the community towards law enforcement, the desire for retaliation for the alleged perpetrator's actions, and a lack of alertness are the factors that lead to vigilantism. The police should arrive at the location of the occurrence without delay. While some forms of vigilantism include public humiliation, beatings, persecution, and even burning to death, this action is certainly not justified from a legal standpoint, because people who take vigilante actions either intentionally or unintentionally cause an effect that is not desired by the law, whether the result satisfies a subjective element or an objective element, and does not consider whether the decision to take the vigilante action arose from him or from an outside force. Vigilantism can be threatened with criminal offenses, particularly under Article 170 of the Criminal Code and Section 351 of the Criminal Procedure Code, but sadly, vigilantism cannot be punished in the absence of a victim's complaint. According to Lamintang and Samidjo, "*klacht delicten*" is a crime that may be prosecuted if the victim files a complaint (Lamintang, 2003; Samidjo, 1985).

To recap, the act of vigilantism is a manifestation of the demands of social justice by the community which are considered unable to be fulfilled by the law enforcement process in court (Allen, 1997). However, according to this study, the circumstances that lead to vigilante action against groups suspected of blasphemy are more complex than *MHS* among offenders in general.

### **5.3.1. Godly Nationalism and the Presence of *Main Hakim Sendiri***

Underpinning of Godly Nationalism manufactures the prolong enforcement of the anti-blasphemy law that applaud the presence of mob violence or public protest. Menchik (2014a) in his study argues that Godly nationalism that is upheld in Indonesia produces religious intolerance. Menchik believes that the value of God Almighty is central to the First Sila of Pancasila, "Believe in One God the Almighty," in which every citizen has an intrinsic moral commitment to maintain religion as part of safeguarding the nation. In this view, insulting, blaspheming, blaspheming religion, and urging others to have no faith are acts that oppose holy nationalism. The Soekarno administration extended recognition to six religions, enacted the Law on Anti-



Defamation of Religion, and founded the Indonesian Ulema Council in accordance with this notion of godly nationalism (p. 607–610). During his administration, Soekarno issued Presidential Decree No. 1/1965, often known as the 1965 Anti-Defamation Law, which stated:

*“Every person shall be prohibited from deliberately before the public telling, encouraging, or soliciting public support for making an interpretation of a religion adhered to in Indonesia or performing religious activities resembling the activities of such religion when the interpretation and activities are deviant from the principal teachings of such religion.”<sup>188</sup>*

This definition of “godly nationalism” also emerges in the Constitutional Court's legal arguments in support of the Blasphemy Law's legality. The Chairperson of the Leader of Muhammadiyah is likewise of the opinion that Indonesia is not a secular state. However, Indonesia is a country that believes in God Almighty, and as such, it has values that cannot be matched with those of a secular state.

Godly nationalism condemns anarchist activities or taking the law into one's own hands by persecuting religious groups or beliefs that are not among the six recognized by the government.

Traditional values are thriving in Indonesia. However, godly nationalism is perpetually warped by various state policies that are oppressive, accusatory, or condemning of diverse religious groups or views and that encourage individuals to behave as their own judges.

Furthermore, Telle (2017) contends that the current political dynamics in Indonesia, which emphasizes godly nationalism, are responsible for the growing tendency of legal enforcement against blasphemy. It is provided to repel atheism, safeguard “orthodox” religion from “deviant” religious teachings and protect existing faiths from intolerant acts or remarks that degrade their sanctity. The Soeharto Administration maintained the BL during the period of the new order because he desired national stability and wished to avoid horizontal confrontations that would disrupt government operations. Numerous times, the BL has been used to destroy communism and atheism and to restrict the liberties of non-recognized religions. At least three concerns posed a potential danger to Indonesia's unity. The first was the

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<sup>188</sup> “Penetapan Presiden No. 1/1965 tentang Pentjegahan Penjahgunaan Dan/Atau Penodaan Agama,” Suara Merdeka, 9 Mar. 1965: 1. Cite from Menchik, Ibid. p. 608.

propagation of mystical ideas that contradicted Pancasila and its first premise, “Belief in One God, the Almighty.” This notion has been interpreted as requiring Indonesians to be religious or to believe in God. In this way, many Indonesians who did not believe in God were expected to learn and acquire information from other recognized faiths in order to live according to Pancasila's fundamental principle.

After the reform era, the BL found itself at a crossroads. On the one hand, the state strives to increase the protection of human rights, but on the other, national stability and security remain of the utmost significance. As the defender of the Constitution and the protector of human rights, the Indonesian Constitutional Court has determined that the BL must be revised since it is not in conformity with the Indonesian Constitution and human rights legislation. In the meanwhile, socio-political situations in Indonesia continue to need this law. According to the Constitutional Court, godly nationalism is reflected in Pancasila Sila I, “Belief in One God,” which is enshrined in Article 29 of the 1945 Constitution and reaffirmed by the Constitutional Court in its *ratio decidendi* decision when examining the constitutionality of the 1965 Anti-Blasphemy Law.<sup>189</sup> In contrast, the vigilante phenomenon rises when the blasphemy law regime is robust. According to research done by Yilmaz and Barton (2021), Front Defenders of Islam (FPI) is a radical Islamic group whose actions are always defined by vigilantism under the leadership of Rizieq Shihab (RS). Thus, vigilantism has been crucial to the FPI's operations (p. 8). RS employs hate narratives to provoke individuals outside the organization, including politicians and the government, and urges its adherents to conduct vigilante action against all types of action that are harmful to Islamic beliefs (p. 8–10). Under the guise of protecting Islam (the “Action of Defending Islam”), RS utilized his popularity to influence the FPI in many anti-Ahok rallies where he was accused of damaging Islam (p. 12). When charges of blasphemy are made against an individual or group of individuals, the FPI is frequently involved in the actions of *Main Hakim Sendiri*.

The objective of sustaining the BL in Indonesia rapidly switched from preventing public disruption and safeguarding national unity to “preventing national stability.” It indicates that the BL must prioritize political goals over maintaining public order.

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<sup>189</sup> See This is also confirmed by a Judge of Constitution Court when answer the question from the Author.

Instead of preserving the rights of people or religious groups, the government uses the BL as a repressive instrument against resistance. The legislation is also used to punish minority religions in an effort to garner the support of the majority and preserve their political power.

But on the other hand, when the blasphemy law regime is strong, the vigilante phenomenon increases. For instance, a study conducted by Yilmaz and Barton (2021) states that Front Defender of Islam (FPI) is a hard-liner Islamic organization, where under the leadership of Rizieq Shihab (RS) its activities are always characterized by vigilante action. “Thus, a core part of FPI’s activities has been vigilantism (p.8). RS uses hate narratives to antagonize those outside its group, including politicians and the government, and encourages its followers to take vigilante action against all forms of action that are contrary to Islamic values (p.8-10). RS used his popularity to influence FPI in various anti-Ahok protests accused of tarnishing Islam, under the pretext of defending Islam (Action of Defending Islam) (p.12). When there are accusations of blasphemy against a person or group of people, the action of Main Hakim Sendiri accompanies it which FPI is often involved in.

There was a swift aim in maintaining the IABL from maintaining to avoid public disorder and protecting national unity into “preventing national stability.” It means that the IABL are needed to support more to political interest rather than maintaining public order. Therefore, in practice the IABL are used by the government as a repressive tool against opposition rather than protecting the right of individual or religious groups. The law is used also to prosecute minority religions to get sympathy from the majority’s voices to maintain their political power.

### **5.3.2. The Government interference toward religion**

Due to the lack of law enforcement to prevent vigilante groups' cruel and arbitrary acts, *Ahmadiyya* and *Gafatar* adherents, as well as *Meiliana*, were victims of vigilantism, as described in the preceding subchapter. The expansion of vigilante organizations and the inability of law enforcement to prevent recurring vigilante violence are examples of the government's unwillingness to take decisive action against vigilante groups that flagrantly violate the law. Consequently, the vigilante groups believe they have the support of the government to continue their efforts.

*“In a striking example of official reluctance to tackle vigilante violence, video footage taken in February showed the police in West Java standing by as a mob killed three Ahmadiyya members and mutilated their bodies. Rather than lead to crackdown on vigilantes, the incident prompted provincial and local governments to issue decrees curtailing the rights of Ahmadis to worship.”*

The Ahmadiyya experienced vigilantism in the form of persecution of Ahmadiyya followers, expulsions, burning of houses of worship, and other prohibitions.<sup>190</sup> This act of vigilantism cannot be separated from the government's policy during the reign of Soesilo Bambang Yudhoyono, namely the issuance of a Joint Decree of the Three Ministers Year 2008 declaring Ahmadiyya to be a heretical religion (the 2008 Join Decree). The 2008 Join Degree essentially calls for Ahmadiyya to return to Islamic teachings and prohibits their adherents from carrying out religious activities that lead to the spread of Ahmadiyya. The 2008 Join Decree was then followed by various policies at the local level, namely the Regulations of the Governors of East Java and West Java which also prohibited Ahmadiyya from using the symbols of their organizations, prohibited the use of houses of worship and schools. While in various other provinces the prohibition of Ahmadiyya has been carried out in almost all provinces. The Joint Decree (SKB) of the Minister of Religion, the Attorney General and the Minister of Home Affairs concerning Warnings and Orders to Adherents, Members and/or Management of JAI and Community Members, is one of the causes of discrimination against Ahmadiyya.<sup>191</sup>

Reinforcing the discussion of the previous chapter, political manipulation of the implementation of the Blasphemy Law also occurred in the Ahmadiyya case. The ban on Ahmadiyya cannot be separated from SBY's political interest in seeking the support of a Muslim majority in the 2019 election. Then the ban on Ahmadiyya also continued during the Jokowi administration, which advanced as a presidential candidate after SBY stepped down. The Jokowi administration continues its repressive measures against the Ahmadiyya. Throughout his campaign, Jokowi emphasized the importance of religious tolerance. But when Jokowi came to power in 2014, the Jokowi

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<sup>190</sup> See <https://nasional.tempo.co/read/1090715/sekelompok-orang-serang-dan-usir-penganut-ahmadiyah-di-ntb>

<sup>191</sup> Kristian Erdianto. Kompas.com with the title “Destruction of the Ahmadiyya Mosque in Kendal Condemned”, Click to read: <https://nasional.kompas.com/read/2016/05/23/16054031/perusakan.masjid.ahmadiyah.di.kendal.denounced?page=all>.

administration tended to allow the actions of MHS to be carried out by hard-line Islamist groups such as the FPI.

- 1) FPI keeps asking the local government to ban the Ahmadiyya group's religious activities. This has led to a number of local policies, such as:
- 2) Joint Decrees 3 and 199 of 2008 say that the Ahmadiyya Mosque will be shut down.
- 3) Governor's Regulation No. 12 of 2011 says that the Indonesian Ahmadiyya Congregation can't do anything in West Java.

Depok Regional Regulation Depok Regional Regulation Number 9 of 2004 concerning Civil Investigating Officers and Depok Mayor Regulation Number 9 of 2011 concerning the Prohibition of the Indonesian Ahmadiyya Congregation in Depok.<sup>192</sup>

Like *Ahmadiyya*, *Gafatar* members experienced various forms of violence. In Gerakan Fajar Nusantara/GAFATAR (Nusantara Sunrise Movement), the defendants (*T. Abdullah Fattah, Fuadi Mardhathilla, Ridha Hidayat, and Althaf Mauliyul Islam*) are found guilty under Art. 156a of the Indonesian Criminal Code for mixing the teachings of Islam, Judaism, and Christianity. Government pressure on Gafatar continued. On January 14, Home Affairs Minister Tjahjo Kumolo instructed the local government to close all Gafatar offices. On March 24, Attorney General Muhammad Prasetyo announced a Joint Decree (SKB), signed together with Minister of Religion, Lukman Saifuddin, and Minister of Home Affairs, Tjahjo Kumolo, warning that “former members and administrators of Gafatar” get involved in “dissemination, interpretation, and activities that deviate from the main teachings of Islam, and the punishment for this violation is a maximum of five years in prison, based on the 1965 blasphemy crime article.”<sup>193</sup> Human Rights Watch reported that 2,422 families, a total of 7,916 individuals including children, were expelled from West and East Kalimantan from January to the end of February. The Indonesian government detained more than 6,000 Gafatar members who were forcibly expelled from Kalimantan to six illegal detention centers in Jakarta, Yogyakarta, Bekasi, Boyolali and Surabaya.<sup>194</sup> They were

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<sup>192</sup> See <https://metro.tempo.co/read/1520885/mui-depok-ahmadiyah-sudah-berulang-kali-diajak-berdialog>

<sup>193</sup> Republika.co.id. Ajarkan Aliran Sesat, Aktivitas Gafatar Resmi Dilarang Pemerintah [Teaching heretical sects, Gafatar activities are officially banned by the government] <https://khazanah.republika.co.id/berita/dunia-islam/islam-nusantara/16/03/24/o4jj6h377-ajarkan-aliran-sesat-pemerintah-resmi-larang-aktivitas-gafatar>

<sup>194</sup> <https://www.hrw.org/id/news/2016/04/05/288202>

then evacuated at the supplies and transportation complex of the Tanjungpura Military Command XII in Pontianak, West Kalimantan. The former chairman of Gafatar, Mahful M Tumanurung stated that: “We, ex-Gafatar members, deeply regret and strongly condemn actions in the form of systematic forced evictions, destruction of fires and looting of assets on land that we legally own.”<sup>195</sup>

Furthermore, in the instance of *Meiliana*, the court's conclusion that she had insulted religion (Islam) was not backed by adequate evidence and witnesses. But randomly, the court construed *Meiliana's* criticism of the loudness of the mosque's loudspeaker, which was excessively loud, as blasphemy. Various defences, both in the form of Amicus Curiae, a friend of the judiciary, and those put up by academics, NGOs in the field of human rights, and the National Commission for the Protection of Women, were not examined at all by the courts.<sup>196</sup>

The facts above show that both Ahmadiyya and Gafatar followers continue to be persecuted and banned from exercising their freedom to worship or organize because of the government's failure to present a fair public policy. Instead of protecting their right to choose, exercise their right to religion, and worship, the government continues to issue regulations that seal their places of worship, prohibit their religious activities, freeze their organizations, and threaten the leaders of these groups with prison sentences. The state covertly supports *MHS* due to its inability to dissuade and prevent vigilante activities.

### 5.3.3. Imposing one's belief on others

The increasing acts of intolerance in Indonesia, which are marked by vigilante actions against groups accused of blaspheming religion or having deviant sects, are rooted in the attitude of hard-line religious adherents who claim to be the most correct in interpreting religion or the contents of religious scriptures. Hard-line religious groups

<sup>195</sup> Mantan Ketua Gafatar meminta bantuan hukum kepada Lembaga Bantuan Hukum Jakarta. See <https://www.merdeka.com/peristiwa/eks-ketum-kutuk-keras-tindakan-pembakaran-lahan-milik-gafatar.html>

<sup>196</sup> See (1) Letter from the Indonesian Judicial Monitoring Society (MaPPI), Faculty of Law, University of Indonesia (FHUI), Number 258/UN2.F5/MaPPI/BI/IX/2018, dated September 10, 2018, regarding submission of Amicus Curiae; (2) A letter from the Institute for Criminal Justice Reform regarding non-criminal complaints, published in September 2018; (3). Letter from the Indonesian Women's Coalition (KPI) (number 160/RKP/KPI\_SETNAS/IX/2018 dated September 29, 2018) regarding sending Amicus Curiae; (4). Letter from the Coalition of Civil Society Concerned with Tolerance, Human Rights Promotion, and Equitable Development, dated September 26, 2018, in response to the Cover Letter Amicus Curiae; (5). Letter from the Muslim Alliance (AUI) of Tanjung Balai City, Number: Istimewa/013/B/AUI-TB/IX/2018, dated September 17, 2018, regarding introduction; (6). Letter from the Commission for Disappearances and Victims of Violence (KontraS) dated October 12, 2018 concerning Submission of Amicus Curiae;

tend to monopolize the truth; they impose their interpretations of the Holy Book on others and do not want to accept different interpretations. This rigid attitude of religious leaders is supported and followed by students, including their families.

Two great Indonesian scholars, Gus Mus (Nahdlatul Ulama) and Quraish Shihab (an expert in Qur'anic Exegesis), shared the view that the monopoly of religious truth from certain groups is the root of intolerance. Shihab, in a national program on television, stated that:

*"God never asks what is five plus five because there will be only one answer. What God asks is, what makes 10? It can be seven plus three or eight plus two etc. Therefore, truth is diverse. Don't think that what you believe is the truth that one believed on others would trigger social friction, a situation with which Indonesia was currently struggling."*<sup>197</sup>

Gus Mus (Ulama from NU) similarly said that:

*"Imposing an interpretation of the Qur'an is really dangerous, especially by those who refer to themselves as ulama, or not as ordinary people."*<sup>198</sup>

If referring to Hashim Kamali's view, "God reveals the truth in variety of ways, some explicit and others by allusion, the latter mainly through the modality of the "verse", to provoke and engage the human intellect (Kamali, 2006).

So, the views of the two scholars should be understood, namely, that the Qur'an itself is aware that humans use their ears to hear, their brains to think, their eyes to hope to see, their mouths to ask questions, their knowledge to understand, and so on. Hashim Kamali also asserts that "approximately 750 verses, or nearly one-eighth of the Qur'an, exhort the readers to study nature, history, the Qur'an itself, and humanity at large."<sup>199</sup> Thus, when *Meiliana* challenged the sound of the Adhan, which was too loud, and then said that *Meiliana* had tarnished religion, such an attitude was an example of the monopoly of truth that understands religion (Islam) without reason, conscience, or science. Likewise in the cases of *Ahmadiyya* and *Gafatar*. The attitude of the Indonesian Ulema Council, which issued a heretical fatwa against the *Ahmadiyya* and *Gafatar* groups based solely on a one-sided truth claim, did not give

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<sup>197</sup> The Jakarta Post. May 13th, 2017. "Do Not Claim Monopoly religion truth". Retrieved from <https://www.thejakartapost.com/news/2017/05/13/do-not-claim-monopoly-on-religious-truth.html> Accessed on July 17th, 2022.

<sup>198</sup> Ibid.

<sup>199</sup> Loc. Cit.

*Ahmadiyya* room for freedom to believe in their choice of belief or at least provided room for *Ahmadiyya* to be heard for their explanations. Then *Gafatar*, which admits that it is not a religious organization and never committed blasphemy as alleged in the MUI fatwa of heresy, The MUI truth claims are made with eyes, ears, and minds close to the real facts. Truth claims followed by false statements, bans, and disbandment of an organization are no longer just truth claims but have stimulated public anger in the form of vigilante action.

The one-sided truth claim by the MUI was also corroborated by the Court. This can be seen in the sentencing decision handed down by the South Jakarta District Court and confirmed by the High Court decision in Jakarta, which stated that Mahful Muis and Ahmad Musaddeq were perpetrators of blasphemy who violated Article 165a of the Criminal Code. In an interview with the former Head of YLBHI, who is also the legal adviser to the two defendants, Asfinawati,<sup>200</sup> she stated that:

*“(1) [.....] (2). The Appellant strongly agrees with the legal considerations of the East Jakarta District Court according to the facts that the trial has not proven at all the charges of the two public prosecutors and acquitted the defendants of the second indictment; (3) That the appellant strongly objected to this decision in which the defendants were declared legally and convincingly proven to have committed blasphemy and were sentenced to prison terms because there was not a single witness or piece of evidence that could corroborate or prove the public prosecutor's first charge.”<sup>201</sup>*

In the *Ahmadiyya* case, both the court of first instance and the high court shared the belief that a person who has religious teachings that are different from the religion adhered to in Indonesia is prohibited from being the perpetrator of religious blasphemy. The emphasis given by the court to *Ahmadiyya* adherents was **“intentionally committing an act publicly that is basically blasphemy against a religion adhered to in Indonesia.”<sup>202</sup>** This means that *Ahmadiyya* followers can't preach their religion in Indonesia if it goes against the mainstream Islam, which is the main religion there.

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<sup>200</sup> Asfinawati, the former lawyer for the defendant and former chief of legal aid at YLBHI, was interviewed by the author on March 2022.

<sup>201</sup> See the Appeal Court of East Jakarta's Decision Number 1107/Pid.Sus/2016/PN Jkt.Tim. See also the High Court Decision in Jakarta Number 105/Pid/2017/PT. Jkt. Page 26.

<sup>202</sup> See the ruling of the High Court Decision in Jakarta Number 105/Pid/2017/PT. Jkt. Page 27.



Furthermore, the Ahmadiyya is not a new religious organization. It has existed for a long time, and the Ahmadiyya have long lived side by side with other Muslims. However, when public policies declare Ahmadiyya to be “perverted,” vigilantism occurs, and is even repeated. Likewise, with *Gafatar*, as an organization that has a license, *Gafatar* has various work programs and collaborates with various state institutions. Before there was a deviant fatwa, people did not consider this organization a deviant organization. Pressure on the Ahmadiyya adherents has occurred since 1980, when the MUI issued a Fatwa on Ahmadiyya Qadiyan (as a result of the second National Conference, held May 26–June 1, 1980) and recommended that the Indonesian government ban the dissemination of Ahmadiyya in Indonesia through the national working meeting. In total, there have been three decrees of the MUI on Ahmadiyya: two fatwas issued in 1980 and 2005, and one recommendation issued in 1984 that declared Ahmadiyya as heretical and not practicing Islamic teachings properly. Not only did MUI issue a deviant fatwa to *Ahmadiyya*, but also to *Gafatar* and *Meiliana*. Meiliana's actions against the call to prayer were also declared by MUI as blasphemy. All acts of persecution against *Ahmadiyya*, *Gafatar*, and *Meiliana* followers took place after the MUI Fatwa was issued.

With the advent of several MUI fatwas and court rulings that label organizations with religious teachings and views that differ from the dominant religion adhered to in Indonesia as deviant, violence against persons accused of blasphemy against religion is increasingly justified by certain groups. As it became apparent that the law enforcement procedure was not moving as expected, this fury grew. In the sociological heritage of Indonesian culture, amok refers to a violent social act prompted by extreme rage (Collins, 2002; Smith, 2006). Typically, lawlessness arises when criminals are caught red-handed or when fraud occurs. In blasphemy instances, governmental choices that favor the majority predominate. Therefore, amok's culture, as stated by Collins or Smith, is not too prominent in cases blasphemy because almost all accusations of blasphemy are always granted by the indictment and the perpetrators are punished. The vigilante actions of the FPI continue because the state allowed them to happen and was justified by various public policies declaring Ahmadiyah and Gafatar teachings heretical long before a court decision was made.

#### 5.3.4. The state's acquiescence to vigilantism

The act of vigilantism is a criminal act that is prohibited by the Indonesia Criminal Code, especially in Article 170 as follow:

*“(1) Barang siapa yang dimuka umum bersama-sama melakukan kekerasan terhadap orang atau barang, dihukum penjara selama-lamanya lima tahun enam bulan; [(1) Whoever commits violence against persons or property together in public, shall be sentenced to a maximum imprisonment of five years and six months].*

*(2) Tersalah dihukum: 1e. dengan penjara selama-lamanya tujuh tahun, jika ia dengan sengaja merusakkan barang atau jika kekerasan yang dilakukan itu menyebabkan sesuatu luka; 2e. dengan penjara selama-lamanya Sembilan tahun, jika kekerasan itu menyebabkan luka berat pada tubuh; 3e. dengan penjara selama-lamanya dua belas tahun, jika kekerasan itu menyebabkan matinya orang.” [(2) Guilty punished: 1e. by a maximum imprisonment of seven years, if he intentionally damages property or if the violence, he commits causes any injury; 2e. with imprisonment for nine years if the violence causes serious bodily harm; 3e. by a maximum imprisonment of twelve years if the violence causes the death of a person.” [Translated by the Author]*

In addition to the provisions of Article 170 of the Criminal Code, Article 351 of the Criminal Code concerning the prohibition of committing persecution, and Article 406 concerning the prohibition of vandalism, are provisions that are often used by law enforcers in preventing and prosecuting perpetrators of vigilante justice. Article 170 of the Criminal Code expressly threatens a heavy penalty, namely between 5 and 12 years in prison, for acts of vigilante justice, namely violence carried out jointly in public, regardless of whether it causes property damage, minor injuries, serious injuries, or death. This criminal act of violence that is carried out vigilantly is a general crime, where the police as law enforcers can arrest or detain perpetrators to be held criminally responsible. This means that the police do not need to wait for the victim to report the violence. The police, as protectors of the community, also have a legal obligation to stop these acts of violence as soon as possible. However, the attitude of the police in various vigilante attacks against *Ahmadiyya* or *Gafatar* followers has been passive or one of omission. The persecution, or *Main Hakim Sendiri*, experienced by *Ahmadiyya* followers has continued since 2010 up to 2021, despite the criminal penalties imposed by their leaders. For example, as mentioned in table 5.1. of the first section, from various netizen videos circulating, the police tend to allow the demolition of houses of worship and buildings, causing *Ahmadiyya* as targets to be

injured and die.<sup>203</sup> The West Kalimantan Police Chief, Inspector General Remigius Sigid Tri Hardjanto, explained that:

*“The soft approach in securing buildings and houses of worship aims to avoid greater losses, namely the occurrence of conflicts between the emotional masses who want to tear down the buildings and the officers who secure them. This of course has the potential to cause injuries, even fatalities.”<sup>204</sup>*

In the case of Main Hakim Sendiri against Gafatar, there were 21 defendants in the destruction of the Miftahul Huda Mosque in Bale Harapan Village, Sintang Regency, West Kalimantan. In the verdict read on January 6, 2022, they were only sentenced to 4 months and 15 days by the Pontianak District Court Judge.

The Islamic Defenders Front, or FPI, is the hard-line Islamic community organization most frequently involved in the actions of MHS. At least in this study, FPI was recorded as being involved in the attack on *Ahmadiyah* residents, *Gafatar*, destroying *Meiliana's* house, and mobilizing large numbers of people in the *Ahok* case (see the table below). Unfortunately, the various actions of MHS taken by FPI did not receive firm action from the government. FPI violence is allowed by the state, so that violence occurs repeatedly with the same motive. This act of omission is a form of state support for vigilante groups.

Table 8. FPI takes MHS's action against a group accused of religious defamation

No	Date	The Forms of MHS
1	February 10, 2011	FPI's attack on the Ahmadiyya Congregation in Cikeusik, Banten
2	January 28, 2011	FPI raided the Ahmadiyya An-Nushrat Mosque in Makassar, South Sulawesi, to attack and destroy the mosque's nameplate and furniture.
3	January 29, 2011	FPI held a demonstration to force the Ahmadiyah congregation to leave Makassar
4	March 4, 2011	The FPI mob caused trouble and set fire to the Ahmadiyya headquarters in Lubuk Pinang District, Muko-Muko Regency, Bengkulu.
5	March 4, 2011	FPI mobs burn down a food stall belonging to members of the Ahmadiyya Congregation in Polewali City, Polewali Mandar Regency, West Sulawesi.
6	March 11, 2011	Dozens of mobs from the FPI occupy the Al Ghofur Mosque belonging to the Indonesian Ahmadiyya Muslim Community (JAI) in Cianjur.
7	March 13, 2011	The Ahmadiyya Mosque in Cisaar Village, Cipeuyeum Village, Haurwangi District, Cianjur Regency, was attacked by hundreds of FPI mobs. As a result, several parts of the building were damaged. The mob also burned

<sup>203</sup> See DetikNews. Kapolda Kalbar Jelaskan Posisi Polisi Saat Masjid Ahmadiyya Dirusak. Cited from <https://news.detik.com/berita/d-5713120/kapolda-kalbar-jelaskan-posisi-polisi-saat-masjid-ahmadiyah-dirusak> Accessed on September 27, 2022.

<sup>204</sup> Ibid

No	Date	The Forms of <i>MHS</i>
		Ahmadiyah books and books. A house belonging to an Ahmadiyah figure in Tolenjeng Village, Sukagalih Village, Sukaratu District, Tasikmalaya Regency, was damaged.
8	May 2, 2011	FPI Jakarta demands the termination of the film Pocong Mandi Goyang Hip, starring Hollywood porn actress, Sasha Grey.
9	July 26, 2011	FPI mobs vandalize a transgender meeting place in Purwokerto, Central Java.
10	August 8, 2011	FPI members ransacked the Coto Makassar shop on Jl. AP Pettarani, Makassar for remaining open during the day during the fasting month. August 8 FPI mob destroys Rudi and Hajjah Adriani's food stall.
11	August 12, 2011	FPI mobs destroy a food stall owned by Topaz Makassar Restaurant.[3]
12	August 13, 2011	FPI mobs create trouble and burn the Ahmadiyya headquarters in Makassar.
13	August 14, 2011	FPI mob destroys a mother's food stall in Ciamis.[3]
14	August 20, 2011	FPI mobs sweep a food stall selling their wares during the day in the Puncak Bogor area, West Java. The action
15	January 22, 2015	FPI demonstrates pressure on court when Ahok is in the Appeal court of East Jakarta.
16	March 24, 2015	Reject Ahok, Jakarta Community Movement and FPI Front Siege DKI DPRD Office.
17	April 8, 2015	FPI runs public pressure that GAFATAR Members Should Be Sentenced to Death.
18	June 12, 2015	Residents to raid Ahmadiyya Congregation in Tebet.

Source: collected by the author from various sources.

The constitutional guarantee of every citizen's right, as well as the government's primary obligation to respect, protect, and fulfil every citizen's religious freedom right, cannot be properly implemented. The 1945 Constitution guarantees protection for every citizen to choose and embrace their respective religion and/or beliefs (see Article 29 in conjunction with Article 28E). The two articles in the 1945 Constitution do not focus on certain religions or beliefs. Thus, if all religions or beliefs, including Ahmadiyya, are practiced in Indonesia, does the state have a constitutional obligation to protect every citizen's right to freedom of religion and belief?

However, Ahmadiyya followers cannot feel secure because they could become targets of violence at any time by the Vigilante group. This incident will continue to repeat itself if vigilantes continue to get support from the government. It can be proven that after this study was completed, violence against the Ahmadiyya target group continued to occur. The violence against Ahmadiyya described above is a form of violation of human rights, especially the right to freedom of religion, the right to protection of privacy and a sense of security, the right to property protection, and the

right to a place to live. Even the National Human Rights Commission has looked into it and said that the main evidence shows that forcing people to leave their homes and move is a crime against humanity that goes against Article 7 (1) letter d of the Rome Statute.

#### **5.4. The Actors of *Main Hakim Sendiri***

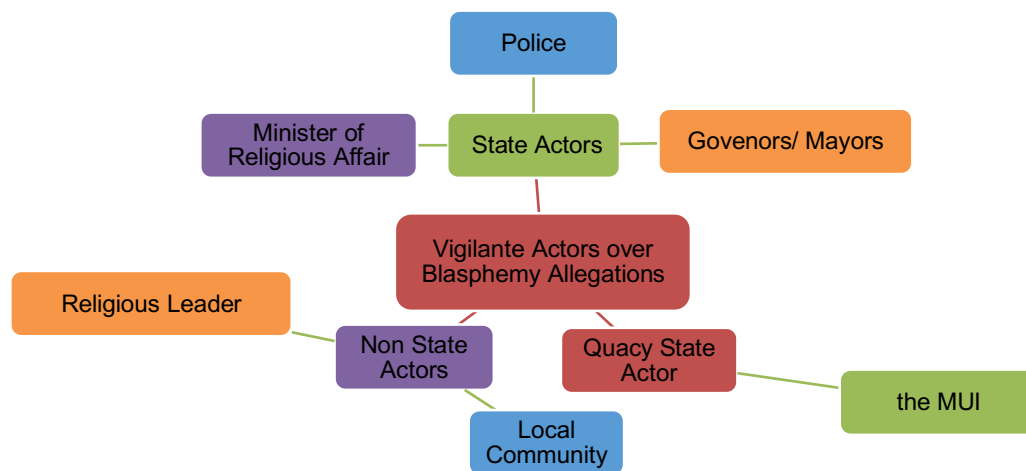
Studies conducted by USCIRF (2020) with the title “Violating Rights Enforcing the World’s Blasphemy Laws” observed the implementations of blasphemy laws around the world, including in Indonesia,<sup>205</sup> states that violence or threats of community violence that accompany accusations of blasphemy generally target the accused perpetrators or bystanders and are mobilized by non-state actors, either individually or in groups (p. 7).<sup>206</sup> However, in some cases, public officials tolerate civil unrest (p. 8). This chapter does not intend to refute USCIRF’s findings but rather to provide a more accurate picture of the vigilantism actors accompanying accusations of blasphemy in Indonesia, particularly in the cases of *Ahmadiyya*, *Gafatar*, and *Meiliana*. In contrast to USCIRF, the author divides it into three categories in this case: state actors, non-state actors, and semi-state actors. Non-state actors are actors who work in the field, including provoking hate speech against perpetrators accused of blasphemy against religion. Meanwhile, semi-state actors are non-state institutions that receive authority from the state, namely the MUI, to assess whether a word or action is categorized as blasphemy against religion. Meanwhile, state actors are state institutions that issue official decisions on behalf of the state stating that a heretical teaching is prohibited, or activities are prohibited, etc.

Learning from the tables above, this study finds that the perpetrators of vigilantism in blasphemy charges against the *Ahmadiyya group*, the *Gafatar group*, and the *Meiliana* are very diverse, as depicted in figure 6.

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<sup>205</sup> See USCIRF (2020). Violating Rights Enforcing the World’s Blasphemy Laws. Retrieved from [https://www.uscifr.gov/sites/default/files/2020%20Blasphemy%20Enforcement%20Report%20\\_final\\_0.pdf](https://www.uscifr.gov/sites/default/files/2020%20Blasphemy%20Enforcement%20Report%20_final_0.pdf)

<sup>206</sup> USCIRF conducted a study of 674 cases of blasphemy and found 78 of them were Pakistan, Egypt, Nigeria, Bangladesh, Indonesia, Jordan, Russia, Algeria, Malaysia, Kuwait, Mauritania, Saudi Arabia, and Sudan have been accompanied by mass protests, as well as vigilantism in the form of threats, and/or violence.



Sources: Cited from various sources and analysed by the author.

#### 5.4.1. State actors

In general, what is meant by “state actors” are public apparatuses acting for and on behalf of the state, working for central government institutions, regional government institutions, and the judiciary. Based on the three innocent blasphemy cases against *Ahmadiyya*, *Gafatar*, and *Meiliana*, at least three state institutions encourage the general public to perform the *Main Hakim Sendiri*. The first is the police. The police are an institution that is trusted by the public when it receives complaints about cases of blasphemy. The police do not have a single understanding when dealing with reports of blasphemy cases. The community considers the rise in cases of religious insults due to the slowness of the police in resolving reported cases. This inaction sparked public anger that led to vigilante action. The police appeared to allow violence against religious minorities accused of spreading heretical religion because they failed to anticipate any vigilante actions involving large crowds. In the case of *Ahmadiyya*, from 2010 to 2021, there were at least six vigilante incidents that demonstrated the failure of the police to prevent the recurrence of such violence. In the *Gafatar* case, the police failed to prevent violence against *Gafatar* members, including the expulsion of *Gafatar* residents and the burning of their homes in Kalimantan. In the case of *Meiliana*, the mediation initiated by the police to conduct a dialogue between residents and *Meiliana* was unsuccessful, and the police failed to prevent a mob rage that took the form of burning down *Meiliana's* house and even several temples. The failure of

the police to prevent violence against the *Ahmadiyya*, *Gafatar*, and *Meiliana* groups is a form of allowing vigilante justice to occur.

Second, the Ministry of Religious Affairs, the Attorney General, and the Minister of Home Affairs are the state actor that encourages vigilantism. The three institutions and its hereditary institutions released the discriminative policy, namely Joint Decree of the Minister of Religion, the Attorney General, and the Minister of Home Affairs of the Republic of Indonesia, Number 3 of 2008, Kep. 033/a/ja/6/2008, concerning warnings and orders to adherents, members, and/or community members of the Indonesian Ahmadiyya Muslim Community (JAI) that violated the right of Ahmadiyya to embrace their religion. Although, according to the Indonesian Constitution, the Regional Government does not have the authority to regulate religious activities, through these discriminatory policies, it prohibits Ahmadiyya religious activities, either in the form of prohibiting religious rituals of Ahmadiyya, as well as other religious activities. Third, governors, mayors, and the head of regents of local governments are also actors who incite vigilantism because they issue public policies that assert that *Ahmadiyya* and *Gafatar* are heretical religions. Article 29 of the 1945 Constitution protects every citizen's right to freedom of religion. Two ministers and the attorney general of the Republic of Indonesia have, in a joint decision, enacted policies that violate this right. The freedom of religion, which includes the ability to freely choose, embrace, and worship in accordance with one's own faith and beliefs, has been restricted by this policy and its subsidiary rules. To maintain the right to freedom of religion as a negative right, the state must remain neutral or refrain from enacting measures that diminish the nature of the right's realization. In the Ahmadiyya case, however, the state's activities through its policies led to infringement of the Ahmadiyya people's right to religious freedom. All these rules that mentioned in Table 5 are used to make it okay for vigilantes to act if the public thinks that law enforcement is taking too long to make community reports.

*Table 9. State Actors Encourage Vigilantism Actions (Main Hakim Sendiri)*

No.	State Actors	Name of Regulations	Area
1	Minister of Religion, the Attorney General and the Minister of Home Affairs of the Republic of Indonesia.	Joint Decree of the Minister of Religion, the Attorney General, and the Minister of Home Affairs of the Republic of Indonesia, Number 3 of 2008, Kep. 033/a/ja/6/2008, concerning warnings and orders to adherents,	Central Government

No.	State Actors	Name of Regulations	Area
		members, and/or community members of the Indonesian Ahmadiyya Muslim Community (JAI).	
2	Secretary Circular General of the Ministry of Religion, Attorney General Young Intelligence, and Director General of National Unity and Interior Ministry Politics.	Secretary Circular General of the Ministry of Religion, Attorney General Young Intelligence, and Director General of National Unity and Interior Ministry Politics Number: SE/SJ/1322/2008, Number: SE/B-1065/DDsp. 4/08/2008, Number: SE/119/921.D.III/2008 concerning implementation Guidelines Ministerial decree Religion, Attorney General, and Minister within the Unitary State of the Republic of Indonesia.	Central Government
3.	Governor of East Java Province.	Governor of East Java Decree Number 188/94/KPTS/013/2011 regarding the Prohibition of the Activities of the Indonesian Admadiyah Congregation (abbreviated as JAI).	Province Government in East Java.
4.	Governor of West Java Province.	West Java Governor Regulation Number 12/20110 concerning Prohibition of Activities Ahmadiyya Congregation in West Java.	Province Government in West Java.
5.	Mayor of Depok City.	Mayor of Depok City Regulation No. 09 2011 concerning the Prohibition of Indonesian Admadiyah Congregational Activities in Cities Depok.	Local Government in Deok City.
6.	Governor of East Lombok	Governor of East Lombok Decree Kep.11/IPK.32.2/L-2.III.3/11/1983 concerning prohibition towards the activities of the Ahmadiyya Congregation, East Lombok Pancor Branch dated 21 November 1983.	Province Government in East Lombok
7.	Governor of South Sumatera	Decree of the Governor of South Sumatera No. 563/KPT/BAN. KESBANGPOL&LINMAS/2008 on 1 September 2008 concerning prohibition towards the activities of the Ahmadiyya Congregation.	Province Governor in South Sumatera.
8.	Governor of South Sulawesi	Letter Governor of South Sulawesi Circular No. 223.2/803/Kesbang on February 10, 2011, concerning prohibition towards the activities of the Ahmadiyya Congregation	Province Government of South Sulawesi.
9.	Governor of East Java	Governor of East Java Regulation No	Province Government of East Java.



No.	State Actors	Name of Regulations	Area
		188/94/KPTS/013/2011 concerning Prohibition of Ahmadiyya Congregational Activities Indonesia in East Java	

Sources: Cited by the Author from various resources.

#### 5.4.2. Semi-state actors

MUI stands for the Ulema Council of Indonesia. At the time of its founding during the Soeharto era, on July 26<sup>th</sup>, 1975, it was an Indonesian cleric-led non-governmental community organization. The MUI's founding objective was to strengthen the faith of Indonesian Muslims, and it continues to urge Muslims to uphold the nation's unity and sovereignty. Thus, MUI is a politically neutral organization that does not engage in political activity. In light of subsequent events, however, the MUI became a quasi-governmental organization under the direction of the Ministry of Religion. Therefore, the MUI's responsibilities and powers cannot be separated from those of the government.

With the passage of the Blasphemy Law in 1965, MUI was required to determine whether a teaching could be classified as a religion. Even the MUI has the authority to determine if a religious doctrine deviates from the predominant religious doctrines in Indonesia. Here is where the issue occurs. The MUI through fatwa Number 6 Year 2016 concerning GAFATAR eventually assesses unsuitable religious teachings and issues a heretical fatwa if the teachings are considered to be aberrant. This is what MUI did against the organization Fajar Nusantara Movement (Gafatar). KH. Ma'ruf Amin, former chairman of the MUI, claimed that Gafatar was deemed heretical because:

*"They went wrong because it was a transformation of Al-Qiyadah Al-Islamiyah and Ahmad Musadeq was its head. Millah Abraham mixes Islam, Christianity, and Judaism. If you go against that belief, you will be declared an apostate and leave the teachings of Islam."*<sup>207</sup>

MUI is a semi-state institution, in the meantime, Mahful M. Tumurung, the previous head of Gafatar, stated:

*"Religious belief and understanding are a constitutionally protected and guaranteed fundamental right for every Indonesian person." In light of this, we assert that our religious views and understanding have diverged from those of the majority of Indonesians, and we affirm our*

<sup>207</sup> Bbc.com/Indonesia/Fatwa MUI nyatakan Gafatar sesat. February 3rd, 2016.

*commitment to Milah Abraham's teachings. As stated in our AD/ART, the Indonesian Ulama Council shouldn't issue heretical fatwas against us or Gafatar because we are a social organization based on Pancasila that works in the sociocultural area.”<sup>208</sup>*

Briefly, the primary reason the MUI considers *Gafatar* to be a false religion is because, according to the MUI's mistaken viewpoint, *Gafatar* denies Muhammad's status as the last prophet by appointing Musadeq as its head. In the meanwhile, the MUI alleged that *Gafatar* disregarded commands for prayer, Ramadan fasting, and hajj, as well as blended Islamic, Christian, and Jewish beliefs.

In the instance of Ahmadiyya, the MUI also issued a fatwa condemning Ahmadiyya's doctrines as heretical. In fatwa Number 10 has been issued by the MUI to restrict Ahmadiyya teachings and deem them to be heretical sects.

The various state actors mentioned in the earlier section failed to prevent deviant fatwas issued by the MUI, where the deviant fatwa by the MUI has become a tool for legitimizing the vigilante group's desire to take justice into their own hands.

The MUI is a semi-state institution. The MUI is an institution that always issues heretical fatwas against Ahmadiyya and *Gafatar*. Since 1980 the Ahmadiyya has been declared heretical for the first time by the MUI Fatwa. With the issuance of this deviant fatwa, the community feels they have the legitimacy to take vigilante actions when the police or law enforcement are slow or failed to reach public dissatisfaction.

The Main Hakim Sendiri does not only attack perpetrators who are accused of blaspheming religion, as in the three cases above, but the violence even extends to the destruction of property of a certain religion which is partly responsible for the blasphemy committed by its follower. This is as illustrated in the Meiliana case, where not only Meiliana's house was damaged by the mob, but the Buddhist temple and medical centre were also affected, burned, and damaged. Vigilante activity over blasphemy allegation did not always occur when a blasphemy case is alleged. In Indonesia, however, vigilantism often accompanied accusations of blasphemy. Even so, vigilante activities did not occur immediately or spontaneously. Main Hakim Sendiri is driven by policies or regulations that have placed the accused as the guilty party. Whether it's getting a deviant stigma after the MUI Fatwa or as a forbidden sect

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<sup>208</sup> Ibid. Bbc.com/Indonesia/Fatwa MUI nyatakan Gafatar sesat. February 3rd, 2016.

after various public policies issued by the local government. With the MUI fatwa and public policies declaring a sect or heresy or a statement said to be blaspheming against religion, non-state actors, namely individuals or groups of individuals, get support to carry out attacks against deviant groups, even burn their houses of worship, or expel from their village, as experienced by followers of Ahmadiyya or Gafatar. For instance, the public was angry and burned several Buddhist temples in Tanjung Balai after the MUI issued the Fatwa of The Indonesian Ulama Assembly (MUI) North Sumatera Province Decree Number: 001/KF/MUI-SU/I/2017 dated January 24, 2017, regarding blasphemy of Islam by Meiliana Saudari in the City of Tanjungbalai and recommended law enforcement to punish Meiliana. Mediation that has been initiated by local police has been discontinued without any agreement.

Moreover, the 1945 Indonesian Constitution guarantees the right of everyone to legal protection and a sense of security. Main Hakim Sendiri is a criminal act that is prohibited and can be punished by punishment under Articles 315 and 170 of the Criminal Code. However, in the case of the Ahmadiyya, the police did nothing when people damaged their houses of worship. In the case of Gafatar, the riots that were carried out for two consecutive days showed that the police were negligent in preventing the burning of the houses of Gafatar followers. In the case of Meiliana, it is the same.

Furthermore, why can religious leaders be categorized as vigilante actors? In the case of Meiliana, when she complained that the call to prayer was too loud, she told one of the religious leaders at the mosque who should be able to provide a solution to her complaint. However, complaints that previously could be categorized as private, spread so quickly among ordinary people with different narratives and sparked anger, "That Chinese forbids the call of prayer."

By understanding why, along with the strengthening of law enforcement against blasphemy, the phenomenon of vigilantism has increased, this chapter aims to identify actors and factors driving the rise of vigilantism against those accused of blasphemy. This chapter will structure as follows: in the first section describes the Actors of Main Hakim Sendiri During Blasphemy Allegations of Meiliana, Gafatar and Ahmadiyya. The second section examines Main Hakim Sendiri Sparked by Islamic Populism in Indonesia. In the third section analyse Various Factors Influence the Occurrence of

Main Hakim Sendiri. The last section discusses the extent to which Main Hakim Sendiri Threaten the Principle of Presumption of Innocence and Religious Freedoms.

#### **5.4.3. Non-state actors**

Non-state actors are community leaders or religious leaders who support vigilante justice because they fail to prevent their followers from doing self-judgment or even participate in provoking the causes of their followers. After the MUI issued its “deviant fatwa,” hard-line Islamic groups pushed take the actions of *Main Hakim Sendiri* to attack the *Ahmadiyya* and *Gafatar* groups, force them out of the country, and take their property. As shown in Table 5, FPI has carried out various acts of violence to attack religious groups accused of deviating, such as Ahmadiyya, Gafatar, or someone who insults Islam, such as Ahok or Meiliana. In fact, the practice of violence by the FPI has not received solid response by law enforcers (the police), even though the principal of action of *Main Hakim Sendiri* is regular criminal act where the police do not need to wait for reports from victims or the public to punish the culprits. But this did not happen. The police tend to accept acts of violence perpetrated by the FPI.

#### **5.5. *Main Hakim Sendiri* and the Rise of Populism of Islam**

The vigilante group phenomenon of vigilantism against religious followers accused of being heretics shows the strengthening of hard-line Islamic populism in Indonesia. Hard-line Islam views “deviant religion as a common enemy” and continues to influence society against it. Such extreme views are echoed by Islamic organizations such as FPI in various religious lectures or speeches. Hard-line Islamic views are continuously manufactured and have become the daily consumption of millennials. Hard-line Islamic groups continue to campaign for the view that the right to practice one's beliefs is not an absolute right if it offends other religious people. The Ahmadiyya group must choose whether they will defend their faith or follow the true teachings of Islam. If they choose to defend their religion, then don't promote that religion because it will hurt most Muslims.

Unfortunately, the violent actions of hard-line Islamic groups and their intolerance did not get firm action from law enforcement. In fact, the government either supports or ignores this. Hard-line Islamic groups that continue to push for the

enforcement of the Anti-Defamation Law are also supported by the moderate Islam group that supports the populism of Islam and maintains the Blasphemy Law. Various efforts made by NGOs concerned with human rights and the right to freedom of religion to test the validity of the Blasphemy Law continue to stagnate because moderate Islamic groups such as NU or Muhammadiyah are on the same page with hard-line Islam and the government to defend the law.

The failure of democracy in Indonesia opens space for hard-line Islamic groups to continuously proffer and promote an Islamic State as an alternative solution. The idea of an Islamic state began to be discussed in various academic institutions and on social media. Various discussions regarding the idea of an Islamic state continue to roll along despite criticism from moderate Islamic groups. Capitalism is thought to be the root of the paralysis of the Indonesian economy. Low economic growth reduces people's purchasing power. When the economy is not growing, various companies do mass layoffs, so the unemployment rate rises sharply in Indonesia. The capitalist economy that workers and the lower economic class cannot feel makes the stunting rate in Indonesia very high. This is what causes hard-line Muslim communities supported by millennials to look for alternative economic systems that can build prosperity.

Islamic populism is increasing, and the division of society between hard-line Islam and moderate Islam continues to sharpen. Intolerance rose sharply, either in the form of hate speech or the criminalization of religious minorities by hard-line Islamic groups. Through the campaign that "blasphemy is a common enemy," it encourages the public to continue to report parties deemed insulting to Islam. Religious minority groups seem to be allowed to grow and develop. But when they manifest their religion, they are accused of blasphemy. Various calls against religious minority groups have been made by hard-line Islamic leaders, stating that they should "embrace religion without promoting it." The stigma of heresy continues to be pinned on minority groups if the religious teachings they believe to be the truth are considered contrary to the main religious teachings adopted in Indonesia. This is the main reason for declaring *Ahmadiyya* and *Gafatar* as heretical religions. MUI is a semi-government agency. It is not a law-forming institution, nor is it an institution that sits in the executive ranks. However, the MUI was given the authority to act as regulator and as

religious police. Although the term “heretical” is not found in the Criminal Code, if MUI says a religious teaching is heretical, this will be equated with the terminology contained in Article 156a of the Criminal Code, namely “crime against religion” or “blasphemy.” In this case, the authority granted by the MUI shows that the state is adopting a concept known in Islam, namely the concept of heresy. According to Assyaukanie, heresy is derived from theological terms. Ma'ruf Amin, a former MUI chairperson, said that a belief or religion is considered heretical if it covers one of the ten criteria of heresy, such as denying the principles of faith or believing or following a belief that is not in line with the argumentation from the Holy Qur'an and the Prophetic Traditions (*dalil syar'i*).<sup>209</sup>

In the case of *Ahmadiyya* and *Gafatar*, minority religions have no representative in the MUI. They do not have a voice that can be heard or addressed. The last word is “religions professed to in Indonesia,” which means it only refers to the six official religions. Other religions or beliefs than those mentioned in the explanatory clause of Article 1 of the Law No. 1/PNPS/ 1965 are not protected by the Law No. 1/PNPS/ 1965. Article 1 of the Law contradicts Article 29 of the 1945 Indonesian Constitution, which recognizes the right to religious freedom but never mentions the sixth official religion. While Article 1 of the Law creates the new norm and discriminates against or excludes other religions or beliefs that have existed in Indonesia for a very long time, but there is no element concerning the permissible limitation to the rights of freedom of religion and freedom of expression as stated in Art. 18 (3) of the ICCPR.

The IABL limits the right to religious freedom in both internal and external forums. Indonesia's blasphemy law has a purpose: to protect the established religion.<sup>210</sup> Blasphemy could be defined as an expression both in spoken, written, or physical action. Being a non-believer is not a crime, but he or she is not protected by the law. The AIBL is extended in other provisions, such as the Electronic Transaction and Informatic Law (ETI Law), to limit the right to freedom of expression. The passage of the ETI Law creates overlaps between the blasphemy law and the hate speech law.

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<sup>209</sup> See Anonym, Fatwa MUI untuk luruskan penyimpangan, cited from <http://www.erasmuslim.com/berita/nas/7b14122123-fatwa-mui-luruskan-penyimpangan.htm>. accessed on April 2, 2022.

<sup>210</sup> See the explanation of Article 1 of the Law No.1/PNPS/ 1965.

As mentioned earlier, the reason behind the enactment of the Law No. 1/PNPS/1965<sup>211</sup> was to protect established religions and to prevent folks' religions or traditional religious systems growth all over Indonesia because traditional religious teachings were considered contradictory with the fundamental principles of the established religions. According to the clarification of Article 1 of the President Stipulation 1956, the government of Indonesia recognized five religions that are Islam, Christian Protestant, Catholic, Hinduism, Buddhism.<sup>212</sup> However, it does not mean the government bans other beliefs such as Baha'i, Shinto, Jewish, and many other religions. After the Reformation Era, under the President Gus Dur administration, those five acknowledged religions became six by adding Confucianism (Fenton, 2016).

In practice, the IABL demonstrates that the government prioritizes the protection of established religions over other people's religions. The government wants to reward the role and contribution of the established religions who fought for Indonesian independence. Religions have an important role in Indonesian society and become part of Indonesian ideology (Nalle, 2017). As a country where most people are Muslim, there is no doubt that Indonesian Muslims and Islamic groups played a big part in getting independence and making Indonesia one country. In his book, Schwarz explains that the role of Islamic organizations such as Sarekat Islam (the Islamic Union) and Muhammadiyah (the followers of Muhammad) in 1929 played an important role in suppressing Dutch colonialism. Therefore, on June 1st, 1945, Soekarno spelled out Pancasila, which comprises the five principles, as a national fundamental norm. The five principles are: (1) belief in God the Almighty; (2) justice and civility among peoples; (3) the unity of Indonesia; (4) democracy through deliberation and consensus among representatives; and (5) social justice for all. By considering both the demand of the Muslim community to establish an Islamic state and the contribution of other minority religions, Soekarno set up the first principle as the root of other principles but omitted the phrase "with the obligation to implement Sharia for adherents of Islam" to be the

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<sup>211</sup> During the Old Order, President had the power to release President Stipulation as one of the legal sources that must be obeyed by the people. But, in the New Order, the strong power of President was reduced by the Temporarily People Consultative Assembly (Majelis Permusyawaratan Rakyat Sementara/MPRS) as stated on the Resolution No. XX/MPRS/1966. According to the Resolution, President could not release the President Stipulation anymore. However, President still could release Presidential Decree which both had the same character, though. Therefore, the President Stipulation No. 1/PNPS/ 1965 has been changed into the Law No. 1/PNPS/1965, but the title and the content of the law were remaining the same.

<sup>212</sup> The IBL, Id. Article 1.

final version of Pancasila. But one group's attempts to set up an Islamic state have been hard because they have to take non-Muslim points of view into account. This has also helped the country stay independent. Most of the founding fathers with Muslim backgrounds put the unity of Indonesia first. The decision balanced protecting the established religion with respecting Muslims as the majority population.

The Soeharto Administration kept the IABL in place during the new order period because Soeharto wanted national stability and avoided horizontal conflicts that would disrupt government operations. The IABL has been used numerous times to eradicate communism and atheism, as well as to restrict the rights of non-recognized religions. There were at least three problems facing Indonesia that could threaten its unity. The first was the spread of mystical beliefs that went against Indonesian ideology, Pancasila, and the first principle, "Belief in One God, the Almighty." This principle has been understood to mean that Indonesians are expected to hold a religion or believe in God. In that way, many Indonesians who do not believe in God were expected to learn and get knowledge from other recognized religions so they could live as they were supposed to according to the first principle of Pancasila.

After the reform era of 1998, the BL was at a crossroads. On the one hand, the state wants to guarantee that the protection of human rights becomes better, but on the other hand, national stability and security are still major concerns. On one side, the Indonesian Constitutional Court, as the guardian of the Constitution and the protector of human rights, has decided that the Anti-Blasphemy Law does not contradict the Constitution, but on the other side, the BL needs to be renewed because it is not in accordance with the Indonesian Constitution and human rights law.<sup>213</sup>

Meanwhile, the socio-political conditions in Indonesia still require this law. The strengthening of legal norms for blasphemy can also be traced from the case studies that are explored in this thesis. For example, in various cases of blasphemy against religion, there are local legal products made to strengthen the Blasphemy Law, where the presence of these legal products is only raised when a specific case appears in the community. For example, when the Ahmadiyya case emerged, various regional governments issued public policies that threatened the position of the Ahmadiyya as a

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<sup>213</sup> The 2010 Decision of Constitutional Court NOMOR 140/PUU-VII/2009.



religion or belief. The following are policies at the local level that reinforce the existing anti-blasphemy legal norms: This weakness of the anti-blasphemy law has become a channel for reviving the hate-spin strategy and opening space for courts to get caught up in the developing political dynamics.

Compared to the Ahok case, in the case of Ahmadiyya in Indonesia, they were considered tarnishing the religion of Islam. The Ahmadiyya have different teachings from most Muslims (Sunnis) in Indonesia because they have additional scriptures in addition to the Al-Quran and admit there are other prophets besides the Prophet Muhammad. The Ahmadiyya organization is considered legal because it is registered and ratified by the judge's decision. But in his teachings, the Ahmadiyya were considered to have tarnished Islam, so that their leader served a prison sentence while his followers received unfair treatment. Although Article 29 of the Indonesian Constitution and Article 18 of the ICCPR recognize the right to religious freedom for everyone, the Blasphemy Law can punish followers of religions outside the established religion if it is deemed to tarnish the established religion. This interpretation of desecration may only be carried out by the MUI, without considering the limitation requirements stipulated in the ICCPR or General Comment Number 34. The MUI has members from Sunni Islam groups, but no members represent the Ahmadiyya group. The Ahmadiyya teachings were concluded as a heretical religion by the MUI, and then the conclusion was ratified by government institutions. The wave of protests from Muslim communities towards the Ahmadiyya group is a form of public pressure on state institutions and law enforcers that has led to a change in the principles of the rule of law and equality before the law.

In the case of the Ahmadiyya in Indonesia, as described in Table 15, they were considered tarnishing the religion of Islam. The Ahmadiyya have different teachings from most Muslims (Sunnis) in Indonesia because they have additional scriptures in addition to the Al-Quran and admit there are other prophets besides the Prophet Muhammad. The Ahmadiyya organization is considered legal because it is registered and ratified by the judge's decision. But in his teachings, the Ahmadiyya were considered to have tarnished Islam, so that their leader served a prison sentence while his followers received unfair treatment. Although Article 29 of the Indonesian Constitution and Article 18 of the ICCPR recognize the right to religious freedom for

everyone, the Blasphemy Law can punish followers of religions outside the established religion if it is deemed to tarnish the established religion. This interpretation of desecration may only be carried out by the MUI, without considering the limitation requirements stipulated in the ICCPR or General Comment. The inclusion of the Ahmadiyya as a deviant religious group has been confirmed in various public policies that were manufactured in various regions.

## **5.6. Conclusion**

In contrast to vigilantism in ordinary crimes, where public outrage generally aims to punish perpetrators of crimes who are caught red-handed or for crimes that continue to occur in society where law enforcement fails to punish the perpetrators, vigilantism in cases of blasphemy is not solely driven by the existence of crime in society but by the monopoly of religious truth by established religions, thus viewing different religious teachings as crimes. Godly nationalism has been defined narrowly, where the state only protects established religions “adhered to in Indonesia” and can punish religions or religious teachings that contradict the main teachings of established religions. This narrow meaning of “Godly Nationalism” is contradictory with the right to freedom of religion and belief guaranteed in the Indonesian Constitution. Articles 29 and 28E expressly respect the right of everyone to choose and embrace their own religion or belief and worship according to that religion or belief.

Islamic populism is rising along with the failure of democracy in Indonesia. The democracy index is decreasing, nationalist parties are involved in corruption, and people's welfare is low (the poverty rate is increasing). The Islamic Party cooperates with hardline Islamist groups in the opposition. Strengthening the Blasphemy Law as a result of Growing Islamic Populism Moderate Islamic Organizations Infiltrated by Radical Islam Support the Strengthening of Anti-Religious Laws This is indicated by moderate Islamic groups supporting the criminalization of religious minorities and appearing in court to support the government in defending the Blasphemy Law. Moderate Islamic groups have been reporting witnesses in various blasphemy cases, giving expert testimony on blasphemy cases, and participating in supporting the 212 movement.

Unlike the Ahok case, which has a political undertone, the Ahmadiyya case is distinct from other blasphemy cases in Indonesia. The Ahmadiyya can be classified as a splinter Islamic group. In the case of Ahok, Ahok is a member of the Christian religion, which is one of the religions that has received recognition as an official religion in Indonesia. However, Ahmadiyya is categorized as heresy because it is not recognized as an official religion. This is based on the provisions of Article 1 of the Anti-Defamation Law, which states that Ahmadiyya are not included as a religion professed in Indonesia or traditional religions that are allowed to exist. The accusation of Ahmadiyya being a heretical religion was also used as a reason to dissolve Gafatar.

The growth of the *Main Hakim Sendiri* itself cannot be separated from state actors such as the Ministry of Religion, the Police, and the Governor, Regent, and City Representatives who continue to produce public policies that reinforce the heretical fatwas issued by the MUI. These various public policies have become a legitimacy tool for the public to take justice into their own hands when public trust in the police has decreased. Meanwhile, the police, as an institution tasked with maintaining public order and protecting the public, failed to anticipate and prevent vigilante justice so that the same incidents would continue to occur. Religious leaders continue to sharpen religious polarization by placing their religion as an exclusive religion so that it easily becomes the driving force behind the birth of heretical fatwas by semi-state institutions such as the MUI.

The existence of vigilante actors against minority religious groups that are accused of being a deviant religion or insulting religion continues to get fresh air when the various motivating factors are getting stronger. Godly nationalism, which forbids the presence of teachings or beliefs outside of an established religion, has placed the state in the position of regulator and controller of religion. Various public policies continue to be issued by the state to interfere in the religious affairs of citizens and determine the right religions and wrong religions. In such a position, the existence of the anti-defamation law continues to receive requests to be maintained. In the end, the majority religion became a popular religion, which determined the social life of the community.



## **CHAPTER VI**

### **A PSEUDO SECULAR STATE UNDER ANTI-BLASPHEMY LAW REGIME HARVEST AN ILLUSION OF RELIGIOUS FREEDOM**

#### **6.1 Introduction**

Discussions on the enforcement of the anti-blasphemy act cannot be separated from a country's decision in establishing religious ties, or what is referred to in various literatures as the relationship between church and state. Although there are no such rules in International Law that compel nations to adopt a given pattern of relationships, the current trend seen by the international community in accordance with International Human Rights Law is a pattern of interactions in which the state is religiously neutral. In order to guarantee the protection of the right to religious freedom, a state must recognize and accommodate the needs of all religions. The actual structure of state-religious relations established by a state indicates the extent to which freedom of religion is guaranteed. According to Fox (2006), the structure of state-religion relationships throughout Europe, North America, Asia, and Africa is not uniform but rather diverse. There are nations in which the relationship between the state and religion is explicitly severed, such as the United States. There were other states with an established religion, such as Denmark and the Unified Kingdom, which were united with religion. The approach in France and Germany, meantime, removes religion from the sphere of the state and prohibits religious minorities via the Proselytism Law. In Austria and Belgium, only a few religions were recognized as official, while others were not.

Nonetheless, as a result of the establishment of democracy and the rule of law, the pattern of interactions that formerly positioned the state as the guardian of a particular religion has altered to one in which the state tends to be religiously neutral. Democracy and the rule of law need the protection of everyone's right to freedom of religion, with the state required to respect all religions equally (Nieuwenhuis, 2012). An-Na'im (2008), a Muslim scholar and specialist on human rights who analyses state and religious relations in Muslim countries such as Turkey, India, and Indonesia, supported Nieuwenhuis's proposal. An-Na'im thought that Muslim countries should

reconsider the close link between state and religion (Islam) in order to better preserve the right to religious freedom.

This chapter investigates in further detail how the Anti-Blasphemy Law gives an overview of the pattern of relations between religion and state in Indonesia, despite the fact that the Constitution of the Republic of Indonesia, the 1945 Constitution, has never expressly articulated it. Secularity cannot be met by inserting a constitutional provision stating that Indonesia is not a religious state but a rule-of-law state. To what degree the present laws forbid the state from intervening in the religious affairs of its inhabitants, or on the other hand, permit the passage of laws that allow the state/government to ban, limit, and even penalize particular religious groups, requires additional investigation. In addition, it is quick to conclude that the precepts of Pancasila “Belief in One Supreme God” provide foundation for non-secular thought, since it is a universal principle or abstract value. This chapter demonstrates that the interpretation and execution of the Indonesian Anti-Blasphemy Law by lawmakers/public policy and law enforcements, as well as the evolution of this law over time, have given rise to a true relationship between the Indonesian state and religion. How the current design of state-religious relations during the implementation of the anti-blasphemy legislation might contribute to the optimization of the right to freedom of religion, or perhaps constitute an impediment, must be investigated further.

The application of the anti-blasphemy law in the cases of *Ahok*, *Gafatar*, *Meiliana*, and *Ahmadiyya* provides a more comprehensive explanation of why pseudo-secularity between State and Religions under the regime of Indonesia Anti's Blasphemy Law is strengthening and endangering the right to freedom of religion.

The scholarship on the connection between the state and religion in Indonesia focuses mostly on normative historical research. Ota Atsushi, Oka-moto Masaaki, and Ahmad Suaedy (2010), for instance, highlight how Islam has hegemonized its relationship with Indonesia via the implementation of sharia norms, the establishment of a compilation of Islamic law as family law for Muslims in Indonesia. Consequently, this chapter does not explore contemporary trends in the connection between religion and the state, particularly after the reformation era. This chapter also does not cover Pancasila's perspective on the connection between Islam and the state, nor does it

examine the perspectives of Islamic groups on the subject. As a result of the application of the anti-blasphemy law, however, it is essential to utilize this chapter as a study guide while documenting the evolution of interactions between the state and religion.

Second, Abdul Karim (2005) in his article entitled Religion and State Relations in Post Reformation Era. Briefly from the title, the Author seems to discuss in depth the relationship between religion and the state during the reformation period. But this article only discusses the historical aspect of the relationship between religion and the state in Indonesia, and very little mentions about how its relation during the reformation era. Karim briefly stated:

*“In the reform era, the ambiguity of the “gender identity” of our constitution is getting worse. This indication began when the demands for amendments to the 1945 Constitution were failed to be carried out by law and policy makers”.*

The normative historical perspective may be able to describe how the founding fathers envisioned the connection between religion and the state, but the wording of the constitution and the interpretations of the constitutionalists may not accurately reflect the actual situation. This section aims to explain accurately why judges are unable to completely actualize the principles of the link between state and religion in the interpretation of statesmen's constitutionalism when determining situations involving religion. Through an examination of blasphemy case decisions, this chapter will examine the connection between the state and religion, focusing on improving and implementing the legislation against blasphemy and its consequences for religious freedom in Indonesia. Therefore, the discussion of the relationship between state and religion as represented in numerous court decisions on blasphemy trials is deemed crucial in order to offer a clearer picture of whether the argument that Indonesia a religious state is not, but a religious state, is accurate or not.

This chapter examines the extent to which the execution of the Anti-Blasphemy Law reflects the state's support for the established faiths in Indonesia. The connection between the State and Religion under the regime of the Blasphemy Law will be evaluated using a variety of indicators. The first section will examine how the established orthodox religions enjoy main governmental protection and how the legislation targets religious minorities. The second section will elaborate on why the

state's neutrality toward religions is problematic, citing instances in which the government has controlled religious life and established rules about deviant faiths. The final section investigates the relationship between official control of religion and judicial judgments to penalize other religious organizations. The fourth section describes how the State or government supported religious intolerance among the majority.

## **6.2 Theory and Conceptual Framework**

### **3.8.4 Relationship between State and Religion.**

This study examines the link between religion and politics from a theoretical standpoint. This notion is also known as the relationship between church and the state in certain publications (An-Naim, 2008; Durham and Scharffs, 2019; Salim et al., 2003). Durham and Scharffs (2019) categorize the relationship between religion and the state as follows: theocratic states, established religion states, religious status system states, endowed religion states, states with a preferred set of religions, cooperation between states and religion, states accommodating religions, separation between states and religions, *laïcité*, secular control regimes, and abolitionist regimes. Authors underline that the form of state-religion relations influences the degree of religious freedom in a country (p.123).

Some institutional structures are less likely to encourage religious freedom than others, while some are completely incompatible with it (p. 121). The structure of the relationship between religion and the state is defined using a loop, allowing for a more precise identification of its impact on the right to religious freedom. Durham and Brett demonstrate the range of options, from complete or positive identification through non-identification and on to negative identification, when persecution or antagonism towards religion prevails, in figure 2. Positive identification (such as recognizing just one religion) reduces religious liberty for other faiths. Negative identification in which State animosity towards religion leads in the absence of religious liberty.

This loop diagram illustrates the category of state-religion connection, the attitudes of the state toward religion, and the level of religious freedom in each category. The state can transition from one classification to another, such example from a theocratic state (positive identification) to a state with an established religion.



Depending on the political and social climate of the nation, the transition might lead to either a total separation or an abolitionist regime (negative identification).

People often believe that a high degree of religious freedom corresponds with a low degree of religion-state identity, or a low degree of religious freedom correlates with a high degree of religion-state identification (Durham and Scharffs, 2019). Durham and Scharffs claim that separation between state and religion does not necessarily lead to a high degree of FoRB, and vice versa, because the structure of religion-state interactions is never static. A high degree of religious freedom corresponds with a low degree of religion-state identity (recognition); nevertheless, it is not necessarily the case that a low degree of religious freedom correlates with a high degree of religion-state identification. Some nations, like as Norway, Finland, and the United Kingdom, have total identification or religious institutions while retaining a high level of religious freedom. A country has non-identification or non-establishment of religion, on the other hand. They have little religious freedom, such as the Soviet era of Russia and Albania (p.122). In conclusion, secularism is not the sole condition that ensures a high level of religious freedom. Other elements, such as social and political considerations and the interpretability of religious law by communities, must also be studied. To determine the relationship between religion and the state in Indonesia, it is necessary to examine in detail the extent to which anti-blasphemy law enforcement in Indonesia is influenced by political manipulation of religions and populism has an effect on violations of the right to religious freedom.

### **3.8.5 Implication of Relationship towards Religious Freedom**

Abdullah An-Na'im (2008), one of the foremost Muslim intellectuals and specialists in Law and Human Rights, says that it is crucial for the Muslim community to apply secularism in the twenty-first century. An-Na'im argues that the coercive implementation of Sharia Law by the state in a majority Muslim community such as Indonesia, which also includes other religious groups, is contrary to a Qur'anic injunction emphasizing that the acceptance of Islam is voluntary and a person's free choice to obey his orders. This position validates an-rejection Na'im's of the notion of building an Islamic state, as the Qur'an itself states that "religious compulsion is forbidden." Therefore, An-Na'im underlined that secularism is a step forward for the future of Muslim-majority nations.

However, the terms secularism and secularity are sometimes misunderstood. Secularism emphasizes the notion of the separation of state and religious connections. In this environment, the state does not care or even cares about religious activity in the public domain, or even outlaws it. This perspective will jeopardize the status of religion itself since it can lead to an extreme form of secularism in which the state does not want to know about or even restricts or punishes its citizens who believe in or express their faith. Therefore, the term secularism is perceived as a threat to religious life or the right to religious freedom. This differs from secularity in that secularity, as an adjective, focuses on the nature of the state's relationship with religion, which neutralizes the state's position on religion or accommodates the interests of religious adherents without favouring one religion or forbidding others.

This publication refers to the idea of Durham and Scharffs using the term secularity rather than secularism. Scharffs recalled that secularism and secularity are distinct because, both theoretically and practically, they differ in terms of meaning, character, and degrees of freedom, as shown in Table 10.

*Table 10. Distinction Between Secularity and Secularism*

<i>Distinction</i>	<i>Secularity</i>	<i>Secularism</i>
<i>Definition</i>	“Secularity is an approach to religion-state relations that avoids identification of the state with any particular religion or ideology (including secularism itself) and endeavours to provide a neutral framework capable of accommodating a broad range of religions and beliefs”	“Secularism is a positive ideology that the state may be committed to promoting, an ideology that may manifest itself as opposition to religiously-based or religiously motivated reasons by political actors, hostility to religion in public life and an insistence that religious manifestations, reasons, or even beliefs be relegated to an ever-shrinking sphere of private life, or even in progressive proselytizing atheism, or what has been called “secular fundamentalism”.
<i>State position</i>	Secularity will be inclined towards negative liberty. States are avoiding to interference freedom of other people.	Secularism will be inclined towards positive liberty. States are willing to use their power, resources, or freedom to fulfil one’s potential who are willing to use coercive means to help us achieve what is food for us.
<i>Upholding certain values</i>	Secularity upholds multiple, plural, and ultimately incommensurable.	Secularism allows criminalization towards certain religions.

Source: Cited from Durham & Brett Scharffs (2019).

According to Durham and Scharffs (2019), the relationship between state and religion determines the degree to which the right to freedom of religion is realized. In

Diagram 6.1, the connection between the two might be very dynamic or undergo a transition from a positive identification posture in which the state dominates people' religious matters. Such a relationship can evolve into a state that is tolerant of all religions practiced by its citizens, a neutral state relationship to religion in which the state maintains its distance from the religious choices of its citizens and treats all religions equally, or a state that completely separates its affairs. religion with the state (secularity) so that the state does not need to recognize the faiths or beliefs of its residents and allows it to flourish according to the community's wish.

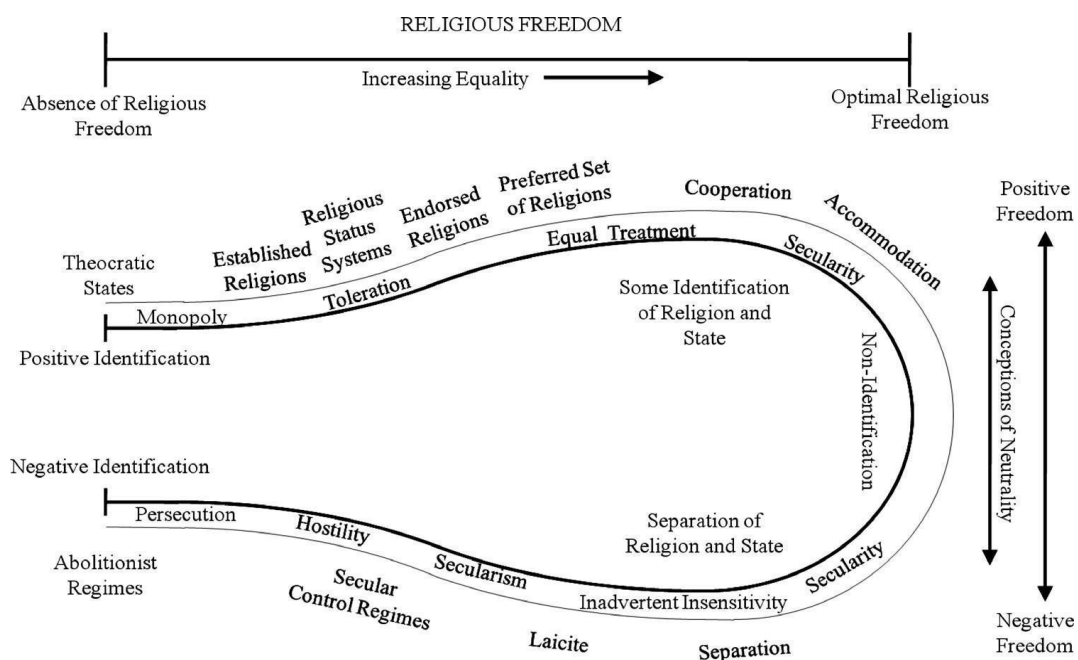


Figure SEQ Figure \\* ARABIC 7. Relationship between state and religion

This concept of neutrality can also lead to negative identification if secularity moves towards insensitivity or if the state is less sensitive to the religion of its citizens, or it can lead to secularism if the state begins to restrict religion in state life by prohibiting the use of religious symbols in public spaces. Extreme secularism can eventually lead to official intolerance of religion, culminating in conflict that ultimately leads to state persecution of religious followers. This theory is used to analyze the genuine connection between the state and religion in Indonesia while the Anti-Blasphemy of Religion Law was maintained and implemented, and how this affected the situation of the right to religious freedom in Indonesia.

Referring to figure 14, the relationship between the state and religion in Indonesia oscillates like a yo-yo, at times displaying the face of a separate state and religion, at other times supporting established religions, or favoring only the six major religions, and at other times controlling religion - existing religions. When seen from a normative perspective, the Indonesian Constitution recognizes and protects the right to freedom of religion, although explicitly stating that Indonesia is not a religious state, but rather a state based on law. According to the Durham and Schaarffs diagram, Indonesia appears to have established a distinct connection between the state and religion. Additionally, the constitution does not specify the names of faiths accepted in Indonesia (established religion). Article 1 of the Anti-Blasphemy Law provides that Indonesia does not restrict the existence and development of religions or other beliefs. Religions, however, define a person's standing (religious status system), and Indonesian nationals are required to list their faith on their identity cards. Obviously, ha-line has far-reaching consequences for a person's life if their faith is not listed on their identification card. Later, the Constitutional Court declared that Indonesian nationals who adhered to a religious belief were not required to mention their faith on their identification cards.

In the meanwhile, Indonesia continues to maintain the Ministry of Religion, which serves as the government's official endorsement of religious organisations. The Indonesian government may also be classified as a state with a preferred set of faiths, where the state gives more attention to the six religions practiced in Indonesia than to other religions or beliefs. In the case of state-determined religious holidays, for instance, only religious holidays of the six affiliated faiths are considered, whereas other religions outside of the six belonged religions are of no interest to the state.

Sociologically, the positive identification of religion in Indonesia might lead to tolerance of religious life, although it is not unusual for the state to regard the six faiths or beliefs subscribed to and those not devoted to less equally. State protection of religion is limited to the six faiths prevalent in Indonesia and tends to overlook or restrict the presence of religions or other beliefs outside of these six. In this regard, the Anti-Defamation Law has become a tool for the state to persecute religions or beliefs outside the six religions, either by issuing public policies declaring certain

religions or beliefs “heretic” or by punishing leaders or followers of these religions or beliefs as perpetrators of religious blasphemy.

Therefore, it is still impossible to classify Indonesia as a country that can ideally uphold the right to religious freedom. Indonesia tends to conform to the Religious Status System, Endorsed Religion, and Preferred Set of Faiths with regard to the six religions it has embraced. Indonesia, on the other hand, positions itself between secular control regimes and abolitionist regimes for faiths or beliefs other than the six acknowledged religions. The uncertainty of the state's approach towards religions has impeded the equitable treatment of all faiths or beliefs, therefore the right to freedom of religion, particularly for religions or beliefs other than the six declared, remains a significant concern for Indonesia.

Culture is produced and evolved under the influence of different factors, such as values, beliefs, and actions that become the norm in social life. According to the definition of culture by McCormick, culture is “an institutionalized and systematic collection of ideas, values, attitudes, and activities.” Therefore, in certain nations, a community's beliefs or religion cannot be separated from governmental life. This differs with the perspective of secularism, which is founded on the notion that religion and the state must be kept apart. The separation of church and state enables the government to respect all religions equally, allowing for greater social order. However, it is also anticipated that secularism may lead to intercultural problems because various cultures revere different religions. Extreme secularism can potentially lead to the restriction of religion in society or even to the establishment of an antireligious state (Scharffs, 2017).

Since the majority of BLs are implemented by Muslim-dominated nations, several analysts believed that the restrictions of the FoRB exist due of the tight relationship between state and religion. This section discusses whether the concept of separation between state and religion is likely to occur, particularly in Muslim-majority nations, and if it warrants further discussion. Professor An-Naim, an expert in Islamic law and human rights, is among those who advocate for secularism as a means to lessen the state's authority over religion. An-Naim (2008) persuades Shariah-compliant nations to consider converting to a secular state on the grounds that only secularism would allow Sharia to grow and endure in the future. Secularism permits

an individual to choose his religion freely, without official coercion and in line with his personal convictions. Contrary to the concept of “no coercion in religion” as stated in Art.18 of the ICCPR and the principle of “no-compulsion in religion” that is explicitly acknowledged by the Qur'an, An-critical Naim's thinking asserts that Islamic regimes tend to implement Sharia Law on all its inhabitants. Therefore, he was persuaded by the concept of separation between Islam and the state or a secular state in which the government is neutral regarding religious beliefs and public policies and supports religious observance, but may control the link between Islam and politics. Unfortunately, An-Naim does not specify the form of secularism that is appropriate for an Islamic state. An-Naim overlooked the fact that most nations with BL adhere to cultural relativism. Referring to Article 18 (3) and Article 19 (3) of the ICCPR, it is permissible for them to limit FoE based on the state's discretion stipulated in their national legislation, even if countries such as Pakistan and Malaysia have not yet ratified the ICCPR. The concept of An-Naim with the above-mentioned qualities of secularism is ideal, but it can only be realized in Islamic nations by a public vote and constitution amendment, followed by social and legal change. For instance, the secularization of Turkey began in 1928 when the term “Islam is the official religion” was removed from the Constitution. Then, few years later, by the Constitutional Amendment of 1937, the concepts of secularism were made official. This fundamental transition requires strong government leadership and political resolve, as well as public backing. Otherwise, this concept is pure imagination.

Second, secularism is harder to establish in countries where cultural relativism is prevalent. According to Donnelly (2007), culture relativism is “the fundamental wellspring of moral justice and rule's validity” (p. 401). In other words, human rights are relative and contingent on how a community interprets them and the extent to which cultural variances are tolerated. Donnelly emphasized, however, that radical or strong culture relativism is “misguided” due to its rejection of human dignity. While extreme universalism also denies local knowledge and national sovereignty (p.402). Donnelly thinks that we must strike a balance between culture relativist and universalist perspectives by admitting the universality of human rights on the one hand and culture as a source of limitation and exception on the other. The equilibrium between cultural relativist and universalist approaches is applicable to the

fundamental human rights treaties, such as the UDHR and the other two covenants, such as the ICCPR and the ICESCR (p.402). To defend the right to FoRB and FoE enshrined in Articles 18 to 21 of the ICCPR, for instance, the States must uphold the concept of individual autonomy (Art.1) and the principles of equality and nondiscrimination (Art.2 and 4 of the UDHR). These values are internationally recognized and should not be diminished by the states in the sake of cultural relativism. Therefore, restrictions on FoRB and FoE are acceptable under Art.18 (3) or 19 (3) of the ICCPR so long as they do not contradict the rights provided by Art.1, 2, and 4 of the ICCPR. For example, the implementation of BL may be acceptable from the standpoint of a weak culture relativism, but it would be problematic if the enforcement of such a rule excluded or discriminated against particular groups of individuals on the basis of their religion or belief that differs from the majority.

In Chapter 4 of the book titled *Law and Religion: National, International, and Comparative Perspective*, Cole Durham and Brett Scharffs argue that separation between state and religion does not always result in a high degree of religious freedom and vice versa because the system of religion-state relationship is never static (p.121). Many individuals believe that a high level of religious freedom corresponds with a low level of religion-state identity (recognition) and that a low level of religious freedom correlates with a high level of religion-state identification. However, there are nations with total identification or religious institution, such as Norway, Finland, and the United Kingdom, that also have a high level of religious freedom. On the other side, countries like as Soviet-era Russia and Albania, which have non-identification or non-establishment religions, have a limited degree of religious freedom (p.122). In conclusion, secularism is not the sole condition that ensures a high level of religious freedom. Other aspects, such as political and economic concerns and the flexibility with which societies interpret religious law, must also be studied.

However, Islamic nations such as Pakistan, Malaysia, and Brunei cannot qualify as true democracies (Rothstein and Broms, 2013). Consequently, it is improbable that the universality of human rights would be completely applied. If what An-Naim (2008) implies is that governments accept the ideals of a secular state without modifying its institution, then Indonesia has met An-expectations Naim's with its decision. Indonesia is a mostly Muslim country, although it has never been designated an

Islamic state. Rather, it is a state built on the rule of law, which upholds the Pancasila philosophy and adheres to the ideal of secularism. Nevertheless, the BL remains difficult.

### **6.2.3 Unfinished debate of Indonesia-State and religion**

Anti-Blasphemy Law has strengthened Indonesia's state-religion connection. Because of the insufficient debate of state and religion at the time the Indonesian state was created, a law was born to direct the connection between the two. Indonesia's constitution does not expressly establish how the state and religion are intertwined, unlike other countries. This isn't without justification, but the author believes the debate is insufficient, leaving room for interpretation. The state-religion relationship in Indonesia is elastic, depending on the national leadership and socio-dynamic situation. As the largest religion, Islam may substantially affect Indonesia's path, yet it can also stay away from political power. During pre-independence, the state's religiosity waned. From 1800 until 1942, the Dutch Colonial Government implemented Snouck Hurgronje's principles to modernize, secularize, and westernize, meaning it did not govern or meddle in the religious matters of Dutch East Indies inhabitants. The Netherlands' Government Regulation 119 Year 8154 prohibits religious groups from engaging in practical politics.

The Dutch colonial administration excluded religious groups from practical politics by creating the Office of Indigenous Affairs (Het Kantoor for Inlandsche zaken), or the Ministry of Religious Affairs. This ministry oversaw Muslim marriage, education, and political activities during Dutch colonial rule. From the Dutch colonial era until 1942-1945, the Ministry of Religion retained its existence, even strengthening it by constructing an administrative work unit, Shumubu or the Office of Religious Affairs (KUA). Pre-independence, the state regulated marriage, education, and political activities to protect Muslim interests.

Muslims were only separated into Islamist and Islamic-Nationalist factions after independence. Islamist organizations seek to establish an Islamic state with Islam as the official religion. The Islamist organization established the Jakarta Charter by adding seven words to Pancasila's "Belief in One Supreme God" to make it "Belief in God with the commitment to implement Sharia for its members." With these seven



phrases, it is hoped that Indonesia would become an Islamic nation-state, so that the state and religion are one.

Islamic-nationalist movements oppose this ideology and desire national unity, democracy, and justice. Soekarno, the first president of Indonesia, backed Nationalist Islam and launched Pancasila on June 1, 1945. He listed five state principles: (1) Indonesian nationality, (2) internationalism or humanity, (3) consensus or democracy, (4) social welfare, and (5) Divinity. Islamic Nationalists, who desire state and religion to remain separate, opposed modifying Sila I Pancasila's editorial. The Committee for the Preparation of Indonesian Independence (PPKI) eliminated the seven words on August 18, 1945. This is translated as Indonesia's decision in setting the connection between the state and religion: Indonesia is not a state (religion/Islam), but a country founded on "God Almighty."

Indonesia has had four Constitutions: the 1945 Constitution, the 1949 RIS Constitution, the 1950 Provincial Constitution, and the 1945 Constitution (amended four times) or Post Amendment of 1945 Constitution. In the four constitutions, no provision specifically governs the state-religion relationship. Because the constitution does not regulate the connection between state and religion, it can be regarded by the authorities as a swing that can be moved by the present leadership pattern. Soekarno's government enacted Indonesia's 1945 Constitution. "Article 29 states..." The article doesn't list the protected religions. The State must protect a citizen's faith. Soekarno nominated himself President for life under a guided democracy, therefore Sukarno issued Law no. 1/PNPS/1965, the Anti-Blasphemy Law.

Since the Anti-Blasphemy Law was issued in 1965, the concept of religion has narrowed since Article 1 of the Law exclusively protects the 5 official religions and not others. At first, this law wasn't controversial. Anti-Defamation Legislation became a death law that was never enacted.

Second, the 1949 RIS Constitution did not prominently examine the connection between the state and religion since it was superseded by the 1950 Provincial Constitution. Soekarno's Guided Democracy resulted to the invalidation of the 1950 Provisional Constitution and a restoration to the 1945 Constitution. Indonesia's Reformation began in 1999. Four times, the 1945 Constitution was changed. No articles

on state-religion relations were added in the four updates. Changes have strengthened religious freedom. Constitutions do not control the state-religion relationship.

Now that the 1945 Constitution has been changed to preserve religious freedom, the Anti-Blasphemy Law causes complications when applied narrowly. Faiths not included in Article 1 of the Law are being reported as deviant religions as religious prosecution spreads. This happened to Gafatar, Ahmadiyya, etc. followers. In its current development, after more than 7 decades of independence, the Constitutional Court as the legal interpreter of the constitution affirms that: “Godhead in the One and Only God as the basis of the Indonesian state, religion as a way of life bestowed by Allah, the Almighty God must receive attention in the life of the nation and state.” The government must not disregard or oppose religion.

*“Godhead in the One and Only God as the basis of the Indonesian state, religion as a way of life bestowed by Allah, the Almighty God must receive attention in the life of the nation and state. The administration of the state must not ignore religion or must not conflict with religion.”*

Unfinished talks on the state-religion connection have left it ambiguous and influenced by the ruling power. This affects how the state helps established faiths. A moderate administration won't stigmatize specific religious groups, but a repressive government will use the Blasphemy Law to punish anyone who oppose it.

### **6.3.1. Anti-Blasphemy Law allows the state to interfere in the religious affairs**

Article 18 of the UDHR and Article 18 of the ICCPR require states to respect and preserve religious freedom. Since Indonesia joined the ICCPR in 2005, Article 29 and 28E of the 1945 Constitution safeguard and preserve the right to religious freedom as outlined in Article 18 of the ICCPR. Paragraph 1 of Article 28I states that every citizen's right to religious freedom cannot be restricted. Since the strengthening of the right to religious freedom, the old-order Anti-Defamation Law has not modified. Article 1 of the Anti-Defamation Law, which permits a person to be penalized for accepting a belief different from Indonesia's 6 main faiths, continues to legitimize governmental apparatus and public intolerant acts against religious organizations or minority beliefs.

This study's statistics on religious or belief adherents criminalized before and after the 1945 Constitutional amendment reveals a considerable surge. Both have Anti-

Blasphemy Laws. Before the Constitution was changed, the Blasphemy Law criminalized religion just once. Ironically, under the same Anti-Blasphemy Law regime, criminalization of religion has increased.

*Table 11. Criminalization of Adherents of Religion or Minority Beliefs Before and After the Amendment of the 1945 Constitution under the Anti-Blasphemy Law regime.*

	Before Amendment of the 1945 Constitution (1945 to 1998)	After the Amendment of 1945 Constitution (1998 to 2021)
Number of Criminalization of blasphemy case	3	67

Sources: Cited from various sources.

The data above illustrates that although the 1945 Constitution specifies that Indonesia is not a religion-based government (Islam), the Anti-Blasphemy Law has enhanced the state's role in intervening with citizens' religious issues, including punishing heretical religionists. The Anti-Blasphemy Law, which was seldom utilized to punish religious groups, has intensified since the Constitution guaranteed the right to religious freedom. Police are receiving more blasphemy reports. The Anti-Blasphemy Law's multi-interpretational provisions are used by law enforcement to follow up on reports until the trial and sentencing. Hardline Islamic organizations' protests, huge gatherings, and vigilante acts have caused official authorities to label faiths heretical. Law enforcement became helpless and unable to decide cases independently. The constitution doesn't specifically control the relationship between the state and religion; therefore, the ruling administration can freely interpret it. Under the Anti-Defamation Law regime, the criminalization of religion and numerous government policies reveal that state institutions and law enforcement regulate or intervene in the religious matters of its residents.

In Durham and Scharffs' (2010) diagram, Indonesia is between a theocratic and a religious state. This empowers certain faiths to monopoly the truth and persecute wrongdoers. Such a connection threatens religious freedom since someone who chooses and believes in his faith and religious teachings might be branded heretical and punished.

### **6.3.2 Anti-Blasphemy Law Favours to Established religions**

From its conception to its current implementation, the Indonesia's Anti-Blasphemy Law (IABL) continues to help established religions receive official backing.

Assistance in this situation is not limited to financial support to existing religious groups, but also in giving legal protection to its members in creating religious organizations and worshipping according to their faith and beliefs. Ironically, this study indicates that the Anti Blasphemy Law not only offers the big faiths more legal standing, but it is also utilized to punish religious members.

President Soekarno signed the IABL in 1965.<sup>214</sup> It was designed to decrease social friction between conservative people and non-religious belief groups and atheists who were in opposition to Pancasila and posed a threat to the protected religion, national security, and national disintegration (Sihombing, 2008).<sup>215</sup> The events of the communist revolution of 1965 became a terrible chapter in Indonesian history, and the people did not want a similar catastrophe to occur again (Arief, 2012). Following this dreadful occurrence, the House of Representatives issued the Provisional People's Consultative Assembly of the Republic of Indonesia No. XXV/MPRS/1966, which outlawed communism, Leninism, and Marxism.<sup>216</sup> The 1965 revolution movement urged Soekarno to step down and provided Soeharto the mandate to succeed him. The administration legislation under President Soeharto during the so-called "New Order" period was altered at that time.<sup>217</sup>

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<sup>214</sup> The President Stipulation No. 1/PNPS/ 1965 was enacted under the "Guided Democracy" of Soekarno. He was maintaining the state by took over the legislative power and tried to ensure that state was functioning. The characteristic of Soekarno's regime was close to an absolute power which according to the President Decree, the President had the power to released Presidential Stipulation (Penetapan Presiden/ PNPS) or Presidential Directive (Peraturan Presiden). Therefore, the Law No.1/PNPS/1965 was enacted through President instead of Act (Undang-Undang). It was later in 1969, the government elevated it to the status of national legislation through the enactment of Law No. 5/1969.

<sup>215</sup> The Indonesian expert Edward Omar Sharif Hiariej explained in the Ahok's case that PNPS was issued by President Soekarno on January 20, 1965. Exactly two weeks after the massacre of Muslims in Madiun. here was a sadistic murder when the kiai and santri were praying at dawn, the Koran was trampled upon, torn apart as a form of blasphemy. Retrieved at <https://www.jawapos.com/nasional/hukum-kriminal/14/03/2017/begini-awal-mulanya-pasal-penodaan-agama>. See also Michael S. Densmoor, 2013. The Control and Management of Religion in Post-Independence, Pancasila Indonesia. A Thesis. Georgetown University Washington, DC April 13, 2013.

<sup>216</sup> Provisional People's Consultative Assembly of the Republic of Indonesia No. XXV/ MPRS / 1966 concerning the dissolution of the Indonesian communist party. Statement as a Prohibited organization throughout the territory of the Republic of Indonesia for the Indonesian Communist Party and prohibiting any activities to spread or develop communist / Marxist ideals or teachings.

<sup>217</sup> On 11 March 1966 President Sukarno was forced by the Army generals to sign a letter transferring power to General Suharto. In Indonesia, Sukarno's letter was known as 'Super Semar', an abbreviation of 'Surat Perintah Belas Maret' (Letter of Order of the 11 March). However, from a Javanese Shadow puppet (wayang) story, Semar is a royal servant known for a powerful spirit and strength.

As stated previously, Soekarno signed the President Stipulation in 1965,<sup>218</sup> because he wanted to protect the established religions and beliefs in order to prevent the people's religions or traditional religious systems throughout Indonesia whose teachings were deemed to be in conflict with the fundamental principles of recognized religions. The body of the Blasphemy Law has no mention of the six religions that are infamously “recognized” by the Indonesian government. These paragraphs can be found in the explication, or the notes that follow the major provisions of the legislation (Fenton, 2016). In accordance with the explanation of Article 1 of the President Stipulation of 1956, Indonesia recognizes Islam, Protestant Christianity, Catholicism, Hinduism, and Buddhism.<sup>219</sup> However, this does not imply that the government prohibits Baha'i, Shinto, Jewish, and other religions. After the Reformation Period, under the presidency of Gus Dur, these five recognized faiths become six with the addition of Confucianism.

Furthermore, the IABL demonstrates that governmental protection for established faiths is preferred over protection for alternative religions. As the foundation for the establishment of the blasphemy legislation, Pancasila seeks to recognize their role and contribution to society throughout the independence struggle. Religions play a major role in Indonesian culture and have become an integral aspect of the country's philosophy (Nalle, 2017). As a majority-Muslim nation, it is indisputable that Indonesian Muslims and Islamic organizations played a key role in achieving independence and national unity. However, the quest to build an Islamic state has proven extremely difficult due to the necessity to satisfy the non-Muslim viewpoints of numerous Indonesian provinces. Most founding fathers of Muslim ancestry prioritized Indonesia's unity. Schwarz cited by Nalle explains that Islamic groups such as Sarekat Islam (Islamic Union) and Muhammadiyah (the followers of Muhammad) played a significant part in the Dutch colonial's suppression in 1929.<sup>220</sup>

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<sup>218</sup> During the Old Order, President had the power to release President Stipulation as one of the legal sources that must be obeyed by the people. But, in the New Order, the strong power of President was reduced by the Temporarily People Consultative Assembly (Majelis Permusyawaratan Rakyat Sementara/MPRS) as stated on the Resolution No. XX/MPRS/1966. According to the Resolution, President could not release the President Stipulation anymore. However, President still could release Presidential Decree which both had the same character, though. Therefore, the President Stipulation No. 1/PNPS/ 1965 has been changed into the Law No. 1/PNPS/1965, but the title and the content of the law were remaining the same.

<sup>219</sup> The IBL, *ibid.* Article 1.

<sup>220</sup> *Ibid.* P.7

Many Muslim leaders, like Mohammad Hatta, Sutan Sjahrir, and Mohammad Yamin, backed the National Indonesia Party created by Soekarno. They have successfully announced Indonesia's unity. Therefore, on 1 June 1945, Soekarno articulated Pancasila, which consists of the five principles, as a basic national standard. The five principles are: (1) the beliefs of God the Almighty; (2) fairness and civility among peoples; (3) the unity of Indonesia; and (5) socioeconomic justice for everyone (Sezgin and Künkler, 2014). Taking into account the aspirations of the Muslim population to form an Islamic state, Soekarno established the first principle as the foundation for all other principles. In the final text of Pancasila, the Belief in God with the commitment to implement the Shari'ah for Muslims, also known as the Jakarta Charter, has been removed. The judgment strikes a compromise between safeguarding the established faith and recognizing the majority Muslim community.

During the new order period, the IABL was maintained by the Soeharto Administration because President Soeharto wanted national stability, avoided horizontal conflicts that would affect the running of the government. Under President Soeharto administration, this law has been extended by the other law by adding Article 156a on the Indonesia Criminal Code. This Article used many times to eliminate the communism and atheism under the state ideology of Pancasila as well as to limit the right of non-recognized religions. There were at least three problems facing by Indonesia which could threaten the unity of Indonesia. The first was the spread of mystical beliefs that against Indonesian ideology, Pancasila. In the first principle of Pancasila is "Belief in One God the Almighty". This principle has been understood that Indonesians are expected to hold a religion or believe in God. In that way, many beliefs of Indonesia who do not believe in God were expected to learn and get knowledge from other religions so that they can live as what they supposed to do according to the first principle of Pancasila.

Following the age of reform, the blasphemy legislation stood at a crossroads. On the one hand, the state desires to improve the protection of human rights, while on the other, national stability and security continue to be of paramount importance. As the highest court of justice in Indonesia, the Constitutional Court has determined that the blasphemy legislation must be revised since it is not consistent with the law now in effect. In the meanwhile, sociopolitical situations in Indonesia continue to need this

law. Unfortunately, since the government approved Law No. 11 of 2008 about Electronic Information and Transactions (hereafter the Law of EIT), the IABL has become more restrictive of the right to freedom of expression.

Many groups believe that the Anti-Defamation Law in Indonesia exclusively protects six major religions. According to the data presented in the table above, the majority of community members who encounter violence or criminalization are members of religious minorities. However, the general population is unaware that the Anti-Defamation Law also poses a threat to followers of the six major faiths practiced in Indonesia. Ahok identifies himself a Christian. Christianity is one of Indonesia's six predominant faiths. However, as a result of animosity, the Anti-Defamation Law has been utilized as a political instrument to punish Ahok. Meiliana is also a Buddhist, which is one of the six major faiths practiced in Indonesia. Meiliana is likewise a target of blasphemy law enforcement, like Ahok. In the evolution of the case, the Anti-Defamation Law is utilized as a form of retaliation by individuals who denounce religious leaders for “insulting” their faith. As stated in Clause 156a letter a, the purpose of the blasphemy article is to safeguard the religions practiced in Indonesia, including Islam. The explanation for this restriction does not appear in the ICCPR, nor does it account for other limits under Indonesian blasphemy legislation. This differs from the goal of restricting the freedom of association, which is to defend the rights of others. The court ruled that the blasphemy of Islam violated the rights of Muslims; hence, safeguarding Islam entailed protecting Muslim rights.

Although the ICCPR has become a positive law in Indonesia on par with the IBLs, many legal officials lack the rudimentary skills necessary to execute the law. The 1945 Indonesian Constitution and the Human Rights Law provide freedom of religion and belief as well as freedom of expression. However, the government, court, and police utilized IBLs against defamation and blasphemy more frequently in order to curtail those freedoms.<sup>221</sup> In a number of instances, the Court has understood that sect membership constitutes defamation of the state's recognized faiths, which is contrary to the goals of General Comment No. 34 of the ICCPR and the Ra-bat Action Plan.

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<sup>221</sup> See Indonesia 2016 Human Rights Report. Retrieved at <https://www.state.gov/documents/organization/265550pdf>

In the instance of Gafatar,<sup>222</sup> three leaders of the religious sect were detained in Jakarta on May 26 for blasphemy because, according to the Authorities, Gafatar's teachings blend Islam, Christianity, and Judaism in a manner that is incompatible with recognized faiths doctrines. In March, the Ministry of Religious Affairs, the Ministry of Home Affairs, and the Attorney General's Office announce a combined decree banning Gafatar and any connected groups. Since the Minister of Religious Affairs never granted it legal status, the Gafatar has no legal standing as a civil body. Before the court ruled that the Gafatar is guilty of violating the blasphemy statute, the government had previously classified them as an unlawful organization. In this regard, it was unclear what legal basis the government would employ to restrict the religious freedom of Gafatar members.

In the same month, the East Jakarta District Court sentenced the three top leaders of the outlawed Gafatar religious cult to between three and five years in prison for blasphemy.<sup>223</sup> Gafatar is not protected by the IABLs since the government defines a religion as having a prophet, sacred book, and divinity, as well as being globally acknowledged. The court determined that, unlike the six recognized faiths mentioned in the IBL, Gafatar did not meet these standards. The Court restricts the Gafatar's freedom of expression in order to preserve the six recognized faiths, rather than for the other purposes listed in the ICCPR. The Gafatar's ruling breaches the ICCPR's guarantees of freedom of religion and speech.

Ustad Abdul Somad, a religious leader with thousands of followers in Indonesia, faced this situation. Due to the uncertainty of the criteria in the Blasphemy Law, Ustad Somad was also charged of blasphemy as a follower of the predominant faith of the majority [Islam]. Similar experiences were shared by other prominent Muslim national personalities, as seen in Table 10.

*Table 12. The Criminalization of Blasphemy Cases Based on the IABL Junto Article 156a Indonesia Criminal Code with Punishment for Maximum 1 Year in Prison*

No.	The Court	Year	Defendant's Name	Defendant's Religion	Indictment	Punishment
1	Medan District Court	1968	HB. Jassin	Muslim who made short story "The sky is	156a CC	1-year sentence with 2-year probation

<sup>222</sup> See Tabel 1.1. on Appendix.

<sup>223</sup> See Article 1 of the IBL.



No.	The Court	Year	Defendant's Name	Defendant's Religion	Indictment	Punishment
				getting cloudy" (1968)		
2	Polewali Mandar District Court	2005	Sumardin Tappayya	Village Leader who Praying by Whistling (2005)	156a CC	6 months sentence with 1-year probation
3	Makassar District Court	2008	Hikmat Faturiddin, Abdul Qadri, Fadli, Maulid Syawal and Asrul AB	Follower of Al-Qiyadah belief (2008)	156a CC	4 months sentence with 6 months' probation
4	Kupang District Court	2009	Nimrot Lasbaun and Friends	Christianity who believes Sion as the city of God (2009)	156a CC	6 months sentence
5	District Court Ambon	2009	Wilhelmina Holle / Musohi - Maluku Public Unrest	Islam	156a CC	1-year sentence
6	Blitar District Court	2011	Miftakhur Rosyidin bin Winarko (RIP)	Muslim who imaged Cross in a mosque.	156a CC	4 months sentence
7	Garut District Court -2012	2012	Sensen Komara	A follower of Indonesian Islamic Nation.	156a CC	1-year treatment in mental Institution
8	Sampang District Court	2012	Tajul Muluk	A Shia leader	156a CC	1-year sentence and 4 years sentence by High Court
9	Dompu District Court	2012	Charles Sitorus /	Christianity Teaching of Kindness Books distribution (2012)	156a CC	1 year and 2 months sentence
10	Pontianak District Court	2012	Sandi Hartono as son of Khu Khim Chiung (2012)	Islam	IET Law No.11/2008	6 months sentence and 500 million rupiah fine
11	Kalabahi District Court	2013	Alfred Waang	Islam who forced a kid to eat pork meat	156a CC	1-year sentence
12	District Court of Trenggalek	2013	Agus Santoso or Tesy bin Kijaelani	Islam	156a CC, 335 (1) CC	4 months sentence
13	District Court Denpasar	2013	Rusgiani	Hinduism	156a CC	1 year and 2 months sentence
14	Medan District Court	2018	Meiliana	Budhism who complain adzan/ call for prayer volume	156a CC	1 year and 6 months sentence

No.	The Court	Year	Defendant's Name	Defendant's Religion	Indictment	Punishment
Sources: Cited from Court Decision Directory at Indonesia Supreme Court and Categorized by Author						

*Table 13. The Criminalization of Blasphemy Cases Based on the IABL Junto Article 156a Indonesia Criminal Code with Punishment for 2 to 5 Year in Prison*

No.	The Court	Year	Defendant's Name	Defendant's Religion	Indictment	Punishment
1	District Court Central Jakarta	1990	Aswendo Atmowiloto	Muslim who published a survey the favorite leader in Indonesia and put Muhammad as the second rank	156a CC	5 years sentence
2	District Court Situbondo	1996	Muhammad Saleh	Islam	156a CC	5 years sentence
3	Kalabahi District Court	2004	Ir. Charisal Matsen, Agustinus Manu M.Sc.	Muslim who made a Book cover design of "Alor in numbers"	156a CC	2 years sentence
4	District Court Bale Endah	2004	Mangapin Sibuea	Christian who Apostle and Prophet of the world cottage	156a CC	2 years sentence
5	Probolinggo District Court	2005	Ardi Husain and 6 managements of YKNCA	Muslim who wrote and published a book "Penetrating the dark towards light 2"	156a CC	4 years and 6 months sentence
6	District Court Jakarta	2006	Lia Aminuddin	Lia Eden Community	156a CC 157 paragraph (1), and 335 CC	2 years sentence
7	District court Central Jakarta	2006	Abdul Rachman	A Salamullah follower	156a CC	3 years sentence
8	District Court Central Jakarta	2007	Ahmad Musadeq	A follower of Alqiyadah Al Islamiyah and the leader of Gafatar	156a CC	4 years sentence

No.	The Court	Year	Defendant's Name	Defendant's Religion	Indictment	Punishment
9	Malang District Court	2007	Djoko Widodo SH and Nur imam Daniel or Daniel as part of 41 members of LPMI (2007)	Islam	156a CC	3 years and 6 months sentence
10	District Court Padang	2007	Dedi Priadi and Garry Lutfi Yudistira	Al-Qiyadah Al-Islamiyah	156a CC	3 years sentence
11	Jambi District Court	2008	Edi Ridwan, Amir, Sudibyo and Warsito	A leader of Islamic New Model	156a CC	5 years sentence
12	District Court of Tasikmalaya	2008	Ishak Suhendra	A writer of Religion and Reality Book	156a CC	5 years sentence
13	District Court Central Jakarta		Lia Aminudin / Salamullah (2009)	Habib Abdurrahman Assegaf / Islam	156a CC	2 years and 6 months sentence
14	District Court Central Jakarta		Wahyu Andito Putro Wibisono / Salamullah (2009)	Habib Abdurrahman Assegaf / Islam	156a CC	2 years sentence
15	District Court South Jakarta		Agus Imam Solihin / Satriyo Piningit (2009)	- / Islam	156a CC	2 years and 6 months sentence
16	Ciamis District Court		Ondon Juhana (2011)	Sri Asriyati and Victims / Islam	156a CC and 378 CC	4 years sentence
17	District Court of Tasikmalaya		Oben Sarbeni (2011)	MUI / Islam	156a CC	4 years sentence
18	Temanggung District Court		Antonius Richmond Bawengan / Distribution of 3 brochures and 2 books (2011)	Community members and administrators	156a CC	5 years sentence
19	District Court Sumber Cirebon		Ahmad Tantowi / Heaven of Eden (2011)	Victim / Islam	156a CC and article 289 CC	10 years sentence
20	Klaten District Court		Andreas Guntur Wisnu Sarsono, Mandate of Divine Greatness (2012)	FKAM / Islam	156a CC	4 years sentence

No.	The Court	Year	Defendant's Name	Defendant's Religion	Indictment	Punishment
21	District Court Padang		Alexander Aan / Account Atheis (2012)	/ Islam	156a CC	2 years and 6 months sentence
22	Ciamis District Court		Subastian Joe Bin Abdul Hadi / FB Allah Stingy and Arrogant (2012)	FPI, LPI and MUI / Islam	156a CC	4 years sentence
23	Ende District Court		Herison Yohanes Riwu / Host Case (2013)	Church leadership / Catholic	156a CC	4 years and 6 months sentence
24	District Court Lubuk Pakam		Khairuddin or Udin / Islam Kaffah sect (2013)	society / Islam	156a CC	4 years sentence
25	Pati District Court		Muhamad Rokhisun bin Ruslan (2013)	victim / Islam	156a CC, Art. 45 & Art. 28 ITE Law.	4 years sentence
26	District Court Bale Bandung		Rohmansyah / Qur'aniyah sect (2013)	Bandung / Islamic Organizational Society	156a CC	2 years and 6 months sentence
27	Sangatta District Court		Syeh Muhammad (Teacher of Bantil) (2014)	ex-student / Islam	156a CC & 378 CC	3 years sentence
28	District Court North Jakarta and Supreme Court		Ahok		156a CC & 27 (3) & 45 (1)	2 years sentence

Sources: Cited from Court Decision Directory at Indonesia Supreme Court and Categorized by Author.

This research includes 62 blasphemy cases from 1965 to 2018. Figure 8 shows examples by sentence length. 14 offenders (22.5%) out of 62 were sentenced to 1 year in jail. 14 or 23% were sentenced between 1 and 4 years, 28 or 45% were sentenced above 4 years, and 14 or 20% were not brought before the court, including 1 case where the defendant was not found guilty. Not all IBL cases should be brought to court, as they are commonly utilized against minority religions or sects. Alternative conflict resolution, such as communication or mediation out of court, should be continued as the best feasible option.

*Figure SEQ Figure \\* ARABIC 8. The Length of Sentence from 1965 to 2018*

Source: The Supreme Court Directory analysed by the writer based on the data on Table provides on Appendix.

In figure 9, the public prosecutor based 58 of 62 indictments on Article 156a of the Indonesian Criminal Code. The IET Law is used in 4 cases (6%). The IBLs have been utilized largely to impede religious freedom, not free speech.

*Figure SEQ Figure \\* ARABIC 9. The indictment used by the Public Prosecutor from 1965 to 2018*

Source: Writer analysed the Supreme Court Directory. The writer analysed the Supreme Court Directory using the Appendix Table.

Meanwhile, figure 10 shows that most blasphemy victims are Muslim (84%), Christian (5%), Catholic (2%), and Hindu (2%). Muslim community gains more from

blasphemy law. The legislation protects the most popular religions. 7% of victims are unidentified.

### 6.3.3. Anti-Blasphemy Law justify religious intolerance

The *Gafatar* group, which purports to be non-religious, has become a target of the Anti-Defamation of Religion Law and has been designated a “twisted” religious doctrine so it doesn't escape the crowd. AD, a *Gafatar* adherent, said

*“Gafatar is not a religious organization, more precisely a social organization that focuses on social problems and helps prepare the nation to face various crises in the future, one of which is in the realm of unity (solidarity, tolerance, egalitarian) and Food Security and Independence (KKP) in the realm of unity, Gafatar held a blood donation campaign (symbolizing human values that do not see SARA differences), in addition to carrying out “Re-interpretation, re-internalization and re-actualization of Pancasila values”, We had established 1021 Pancasila villages throughout Indonesia (37 provinces). At the time of its establishment, Gafatar chose to become a legal mass organization, so it has a founding body (20 people) and a*

Figure SEQ Figure \\* ARABIC 10. The Victims of blasphemy cases from 1965 to 2018

Source: The Supreme Court Directory analysed by the writer based on the data on Table provides on Appendix.

*notarial deed of establishment, initially in 2011 there were 4 regional representative councils (DPD), DKI Jakarta, West Java, East Java, and*

*Jogjakarta, each of which has its own SKT (Registered Certificate) Kesbangpol Province.*<sup>224</sup>

The similar thing occurred in the case of Ahok. The court concluded in its legal analysis that Ahok's actions might disrupt interreligious peace. The court deemed Ahok less attentive to issues that may spark rage and disrupt unity. Ahok's defense stated that he did not want to offend Muslims, but trial evidence demonstrated that Ahok was aware that Al-Maidah was a section of the Qur'an that Muslims regarded to be authentic. The Muslim holy book has been denigrated and humiliated by Ahok's statement, *"Don't just trust what others say... (you) might be duped using Al-Maidah verse 51."* However, according to the UN Special Rapporteur on Freedom of Religion and Belief for 2006,<sup>225</sup> Ahok's criticism of verse 51 of Al-Maidah is grounded on common knowledge. Therefore, he should not be penalized, even though his comments may offend and harm the sentiments of Muslims, because his opinion did not directly violate their right to religious freedom. In addition, as required by General Comment No. 34 of the ICCPR, Ahok's speech did not provoke enmity or violence in society. If the protest of one hundred thousand Muslims is a significant indicator of impending violence, the Court should investigate this factor, and its conclusions should be substantiated by substantial evidence.

*Table 14. The Blasphemy Cases using an alternative dispute resolution outside of the court or other methods or the defendant were found not guilty*

	Courts Area	Defendant / Case	Plaintiff / victim	Indictment	Sentence
1	District Court Batam	Mas'ud Simanungkalit, Islam Hanif (2003)	MUI Batam / Islam	156a CC	the case is mediated
2	District Court Palu	Rus'an / Islam is failed religion (2005)	FKUI Palu / Islam	156a CC	the case is mediated
3	District Court Malang	Yusman Roy / Bilingual Prayer (2005)	Public / Islam	156a CC 157 (1) CC	not guilty for pasal 156a huruf a KUHP but guilty for pasal 157 and received 2 years sentence

<sup>224</sup> Interview with AD, the Gafatar follower at 2:38 PM, on 4/18/2020].

<sup>225</sup> the UN Special Rapporteur on Freedom of Religion and Belief 2006

	Courts Area	Defendant / Case	Plaintiff / victim	Indictment	Sentence
4	District Court South Jakarta	Teguh Santosa / Prophet Cartoon (2006)	Public / Islam	156a CC	not guilty because of the wrong indictment
5	District Court Bekasi	Imam Trikarsohadi and Abdul Wahab / Prophet Cartoon (2006)	- / Islam	156a CC	the case is mediated
6	District Court Surabaya	Gloria Publisher Surabaya (2006)	- / Islam	156a CC	the case is mediated
7	District Court Semarang	Raji / Intoxicated Prayer (2008)	- / Islam	156a CC	the case is mediated
8	District Court Klaten	FX Marjana (2009)	- / Islam	156a CC	the case is mediated
9	District Court Medan	Moses Alegesen / Manuscript Translation (2009)	PDHI / Hinduism	156a CC	not guilty
10	District Court Surabaya	Ahmad Naf'an / Ilmu Kalam Santriloka (2009)	- / Islam	156a CC	the case is mediated
11	District Court Bandung	Hadasanah J Werner / Bethel Tabernakel Chruch (2012)	Indrawati Tirtosoedimoro / Christian	156a CC	not guilty
12	District Court South Jakarta	Eyang Subur (2013)	HAMI Adi Bing Slamet / Islam	156a CC	investigated by metro jaya police
13	District Court Tolitoli	5 students from Tolitoli Highschool / Dance like the praying movement (2014)	School / Islam	156a CC	Police investigation & mediation
14	District Court Ciamis	Dedi / Astray Sekt (2014)	Community / Islam	156a CC	Police investigation & mediation
15	District Court Cibinong	Jonas Aviano and Asmirandah / Inter religion marriage (2014)	FPI / Islam	156a CC	Police investigation & mediation
16	District Court Medan	Ahmad Arifin / tarekat sammaniyah	FUI Sumut / Islam	156a CC	Police investigation & mediation



	Courts Area	Defendant / Case	Plaintiff / victim	Indictment	Sentence
17	District Court Bandung	Cecep Solihin / New Prophet (2014)	- / Islam		released after signing a a declaration
18	District Court Central Jakarta	Caricature in Jakarta Post (2014)		156a CC	Chief editor become suspect
19	District Court Surabaya	OSPEK “Tuhan Membusuk” (2014)	GUIB	156a CC and governor regulation no 55 / 2012 on Supervision of religion manifestation and astray groups	mediation
20	District Court Palu	I Wayan Heri / Social media status (2014)		Information and Electronic Transaction Law No. 11 / 2008	mediation

#### 6.4. Pseudo-secularity harvests an illusion of religious freedom

In comparison to the relationship between the state and religion before and after Indonesian independence, the Anti-Blasphemy Law has altered the relationship between the state and religion. This thesis finds that in the colonial and pre-independence eras, there was a divide between Islamic groups that desired the establishment of an Islamic state and nationalist groups that desired a separation of religion and the state. However, since the Anti-Defamation Law was enacted and implemented, there has been a shift, in which Islamic groups have the support of nationalists. Using the Anti-Defamation Law to prosecute groups deemed as straying from Islam demonstrates this point. The Anti-Defamation Law, which was upheld by both the Reformation Era Government and the Joko Widodo Administration, demonstrates the cohesion of nationalists and Muslims on the link between religion and the state they wish to construct.

The Constitution of 1945 does not classify Indonesia as a religious state, but it does require Indonesia to be founded on the one and only Godhead, as stated in the First Principle of Pancasila. Yudi Latif (2011) analyses and discusses each of the

Pancasila principles from a philosophical standpoint, debating the viewpoints of the nation's founding fathers and comparing them to the constitutions of other nations (Latif, 2011). However, Latif (2011) does not explore the post-reformation relationship between religion and the state, Pancasila's perspective on the relationship, or how they deal with discontent or satisfaction resulting from the state-religious interaction. While As'ad Said Ali (2009) examines the idea of the Pancasila State, he does not address the link between religion and the state throughout the reform era (As'ad, 2009). According to Din Syamsudin, former Central Executive of the Moderate Islamic Organization Muhammadiyah, as cited by Moh Dahlan (2014), the first group to assert that religion and the state are inextricably linked is the Muslim Brotherhood. Thus, everything that pertains to religion also pertains to the state, and vice versa. So that there is no separation between religion and the state, and they become a single one. Al-Maududi is the figure backing this movement. Second, those who say that the connection between religion and the state is symbiotic and dynamic-dialectical, rather than direct, so that the two regions retain distance and respective control, so that religion and the state coexist. Religion requires state institutions to expedite its growth, and state institutions require religion to construct a just state in conformity with the spirit of divinity. Abdullahi Ahmed An-Na'im, Muhammad Syahrur, Nasr Hamid Abu Zaid, Abdurrahman Wahid, and Nurcholish Madjid are included in this group. Third, the group that believes religion and the state are separate spheres with no connection whatsoever. This organization distinguishes between religion and politics/state. Therefore, this group opposes the foundation of the state on religion and the incorporation of religious standards into public law. Ali Abd Raziq is one of the world's Muslim leaders who belongs to this group. R.R. Alford thinks that religion has no significant effect in the political views of its adherents; religious adherents typically have secular political views.

In Indonesia, the pseudo-secularity of state-religion relations creates an illusion of religious liberty. Using the Durham and Scharffs model, the figure below depicts the relationship between the state and religion in Indonesia under the Anti-Defamation Law system. In his work titled "Islam and the State in Indonesia from a Legal Perspective," M. Ali Safa'at claims that the concept to replace the state's basis of Pancasila, which is the ideology of the Nationalist faction, with Islamic Law emerged

in 2002. This reasoning at least supports this conclusion. The pseudo-secularity of state-religion relations produces dishonest religious freedom. The diagram below illustrates the connection between the state and religion in Indonesia under the Anti-Defamation Law regime, with reference to the Durham and Scharffs model. M.'s contribution at least bolsters this result. Ali Safa'at says in his work titled "Islam and the State in Indonesia from a Legal Perspective" that the concept to replace the Nationalist group's Pancasila with Islamic Law as the state's foundation emerged in 2002.

*In the Reformation Era, the meaning of Pancasila, and especially the first principle of the "Belief in One Almighty God" has again been the subject of debate, resulting in debate on the relationship between state and religion. In 2002, the debate regarding the amendment of article 29 paragraph (1) and paragraph (2) of the 1945 Constitution without any fundamental change to Pancasila reflects a shift in the direction of Islamic politics away from efforts to make Islam the state's foundation towards efforts to implement Islamic law in the Constitution. The proposals were rejected by both houses of the Indonesian Parliament (MPR) (Safa'at, 2020)*

Despite the fact that this proposal was shot down in writing by the Indonesian Parliament, the growth of legal politics both in the centre and in the regions gave support to the notion. In his normative approach, Safa'at also indicates that the strengthening of the application of Islamic Law can be found from the proliferation of Islamic Law adopted as Positive Law by both the Central Government and Regional Governments. Safa'at says this can be found by looking at the proliferation of Islamic Law adopted as Positive Law by both the Central Government and Regional Governments. Safa'at argue that many Islamic rules have been incorporated into positive law, beginning with the old system and continuing through the reform order. The Marriage Law, the Marriage Registration Law, the Compilation of Islamic Law, the Zakat Management Law, the Hajj Law, the Waqf Law, the Sharia Banking Law, and the Sharia State Securities Law are among examples. On the other hand, the state is the entity that chooses the objectives to be pursued through the creation of these numerous laws. Where, in addition to the Law, it seeks to (1) combine the laws that apply to Muslims; (2) maximize the economic potential of Muslims; and (3) safeguard and facilitate religious life in people's lives through the Law, where it is expected to

be able to do so. Therefore, this legislation, which is founded on Islamic law, must nonetheless fulfil the aims set by the state as an entity that is considered to be secular.

In terms of concepts, it would appear that the concept of making Islam the cornerstone of the state is still being opposed by members of the Indonesian Parliament. In spite of this, the reality of life in society is that when community groups challenged the Anti-Defamation Law through a judicial review at the Constitutional Court, the Nationalist group represented by the government received support from Islamic groups represented by moderate and non-moderate Islamic organizations in Indonesia. This occurred when the Anti-Defamation Law was being reviewed by the Constitutional Court. The following is a list of the perspectives held by various Islamic organisations about the Blasphemy Law:

*“Undang-undang a quo masih diperlukan di Indonesia sehingga kalau dicabut dapat 1) menimbulkan instabilitas Indonesia; 2) mengganggu kerukunan umat beragama; 3) merugikan terutama untuk minoritas dan dapat terjadi anarkisme. Logikanya ketika tidak ada aturan bukan menjadi beres tetapi masyarakat akan membuat aturan sendiri.” “The a quo law is still needed in Indonesia so that if it is repealed it can 1) cause instability in Indonesia; 2) disturbing religious harmony; 3) disadvantage especially for minorities and anarchism can occur. The logic is that when there are no rules, it doesn't turn out right, but people will make their own rules”<sup>226</sup>*

Other moderate Muslim personalities, such as Prof. Dr. Amin Suma, Rahmat Syafi'i, Prof. Nur Syam, and MUI figures such as Dr. Adian Husaini, Amien Djamaladdin, and Yamin Rahman,<sup>227</sup> endorse Hasyim Muzadi's viewpoint. Dr. Adian Husaini, a member of the Indonesian Ulama's General Assembly, stated, “The status quo statute [the Blasphemy Law] should not be challenged initially. If required, a new legislation that provides faiths with greater protection will be drafted.”<sup>228</sup>

In the meanwhile, Muhammadiyah, a moderate Islamic group, provides its perspective on the Blasphemy Law, which in principle cites QS Al-Baqarah verse 256 and QS AL-Kafi verse 29 that “there is no coercion in religion since it is evident which method is correct and which is incorrect. In QS Al Kafi, it is said, “The truth comes

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<sup>226</sup> KH Hasyim Muzadi, a Nahdatul Ulama figure, when giving a statement as an expert in the judicial review of the Anti-Defamation Law at the Constitutional Court. Quoted from the Constitutional Court Decision Number 14/PUU-/2009. Page 121.

<sup>227</sup> See the Constitutional Court Decision Number Page 121-152.

<sup>228</sup> Ibid. Page 151.

from God; whomever desires to believe, let him believe; whoever desires to doubt, let him disbelieve in God's commandments.”<sup>229</sup> Muhammadiyah also highlighted that Islam protects religious liberty, religious diversity, and religious views or convictions. According to our view of Surah Al-Baqarah verse 147 and AL-Maidah verse 48, this is the case.<sup>230</sup> Muhammadiyah further highlighted that “in practicing religion and belief, individuals do not combine religious teachings and do not disregard the religious views of others.”<sup>231</sup> The actualization, expression, and practice of religion in the public domain are an integral component of social life, hence Muhammadiyah members adhere to the Islamic life principles established on February 5, 2001 by the Central Executive Muhammadiyah in Yogyakarta. There are four fundamental Islamic lives:

*“[...]build brotherhood and guidance with others such as neighbors and other members of the community, both Muslim and non-Muslim; good for neighbors, neighbors with different religions, good and fair, showing positive attitudes. based on the principles of respecting human honor, fostering brotherhood and unity of humanity, [...] fostering a spirit of tolerance, respecting the freedom of others...[...]”<sup>232</sup>*

Meanwhile, other religions, such as the Indonesian Church Association (PGI) are of the view that

*“for Law 1/PNPS/1965 to be criticized in terms of its function and content because it has multiple interpretations and tends to have multiple interpretations, it is feared that there will be too much state intervention in religious life. If things happen that violate or are considered blasphemous or deviant, it will not be done without an attitude or resolved with internal violence, without games and physical actions. And it has long been done among Christians so that those who are different or who also insult the teaching can return to the good of the group or people or church that will be left behind.”<sup>233</sup>*

From this perspective, there are still two divergent directions: NU and MUI want the Anti-Defamation Legislation to be maintained, while Muhammadiyah neither rejects nor accepts the offer of reform, preferring instead a state of religious freedom in which expression may be restricted by law. This indicates that Muhammadiyah viewed the Blasphemy Rule as a law that merely restricts the communication of ideas

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<sup>229</sup> Ibid. Page 156.

<sup>230</sup> Page. 157.

<sup>231</sup> Ibid. Page 156.

<sup>232</sup> Page 158-159.

<sup>233</sup> Page 162.

and not for those who select their faith. In the meanwhile, PGI desires a reform of the Blasphemy Law, which tends to be open to multiple interpretations and allows the state to meddle in an individual's religious matters. See also the views of the Bishops' Conference, which examines in depth the multiple interpretations of the articles in the Blasphemy Law and reaches the same conclusion as the PGI, namely that the Blasphemy Law violates the right to freedom of religion guaranteed by the 1945 Constitution, Indonesia is not a religious state, and the Blasphemy Law. irrelevant to the current era.<sup>234</sup>

However, this time the ruling of the Constitutional Court differs from earlier decisions in that the Court no longer considers non-discrimination principles as key principles that should govern responses to the Blasphemy Law. In lieu of the freedom of articles in the Blasphemy Law that have multiple interpretations and are contrary to the 1945 Constitution, particularly regarding the right to religion, the Constitutional Court renders an ambiguous decision, on the one hand stating that the formulation of the Blasphemy Law has multiple interpretations and can lead to discriminatory actions against groups. On the other side, several faiths claim in their decisions that the Blasphemy Law is valid or does not violate the 1945 Constitution. The Court asserts, "whether or not the Blasphemy Law is abolished, there will be no disorder in society." In the sake of societal safety and the anticipating of horizontal and vertical conflicts, blasphemy is extremely essential."<sup>235</sup>

The purpose of this Court's ruling is to demonstrate that the assertion that Indonesia is not a religious state that promotes secularism is, in reality, intended to demonstrate pseudo-secularism. The Constitutional Court still retains the Law on Blasphemy of Religion, which seeks to make the state the vehicle for punishing people based on their choice of religion, even though the consequences of this decision run counter to the central tenets of other religions. However, the choice of religion is an internal matter and an inviolable right, thus the state cannot restrict it in times of emergency or conflict. The Constitutional Court does not portray itself as a defender of human rights. The Court thinks that the Blasphemy Law, which obviously restricts freedom, is significant and must be justified for grounds that cannot be substantiated

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<sup>234</sup> Page 167-168

<sup>235</sup> Page 304.

by factual evidence. Several clauses guaranteeing religious freedom in the 1945 Constitution were deemed unconstitutional by the Constitutional Court, which preferred to preserve the Blasphemy Law. Thus, the pseudo-secularity portrayed by the Blasphemy Law, which has been upheld by the Constitutional Court to far, produces a false sense of religious liberty.

In a democratic period in which the state is continually needed to guarantee and preserve the rights of every person to freely select and believe in their respective religions or beliefs, the state's secularity over religion is a must. The neutrality relationship between the state and religion must be expressly stated in the Constitution so that the ruling government cannot interpret the Constitution and all laws and regulations arbitrarily to support its own power interests, either by gaining the support of the majority by pretending to support religion or by targeting it. If the presence of religious opportunities is in opposition to the government or a danger to its authority, the government may prohibit their existence. A constitution that stresses the link between the state and religion will serve as a guide for lawmakers to assess the applicability of current laws to the degree that this might impede and threaten the preservation of the right to religious freedom. In addition to being able to act objectively, law enforcers are not readily able to use the law to prosecute adherents of certain religions or sects.

## **6.5. Conclusion**

Previous studies on the state religion relationship concluded that separation between state and religion or secularity is an indication of a modern democratic country, where the state does not interfere religions and the society have a freedom to embrace, follow and practice their religion or faith according to their personal preference and believe (Durham and Scharffs, 2019). This research finds out that the content of constitution in Indonesia does not set definition about relation between state and religion, therefore from the date of Independence declaration until today there is a dynamic type of relation between state and religion following the prominent political ideology controlling the regime at the time. Since 1965, Indonesia's government issued the IABL as measure to protect Islam from communism ideology, however recently the number

of blasphemy cases decided using the IABL is keep increasing and this is dangerous for human right and democracy.

This research also finds out that law enforcement and government officials are formally accept that Indonesia's constitution adopted secularism principle in its article, Indonesia is a ruled by law state and not a ruled by religion state. The constitution acknowledges and guarantees the right for every person to accept, follow and practice religion according to individual preference and belief. However, the government is utilizing the IABL to repress followers of minority group of religion from enjoying their freedom of religion, behind a fake assumption that Indonesia is a secular state that acknowledged any kind of religion. With the notion of a pseudo-secular state, the government has a leeway to manipulate the type of relation between state and religion and translate it into government policy following their political agenda. This condition is degrading democracy and reducing human rights protection.

In Indonesia, the relationship between the state and religion has never been specified in the Constitution. In legal practice, it is often understood that Indonesia is not a religious state, but rather a state founded on the One Godhead. Indonesia is a state of law, not a religious state, indicating that Indonesia is a secular state in which the government is founded on positive law and not religious law. Nonetheless, it is also understood that Indonesia is a country built on the One Godhead, suggesting that Indonesia adheres to Godly nationalism, which was subsequently utilized by law enforcement to justify the anti-blasphemy statute. This pseudo-secularity of the state-religious relationship is not conducive to promoting and ensuring the freedom of religion and worship in Indonesia. The ambiguous relationship between the two places the state in an ambiguous position; on the one hand, the Constitution provides confirmation and guarantees for the right to freedom of religion for everyone to embrace their own religion and belief, but on the other hand, the Constitution cannot cancel the existence of law. laws, such as the Blasphemy Law, which uses 'legitimate' religion as a means to punish 'perverted' religions. In this regard, the Blasphemy Law is defended deliberately to serve as a tool of power and will be utilized if it benefits that power, either to attack the religion he adheres to or to attract sympathy from the religious group he adheres to by punishing adherents of a religion who are viewed as threatening the interests of the adhered religion.



The absence of explicit regulation of the connection between state and religion in the Indonesian Constitution leaves wide room for any administration in power to interpret and establish the nature of the relationship between state and religion in line with power-serving political processes. This is evidenced by the constantly fluctuating pattern of relationships between the state and religion in Indonesia. The blasphemy legislation, which was applied to many regimes, including the old order, the new order, and the reform order, continued to be used to prosecute religious minorities after the reform order came into existence. The reform order, which is equipped with human rights legal instruments and a complete guarantee of the right to freedom of religion, is unable to curb the repressive nature of the government, which interprets the Blasphemy Law as justification for limiting the right to freedom of religion by punishing adherents of religions.

Under the Anti-Defamation Law, the government has established a state that both supports particular faiths and punishes its members. These factors endanger not just the existence of religion but also religious concord. The Blasphemy Law has become a political instrument of power that is purposefully defended in order to consistently bribe and win the support of the majority Islamic population by demonstrating that the government cares about and supports Islam. On the other hand, the Blasphemy Law is also utilized to intimidate oppositional majority groups.

The execution of blasphemy laws reveals official support for religion (Islam) motivated solely by political and economic considerations. As a result of the fact that the Anti-Religious Blasphemy Law simultaneously threatens or targets adherents of Islam as the majority faith. Cases in which religious individuals are claimed to have degraded religion through their religious lectures illustrate this point. In Indonesia, the pseudo-secularity of the state towards religion simply produces pseudo-governmental support for religion (Islam). In conclusion, the pseudo-secularity of the relationship between the state and religion currently adopted by Indonesia is not conducive to attempts to enhance democracy, but rather undermines the fully protection of the right to religious freedom for its citizens and threatening human rights.

## CHAPTER VII

### REPEAL OR REFORM ANTI-BLASPHEMY LAW FOR FULL RELIGIOUS FREEDOM PROTECTION: A POLITICAL GAME

#### 3.9 Introduction

As a closing chapter, this section aims to analyse the current effort of the government being made to optimize the protection of the right to freedom of religion which in the last seven decades of the enforcement of the Anti-Defamation Law. It has been in the spotlight of the community and the world. Indonesia's ratification of the ICCPR and the guarantee of the right to freedom of religion in the 1945 Constitution are in fact not sufficient to provide political authority for Indonesia to harmonize its domestic laws. The socio-legal studies in the previous chapters have emphasized how the allegations of indiscriminate blasphemy have shifted into hate-spinning, using identity to paralyze political opponents to gain the sympathy of the Muslim-majority. However, law enforcement officials have failed read these facts and the law has been continued to be enforced.

Second, the enforcement of blasphemy cases remains strong under the pretext of preventing horizontal conflicts between religion. Empirically, what has happened is the other way around. The law enforcement encourages the public to act *Main Hakim Sendiri* because of the inability of the apparatus to consistently translate the Anti-Blasphemy Law. In the case of Ahmadiyya and Gafatar, followers of these two groups continue to be victims of physical and psychological violence against those who are seen as heretical. The repeated enforcement of the Anti-Defamation Law has in fact fostered vigilante groups to take vigilante action.

Third, philosophically, the Blasphemy Law strengthens the position of the state which is not neutral towards religions. The state's ambiguity in placing its relationship with religion places the Anti-Defamation Law as a tool to play identity politics. The swinging relationship between state and religion results in a pseudo-religious freedom. The state is lenient towards religion, or sided with a particular religion, or becomes very repressive towards religion, all of which are possible under the same legal regime, namely the Anti-Defamation of Religion Law. By borrowing the hand of the MUI, the state has controlled religions or traditional beliefs which at any time can

give the stigma of being heretical. This will continue to encourage polarization, improve interfaith relations, and threaten citizens' rights to freedom. On the other hand, Indonesia continues to be in the spotlight of the international community.

As a member country of the United Nations and a participating country that ratified the ICCPR through Law Number 12 of 2005, Indonesia's Universal Periodic Report on the issue of religious freedom continues to reap reactions in the form of recommendations from various countries. Most of the recommendations made focused on criminalizing minority religions using the Anti-Defamation Law. The Rabat Plan of Action notes that the blasphemy law is counterproductive to the right to freedom of religion because it legitimizes the criminalization of one's religion or belief by the state in a discriminatory manner. The urge to abolish the Anti Blasphemy Law is also motivated by the occurrence of unhealthy conversations and debates in enjoying the right to freedom of religion because this law does not provide a guarantee for a person to enjoy the right to have a religion or belief, where this right should be free from criticism or blasphemy [...] Ahmed Shaheed, Special Rapporteur on freedom of religion or belief argues that

*“International Law compels States to pursue a restrained approach in addressing tensions between freedom of expression and freedom of religion or belief. Such approach must rely on criteria for limitations which recognize the rights of all persons to the freedoms of expression and manifestation of religion or belief, regardless of the critical nature of the opinion, idea, doctrine, belief, or whether that expression offends or disrobe others, so long as it does not cross the threshold of advocacy of religious hatred that constitutes incitement to discrimination, hostility, or violence”*

What is conveyed by the Special Reporter, in principle, that a person's right to manifest or practice his religion or belief should be guaranteed and protected, even if the teachings of that person's religion or belief offend or interfere with the beliefs of others. This offense and disturbance are unavoidable, as long as the religious expression does not fall into the category of advocating hatred against religion to carry out discriminatory actions, riots, or violence. This view is very much in line with what is stipulated in Articles 18, 19 (3) and 20 (2) of the ICCPR. Thus, the Anti Blasphemy Law that threatens a person's right to express their religion or belief as regulated in the Anti Blasphemy Law is a violation of the 3 articles above.

Although the Anti-Defamation Law is still being maintained in various countries, in recent developments, the existence of such a law is experiencing a global trend of rejection. For example, in Ireland, Germany, Canada, there have been reforms to articles that have multiple interpretations to be abolished. In Pakistan, although the blasphemy law is maintained, the Supreme Court in the case of Asia Bibie made important considerations where the charges against her were deemed substantive so that Asia Bibie was released from the death penalty after 8 years of her imprisonment. The paradigm shift carried out by the Supreme Court in Pakistan is a good development in the effort to protect the fundamental rights and human dignity of everyone in all places. Meanwhile, in several states of the United States, the Anti-Defamation Law is still maintained in 5 countries, however, until now it has become a dead law (or has never been used again as a basis for criminalizing religious adherents).

In this context, this concluding chapter examines the extent to which the current political legal policy in Indonesia seeks legal reform of the blasphemy law and to what extent these efforts lead to full protection of the right to freedom of religion or vice versa? The first part explains the conceptual framework of law reform and the meaning of full realization of the protection of the right to freedom of religion. The second section describes the division of public support between amending the law and abolishing the law. The fourth section reveals data that this law not only targets religious minorities but also the majority. The fifth section examines the political policy of law towards the half-hearted reform of the anti-blasphemy law. Then it closes with a conclusion.

### **3.10 Theory and Conceptual framework**

#### **3.10.1 Full Realization of the Right to Freedom of Religion or Beliefs**

First, the right to FoE is fundamental human rights for everyone in everywhere. Its widely recognized within both international and regional human rights standard since it's also essential for the development of individual and the foundation of democratic society (Howie, 2017). According to Art.19 (1) of the International Covenant on Civil and Political Rights (ICCPR), the concept of FoE is defined as the right of everyone not only "to hold opinion without any interference" but also to "to seek, receive, impart

information or ideas in all kinds". The scope of FoE is "opinion", "information" and "ideas in all kinds". The word "in all kinds" means that the information could be regarded either as supportive or criticize, offensive or inoffensive, difference or similar. The word "freedom" according to Scanlon means that everyone has the autonomy to decide independently what the person's should believe and should do (Scanlon, 1972). Freedom to seek, receive, impart information or ideas in all kinds are protected equally and only can be limited under Art. 19 (3). As the right to hold opinion cannot be interference or disturb by others (Article 19 (1), Dworkin argues that censoring other's opinion as insulting is the same as saying that other's opinion is not "worthy of equal respect" (M. Dworkin R., 2013). Therefore, a person cannot be punished because of his/ her belief, imagination, fancy or thought (Mendlow, 2018). In sum, FoE is the right of everyone to hold opinion or to express, to share, to seek, to receive information or ideas either supportive or criticize, offensive or inoffensive to others' opinion freely without being fear of subjected with penalty. Therefore, the States parties of the covenant as duty bearer are obliged to take some measures to reform their domestic laws in accordance with the covenant.

Furthermore, the concept of FoRB can be defined by understanding its key concepts stated at Art.18 of the UDHR as well as Article 19 of the ICCPR and other relevant instruments. In Art.18 of the UDHR states that:

*Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance. (Stressing added).*

The scope of FoRB includes both *forum-internum* and *forum-externum*. This interpretation was described under the 1981 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (the 1981 Declaration). The *forum-internum* includes the right "to change his religion or belief" that have similar meaning with the right "to have or adopt a religion or belief of one's choice" under Art.18 of the ICCPR. While *the forum-externum* includes its right to exercise in teaching, practice, worship, and observance. In Art.18 of the ICCPR states:

*[1...] freedom of thought, conscience, and religion. This right includes freedom to have or to adopt a religion or belief of his choice, and freedom, either alone or in community with others and in public or*

*private, to manifest his religion or belief in teaching, practice, worship, and observance. (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. (Stressing added).*

Durham (2011), a Professor of Law and the founding father of the International Center for the Law and Religions Studies (ICLRS), argues that the right to FoRB should be protected without any discrimination as stated at Art.7 and can be enjoyed by everyone ‘without distinction of ... religion” that guaranteed at Art.2 (p.10). Then, through the Human Rights Committee (HRC) of General Comment Number 22 of 1993 (the GC No.22), the FoRB also includes the right to replace religion or have no religion. In paragraph 2 of the GC No. 22 emphasize that the words “religion” includes theistic, non-theistic, and atheistic beliefs, as well as the right not to profess any religion or belief. While the word ‘belief’ is broadly construed including traditional religions or religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. In sum, the right to FoRB covers the right of everyone without any coercion or distinction to have, to change, to depart, to convert religions or beliefs includes theistic, non-theistic, atheistic beliefs, or not to embrace any religion or beliefs of his choice and to manifest the right in education, live, worship and observance.

### **3.10.2 Blasphemy Law, the cross cutting between FoE and FORB**

How the FoE, FoRB and the BLs are cross cutting? To answer this question, it needs to understand the concept of BL. The BLs have been used for long times to restrict hate speech, a religious insult against religious artefacts, holy personages, customs, or beliefs (Nash and Bakalis, 2007). According to Black Law Dictionary, blasphemy is defined as “Any oral or written reproach maliciously cast upon God, His name, attributes, or religion [....] It embraces the idea of detraction, when used towards the Supreme Being, as “calumny” usually carries the same idea when applied to an individual [....] (p.155-56).” Adding this definition, the BL was actually taken from the teachings of Christianity and adopted in Act 1703 in South Caroline which basically gave four opinions about what is called blasphemy, namely (1) anyone who denying the holy individuals of trinity as God; (2) asserting or maintain that there more Gods than one; (3) deny the truth of Christianity; and (4) denying the Old and New

Testament scriptures as divine authority (Glazer, 1981). Then, the BL were followed by other countries by adjusting to the main religious teachings of the country that need to be protected. In general, blasphemy is interpreted as an act of dishonour for God, the sacred things or tainted the purity of religions. With this interpretation, the BL may violate the FoRB under Article 18 since its only focus on protecting the main religions of the state concern. For instance, in the case of Ahmadiyya, the Indonesia government used the Law No. 1/PNPS/ 1965 (the BL of Indonesia) to prosecute the leader of Ahmadiyya and banned the Ahmadiyya to share their teaching because the court found that Ahmadiyya was considered as deviant of Islamic majority that protected under the BL (Colbran, 2010). In this sense, the BL is not only limiting the right of Ahmadiyya to express their religious teaching but also violate the right of Ahmadiyya followers to have and practice their own religion that differ from the Islamic majority.

Second, the BL limit the right of person who are belong to minority groups of religion to express their religious teachings. FoRB can divide into *forum-internum* and *forum-exterum*. *Forum-internum* is non-derogable right protected under Art.18 stated above. While *forum-exterum* means that the right to manifest religion or belief including worship, teaching, observance and could be a subject of such limitation under Art.18 (3). According to the GC No. 34, the *forum-externum* is only permissible to “strictly limited to curtailing incitement to discrimination, hostility or violence”. Although the right to manifest the *forum-externum* could be limited but the limitation itself is also limited only if the religious expression advocate to discrimination, hostility, or violence. This limitation is explicitly mentioned under Art.20 (3) “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. Under Art.20 (3) any advocacy of religious hatred that constitute incitement is prohibited by law, but interestingly Art.4 of the Convention on Elimination All forms of Racial Discrimination (CERD) does not mention “religious hatred” as a form of racial discrimination. These double standards later become problematic when applied.

*States shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin,*

*and the provision of any assistance to racist activities, including the financing thereof”*

With this argument, the HRC states that the right to manifest religions or the right to express religions may subject to such limitation under Art.18 (3) or 19 (3), but it does not necessary for the State to criminalize the person who violates both articles except the expression falls into Art.20 (3). Considering the principle of proportionality, in most Western countries such as in Canada, according to the Canadian Charter of Rights and Freedom Section 2(b), the violation of the right to FoE usually brings before the civil court rather than to the criminal court. However, under the BL, the proportionality of the sanction is problematic since the breach of BL mostly brought before the criminal court. The research done by Pratiwi (2021), the case of BL in Indonesia between 1995 to 2018, from the total of 62 cases, 80 % of the total the perpetrators were punished and put imprison for above six months and only 20 % they were found not guilty (p.27).

In respect of religion or belief, the person's expression either it's related to the person's religion or others religion, may subject to such limitation under Art.19 (3). The right to FoE goes with it special duties and responsibilities of everyone to respect the rights and reputations of others or to protect the national security, public order, public health, or morality. People have responsibility to share the truth information. Sharing vague information about a person may destroy his reputation. However, the GC No. 10 Paragraph 3 of the HRC on Art. 19 of the ICCPR warns that the restrictions of freedom of expression shall not put in jeopardy of the right itself. Therefore, the over limitation of such rights or the limitation that goes beyond Article 19 is the violation of the right itself. According to Fiss and Kestenbaum (2017), based on the research done in 71 countries, the use of BLs tends to over limit the right to FoE. This trend shows that the BLs have the lower standard of limitation since they only focus on protecting religious orthodox teachings or symbols or feelings of others. But the question is whether or not such expression violates Art. 19? The United Nations (UN) Special Rapporteur on Freedom of Religions or Beliefs and the UN Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HrC/2/3, 20 September 2006, para 37 states that “the expression defame other religions may hurt feelings of others, but it does not directly result in a violation



of their rights to freedom of religion”. This general comment emphasize what Temperman (2011) argues that every one’s right of expression is human rights and protected by Art. 19, but the right not to be hurt or not to be insult is not protected under the ICCPR.

In sum, the enforcement of BLs intersects with and mostly violate the right to FoRB and FoE of particular people who manifest their religions that considered deviant from recognized religions or who express their religious thoughts that considered injured the religious feelings of others. However, the expression that constitute incitement of discrimination or violence against minority groups of racial or religions are prohibited under Art.20.

### **3.11 Understanding Law Reform**

#### **3.11.1 Public Division between amending and abolishing the law**

The direction of reform of the Anti-Blasphemy Law after the Constitutional Court's decision in 2010 stating that the law is not unconstitutional has caused a division of views in society. Moderate Muslim groups supported by human rights experts and civil society organizations concerned with the promotion of the right to freedom of religion continue to push for the abolition of the blasphemy law because the vagueness of legal norms in the law has caused the enforcement of this law to cause continuous violations of the right to freedom of religion in Indonesia. Case studies on the criminalization of Ahok, Meiliana, Ahmadiyya followers and Gafatar are just a few examples of violations of the right to freedom of religion that have occurred in Indonesia in the past decade. However, another group, hardline Islamists supported by the MUI, claim that the blasphemy law needs to be maintained for various reasons. This section will review the reasons for those who maintain the law, and the middle ground of the government's amendment of the law, and the reasons for those who support reforms that lead to the abolition of the blasphemy law.

Table 15. Matrix of reasons from religious group position and government

Reasons	Hardline Islamic Groups supported by MUI	The Government of Indonesia	Moderate Islamic Groups Supported by HR NGO and other groups of religions
Main idea	Maintain the Blasphemy Law	Maintain the law until it is amended.	Abolish the Blasphemy Law
Historical reasons	The blasphemy law needs to be maintained so that the violence against Muslims that has occurred in the past is not repeated.	The abolition of the blasphemy law will create a legal vacuum and it is feared that if blasphemy occurs, it will cause greater horizontal conflict if this law is revoked even though the replacement for the blasphemy law does not yet exist. Law making is the domain of the legislature, not the Constitutional Court.	Blasphemy laws in the past were made only for emergencies, which no longer exist today.
Philosophical & legal reasons	Abolishment of Blasphemy Law is incompatible with the Godly Nationalism and promote Islamophobia.	The Blasphemy Law does not contradict the Constitution, particularly Article 28 J where the state can limit a person's right to religious expression.	The blasphemy law violates the right to freedom of religion guaranteed by the Constitution because both internal freedom and external freedom can be restricted, and the narrow interpretation of religions practiced in Indonesia is limited to only 6 religions, other than those 6 religions are vulnerable to criminalization.
Empirical Reasons	In Indonesia, new sects have sprung up whose teachings are contrary to the religions practiced in Indonesia	The enforcement of blasphemy law was successful to prevent the wider horizontal conflict among religious groups.	In most blasphemy cases encourages the act of <i>Main Hakim Sendiri</i> that cause recurrent conflicts among religious groups.

	so that they are not in line with the religion of Indonesia.		
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Hardline Islamic groups supported by the MUI still insist that the blasphemy law be retained. This view received a breath of fresh air when the Constitutional Court declared that the blasphemy law was not unconstitutional. This study reveals that there are at least historical, and juridical-philosophical reasons put forward by this group. The first historical reason is that in 1965, Muslims in history had been the target of violence which caused deep trauma, so that maintaining this law would at least be able to prevent similar events from happening again in the future. This reason was also put forward by the former Chief Justice of the Constitutional Court, Mahfud MD, when he tested the anti-blasphemy law. Secondly, juridically, and philosophically, the idea of abolishing the blasphemy law is considered contrary to Pancasila and the 1945 Constitution. The idea is seen as turning Indonesia into a secular state that separates religion and the state. Such a model is seen as contrary to the first principle of “Belief in One God”. Hardline Islamists understand that the principle of Belief in One God allows the state to prohibit irreligious propaganda and teachings that are considered heretical. This view can at least be found in various MUI fatwas on heretical teachings.

Hardline Islamic groups have also stated that the idea of abolishing the blasphemy law is Islamophobia that must be countered. It is no doubt that the enforcement of the lower standard of BLs across the world are incompatible with the Art. 19 and 20 of the ICCPR. However, it would be difficult to push the predominant Muslim countries to repeal the BL since at the same time the law against hate speech is also applicable in many European countries and the application of its double standard still debateable (Joppke, 2018; Keck and Winkley, 2015; Kunelius et al., 2007). The idea of An-Na’im is not practicable in the country such as Pakistan, Saudi Arabia, Brunei, or Malaysia. They have a strong counterargument that proposed by several Muslim predominant countries, including Indonesia to defend the existing of BLs. Following the wave of Islamophobia in Western countries triggered by the film “Innocence of Muslim” as well as the earlier case of Danish cartoon, Pakistan on behalf of Islamic countries, the OIC’s Human Rights Commission proposed the requirements of “international code of conduct for media and social media to disallow the

dissemination of incitement material". The OIC principle that freedom of speech should not be used as an excuse to demean and embarrass other people's religious beliefs. Although this film cannot be categorized as racial discrimination under Art.4 of ICERD or a hate war, it can be categorized as a form of incitement of hatred that violates Art.20 of the ICCPR because it targets hatred towards Muslims as minority groups in Europe. It is similar to the case of Geert Wilders who found guilty by the Dutch Court of insulting and incitement to discrimination of his statements and his movie *Fitna* against Muslim Moroccans group (Vrielink, 2016).

Another Islamophobia was the case of the distribution of 12 cartoons of the Prophet Muhammad repeatedly in several countries of Europe from 2005 to 2006 cannot only be seen as a form of freedom of expression or criticism against radical Muslim that must be respected in a democratic climate. But the cartoons depicting the Prophet, which has long been understood by people of all religions in the world that Muslims have the belief not to depict the Prophet Muhammad, has hurt the feelings of Muslims in the world. The proof is very evident from the rapid reaction in the form of demonstrations in Denmark and Copenhagen (2005), London (2006) and condemnation from many Islamic countries and even encourage other brutal actions when the demands of apology or withdrawal to the authors and spreaders are not immediately carried out. However, the important point why many experts enter this case differently from other satirical cartoons is not without reason. Muhammad's portrayal of a terrorist is a form of spreading hatred targeting minority Muslims in Europe an invitation to the public to be anti-Islamic (Modood et al., 2006). Where hate speech against minority groups of religion or minority groups of racial is an act that has long been prohibited in domestic law in various countries in Europe such as Germany, Austria, France, and many others. This is as forbidden as the expression that the Holocaust never existed (see *David Irving v Penguin Books and Lipstadt*). Unfortunately the application of double standards also gets a space where anti-Semitic, homophobic, anti-Christianity can be punished as an hate speech based on Article 4 of the ICERD but Islamophobic is not considered as an expression of hatred under the Convention (Joppke, 2018; Keck and Winkley, 2015; Kunelius et al., 2007). The double standard of hate speech law application in Europe can be used to justify

the enforcement of BL in predominant Muslim countries and strengthen the view that even in a secular state it still allows the state to favour the majority religion.

However, recent developments in various European and American countries have made significant changes in optimizing the protection of the right to freedom of religion. In addition, Muslim countries need to understand that the UN Resolution 16/18 on combating intolerance, negative stereotyping, and stigmatization of, and discrimination, incitement to violence and violence against persons based on religion or beliefs aimed to avoid the prejudice not only towards Muslims but also to other religions. The adoption of the Resolution 16/18 becomes a big challenge for the 57 OIC countries to amend their BL to be in line with the Resolution that focusing on abolishing intolerance, discrimination, incitement to violence against persons rather than targeting minority groups to protect Islam as the main religions in their country.

Historically, Law No.1/PNPS/1965 on Blasphemy (BL) was passed by Presidential Decree to avoid a repeat of the mass killings of Indonesians and Islamic leaders carried out by the Communist party in 1965 after the Communist coup in 1965 (Crouch, 2012). If the law is repealed, a legal vacuum is created. If a similar case were to occur, there would be no legal basis for criminal accountability. Mahfud MD, a coordinating minister for Law and Human Rights and former Chief Justice of the Constitutional Court in his 2010 decision stated that: "The repeal of the Blasphemy Law could jeopardize the unity of the nation, because if the APA Law is repealed, there will be a legal vacuum, so that if there is a conflict between religions there is no law that can prevent it, so it can trigger chaos in society." This view is also reinforced by the Constitutional Court Judges in various decisions.

Secondly, there is no doubt that according to the Constitutional Court's Decision on the BL Judicial Review Petition on April 19, 2010, that the BL provisions are vague and multi-interpretive, so the Constitutional Court declared the BL unconstitutional. However, the Court did not repeal the law, but rather stated that the BL needs to be reformed and clarified (p. 212).

Third, after the Constitutional Court's decision in 2010, a draft law on religious protection was included in the 2019 National Legislation Program in which the draft law clarified the definition of religion, religious assemblies, Religious Harmony Forums, houses of worship, religious broadcasting, and others to guarantee the

freedom of citizens to embrace their respective religions and worship in accordance with their religions and beliefs (DPR, 2019). Thus, the most recent political, legal, and social developments in Indonesia still require changes to the blasphemy law rather than abolishing it.

However, the empirical facts that occur in society contradict the above view. The enforcement of the blasphemy law tends to create horizontal conflict. This is as discussed in the previous chapter where conflicts between religious communities always accompany when the blasphemy law is applied. Conflicts occur because vigilante groups use the Blasphemy Law as a legitimate tool to attack other groups. Thus, the claim that maintaining the Blasphemy Law prevents religious intolerance does not get factual support in the sociological reality in society and therefore becomes irrelevant.

### **3.12 Anti-Blasphemy Laws Targeting Both Minority and Majority Groups of Religions**

According to Indonesia's law scholars, one of urgent reason for reforming the IABL that this law was only applicable to minority religious groups and this research found out that the law recently has moved direction politically to suppress majority Islamic groups that become opposition to government policies. It is no doubt that the IBL tends to discriminate minority groups (Forte, 1994) inside and, or outside of the court. Inside of the court, Judges have applied the law to punish blasphemous with disproportionate penalties (Biswas, 2020; Fagan, 2019). The judge decision on blasphemy cases is usually using heavy sentencing such as 5 years jail time which should not be the same as criminal charge. Outside of the court, the IBL has been used more frequently by the local government as legal basis to issuing other relevant policies against the adherents of the heretical sect in Indonesia (van der Kroef, 1953).

Furthermore, the hardline Islamist religious groups and the security forces have called the policies as justification for violent or attack minority religious groups (Howell, 2005). In the experts' notes, since the 2016 Ahok blasphemy case, the attitude of Muslim conservative intolerance has increased (Lindsey and Butt, 2016; Mietzner and Muhtadi, 2020). The study of Mietzner is based on the findings of survey institutions such as the Indonesian Survey Institute shows that conservative Muslim

groups tend to refuse to elect a President or a non-Muslim Governor, refuse to allow the establishment of non-Muslim places of worship in their neighbourhood, or refuse to accept non-Muslim teachers in Muslim schools (LSI 2016, p.17). Even Menchik (2014a) criticizes the largest Islamic organizations such as Muhammadiyah and Nahdlatul Ulama (NU) who are ambiguous, on the one hand they support democratic values such as tolerance and plurality, but on the other hand, they also support authoritarianism through refusing the heterodox religious teachings. Issues involving *aqeedah*<sup>236</sup> that are in conflict with orthodox schools, such as blasphemy, are strongly opposed by these two moderate Islamic organizations. If modern Islamic organizations still reject diversity in religion, it is difficult to change the views of conservative Islamic groups. Differences in belief should be separated from the issue of their position as citizens. Differences in beliefs should not prevent a person from getting legal protection and human rights. The role of parliaments in interfaith dialogue with various religious organizations is vital in guaranteeing the protection of religious freedom in Indonesia.

Unfortunately, these problems do not always come to the attention of legislators. The legislators rarely hold public hearings with or advocate to these largest moderate Islamic organizations in regarding blasphemy legal reform and the urgency of respecting the right to religious freedom.<sup>237</sup> Various local regulations and executive legal products that threaten the right to freedom of religion appear to be left alone and free from oversight by legislators. The passive attitude of lawmakers is based on the understanding that supervision of regional legal products is the full authority of the central government, or through a judicial review mechanism adopted by citizens who feel their constitutional rights are impaired. Meanwhile, the process of amendment to the blasphemy law seems to stand in the way and tends to get weak political support.

After a decade, until recently, the bill of religious harmony is not discussed by Parliament or ratified yet, and public debates continue. Blasphemy's legal reform in

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<sup>236</sup> *Aqeedah* is the belief and trust in Allah, the worth of worship and divinity, belief in angels, books, apostles, destiny, the last days, and everything that is authentic in religion. Including the belief that Muhammad peace be upon him, as the last Apostle. Therefore, Sunni Muslims rejects teachings that believe there is a last prophet besides Muhammad.

<sup>237</sup> In an interview with a member of Parliament it was stated that a public hearing with a religious group was conducted by Parliament. However, with the discussion of the IBL replacement bill not yet being demonstrated, a better public consolidation for FORB has not yet been achieved.

Indonesia has been run in very slow because of the deadlocked in Indonesia Parliament<sup>238</sup> and the fear of the spread of communism.<sup>239</sup> The legislators are still hesitant to draft the legal concept of blasphemy, in order to make a balance between protecting majority of religious groups from being insulted, upholding a state ideology of Pancasila in believing “One God, the Only God”, and preventing religious minorities from being a target of criminalization. As consequences, the enforcement of the IBL continued and unsettled the community. Due to ambiguity of legal norms and strong social influence, the court tends to punish blasphemy defendants with severe punishment. Most blasphemy defendants are the adherents of minority religions such as Ahmadiyya, Shia, Gafatar. Slow progress on parliament to reform Indonesia blasphemy law will keep the door for future criminalizing to any actions that considered defamation toward recognized religions, symbols of recognized religions and any sacred aspects of religions including a new interpretation of religions that considered non-canon. Therefore, as long as the new IBL that compatible with IHRL does not available yet, coercion toward or discrimination against minority religions will continue to happen in the future.

### **3.13 Reforming Anti Blasphemy Law: A Political Game.**

Another idea of revising the BL is shifting the concept from a combating defamation of religion approach to a combating hate speech approach. Most of the BLs use the former approach rather than the later one. What are the different between the two? Following the Rabat Plan of Action of 2012 (RPA of 2012) on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence, Jeroen Temperman, a Professor of Law from University of Erasmus and Human Rights expert, offers an idea for shifting from combating religious defamation approach that focus on protecting religions into combating hate speech approach that focus on protecting the right of individual

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<sup>238</sup> The results of interviews with members of Parliament confirmed that the IBL replacement bill was included in the National Legislation Program, but so far it has not been discussed because there is still a deadlock. See Appendices 2, the interview transcript, p. 59-60.

<sup>239</sup> Historically, Law No.1/PNPS/1965 against defamation of religions or Indonesia Blasphemy Law (hereinafter IBL) was endorsed by a Presidential Decree to avoid a repeat of the mass killings of the Indonesian people and Islamic leaders carried out by the Communist party in 1965 after a Communist coup in 1965.



(Temperman, 2015). This paper examines some challenges whether in predominant Muslim countries should repeal or reform BL in order to fully realization of human rights protection of FoRB and FoE. This study is started from analysing the intersection between the concept of FoE, FoRB and BL, then examining why the idea to abolish the BL is not practical particularly in predominant Muslim countries and analysing why the idea of secular state proposed by An-Naim (2008) is unlikely accepted. Finally, using Temperman's ideas and the RPA of 2012 as starting point, this paper offers a middle ground of reforming the BL to shift its concept from protecting religions into protecting the right of individual including some other changes to eliminate the defects in the law and to amend it in accord to international human rights standard.

Temperman (2015) argues that the combating defamation of religion approach would not comply with the principle of human right since its focus on the protection of religious system or personal feelings on religion. There is no such provision in the IHRL aims to protect religious system or personal feelings. Although in some previous cases, the ECtHR protect religious feelings, but the decisions were criticized by scholars. In the case of *Otto Preminger v. Austria*, the ECtHR concluded that the state is permissible to intervene the FoE if such expression is intended against the religious feelings of others (p.14). The court also concluded that it was legitimate aim to protect the right not to be insulted in their religious feelings by others (p.13). In this sense, the *Otto Preminger* case is considered incompatible with Art. 19 and the perpetrator should not be punished (Kuznetsov, 2015; Temperman, 2015).

While the combating hate speech approach is more relevant with the RPA of 2012 that suggest to all members of the ICCPR to consider six aspects namely the context, speaker, intent, content, extent, and likelihood of defining restriction of FoE, incitement to hatred (Shepherd, 2017). The later approach is also relevant with the RPA since its focus on the protection of the right of individual from the danger or extreme speech that attacks or discriminates or hates any person's race, religion, ethnicity as articulated in Art. 20 (2). Unfortunately, in the case of Ahmadiyya in Indonesia, the BL protected the majority of religious system (Marshall, 2018; Crouch, 2012). But when the incitement of hatred and violation against Ahmadiyya happened, the State failed to protect Ahmadiyya's followers equally (Djamin, 2014). In the case of *Norwood v UK (2004)*, an extreme right-wing party of BNP member was displaying

poster with words “Islam out of Britain – Protect the British People” was considered by ECtHR as anti-Muslim hate speech. This hate speech expression discriminates Muslim as minority groups of people in the U.K. to become a target of hatred. In the case *M'Bala M'Bala v France* (2015), the comedian for anti-Semitic insulted a certain race against Jews. This expression also discriminated Jews people in France. In this sense, the enforcement of BL that focus on protecting religious system violate Art. 19 (3) and Art. 20 (3) of the ICCPR.

The compromise way that can be done to fully realization of the protection of FoRB and FoE is to reduce the spectrum of culture relativism through expanding the spectrum of universality until the political and social context are ready to repeal the BL through referendum like what had recently happened in the Ireland in October 2018 (ICCL, 2018). As the state's members of the ICCPR, the States have the obligation to undertakes such measure that all rights mentioned in the covenant are respected within their domestic territory (Art. 2). In this section, using the RPA of 2012, the blasphemy provisions in Austria and Pakistan are analysed comparatively in order to unpack the defects of the law. In general, the BL in Austria is in medium-level standard compared to in Pakistan. In Art. 188 of Austria Criminal Code (Austria Blasphemy Law - ABL) is articulated better than in Art. 295-C of Pakistan Penal Code (Pakistan Blasphemy Law – PBL). In Art. 188 of ABL states that:

*Whoever publicly disparages or mocks a person or a thing, respectively, being an object of worship or a dogma, a legally permitted ride, or a legally permitted institution of a church or religious society in Austria, in a manner capable of giving rise to justified annoyance, is liable to imprisonment for a term not exceeding six month or a day-fine for a period of up to 360 days. (Stressing added).*

While in Article 295-C of Pakistan Penal Code mentioned that

*Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.” (Stressing added).*

The ABL articulates the limitation clause more clearly than the PBL. Although both provisions explicitly using the word “[w]hoever”....” but the ABL emphasize the legal personality norm and adding the words “liable to imprisonment for a term..[.]”. In this sense the ABL only applicable for someone that liable to imprisonment such as

to adults not to children. While in the PBL does not mention it. The RPA recommends that the speaker's status or position in the society particularly when he or she speaks in public intentionally targeted certain groups should be considered. The intention means that an act requires a relationship between the object, the subject of speech and the audience that likelihood or imminence of incitement happened means that some degree of risk of harm must be identified (the RPA, 2012: p. 11).

Second, the "publicly" norm also mentioned explicitly in the ABL but not in PBL. It means that such action cannot be punishable if the expression done in private room. The RPA (2012) describes that the speech act should be considered as public nature, means that "the statemen circulated in a restricted environment or widely accessible to the general public". Beside this, the context of the speech act should be prevalent with social and political conditions at the time the speech was delivered and shared (p.11).

Third is the legality norm. The ABL uses the word "[...] a legally permitted ride or legality permitted institution [...]". The provisions show that the ABL is made by legislative body that have the authority to making the law. Unfortunately, the similar norm is hardly found at the PBL. The RPA does not specifically mention about it since its clearly stated at Art. 20.

Fourth is the proportionality norm. The ABL uses the words "[...] for a term not exceeding six month or a day-fine for a period of up to 360 days." It means that the sanction is proportional with the severe of the wrongdoing. While in the PBL, the provision does not clearly mention the norm of criminal liability, the norm of publicly, the norm of legitimate aims. Moreover, the words "imputation, innuendo, or insinuation" are considered as vague concept. The purpose of this law is merely to protect the religious system, which is only for Islamic religion, but not including other religions. In this sense, the law is targeted to only minority religions. Furthermore, the proportionality norm is problematic since the law threaten with death penalty of imprisonment for life. This norm is incompatible with the ICCPR Article 6 of the right to life.

However, in the ABL there is no specific purpose articulated why such expression is restricted. It uses the words "disparages or mocks a person or a thing, respectively, being an object of worship or dogma" means that the law still protects to

the thing not only individual as human beings. The words disparage or mocks have very broad meaning that could become a subject of subjective interpretation. For example, in the case of *E.S. v Austria*, the applicant, E.S., spoke at the seminar attended by 30 peoples made several statements about Islam and the Prophet Muhammad by called him as *paedophile* (Milanovic, 2018). The Court found that E.S. defamed Prophet married a child or had a sex with a child in order to show that he was not a worthy subject of worship. But E.S. called him a paedophile which would imply that he had primary sexual tendencies towards children more generally. She is disregarding the notion that the marriage had continued until his death (Milanovic, 2018). The court found the public nature of the seminars and that at least some of participants have disturbed by her speech (para.14). The manner in which religious views were attacked could invoke the State's responsibility in order to guarantee the peaceful exercise of the rights under Art. 9. She found guilty based on the law prescribed at Art. 188 of the Austria Penal Code and fine for 480 Euro. The Court concluded that presenting objects of religious worship in a provocative way capable of hurting the feeling of the followers and violation the spirit of tolerance based on Article 10 subsection 2 of the ECHR. In this sense, although the sanction is very low, only USD 240, the court still focus on protecting "religious feelings" rather than protecting the right of individual.

According to Article 19 (3), the States are permitted to limit of FoE if all requirements mentioned on Article 19 (3) are met. At least there are three legal scopes of limitation namely (1) legality test, (2) necessity test, and (3) proportionality test. This limitation is similar with Article 18 (3) and Article 20. However, violation of Art. 19 (3) or 18 (3) are not always criminally punishable. But violation of Art. 20 (3) could be considered as criminally punishable if the act matched with the three tests. First, the legality test means that the limitation should be lawful and based on the law to avoid arbitrary or unreasonable punishment. The word 'law' here is a regulation that made by legislative body. The law should be responsive, clear, precise, and predictable. If the law that used to limit the right is made by executive body lower than an act, then it would be problematic. If the law has repressive character or too vague in which the norms are not clear or ambiguous, then the implementation of such law may be problematic as well. Second, the necessity test means that the aims of limitation should correlate a "pressing social needs" (Gerards, 2013). The aims are in order to protect at

least one of the reasons either (1) to protect the right and reputation of others (2) to protect national security, (3) to protect public order, (4) to protect public morality, (5) to protect public health. These aims of limitation are narrower than in Art. 9 of the European Convention of Human Rights (ECHR), but similar to other regions such as Asian Declaration of Human Rights (Art.8), American Declaration of Human Rights (Art. 13), African Charter of Human Rights (Art. 9), and Cairo Declaration of Human Rights (Art.32). The problem is the difficulty to find the common understanding of what the exact meaning of each aspect. Therefore, in most cases the translation of each aspect depends on the subjectivity of Judges. Third, the proportionality test means that “achieving a particular aim must be important enough to justify the damage which will be caused to individual rights” (Anđelković, 2017).

In order to develop the high-level standard of BL, the three-test mentioned above must be combined with some principles that mentioned in the GC No. 22 of FoRB, the Declaration of 1981, the CG No. 34 of FoE, the RPA that I have discussed earlier. The high level standard of Blasphemy law must contain at least seven considerations namely (1) legality norm meaning that prohibition is regulated by law with clear norms, (2) legal personality norm meaning that the person can be fully accountable for the wrongdoing he or she did, (3) intention norm meaning that the person has a specific intentions to attack certain individuals or groups based on race, ethnicity, religion (4) publicly norm meaning that the speech is delivered openly in public considered the context and the relation between the speech and the harm, (5) legitimate aims norm meaning that the purpose is valid to fulfil one of the objectives stated in Article 19 (3), (6) harmful test meaning that the speech likelihood causing hostility or violence against certain target groups of people, (7) proportionality norm meaning that the proportional punishment is adjusted to the level of danger from the impact caused.

### **3.14 Conclusion**

The concept of blasphemy law, which has existed for a long time as a legal concept that inherited from the colonizers, was adopted into various national laws and has been practiced for a long time. Meanwhile, the concepts of FoRB and FoE are relatively new which have not been fully understood as legal concepts by various countries since

they uphold the strong culture relativism and decided to not ratify the ICCPR or because of the state parties delay in taking steps to adjust its into their national law. Although the state neutrality towards religions is more appreciated, but the idea of separation between state and religion is a big deal while it does not always guarantee of having high degree of religious freedom. The intersection between the BL and the concept of FoRB and FoE must be resolved to eradicate the violation of the right to religious freedom particularly to protect minority groups of racial, religion, or ethnicity or to prevent unnecessary or excessive limitation towards FoE. It is no doubt that the implementation of the lower-level standard of BL in various predominant Muslim countries are incompatible with the ICCPR. However, the idea of pushing them to repeal the law is not practical and unlikely happened in the near future since in the various cases of hate speech in various countries in Europe, the law is applied with double standard in which often be used to punish against Anti-Semitism or Anti-Christianity but rarely be used to punished Anti-Islam. Based on the historical context, current political, social, and legal conditions, in Indonesia is supportive towards reforming the law rather than abolishing it. Following the RPA of 2012, the concept of high-level standard of BL with contains seven considerations namely legality, legal personality, intention, publicly, legitimate aims, harmful impact, and proportionality punishment is offered to leads a middle ground that can be carried out. The predominant Muslim countries are strongly encouraged to ratify the ICCPR, reform the BL that can be applied to prevent the dangerous hate speech that creates hostility or violence against minority groups of religion, race, or ethnicity, focus on protecting the right of individual, while at the same time upholding the FoRB and FoE.

Therefore, asking Indonesia to reform its ABL is more practical and acceptable rather than to repeal it. First, historically the Law No.1/PNPS/1965 against blasphemy (BL) was passed by President Decree to avoid the repetition of mass murder against Indonesian people and Islamic leaders done by Communist party in 1965 following the Communist coup d'état in 1965 (Crouch, 2012). If the law was repealed, then it creates the condition of vacuum of law. If the similar case had happened, then there is no legal basis that can be used to call responsibility of criminal offenses. Second, it is no doubt that according to Decision of the Constitutional concerning the Request of Judicial Review of the BL on April 19 of 2010 that the provisions of BL are vague and multi-

interpret so the Court held that the BL was unconstitutional. However, the Court did not repeal the law instead of stated that the BL need to be reformed and clarified (p. 212). Third, after the Court Decision in 2010, the draft law of religious Protection is included in the 2019 Program of National Legislation in which the draft law clarifies the definition of religion, religious assemblies, the Forum for Religious Harmony, houses of worship, religious broadcasting, and others to guarantee the independence of its citizens to embrace their respective religions and worship according to their religion and beliefs (DPR, 2019). Thus, the most up-to-date political, legal and social developments in Indonesia still require changes to Blasphemy's law rather than abolishing it.

Legal political dynamics in Indonesia still does not show indication of political party willing to initiate process for abolishment of anti-Blasphemy law, even after many failed judicial review petitioning efforts by NGOs that have concern for freedom of religion in Indonesia. Instead of revising the problematic articles on the IABL, the constitutional court backed up the IABL by repeatedly confirming in their decision that IABL is constitutional. Although, off the court, the constitutional judges agree that some articles on IABL can be interpreted as permission for discriminative measure against some religions, but they also emphasize that the main problem lies on the interpretation of those article, and it was not on the legal norm of IABL. The indecisiveness of constitutional court on this issue hurts civil society expectation especially from the minority religious groups which always become the victim of criminalization based on IABL. The constitutional court decision also made Human Rights defender groups realize that judicial review petitioning was not a strategic effort to fix the IABL flaws.

On July 2022, Indonesian House of Representatives announced Criminal Code Bill (RUU KUHP) and it contains article for crime against religion, which seems like a possible way to resolve polemics around IABL. In the bill, articles 302 to 307, there are significant developments related to anti-blasphemy law, where blasphemous act is not categorized as a delict. Article 302 regulates a criminal sanction for hate speech or incitement of hatred. Despite of those good development, recent legal-political dynamic in Indonesia makes civil society wondering of when the new criminal bill will be issued formally and replaced the IABL.

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