

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 Norway¹, Iceland², Denmark³, and Canada⁴ 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 practice⁵. Other countries⁶ 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

¹ In Norway, the blasphemy law was removed from the Penal Code in 2005.

² In Iceland, the blasphemy law was repealed in 2017. Id.

³ In June 2017, the Danish Parliament repealed its blasphemy law.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

⁴ In Canada, the blasphemy law was repealed in 2018.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

⁵ 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/>

⁶ 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.⁷

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.

⁷ 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)⁸. 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 rights⁹ and uphold the rule of law¹⁰.

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).

⁸ 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.

⁹ See Chapter X of Indonesia Constitution Article 28A to 28J.

¹⁰ 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.

