REPEAL OR AMEND ANTI-BLASPHEMY LAW? A SOCIO-LEGAL STUDY OF THE ENFORCEMENT OF INDONESIA'S ANTI-BLASPHEMY LAW

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ABSTRACT

IMPLICATION OF THESIS

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CHAPTER 1
AN INTRODUCTION TO A STUDY OF INDONESIA'S ANTI BLASPHEMY LAW

1.1 Background of the problem

The rule of law constitutes a crucial constituent of democracy, which relies on the existence of precise and unambiguous legal standards that ensure substantive justice and safeguard human rights (Tamanaha, 2007). Preserving the rule of law is of utmost importance since it is instrumental in upholding justice and preventing the exploitation of laws for political purposes or marginalization of vulnerable communities (Creutzfeldt et al., 2020; Shaikh & Malik, 2020). However, when legal provisions are vague and obscure, they can pose significant challenges in balancing legal clarity and protecting human rights since they are often susceptible to manipulation and selective implementation (Golder & Williams, 2006). Hence, legal reforms are vital to overcome these challenges and uphold the rule of law in an effective manner. (Carothers, 2010; Colbran, 2015).

The Indonesian Anti-Blasphemy Law highlights the pressing need for legal reform, and discussions have arisen about whether the law should undergo amendment or repeal because of the disparity between the law's provisions and its application in practice (Lindsey, 2019). For a country committed to preserving the rule of law, it is crucial to conduct a comprehensive analysis of the law's history and formation, its influence on society, and the factors that shape its enforcement, to determine the direction of legal reform (Daniels & Trebilcock, 2004).

Freedom of religion or belief (FORB) constitutes a fundamental human right that plays an essential role in recognizing and safeguarding human dignity. Its infringement can negatively affect human rights (Abdulla, 2018; Lintang et al., 2020). The interdependence of human rights means that the realization of FoRB guarantees the fulfillment of other rights, while the lack of it can jeopardize citizens' safety and right to life (Siregar & Sakharina, 2019; Whelan, 2010). On the other hand, practicing

one's religion or belief without facing persecution or discrimination promotes peace, security, and individual freedom (Saiya, 2015).

Preserving and guaranteeing human rights, including FoRB, is contingent upon a democratic state that respects the rule of law and separates power among the executive, legislative, and judicial branches (Banaszak, 2021; Shaheed, 2018). In a functional democracy, these branches serve as checks and balances to ensure the common good. In contrast, in non-democratic nations, they function as instruments for maintaining authoritarian rule, endorsing despotic legislation, and legitimizing human rights violations (Scheppele, 2018; Tamanaha, 2011). In such legal setups, the rule of law is theoretically present, but in reality, courts endorse human rights violations rather than upholding justice or providing relief to victims. In these political systems, human rights are exploited to present an image of compliance with human dignity to the international community while being violated in practice (Khan, 2015).

Indonesia's Anti-Blasphemy Law (ABL) has been a topic of contention for over a decade, serving as an example of despotic legislation that endangers the FoRB (Blitt, 2011; Buruma, 2007; Danchin, 2010a; Dundon & Rollinson, 2011; Fagan, 2019; Fiss & Kestenbaum, 2017; Graham, 2009; Siddique & Hayat, 2008; Theodorou, 2016; Uddin, 2015). Despite other nations' revision or revocation of similar laws, such as Norway, Iceland, Denmark, and Canada, Indonesia continues to enforce the ABL (Fox & Sandler, 2005). Conversely, other countries have abolished their ABLs in response to human rights violations, constricting FoRB and freedom of expression, and threats to democracy.

Numerous scholars, human rights activists, and moderate religious groups have scrutinized the Indonesia Anti-Blasphemy Law (IABL) and concluded that it deviates from International Human Rights Law (IHRL), infringes on religious freedom, and punishes minority religious communities severely by accusing them of insulting the state-recognized orthodox religion (M. Crouch, 2014, 2015; M. A. Crouch, 2011; Graham, 2009; Lindsey & Pausacker, 2017; Menchik, 2014; Tømte, 2012; Uddin, 2015). Despite these findings, the Indonesian government has not rescinded or revised the law, despite several unsuccessful attempts to do so.

A decade ago, a proposal to replace the anti-blasphemy statute in Indonesia's legislature was introduced but never materialized. In 2009, the Constitutional Court of

Indonesia Republic (CCIR) was asked to review the law after individuals wrongly convicted under the Indonesia Anti-Blasphemy Law (IABL) filed a petition supported by human rights NGOs. The CCIR, in several rulings, has urged the Indonesian Parliament to revise the IABL, including Decision No. 140/PUU/VII/2009, emphasized by No. 84/PUU-X/2012 and No. 56/PUU-XVI/2017. However, the CCIR declared the law to be constitutional and necessary to maintain public order, while acknowledging its legal vagueness. According to the CCIR, the IABL does not restrict an individual's faith but rather governing public remarks that insult or vilify a religious practice followed in Indonesia.

Though the CCIR recognized the legal uncertainties surrounding the IABL, researchers like Crouch (2011) and Tømte (2012) contend that the IABL does not align with the 1945 Constitution and Indonesia's governmental commitment to basic human rights principles. Nonetheless, the Indonesian Legislative Body (DPR) has made no strides to amend the IABL. Instead, it included articles on offenses against religion in the Bill of Criminal Code, which reinforced the legal status of the law. Despite public protests and the 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 surged (Santoso, 2020). This study will scrutinize the socio-political consequences of the law and track its development since the CCIR's landmark ruling.

The IABL has been manipulated for political leverage, resulting in the discrimination of particular religious practices and the weaponization of religion through the law. This has led to a harmful influence on the politics of religion, with hate-based tactics used to push political agendas. In the cases of Ahok and Meiliana, the weaknesses of the IABL have allowed baseless accusations of blasphemy against individuals, thereby violating their right to religious freedom. The CCIR has cited the concern of establishing a legal void and the threat of interreligious conflict as causes for not repealing the IABL. However, this warrants further research to determine whether the repeal of the IABL would be likely to intensify interreligious conflict.

This study intends to investigate vigilante justice in connection with blasphemy cases in Indonesia, concentrating on the cause of the Habib Rizieq Shihab phenomenon and its association with the court's failure to provide justice. The study

examines the impact of the expanding Islamic populism on the Shihab case and other factors that contribute to it. Furthermore, it aims to identify the genuine proponents of the implementation of the ABL and investigate whether bolstering the law has affected the endeavor to reinforce the right to religious freedom. The study's outcome is crucial in comprehending the socio-political consequences of ABL in Indonesia and the necessity of reforming it.

From a philosophical standpoint, discussing the existence of anti-blasphemy laws must consider the state's affiliation with religion. Preserving human rights necessitates a sovereign state that can fulfill its responsibility, as individual efforts prove insufficient. To safeguard FoRB as a negative right, the state should adopt a non-interference stance and avoid restricting religions. A secular approach, which entails the state abstaining from entangling in religious affairs, is considered the most optimal choice for realizing FoRB.

The Indonesian government regards the Indonesian Anti-Blasphemy Law (ABL) as critical in upholding the State ideology of Godly Nationalism, preserving interreligious harmony, preventing interfaith conflicts, and avoiding a reoccurrence of the nation's grim history with anti-religious movements (Menchik, 2014). Crouch (2012) observes that the IABL was historically ratified to prevent the recurrence of earlier religious conflicts and prevent the killing of innocent individuals and Islamic leaders by the Indonesian Communist Party in 1965. Revoking the law would create a legal void for prosecuting criminal offenses related to blasphemy. Conservative and moderate Muslim organizations, such as Front Pembela Islam (FPI), Nahdlatul Ulama (NU), and Muhammadiyah, support the law's continuation.

However, current research indicates that some blasphemy cases, such as Ahok and Meiliana, have been used to gain public support for local elections, which resulted in different levels of vigilante justice against minority communities (Andreas, 2019; Marshall, 2018b). Despite the surge in blasphemy cases, there has been limited study of the enforcement of the IABL, both within and outside the court, and no research on the variety of community responses to this issue (Harsono, 2019). Consequently, this research intends to study in-depth the factors and actors that have influenced the implementation of the IABL in each phase, updating previous research and considering the current socio-political scenario during the second term of Joko

Widodo's presidency, where there has been an increase in the number of blasphemy cases (Pratiwi, 2019). This study aims to illuminate the enforcement of the IABL and provide insights into the variety of community responses to this issue.

Besides the legislative process, several factors impact the Indonesian Anti-Blasphemy Law (IABL), including conflicts between major and minor religions, the relationship between religion and politics, the emergence of Islamic populism, and political exploitation of religious concerns (Marshall, 2018b; Salim & Azra, 2003). High-profile blasphemy cases in Indonesia reveal the complicated interplay between religion, politics, and law enforcement, where apologies from offenders led to terminated cases, while conservative Islamic groups filed new blasphemy allegations and demanded justice (Hilmi, 2018). The politics of identity has also influenced public reactions to blasphemy cases, as in the case of Ahok, where the Chinese governor of Jakarta was the focus of the political debate, with issues of race and economic discrimination being central (Marshall, 2018b; Tehusijarana, 2018). Political dynamics have influenced the enforcement of the IABL, making it easier for authorities to interpret it as they desire. The vagueness of the law permits those in power to decide the law's interpretation, making it susceptible to manipulation for their interests. Writing the law with clear and unambiguous norms would make it more challenging for the powerful to manipulate it for their benefit. This study analyzes recent developments in the IABL and how political dynamics impact the relationship between state and religion, posing a threat to freedom of religion in Indonesia.

Notwithstanding the Indonesian Constitutional Court's choice to maintain the IABL, recent responses to blasphemy cases have been marked by anger, hostility, and violence, triggering discrimination and violating human rights (Harsono, 2019; Prud’homme, 2010). The continued enforcement of the IABL, combined with unclear legal policies, poses a significant challenge for Indonesia to honor human rights and maintain the rule of law.

The relationship between religion and state is a central topic in discussing Anti-Blasphemy Laws (ABLs). An-Naim (2008a) argues for a secular state that remains impartial to religion and prevents religious laws from governing public life. He maintains that a secular state that does not enforce Sharia is essential for individuals to choose their religious beliefs without coercion or fear of state institutions. However,

Durham and Scharffs (2019) challenge the idea that extreme secularism always results in religious freedom. In strictly secular states, public religious practices are often restricted, and discriminatory attitudes towards religion may still persist.

This study aims to scrutinize the Indonesian court's verdicts in blasphemy cases and how they affect the relationship between religion and the state. By analyzing the legal aspects of blasphemy cases, the study seeks to provide insights into how the state perceives religion and safeguards religious freedom. The examination endeavors to comprehend the nature of the relationship currently being reinforced as a result of these verdicts. Specifically, this study intends to illuminate how the issue of blasphemy impacts the relationship between religion and the state in Indonesia.

1.2 Objectives of the study

The objectives of this study are:

1. To evaluate if the current progression of Indonesia's Anti-Blasphemy Law (ABL) and its corresponding laws decrease the adherence to the rule of law and impact the enjoyment of human rights.
2. To examine the factors and actors that have influenced the implementation of the IABL, including whether political exploitation of religious matters affects the application of the law.
3. To analyze the relationship between the state and religion in Indonesia and determine if the court's rulings result in practical cooperation between the state and religion in Indonesia, including identifying the nature of the relationship.

1.3 Research questions

This study focuses on answering the following research questions:

1. What is the reason for the current progression of Indonesia's Anti-Blasphemy Law (ABL) and its correlated laws to reduce adherence to the rule of law? Does it have an impact on the enjoyment of human rights?

2. What factors and actors have influenced the court's decisions on the implementation of the Indonesian Anti-Blasphemy Law (IABL)? Does political exploitation of religious issues impact the application of the law?
3. Does the verdict of the court lead to enhancing the relationship between the state and religion in Indonesia, and if so, what type of relationship does it foster?

1.4 Originality of the Study

In the past two decades, numerous studies have been conducted on Indonesia's Blasphemy Law, with varying research objectives and analytical methods. Al-Khanif (2008), Margiyono et al. (2010), Arifin (2010), Noorsena (2012), and Arief, B.N. (2012) all employed a top-down approach to evaluate the law and court rulings to assess the consistency of existing regulations with international human rights standards.

For instance, Al-Khanif's (2008) study focused on blasphemy cases of Ahmadiyya from the perspective of International Human Rights Law. Margiyono et al. (2010) reviewed the arguments presented by judges of the Constitutional Court during their examination of the Anti-Defamation Law. Noorsena (2012) concentrated on normatively reviewing blasphemy cases to reformulate Article 156a of the Criminal Code, which is frequently utilized as the basis for criminalizing blasphemy. Arief, B.N. (2012) conducted a comparative study of blasphemy offenses in Indonesia with other countries.

However, this study does not seek to avoid the top-down approach employed in those previous studies. Instead, it is a necessary approach to examine the current development of the latest anti-blasphemy law in Indonesia. This is due to significant changes that the legal politics of the Anti-Blasphemy Law have undergone, especially after the issuance of several Constitutional Court decisions on the judicial review of the Anti-Blasphemy Law and the enactment of new laws related to it in the last ten years. The primary question is whether the current legal politics uphold the principle of the rule of law and respect human rights, particularly the right to freedom of religion or belief, or whether they are violating it instead.

Aside from a top-down approach, this study also includes a bottom-up approach that seeks to shed light on the current development of the Indonesian Anti-Bribery Law (IABL). It aims to investigate whether the enforcement of the IABL by the courts is influenced by the limitations of the law itself or by other non-legal factors.

The purpose of this research is to analyze the factors and actors that have influenced the implementation of the IABL and determine the extent to which religious and political populism may have impacted the enforcement of the law.

This research differs from Arifin's (2010) study that examined the judge's ruling in the case of Shia vs. Sunni, adopting a sociological approach. Although Crouch (2014) also used a socio-legal approach, he focused on the conflict between the Muslim and Christian communities in West Java. Efendi (2017) chiefly focused on the contested aspects of court decisions in general criminal cases at the appeals level, while Kamil, A. (2012) concentrated on the independence of courts in deciding criminal cases in general. However, the analyses disregarded judicial considerations and the factors that influenced their decisions, which are critical aspects of this study.

In contrast, the present study employs an interdisciplinary approach to provide a more comprehensive perspective than previous studies. Using a socio-legal approach, it identifies the discrepancies between the law on paper and its practical implementation in the field. By examining various factors and actors that have shaped the court rulings on various blasphemy cases, this research aims to determine whether or not populism of religions and political manipulation of religions affect the enforcement of the IABL, and assess the impacts of court decisions on society and the ability to maintain justice.

Furthermore, this research also aims to analyze whether the court rulings have established a palpable relationship between the state and religion in Indonesia. All of the research objectives will aid the author in evaluating the possibility of repealing or modifying the blasphemy laws in Indonesia.

Telle's (2017) and Tyson's (2021) studies provided insight on how the enforcement of the blasphemy laws is influenced by the politicization of religion, which assists this research. Additionally, Muktiono's (2021) work places emphasis on the non-discrimination principle as the foundation for the court to decide cases of blasphemy. Despite the usefulness of these studies, none of them cover the further steps this

research undertakes to examine the possible repeal or reform of the blasphemy laws in Indonesia.

1.5 Outline of the Thesis

The research findings are presented in a structured and thorough manner throughout seven chapters. Chapter I outlines the purpose, research questions, and objectives of the study, while providing an introduction to the study of Indonesia's Anti-Blasphemy Law. This chapter is intended to provide a comprehensive understanding of the issues surrounding Indonesia's Anti-Blasphemy Law, which have sparked debates on whether to repeal or modify the law.

Chapter II presents an overview of the theoretical and conceptual frameworks that form the basis of the study. The chapter delves into theories of justice and the rule of law and analyzes their connection. Additionally, it discusses the conceptual frameworks of the law enforcement of the ABL and Human Rights under the Anti-Blasphemy Law regime.

In Chapter III, the research design and methodology of this study are explained, employing a socio-legal approach. The chapter describes the research design and covers the data collection techniques and analysis methods used to investigate the enforcement of Indonesia's Anti-Blasphemy Law. Furthermore, this chapter provides an overview of the four case studies analyzed in this research.

Chapter IV explores the development of Indonesia's Anti-Blasphemy Law, as well as related laws, and their impact on human rights in the context of the rule of law. The chapter analyzes the legal and political context that resulted in the strengthening of the Anti-Blasphemy Law by the Constitutional Court of Indonesia and its judicial review decisions. Additionally, this chapter examines the existence of related laws, including the Law concerning Criminal Code and the Law concerning Informatic Electronic Transactions, and evaluates whether or not the current developments of the Anti-Blasphemy Law have undermined the rule of law by investigating their impact on the enjoyment of human rights.

Chapter V scrutinizes the law enforcement of Indonesia's Anti-Blasphemy Law and the potential for political manipulation. The chapter begins with an introduction

and an overview of blasphemy law enforcement in Indonesia. The discussion and analysis section outlines various factors and actors that have shaped the enforcement of the Anti-Blasphemy Law, including the emergence of godly nationalism in the court's arguments, state monopolization of truth, and the continued strengthening of the flawed Anti-Blasphemy Law, which has undermined the rule of law. Additionally, the chapter identifies government interference toward religion and its effects. The chapter then delves into political dynamics surrounding blasphemy cases, with case studies on Ahok's case and Meiliana's case. Finally, the chapter examines how enforcement of the Anti-Blasphemy Law can prevent the achievement of justice. Overall, this chapter adds valuable insights into the potential for political manipulation in Indonesia's Anti-Blasphemy Law enforcement.

Chapter VI analyzes the relationship between the state and religion in Indonesia in the context of the enforcement of the Anti-Blasphemy Law. The chapter evaluates the impact of the law on the relationship between the state and different religious groups and explores how the relationship has been altered by the varying interpretations of the Anti-Blasphemy Law. This chapter provides valuable insights into the religious dynamics in Indonesia and the state's role in regulating religious expression, offering a detailed examination of the potential consequences of the Anti-Blasphemy Law on state-religion relations.

Chapter VII concludes the study by presenting the main findings and recommendations. The chapter provides an overview of the research, highlights the conclusions drawn from the theoretical, conceptual, and empirical analysis presented in the preceding chapters. The chapter evaluates the impact of the Anti-Blasphemy Law on the rule of law and human rights in Indonesia, and queries whether renewing or repealing the law is the best option moving forward. This chapter comprises crucial findings and recommendations which provide valuable insights into the complex dynamics of Indonesia's Anti-Blasphemy Law.

CHAPTER 2
THEORETICAL AND CONCEPTUAL FRAMEWORK TO STUDY INDONESIA'S ANTI BLASPHEMY LAW

2.1 Theoretical Framework

This thesis draws upon the theories of the rule of law and justice to examine the impact of Indonesia's Anti-Blasphemy Law on human rights and the rule of law. The rule of law and justice are interconnected, as the former supports justice by ensuring that laws and legal systems are fair and impartial, while the latter protects human rights by ensuring that everyone's basic needs and dignity are respected and upheld. The thesis highlights the crucial balance between human rights and law enforcement, which is essential for maintaining both security and liberty in society. Law reform plays a critical role in facilitating effective law enforcement, as it ensures that laws and legal systems are of high quality, efficacy and legitimacy. Law enforcement itself can further generate the need for law reform by revealing gaps or inadequacies in existing laws. Finally, the thesis underscores the importance of the rule of law evolving with the changing circumstances and expectations to remain relevant and effective.

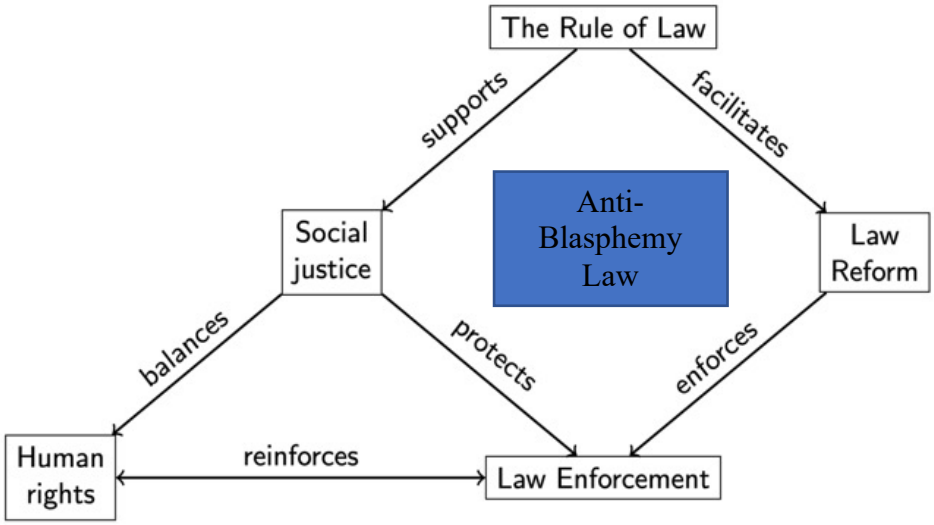

Figure 1. Theoretical and conceptual framework of this study

2.1.1 Theory of the rule of law and its elements

The concept of "the rule of law" is fundamental to modern legal systems, and its meaning and implementation have been subject to extensive debate. A.V. Dicey identified three critical elements of the rule of law: the supremacy of law, equality before the law, and due process of law. Supremacy of law entails that the law is above all, including the government and its officials, guaranteeing the rights of all citizens without interference. Equality before the law asserts that the law must provide equal treatment despite an individual's characteristics, such as race, gender, religion, or class. Due process of law ensures the proper execution of justice by ensuring fair, transparent, and equitable administration of the law for all who have committed offenses.

Joseph Raz (1980) proposes that the rule of law protects human dignity and autonomy by ensuring objectivity and preventing the arbitrary and capricious exercise of power. Raz emphasizes the need for a legal system that follows the rule of law, as any law that does not apply to all can be deemed arbitrary. The second perspective highlights fairness and substantive democracy, whereby the law reflects the values and interests of society and promotes human rights, equality, and welfare. The rule of law must find balance with social needs and expectations, to ensure that legal frameworks work for the public interest.

Legal empowerment, as espoused by Amartya Sen (2008), is integral to achieving development that fosters freedom by enhancing people's capacities. This perspective highlights the crucial role of the law in enabling individuals to realize their potential and achieve their objectives. The third perspective acknowledges that the rule of law is context-specific and complex, subject to different legal, cultural, and institutional traditions in different societies. Prado and Michael Trebilcock (2021) argues that an effective and sustainable legal system should consider contextual factors such as political, social, and economic dynamics.

Socio-legal studies are anchored on researching the law, through understanding the extent to which external factors such as social and political dynamics can impede judicial independence and influence legal interpretation and decision-making. In a country governed by the rule of law like Indonesia, any study of the Anti-Blasphemy Law necessitates a comprehensive understanding of the history of the legal system's

development and its implications for human rights. Also, investigating how socio-political factors affect its legal enforcement is crucial.

Friedman (1975) posits that law is a sophisticated system that comprises institutionalized law, substantive law, and public understanding. The development of law involves systematic discussion of its legal content and processes with relevant institutions such as law enforcement agencies, and consideration of the community's awareness and culture. The Indonesian National Law Development Agency (BPHN) espouses this principle.

Bedner and Vel (2010) propose that the rule of law theory consists of three elements: procedural elements, substantive or legal content elements, and institutional elements. Substantive or legal content element shall be examined with Bedner's (2010) two indicators. It is crucial that the law and its enforcement maintain the concept of justice as a central condition. With regards to the legal procedure element, three indicators were evaluated, the first of which was whether the legislation had broad application rather than targeting specific groups.

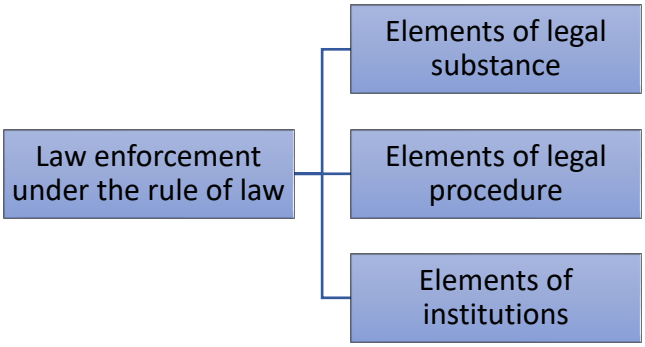

Figure 2. Three Elements of Law Enforcement under the Rule of Law

The second indicator of the legal procedure element evaluates whether legislation applies broadly, rather than targeting specific groups. According to Raz, laws must be easily understood by society, apply to everyone, and prevent authorities from perverting them for goals that are counter to public interest. The actions of the government are subject to the law; discretionary acts and policies must have a rational basis. Bedner (2010) argues that the existence of the law should promote stability and clarity rather than uncertainty and stress in society. The second indicator of the legal procedure element assesses whether state activities are subject to the law. (Bedner & Vel, 2010, pp. 22–23).

The third element of the rule of law concerns legal institutions and how the law is enforced to safeguard human rights (Fuller, 1969; Waldron, 2011). In this study, it is necessary to examine fair trial and legal due process. As per Bedner (2010), the law enforcement factor assesses whether blasphemy cases are adjudicated impartially and independently. The concept of fair trial is based on case studies that demonstrate how legal institutions uphold the defendant's right to legal defense, including a fair opportunity for the defendant to present their arguments. The impartiality and independence of the judiciary in blasphemy cases will be analyzed, with a focus on instances that have generated significant public controversy and how the courts responded to the associated social and political pressures.

Therefore, this study will investigate the experiences of religious minority groups that have been punished under the blasphemy law and other non-legal factors. This will entail exploring whether vigilante attacks occurred, and if so, were they prosecuted? Did extraneous pressure impact the judges' decisions? In addition, according to the concept of due process of law, states are obligated to ensure that domestic courts' law enforcement procedures are aligned with international human rights law (IHRL). This study delves into relevant legal issues and facts regarding blasphemy cases to determine whether judges construct and decide on the criminal case appropriately.

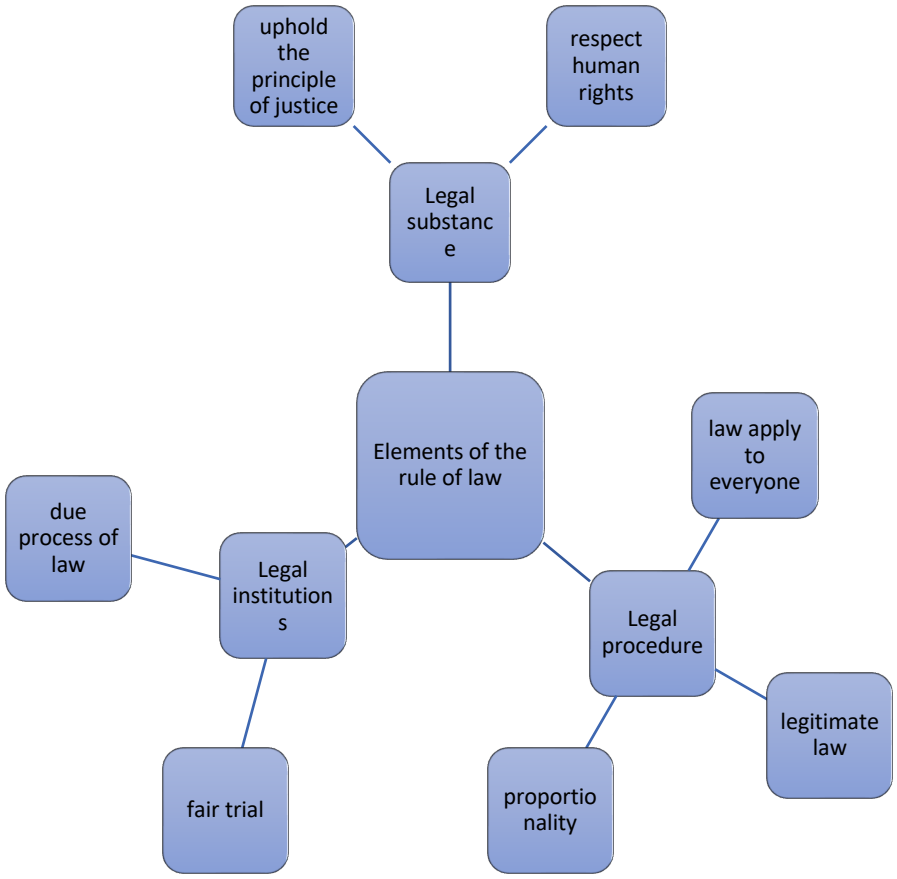

Figure 3. Elements of the Rule of Law

This study's foundation is the theory of the rule of law because Indonesia is a country that adheres to this concept, as evident in Article 1 Paragraph (3), Article 27 paragraph (1), and Article 28D paragraph (1) of the Indonesian Constitution (Asshiddiqie, 2016). Initially, as a former Dutch colony, Indonesia's concept of the rule of law was closer to the "rechstaat" concept, which requires that the government is based on written law (Chemerinsky, 2019). Written law, or positive law, is civil law that the country adopted from colonial powers. However, history, culture, and international relationships have influenced law development in Indonesia. The existence of customary law based on customary practices and long-established Islamic law cannot be ignored (Pohl, 2006). According to Salim and Azra (2003), Islamic law is gaining ground in Indonesia. This is evidenced by the enforcement of Islamic law as the basis for establishing Islamic-based political parties, Islamic political parties'

continuing efforts to adopt Islamic law into national law, and the adoption of Islamic Criminal Law in Aceh.

Thus, Indonesia implements legal pluralism, where at least three legal systems apply: positive law, customary law, and Islamic law. Legal pluralism can influence how the rule of law experiences shifts and challenges in its implementation, particularly when they intersect, including when developing and enforcing the Anti-Blasphemy Law in Indonesia.

2.1.2 Theory of justice

The theory of justice is a concept that philosophers and scholars have discussed and debated for centuries. At its core, the theory of justice aims to define fairness and equity in society and how resources, opportunities, and benefits should be distributed among individuals and groups. John Rawls proposed one of the most influential approaches to the theory of justice. He argued that a just society could be created by rational people in a hypothetical "original position," where principles of fairness and equality guide them, and personal characteristics are unknown. Rawls identified two key principles of justice: the principle of equal basic liberties and the difference principle.

The principle of equal basic liberties posits that every individual should have the same rights and freedoms as everyone else, regardless of their social or economic status. Scholars such as Martha Nussbaum have emphasized the importance of this principle, arguing that basic capabilities such as life, bodily health, and freedom of movement are vital to justice. (Nussbaum, 2007)

The difference principle, in contrast, holds that social and economic inequalities are only just if they benefit the least advantaged members of society and are open to everyone. Scholars have criticized this principle, arguing that it could discourage innovation and hard work. However, others defend the difference principle as a necessary aspect of a just society. (Sen, 2008)

Another important aspect of the theory of justice is the concept of distributive justice, which is concerned with how goods and resources are distributed among members of society. Scholars such as Robert Nozick have argued for a "minimalist"

conception of distributive justice, in which individuals are entitled to keep the fruits of their labor and are not subject to excessive taxation or redistribution. (Nozick, 1974)

The right to freedom of religion is a multifaceted issue that can be explored using various theories of justice. The capabilities approach, developed by Martha Nussbaum, is one such theory. According to this approach, a just society must ensure that individuals have access to a set of basic capabilities, including the capacity to practice one's religion freely. In her book "Frontiers of Justice", Nussbaum argues that individuals should have the freedom to practice their religion without interference from the state or other actors, as long as it does not harm others. (Nussbaum, 2007).

The capabilities approach stresses the importance of individual agency and autonomy, which is particularly pertinent to the right to freedom of religion. This approach acknowledges the diversity of religious beliefs and practices and recognizes that individuals have the right to choose their own religion and practice it without fear of persecution or discrimination.

The principle of equal basic liberties developed by John Rawls is another theory of justice that is applicable to the right to freedom of religion. According to this principle, every person should have the same rights and freedoms as everyone else, regardless of their social or economic status. This principle encompasses the right to freedom of religion, which ought to be secured and guaranteed for all. (Rawls, 1999).

Both the capabilities approach and the principle of equal basic liberties emphasize individual agency, autonomy, and equality, which are crucial for safeguarding and promoting the right to freedom of religion. These theories acknowledge the diversity of religious beliefs and practices and recognize that people have the right to choose their religion and practice it freely, without fear of persecution or discrimination.

To summarize, the capabilities approach and the principle of equal basic liberties are two theories of justice that can examine the right to freedom of religion. These theories underscore the significance of individual agency, autonomy, and equality, which are vital principles in defending and promoting this essential human right.

2.1.3 The rule of law, Justice and Human Rights

Scholars and experts have extensively discussed the close relationship between the rule of law and justice. Both concepts are essential for fostering fair and equitable

societies (Fallon Jr, 2017; Merkel, 2012). The rule of law ensures that all individuals, irrespective of their social status or position, are subject to the same laws and regulations (Baxi, 2009). Justice, on the other hand, aspires to create a society that guarantees equal access to fundamental human rights and opportunities for all individuals, regardless of characteristics like race, ethnicity, gender, sexuality, religion, etc.

By ensuring that laws are applied evenly to all individuals, regardless of their social status, the rule of law guarantees that everyone receives equal protection and due process under the law (Fallon Jr, 2017). An impartial legal system is crucial in seeking justice for all individuals. Devoid of the rule of law, justice won't be possible since it would create an unfair legal system that could breach individuals' right to justice (Barusch, 2017).

Justice, on the other hand, provides a broader framework that directs the rule of law. Justice aims to establish a society that is just and equitable and grants equal access to basic human rights and opportunities for all individuals. Therefore, the rule of law must be carried out in a way that supports justice and assures that everyone has comparable accessibility to justice (Baxi, 2009).

For instance, where income disparity is high, the rule of law must push for justice by ensuring that the legal system does not benefit individuals with more economic resources. This can involve providing legal assistance to those without sufficient resources to afford representation (Barusch, 2017), or drafting laws and regulations in equitably all-inclusive ways that do not oppress marginalized groups.

2.1.4 Law enforcement uphold the rule of law to preserve justice

The principle of the rule of law is a critical element of governance that stresses the accountability of all individuals and entities, public and private, to laws publicly enacted. It is necessary to ensure that the laws are enforced equally and are compatible with international human rights norms and criteria. In addition, the rule of law requires procedures to guarantee observance of the principles of legal certainty, accountability to the law, equality before the law, participatory decision-making, procedural and legal transparency, and avoidance of arbitrariness (Lolas Stepke, 2023).

Law enforcement entails guaranteeing that individuals comply with the law and penalizing those who breach the law. It is a function performed by law enforcement officials such as police officers, sheriffs, and other authorized personnel (Banks, 2018).

The relationship between law enforcement and the rule of law is complicated and mutually reinforcing. The rule of law provides a structure for law enforcement officials to operate within, guiding their conduct to be consistent with due process and equal protection principles. In contrast, law enforcement upholds the rule of law by ensuring the law is applied fairly and uniformly, while punishing those who break the law (Bingham, 2007).

However, difficulties can arise when either of these concepts, the rule of law or law enforcement, is weak or not mutually reinforcing. If the rule of law is fragile, law enforcement officials might abuse their authority and violate individual rights or engage in corrupt practices. On the other hand, if law enforcement is ineffective, the rule of law might be debilitated, and public trust in the legal system might suffer.

Thus, balancing the need for both law enforcement and the rule of law is crucial. Law enforcement ensures order and security, but must, nevertheless, subject to the rule of law to safeguard individual rights and freedoms (Carothers, 2010). Justice warrants treating everyone equitably and providing equivalent opportunities. Law enforcement is essential to preserving both of these principles as it is responsible for enforcing the law and protecting people from harm (Capoccia, 2013).

In the absence of law enforcement, individuals would flout the law with impunity, leading to anarchy and chaos. Additionally, law enforcement is tasked with protecting individuals from harm, an essential requirement for upholding justice. If there were no law enforcement, citizens would be vulnerable to the mercy of wrongdoers and lawbreakers, resulting in a society where the strong prey on the weak, and the rich exploit the impoverished (Tyler, 2017).

In conclusion, the principles of justice and the rule of law are essential elements of creating societies that are fair and equitable. Justice highlights equal access to fundamental human rights and opportunities, emphasizing fairness, equity, and inclusivity within society. The rule of law guarantees that everyone is subject to the same set of legal regulations, creating the structural foundation that enables justice to

be achieved. These interconnected concepts work together to provide equal access to justice and basic human rights and opportunities to all individuals, regardless of their social position or status. The principles and frameworks developed by justice theorists offer a valuable structure for recognizing and addressing the persistent inequalities and injustices in contemporary societies.

2.2 Conceptual Framework

2.2.1 Anti-Blasphemy Law in the world

The origins of anti-blasphemy laws date back to ancient times when blasphemy was considered a violation against the divine powers. Historically, according to Graham (2009), the Christianity doctrine influenced the Anti-Blasphemy Laws (ABL) which were later adopted in Act 1703 in South Carolina. In recent times, the relevance of ABL has been a subject of human rights debates. During the Middle Ages, blasphemy was regarded as a transgression against the Church, with severe penalties levied against offenders. The concept of blasphemy as an offense against God or religion remained in the modern era, with several countries still enforcing blasphemy laws.

In the United States, the First Amendment, incorporated as part of the Bill of Rights in 1791, guarantees the freedom of speech, religion, and the press. However, various states introduced blasphemy laws, and it was not until the 20th century that the Supreme Court started to invalidate these laws as unconstitutional. In 1952, the Supreme Court ruled that a state law prohibiting blasphemy was unconstitutional (Joseph Burstyn, Inc. v. Wilson), and in 1971, the Court expanded this protection to include criticism of religious figures and institutions (Cohen v. California).

In Europe, blasphemy laws were widespread until the Enlightenment, which initiated a shift towards secularism and rationalism. Nonetheless, many countries, such as Ireland and Greece, retained blasphemy laws until recently. In recent years, several European countries have abolished their blasphemy laws in response to criticisms from human rights groups and concerns about their effect on freedom of expression. Ancient civilizations such as Greece, Rome, and Egypt, dating back to the 16th century, have had anti-blasphemy laws criminalizing speech deemed derogatory to

religion. The Christian church has historically been associated with anti-blasphemy laws, which were used to suppress dissent and maintain religious conformity, while the Muslim-majority countries, particularly Pakistan, whose blasphemy laws were enacted during the colonial era, are presently associated with anti-blasphemy laws.

Blasphemy laws have been politically exploited for far-right religious politicians' propaganda and have often been directed at religious minorities, such as Christians and Ahmadis, and political opposition in Pakistan. Furthermore, Saudi Arabia and Iran have strict anti-blasphemy laws that stifle freedom of expression, thought, and religion. These laws are not consistent with international human rights principles, as they strengthen and promote religious mindset and orthodoxy over individual freedoms. They often result in violations of freedom of expression, religion, and thought, which are protected by international human rights instruments. Blasphemy laws are also counterproductive, such as in Pakistan, where they lead to an informal restriction on inter-and intra-religious and belief debate and criticism (Bielefeldt, 2012a; Ssenyonjo & Baderin, 2016).

Anti-blasphemy laws (ABL) lack a precise definition and tend to vary in interpretation from country to country. They often have an unclear concept and tend to be contrary to the principle of lawfulness, mainly aimed at safeguarding the state religion and imposing excessive punishment (Fiss & Kestenbaum, 2017). Blasphemy encompasses different meanings[1], but mostly involves an act of dishonor against God[2] (Glazer, 1982). ABL is responsible for curbing hate speech or religious offences against holy persons, customs, artefacts, or beliefs as a means of governmental intervention in citizens' religious lives aimed at maintaining religious tolerance. A clear distinction is absent as to whether the objective is to safeguard religious groups against offensive speech or merely shield majority religions[3], thereby promoting

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1 Blasphemy means (1) anyone who denying the holy individuals of trinity as God; (2) asserting or maintain that there is no more Gods than one; (3) deny the truth of Christianity; and (4) denying the Old and New Testament scriptures as divine authority.

2 See the First Laws of the State of South Carolina 159 (Michael Glazer, Inc. 1981) (cited hereinafter as "Act No. 202", supra note 3.)

3 See the case of Asia Bibie vs. Pakistan, the Supreme Court of Pakistan of CRIMINAL APPEAL NO.39-L OF 2015 (Against the judgment dated 16.10.2014 of the Lahore High Court, Lahore passed in Crl.A.No.2509/2010 and M.R.No.614/2010).

censorship laws that penalize critics and pose threats to democratization[4] (Marshall, 2018a).

In Pakistan, the ABL is widely interpretable and prohibits blasphemous acts against God, religious symbols, prophets and any deemed sacred object. The vague concepts covered under ABL such as "insult," "criticism," or "blasphemous" lack clear legal interpretations and are predominantly based on a particular community's feelings. The law aimed at protecting the religious system, symbols, artefacts, and teachings, and as such, is characterized by biased norms that prioritize safeguarding the sacred over individual rights (Nash & Bakalis, 2007).

Numerous countries inherited[5] their Anti-blasphemy laws from their colonial period and adopted them as national laws via the concordantial principle, which are still enforceable today (C. Durham & Scharffs, 2019; Octora, 2016). However, as outdated legal conventions, these laws are maintained and strengthened by enacting various regulations at either the national or local levels[6].

Blasphemy laws have been historically related to religion, serving to subvert opposition and uphold religious orthodoxy. Modern-day employment of such laws in Muslim-majority nations has arisen from political and religious considerations and has negatively impacted human rights and freedom of expression. As a result, the international community has recognized the potential dangers posed by anti-blasphemy laws and called for its abolition since it violates the basic principles of human rights and democracy.

2.2.2 Human Rights Under Anti Blasphemy Law Regime

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4 See also the case of Moh-Ezra vs. Malaysia, In Selangor, Moh Ezra was convicted blasphemy under Section 16 of Selangor State Syariah Law after his company ZI Publications Sdn Bhd publishing the book “Allah, Love and Liberty” written by a Canadian author Irshad Manji. The book is considered disseminating of any wrongful belief and teachings against the Islamic Law. See also Pub. Prosecutor v. Amos Yee Pang Sang, [2015] SGDC 215 ¶ 27

5 The BLs were initially introduced in 1860 under colonial rule incorporated in criminal law inherited from England.

6 See the Blasphemy Law of Indonesia regulates under the Law Number 1/PNPS/ 1965, and Art. 156 and Art. 157 of Indonesia Penal Code and the Information of Electronic Transaction (IET) Law Year 2008 particularly in Art. 27 and 28. In Malaysia, the blasphemy laws can be found in Art. 298 of the Act of Anti Sedition 1948 and Amended in 2015 (Section 3 and 4) and Art. 2333 of Deed of Communication and Multimedia 1998. In Philippines, the blasphemy law can be found in Art. 132 and 133 of Philippine Revised Penal Code; In Singapore, the Bl regulates under Art. 298 Chapter XV of the Singapore Penal Code (Cap 224).

It is crucial to examine the impact of Indonesia's enforcement of the Anti-Blasphemy Law on people's human rights guarantees and protection, considering that one crucial feature of the rule of law is human rights. As Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR) and incorporated its provisions into its Constitution, it has an obligation to ensure that freedom of religion and belief (FoRB) is respected, protected, and fulfilled for all citizens.

Therefore, it is essential to evaluate to what degree the Indonesian court has made international human rights law (IHRL) the basis for considering blasphemy cases. As pointed out by Bolintineanu (1974), it is a general principle of the Vienna Convention 1969 on the Law of Treaties. Hathaway (2008) expounds that the enforcement of the treaty's provisions reflects a state's level of commitment at the domestic level.

The Indonesian Anti-Blasphemy Law's provisions that impede the freedom to express religious beliefs lie between the rights to freedom of religion (FoRB) and freedom of expression (FoE), two fundamental rights. The FoRB is emphasized in Article 18 of the Universal Declaration of Human Rights (UDHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR). These documents embody values, principles, concepts, standards, and rules that international communities have adopted and practiced. In addressing FoRB, the State party of ICCPR must consider other resources such as General Comment No. 22 and General Comment No. 34, which deal with the Declaration of the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, precisely (Bielefeldt, 2012b).

Bielefeldt (2012b) emphasizes that FoRB is an inherent and universal right, vital for protecting all other rights (p.20). FoRB comprises two dimensions: forum-interum and forum-externum. Forum-interum pertains to the internal sphere, guaranteeing an absolute right to choose, renounce, or have no religion, shielded from state interference and upheld by Article 4 (2) of the ICCPR.

Additionally, forum-externum encompasses the right to worship, teach, and practice religious observance. State limitations on these activities must comply with Article 18 (3), allowing restrictions justified by law to ensure public safety, order, health, morality, or the protection of basic rights, while adhering to the principle of proportionality. It is crucial for the state to ensure that such restrictions are precise, do

not undermine the essence of fundamental rights, and avoid discrimination against religious groups..

The limitation of religious expression or manifestation must refer to Article 19, 21, and 22 of the ICCPR since the right to freedom of expression (FoE) is not absolute (Smith, 2003). Nonetheless, it is a fundamental right that cannot be denied by anyone or any state. The state can exercise the discretion to impose restrictions through its domestic law (Altwicker, 2018; Fraser, 2019), provided that the restrictions are rigorously interpreted, precisely regulated by law, and necessary to achieve their stated purpose (Debeljak, 2008; McDonagh, 2013).

Dworkin (2013) argues that censoring someone's opinions and deeming them insulting is tantamount to suggesting that their opinions are not "deserving of equal respect" (p.51). Therefore, a person should not be penalized for their beliefs, thoughts, or imagination (Kerr & Heiler, 2022).

In addition, the right to FoRB is protected internationally by both the Universal Declaration of Human Rights (UDHR)[7] and the International Covenant on Civil and Political Rights (ICCPR)[8], specifically in Articles 19 and 20. These treaties are recognized as a universal benchmark for upholding human rights protections for all persons regardless of their location[9]. The United Nations General Comment (UNGC) No. 34[10] is another tool for protecting this right. These documents encompass all the ideas, values, principles, norms, and laws that have been accepted and implemented by international communities, including Indonesia.

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

> *"Everyone has the right to [FoE][11] […] [that] includes the right to seek, receive and impart information and all ideas of all kinds,*

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7 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.

8 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 [hereinafter ICCPR].

9 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 [hereinafter ICCPR].

10 The UNGC reinforces it with the adoption of GC No. 34 concerning limiting the right to freedom of expression.

11 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

> *regardless of frontiers, either orally, in writing or in print, in the form of Art, or through any other media of his choice"*[12].

Unlike the right to FoRB, the right to FoE is not absolute (Smet, 2011). A state may impose restrictions through its domestic law, provided that the restrictions are precisely interpreted, strictly regulated by law, and necessary to achieve their stated purpose (Debeljak, 2008; Fraser, 2019). Therefore, when a person needs to express their religious beliefs, that person cannot be punished for their thoughts, imagination, or belief, except if their religious expression involves advocating hatred or posing a threat to other people's life or safety, in accordance with Article 20 (3).

According to Scanlon (1972), "freedom" refers to each individual's ability to independently determine what they should think and do. Therefore, government policies that suppress an individual's expression of views, opinions, or beliefs through various media violate Article 19 of the ICCPR, unless IHRL provides a legitimate and proportional justification for the restriction, especially if it solely targets the government's political opponents or other minority groups through various types of restrictions or prosecutions. 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)[13] or Article 20 (2) and (3).

The restriction of the right to FoRB is comparable to the restriction of the right to FoE, and their applicability may overlap (Donald & Howard, 2015; Uddin, 2015). Defending the right to FoE would also facilitate the exercise of FoRB. However, both rights may restrict and limit each other (Mondal, 2016). Additionally, the right to FoE is a precondition for the enjoyment of other rights, and limitations of FoE must not violate other rights, including the right to FoRB (Schmitter & Karl, 1991). A state may

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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).

12 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).

13 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)

impose restrictions through its domestic legislation, such as anti-blasphemy laws (ABL)[14].

C. Durham and Scharffs (2019) elaborate on four stages that the court must undertake in limiting the right to FoRB and FoE, based on Article 19 (3), the Syracuse principles, and UNGC No. 22[15]. These stages must be thoroughly applied in limiting the policy, and if the policy fails the test, the defendant must be set free according to the law.

Stage I: The restrictions must be properly outlined in the law. This requirement has two elements, a formal and qualitative one. The formal element requires that the State's interference is legally authorized (W. Durham, 2011). This means that the law is enacted by the appropriate legal body through a legitimate process and does not contradict the respective State's Constitution. The most crucial element is that the limitation on the right must be compatible with the objects and purpose of the Covenant[16].

Stage II: The restrictions apply solely to violations committed in public. The Rabat Plan of Action (RPA)[17] explains this aspect. The RPA (2011) recommends that the court first considers the speaker's status or position in society, particularly when the individual speaks in public and whether the speech is intentionally targeted towards specific groups. Second, the court looks at the speaker's intention, which necessitates a relationship between the object, speech subject, and the audience. Third, it looks at whether there is a likelihood or imminence of incitement, which implies that there must be some level of risk of harm[18]. Fourth, the speaker cannot be prosecuted if the expression is conducted in a private setting. Fifth, the speech must be classified as public, meaning that the statements should be circulated in a restricted or widely

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14 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).

15 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).

16 See UNGC No. 22 Para. 9.

17 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).

18 The RPA documents, p.11.

accessible environment to the general public. Lastly, the court considers the context's social and political conditions when the speech was made and publicized.

Stage III: The restrictions must pass the "necessity test" with at least one of the following objectives: (a) maintaining public order; (b) protecting people's morality; (c) protecting public health; or (d) protecting and respecting the rights of others. Durham notes that although limitations should be evaluated on a case-by-case basis when implementing such restrictions, the state may not violate the fundamental right of "freedom of thought, conscience, and religion," and the state cannot prioritize protecting a particular religion by imposing arbitrary punishments to restrict the right to manifest that religion (W. Durham, 2011). The most critical aspect is that the limitation grounds must be strictly linked only to the enumerated grounds and with precise interpretation[19]. Additional limitation grounds that are not specified in Art. 19 (3) or 20 (2) may not be cited to justify a restriction[20].

Stage IV: The restrictions must pass the "proportionality test," which means that the restrictions must ensure equal treatment to all individuals, considering the proportional punishment and not being susceptible to discrimination against other minority groups.

To evaluate the effects of implementing Indonesia's Anti-Blasphemy Law based on the rule of law principles, an assessment of how the law impacts the right to FoRB and FoE is crucial. This requires ensuring that any restriction imposed is precisely necessary, serves a specific purpose, does not discriminate against others, complies with the reasonable limitations on legitimate restrictions under International Human Rights Law and the Indonesian Constitution, and does not undermine the fundamental

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19 Ibid., 374 and the General Comment 22 (48), ibid.

20 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 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.

rights safeguarded under Articles 18, 19, and 20 of the International Covenant on Civil and Political Rights.

2.2.3 Factors shaped the Enforcement of Anti Blasphemy Law in the world

Anti-blasphemy laws are legal provisions that prohibit speech or actions that are perceived as contemptuous towards God or people or objects deemed sacred. Such laws have often been used as tools by political and religious authorities to stifle opposition and marginalize minorities. One instance of religious populism and anti-blasphemy laws can be witnessed in Pakistan, a country with a Muslim majority that possesses some of the most stringent blasphemy laws globally, following Iran. These laws were inherited from British colonial rule and have been enforced by successive military regimes and civilian governments to appease Islamist groups and mobilize religious sentiments among the masses. Since 1986, blasphemy has been punishable by death for insulting the Prophet Muhammad, and in 2023, the blasphemy law was extended further to include insults to the Prophet's companions, which could discriminate against Shiite Muslims who criticize early Muslims. Blasphemy laws have been utilized to persecute religious minorities such as Christians and Ahmadis, in addition to secular activists, journalists, academics, and artists. Accusations of blasphemy have also led to mob violence and extrajudicial killings by vigilantes who purport to defend the dignity of Islam (Villa, 2022).

Another example of religious populism and anti-blasphemy laws is Italy, a predominantly Catholic nation with one of the strictest blasphemy laws among non-Muslim-majority countries. Italy's blasphemy law dates back to 1930, when it was introduced by the fascist regime of Benito Mussolini as part of an agreement with the Vatican. The law prohibits any public offense to the "Deity" or to any religion recognized by the state and carries a maximum penalty of two years imprisonment. Despite the law's rare enforcement, it has been cited by populist politicians and conservative groups claiming to safeguard Italy's Catholic identity and values from secularization and multiculturalism. Blasphemy laws have been employed to target comedians, singers, writers, and activists who have criticized or ridiculed the Catholic Church or religion in general (Saiya, 2017).

These two instances highlight how in different historical and cultural settings, religious populism and anti-blasphemy laws have been interrelated. Blasphemy laws are not only linked to religious doctrine or personal beliefs; they can also be leveraged as a means of political power and social regulation. Blasphemy laws infringe upon essential human rights, including the freedom of expression and the freedom of religion or belief. These laws have the potential to propagate bigotry, discrimination, and violence against those who maintain varying or divergent opinions.

2.2.4 The Impacts of ABL's enforcement towards society

Anti-blasphemy laws can have considerable effects on society, both positive and negative, depending on their interpretation and implementation. One potential effect of anti-blasphemy laws is that they can safeguard the beliefs and sentiments of the majority group and avert the social disorder or violence that can arise from religious provocation. For instance, some Muslim-majority nations have stringent anti-blasphemy laws that aim to preserve the dignity and honor of Islam and its Prophet Muhammad. Such laws may act as a deterrent, preventing individuals from expressing opinions or producing materials that could incite frustration or resentment among Muslims, thereby fostering peace and social order. Nevertheless, the impact of these laws may depend on the level of diversity and tolerance in society, as well as on the availability of alternative pathways for dialogue and debate.

Another potential impact of anti-blasphemy laws is that they can restrain the freedom of expression and religion of the minority groups, and violate their human rights. For example, in some Christian-minority countries, anti-blasphemy laws have resulted in persecution and partiality towards the majority religion or ideology. These laws may reduce the ability of Christians to practice their religion, voice their opinions, or criticize the authorities. Additionally, these laws could be exploited or misused by extremists or opportunists who attempt to quell dissent or settle personal scores. In certain instances, anti-blasphemy laws have led to death penalties or extrajudicial killings of alleged blasphemer(s).

One historical example of anti-blasphemy laws is the case of England and Wales, where blasphemy against Christianity was a common law offence until 2008. These laws originated from medieval canon law, which authorized bishops to imprison and

execute heretics, often by burning them alive. The common law crimes of blasphemy and blasphemous libel, declared by the Court of King's Bench in the 17th century, were punishable by fines, imprisonment, or corporal punishment. However, these laws were seldom enforced in recent times and were eventually revoked by the Criminal Justice and Immigration Act 2008.

A modern example of anti-blasphemy laws is the case of Pakistan, where blasphemy against Islam is a criminal offense under section 295-C of the Penal Code. This law was introduced in 1986 by General Zia-ul-Haq as a component of his Islamization initiative, and it carries a mandatory death penalty for those insulting Prophet Muhammad. This law has been extensively criticized by human rights groups and activists for being ambiguous, arbitrary, and susceptible to abuse. According to a Pew Research Center study (Theodorou, 2016), in Pakistan, at least 17 individuals were sentenced to death on blasphemy charges in 2019; however, none of them were actually executed. Asia Bibi, a Christian woman, became the most well-known blasphemy case in Pakistan's history when she was accused of blasphemy by her Muslim colleagues in 2009. After spending eight years on death row, Bibi was acquitted by the Supreme Court in 2019.

To sum up, certain consequences of anti-blasphemy laws may be favorable, such as safeguarding religious sentiments and preventing social turmoil; however, others may be detrimental, including abridging freedom of expression and religion and risking human lives. As a result, it is critical to scrutinize these laws thoroughly and cautiously, while balancing deference for diversity with deference for human rights. Law reform and human rights are connected, with law reform serving as a potent tool for promoting and safeguarding human rights. The relationship between law reform and human rights is highlighted in various sources. According to the Law Society, law reform is essential to ensure that laws align with global human rights standards and that they are implemented in a manner that respects human rights. Furthermore, law reform can be employed to enhance legal protections for underprivileged groups, which can aid in preventing human rights abuses.

2.3 Reformation of Anti Blasphemy Law in the World

Although various countries still retain anti-blasphemy laws, some have successfully altered and aligned these laws with international human rights law (IHRL) norms. However, Indonesia is still grappling with this issue. For instance, there is inadequate research on how to eliminate the ambiguity of anti-blasphemy laws and impose strict restrictive standards in compliance with IHRL. If IHRL permits states to enforce restrictive standards on free speech and religion, then the presence of anti-blasphemy laws should be acceptable as long as the norms accord with IHRL.

Secondly, the literature demonstrates that some nations have managed to amend their anti-blasphemy laws to conform to IHRL. For example, instead of abolishing anti-blasphemy laws, some Australian states - such as New South Wales and Melbourne - have revised the elements of the law relating to blasphemous offenses, replaced the kind of penalties imposed, and altered criminal procedures in order to protect all religions rather than concentrating on Christianity, thereby attenuating the law rather than reinforcing it and resulting in it being enforced less frequently (Blitt, 2011). In another instance, Germany's law on blasphemy has been amended to be more responsive to local contexts, specifically, by recognizing that insulting any religion may disrupt public order (Hatzis, 2021). Additionally, in Ireland, blasphemy qualifications have been revised to focus on banning hate speech with the threat of sanctions that are not always directed at criminal punishment but can also include administrative sanctions (Dundon & Rollinson, 2011).

It is also important to consider IHRL's view on insulting other religions as an act or expression of hate. Although IHRL does not prohibit the "right to insult," it does recommend the norm of "the obligation not to insult others." Respecting other religions by prohibiting "defamation of religion" through blasphemy law with strict restrictions or high norms in accordance with IHRL is crucial to creating a middle ground that fosters harmonious religious relations, prevents incitement to religious hatred (Danchin, 2010b), upholds public morality, avoids horizontal conflicts (Cox, 2015), and eliminates discrimination against minority religions.

Furthermore, learning from other countries' experiences, whether through amending or abolishing anti-blasphemy laws, it is vital to ensure that future laws align with the principles of the rule of law and human rights. Every new law should be

developed with high legal standards, avoiding multiple interpretations, observing legitimate limitations, and adhering to the principle of proportional necessity. It should be oriented towards protecting individual rights rather than concentrating solely on protecting the religious system, creating an accommodative state-religion relationship for all religions.

2.4 History of the ABL in Indonesia

Indonesia, being predominantly a Muslim country, has enforced the Anti-Blasphemy Law (ABL) since the Guided Democracy period under Soekarno's leadership (1965). The law continued to be enforced during the New Order era of Soeharto (1965-1998) and the Reformasi period until before President Jokowi's administration in 2019. However, this study focuses on the evolution of the ABL during the presidency of Jokowi and beyond, which will be detailed in Chapter Four and beyond.

2.4.1 During the Guided Democracy of Soekarno (1965)

The Anti-Blasphemy Law (ABL) in Indonesia has a historical background that dates back to the period of guided democracy[21] under President Soekarno. On January 20, 1965, Presidential Decree No. 1/PNPS/1956 was signed, intending to minimize social conflicts between conservative citizens and non-religious groups, including atheists. The government considered these groups to be opposed to Pancasila, Indonesia's founding ideology, and believed that their existence could threaten protected religions, national security, and the unity of the nation[22] (Sihombing, 2008).

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[21] 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).

[22] 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.

At the time, Indonesia was following President Soekarno's Decree of July 5, 1959, during a period of guided democracy. Presidential Decree No. 150 of 1959 further strengthened this period by ordering the return to the 1945 Constitution and the formation of a Provisional Consultative Assembly and Provisional Supreme Advisory Council[23] as soon as possible.

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

Presidential Decree No. 1/PNPS/1956 subsequently 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 nations[24], and their blasphemy laws are not original, as they have different historical contexts.

In Indonesia, the blasphemy laws consist of two components. President Soekarno signed the first component, President Stipulation No. 1/PNPS/1965 concerning the Prevention of Abuse and/or Defamation of Religion (Law No. 1/PNPS/1965), on January 20, 1965[25]. The second component is the corporation law, Indonesia's Criminal Code Article 156a, which adopted its concepts from the colonizing country, the Netherlands.

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

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23 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.

24 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.

25 President Stipulation No. 1/PNPS/ 1965 was enacted under the "Guided Democracy" of Soekarno. He held legislative power and ensured the state functioned while maintaining its stability. Soekarno's regime was characterized by close to absolute power, as the President had the authority to release Presidential Stipulations (Penetapan Presiden/PNPS) or Presidential Directives (Peraturan Presiden) according to the President Decree. Therefore, Law No.1/PNPS/1965 was enacted through the President instead of an Act (Undang-Undang). In 1969, the government advanced it to the status of national legislation through the enactment of Law No. 5/1969.

martial law as a reference basis to form a new cabinet and appoint himself as the supreme commander of the armed forces (Bathoro, 2018). The cabinet that Soekarno formed was known as the Gotong Royong Cabinet and consisted of major parties such as PNI, Masyumi, NU, and PKI. Djuanda Kartawijaya was appointed as chairman, with several non-party figures becoming ministers (Olivia, 2019). 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.

The emergency situation arose due to the Darul Islam (DI)/Indonesian Islamic Army (TII) rebellion, aiming to establish an Islamic state. The idea of establishing the Islamic State of Indonesia (NII) came to fruition during the Conference of Muslims in West Java in 1948. It was motivated by the Islamic fighters' disappointment over the Renville agreement (Dewanto, 2011). The rebellion began when the Dutch invaded Yogyakarta, announced the fall of the Unitary State of the Republic of Indonesia (NKRI), and simultaneously proclaimed the birth of the NII, making West Java the NII's de facto area. Kartosoewirjo, the leader of the rebellion, encouraged the proliferation of religious sects to hundreds of groups and was a follower of traditional Islam (Dewanto, 2011; Wahid, 2011).

The government expressed concern about the growing prevalence of traditional beliefs, perceiving them as conflicting with Pancasila Precepts I, "Belief in One the Only God," and Article 29 of the 1945 Constitution, "A State based on One the Only God" (An-Naim, 2008). The Kartosuwirjo rebellion, eventually suppressed in 1962, resulted in the loss of 22,895 lives, the destruction of 115,822 homes, and state losses exceeding Rp. 650 million[26] (Dewanto, 2011). To curb rebellions stemming from deviations or misunderstandings in the interpretation of specific religions in Indonesia, Soekarno issued Presidential Decree PNPS No. 1/PNPS/1965. This decree aimed to safeguard the nation and prevent the resurgence of traditional beliefs, while upholding the state's foundation rooted in the belief in one and only God.

2.4.2 During New Order of Soerharto (1965-1998)

Under Soekarno's guided democracy, the 1965 PNPS's status was elevated to law and significantly strengthened by various legislative measures. Nonetheless, the

[26] On today’s value, it is equal to IDR 63,612,750,112 or USD 4,362,416

legitimacy of the PNPS was called into question due to its origin as a decree made solely by the President. This led to the MPRS Decree Number XIX/MPRS/1966, which provided the review of legislative products not aligned with the 1945 Constitution, such as the 1965 PNPS. This decree required that the DPR conduct a comprehensive review of all legislative products that were intended to improve the 1945 Constitution. Presidential Decrees and Regulations that aligned with the public conscience and the national revolution were deemed valid laws, while those that failed to meet these requirements were declared invalid[27]. The DPR was obligated to conclude this review process within two years (Dewanto, 2011).

Between 1950 and 1965, the socio-legal and political-ideological environment in Indonesia focused on national law development, requiring a choice between legal pluralism and national law unification. The legitimacy of the 1965 PNPS was based on Oemar's proposal. Oemar's 1963 National Seminar on offenses against religion argued that all religious adherents in Indonesia had the same right to practice their religion and that everyone was obligated to respect the religious rights of others. This aspect was crucial to guarantee that Indonesia, as a pluralistic country, would avoid any religious conflict (Wignjosoebroto, 1994).

> *"[...] 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 aimed to ensure that the State properly implemented Pancasila's precepts and Article 29 of the 1945 Constitution to maintain the rule of law. The rationale was to prevent Indonesia from becoming a secular state that separates religion from the state, similar to the scenario in liberal countries. In terms of line Oemar views as follows:

> *"[..] 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*

[27] See Article 2 Tap MPRS No. XIX/ MPRS/ 1966.

> *include criminal sanctions on the principle of "the separation […]" (Adji, O., 1983: 50).*

Oemar underscored the importance of safeguarding religion for three reasons. Firstly, as per the Friedensschutz theory or the "religious interconfessional joy," religion is a legal interest that must be protected. Secondly, the Gefühlsschutz theory or "holiest inner life of the community" reinforces that protecting religion aims to secure citizens' sense of security. Finally, the Religionschutz theory or the "cultural property of religion and the immense idealism that emerges from it for a large number of people" highlights the state's responsibility to safeguard religion as a legal interest (p.50).

The TAP MPRS No. XIX provisions and Oemar's ideas led to the conversion of Presidential Decree No. 1/1965 into Law No. 5/1969, with the requirement that there must be modifications, changes, or additional material added to the content for the succeeding law's development. However, Law No. 1/PNPS/1965 has not been altered, expanded, or modified to date. Although the law received formal approval from the President and the DPR, the two authorized institutions for drafting laws, it has not yet been perfected as mandated by Law Number 5 of 1969.

Under the New Order period, Suharto's administration continued to enforce the IABL and reinforced it by introducing Article 156a to the Indonesian 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 enactment of Law No. 1/PNPS/1965 aimed to address social conflicts between conservative religious groups and non-religious, belief groups, and atheists in conflict with the First Sila of Pancasila[28], which were perceived as threats to the established religion, national security, or the country's integrity (Densmoor, 2013)[29]. The 1965

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[28] Pancasila consists of 5 Sila (Principles). The first Sila states: "Believe in God the Almighty."

[29] 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

communist revolution remained a dark episode that haunted Indonesian society, prompting them to avoid a similar incident from occurring again (Arief, 2012). Consequently, the Provisional People's Consultative Assembly of the Republic of Indonesia issued No. XXV/MPRS/1966, which prohibited the teachings of communism, Leninism, and Marxism[30]. The resulting revolution led to President Soekarno's resignation[31] and mandated Soeharto to take his place, marking a drastic shift in the administration's law under President Soeharto's administration, or the "New Order."

2.4.3 During Early Reformation Era (1998 – before Jokowi's Era of 2014)

During the Reform era in Indonesia, which spanned from 1998 until the beginning of the Jokowi administration, the Anti-Blasphemy Law did not experience significant changes, remaining similar to the law during the Soeharto era. However, during this period, which included the presidencies of Habibie, Susilo Bambang Yudhoyono, and Megawati, the Anti-Blasphemy Law was seldom used to punish religious minority groups.

As such, the development of the Anti-Blasphemy Law in Indonesia exhibited significant changes throughout the Old Order (post-Indonesia's independence), New Order, and early Reform. During the Old Order, the Anti-Blasphemy Law focused on preventing religious-based movements that could disrupt national stability, reflecting Sukarno's priority of national unity. Interestingly, although the Constitution used during the Old Order lacked articles on human rights, the Anti-Blasphemy Law lacked criminal sanctions and was not yet linked to the Criminal Code. This differed from the New Order era when the Anti-Blasphemy Law was used to criminalize political opponents deemed blasphemous to Islam to maintain national stability and protect the

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https://www.jawapos.com/nasional/hukum-kriminal/14/03/2017/begini-awal-mulanya-pasal-penodaan-agama.

30 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.

31 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.

established religion (Islam) to encourage support from the majority Muslim population. During the early Reformation era, when the Indonesian Constitution amended human rights articles, instances of blasphemy were infrequent.

During the Joko Widodo administration, the number of Anti-Blasphemy Law cases significantly increased. This study aims to examine (i) the extent to which the enforcement of Indonesia's ABL erodes the rule of law, (ii) the factors and actors that shape court decisions regarding the ABL's enforcement, and whether political manipulation of religions influences its enforcement. The study will also analyze the impacts of its enforcement on society and whether it effectively upholds justice, as well as (iii) if the court's decisions lead to a substantive relationship between the state and religion in Indonesia, and the nature of such a relationship. The following chapters will systematically address all of these questions.

CHAPTER 3
METHODOLOGY AND RESEARCH DESIGN

3.1 Introduction

This chapter details the methodology and research design implemented for this study. As previously stated, this study employs a socio-legal research approach, which is presented in this chapter along with the rationale for its selection. The chapter explains the significance of the study, research tools, data collection methods, study period, data analysis, and research ethics. As diverse data were utilized, including statutes, case studies, interview results, and other secondary data, this chapter details the types of data used to ensure a clear and systematic description.

3.2 Rational for choosing methodology of socio-legal study approach

The socio-legal study approach is a suitable methodology for researching anti-blasphemy laws because it enables researchers to examine the law as a social construct that interacts with various aspects of society, such as culture, religion, politics, and human rights. This interdisciplinary approach can draw on perspectives and methods from the humanities and social sciences, such as sociology, anthropology, political science, and economics. As such, the researcher can explore the origins, functions, effects, and challenges of anti-blasphemy laws in different contexts and jurisdictions.

The socio-legal approach employs a variety of qualitative and quantitative methods to collect and analyze data, such as participant observation, interviews, surveys, document analysis, case studies, and comparative analysis. These methods can help the researcher gain a deeper understanding of the views, experiences, and behaviors of various actors involved or affected by anti-blasphemy laws, such as lawmakers, judges, lawyers, religious leaders, activists, victims, and offenders. The researcher can also use these methods to examine legal texts, doctrines, principles, and precedents that shape and constrain anti-blasphemy laws (Reza Banakar & Travers, 2005).

Moreover, the socio-legal study approach permits researchers to critically evaluate anti-blasphemy laws from different theoretical and normative perspectives, such as legal pluralism, human rights, democracy, secularism, and religious freedom. Such perspectives enable questioning of the assumptions, values, and interests underlying anti-blasphemy laws and assessing their implications for justice and social change.

Therefore, the socio-legal study approach is a credible methodology to examine anti-blasphemy laws, providing a comprehensive, contextualized, and critical framework to analyze and interpret these laws as social phenomena with multiple dimensions and impacts on society.

3.3 Significance of the study

The objective of this study is to contribute to the comprehension of the sociopolitical context of Indonesia's Anti-Blasphemy Law (IABL) application in relation to the right to freedom of religion or belief (FoRB). The study expands upon current knowledge in this field by adopting a socio-legal approach that analyzes the factors and actors responsible for influencing the law's enforcement.

Existing studies on IABL have primarily taken a top-down normative perspective of Human Rights Law. However, this study provides 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 and findings from this study can be valuable to law enforcers examining blasphemy cases. It emphasizes the potential for the misapplication of the IABL, which may deprive citizens of their fundamental rights, and the importance of courts prioritizing the rule of law, protecting rights, and upholding justice that fosters humanity in blasphemy cases. Moreover, this study may also contribute to the field of social science by enhancing legal system performance.

Regarding legislative impact, the findings of this study can enable legislators to comprehend that the vague concept of IABL significantly impacts legal certainty and justice in its enforcement. This study argues that reforming the cryptic, repressive, and discriminatory anti-blasphemy law can prevent Indonesia from evolving into an authoritarian regime that infringes on citizens' rights. The data, findings, and results

from this study can enrich academic studies and facilitate the formulation of legal norms that meet high standards and provide a complete picture of blasphemy law development and its enforcement. Doing so can prevent public debate or vigilante justice from threatening democratization.

This study aims to enrich the knowledge base on the sociopolitical context surrounding the IABL's enforcement and its impact on FoRB. It aspires to provide insights for law enforcers and legislators promoting human rights and upholding the rule of law while enhancing legal certainty and justice in Indonesia.

3.4 The research tools and data collection

To answer the research questions comprehensively, this study employed diverse research tools and methods to collect data, including:

3.4.1 Constitutional Court Decisions and Statutes studies

To evaluate the present state of legal politics surrounding the Anti-Blasphemy Law (ABL) and its impact on the rule of law and human rights, it is crucial to investigate the legal-political developments of the anti-blasphemy regime, particularly following the issuance of several Constitutional Court decisions related to the judicial review of the 1965 ABL, such as Decision Numbers 140/PUU-VII/2009, 140/PUU-VII/2010, 76/PUU-XVI/2018, and 84/PUU-X/2012. This study also examines the contents of Law No. 1/PNPS/1965 regarding the Prevention and Eradication of Religious Abuse and/or Defamation (hereafter the 1965 ABL), Article 156a of the 1981 Criminal Code of Indonesia (hereafter the 1981 CCI), Law No. 11 Year 2008 concerning Information and Electronic Transactions (hereafter the IET Law), and other related regulations and public policies supporting the blasphemy law.

This study investigates the Constitutional Court judges' reasons and considerations on the judicial review of the ABL by referring to the Indonesia Constitution after Amendment, particularly Chapter X article 28 A-J and 29, as well as the human rights treaties ratified by Indonesia, such as the International Covenant on Civil and Political Rights, and other related statutes, such as the Law Number 39 Year 1999 concerning Human Rights. All current statutes and regulations concerning anti-blasphemy are

critically analyzed for their meanings, implications, and impacts on the rule of law and justice, particularly the human rights of citizens.

3.4.2 Criminal Court Decisions studies

To illustrate the legal politics encompassing Indonesia's Anti-Blasphemy Law's current developments and their impact on human rights, we conducted a comprehensive analysis of criminal court decisions in blasphemy cases spanning from 2008 to 2020. The aim of this analysis is to reveal trends in court verdicts, such as the demographics of the religious groups that most frequently utilize the blasphemy law as plaintiffs, the types of blasphemy accusations most frequently imposed on defendants, the length of prison sentences handed out by the courts, as well as the individuals or religious groups most frequently targeted for punishment.

3.4.3 In-depth interview and semi structured interview

This study aims to provide valuable insights into the enforcement of Indonesia's Anti-Blasphemy Law, its impact on justice, and related issues. To achieve this goal, we conducted interviews with two types of respondents: experts and informants. A total of 42 respondents were interviewed, including experts such as the Commissioner of the National Commission of Women, justices of the Supreme Court and the CCIR, human rights experts, parliamentarians, staff of the National Human Rights Commission and Human Rights NGOs, and the former head of YLBHI - Jakarta. Open-ended questionnaires were used to interview experts to explore their experiences with the cases that shaped ABL enforcement, identify the actors who push for strengthening blasphemy laws, and examine public views for defending, revising, or deleting the ABL. Due to the Covid-19 pandemic, these in-depth interviews were conducted face-to-face or through online media such as Zoom, Skype, email, or other related applications.

Additionally, this study also interviewed informants and victims who have experienced or been involved in blasphemy cases, including perpetrators or victims of religious minority groups as the target of blasphemy cases. Due to various reasons, data from government officers, lawyers, and members of minority religious groups regarding law enforcement were extracted from various secondary sources, such as

documentary videos published by mass media, interviews with the parties involved and published societies by various media, including YouTube channel officials and news from Islamic organizations, FPI, and others.

3.4.4 Case studies

This study adopts a case study approach, examining a selected number of blasphemy cases, specifically the Ahok case[32], the Meiliana case[33], the Gafatar (Millah Abraham)case[34], the Ahmadiyya case[35]. Each case is explored in-depth to support the arguments provided in each chapter, providing a comprehensive understanding of the socio-political dynamics of IABL enforcement, including factors and actors that shaped blasphemy prosecutions, the vigilante actions against religious minority groups that occurred during law enforcement, and the state's preferential treatment of certain religious groups.

Although there are similarities in certain aspects, each of the four cases is unique and distinguished by its own set of distinctive features. The following is an overview of the four cases under consideration:

3.4.4.1 Ahok Case

Basuki Tjahaja Purnama, commonly known as Ahok , is a Chinese Christian politician who represented the Jakarta area, Indonesia's capital city, which is known for its multicultural and highly educated population. The case of Ahok contains strong political nuances where Islamist groups mobilized the masses and utilized the issue of blasphemy to confront Ahok during the 2019-2024 Governor election. As a result, Ahok was convicted and sentenced to two years in prison, eventually losing in the 2019 local election.

In this study, information regarding the Ahok case was gathered from various sources, including court verdicts, the chronological development of the case reported in the media, and several relevant academic publications. The case of blasphemy by Ahok is a social and religious case that arose from his statement in Kepulauan Seribu on September 27, 2016, quoting Al-Maidah verse 51 regarding the election of a leader.

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32 See Verdict No. 1537/Pid.B/2016/PN JKT. UTR and Verdict No. 11PK/Pid/2018.
33 See Verdict No. 784/PID/2018/ PT.MDN.
34 See Verdict No. 1107/PID.Sus/201/PN.Jkt.Tim.
35 See Verdict No. 1537/Pid.B/2016/PN JKT. UTR and Verdict No. 11PK/Pid/2018.

This case gained public attention due to its spread on social media. Ahok was subsequently prosecuted and found guilty by the North Jakarta District Court in May 2017. Ahok then filed an appeal, but it was rejected by the Jakarta High Court in October 2017.

Furthermore, there were several court rulings related to the Ahok case, such as the Constitutional Court's decision to reject a request to review Article 156a of the Criminal Code (KUHP) used in Ahok's case in 2017. There was also a Supreme Court ruling that rejected Ahok's cassation request in 2018.

3.4.4.2 Ahmadiyya Case

The Ahmadiyya case in Cikeusik, Pandeglang, Banten of West Java involves a new religious movement in a conservative religious society. Ahmadiyya followers faced different forms of violence from vigilantes, and hardliner groups were supported by local and central governments to enact public policies that stigmatized Ahmadiyya as a deviant group, although formally Ahmadiyya is a legitimate religious organization. Eventually, the court sentenced the Ahmadiyya leader to several years in prison and continued to ban the activities of his followers.

In this study, the Ahmadiyya case can be comprehensively examined due to various sources of information successfully obtained by the researcher. These sources include third-party accounts such as reports from the media outlining the chronology of the case, as well as research reports and fact-finding reports by various non-governmental organizations. Additionally, the researcher also conducted interviews with Ahmadiyya officials to gain insights from within the Ahmadiyya community during their experience of vigilante actions by various segments of society opposing the presence of Ahmadiyya in different regions.

In 2008, the Indonesian government issued a Joint Decree (SKB) that prohibited Ahmadiyya from conducting religious activities in Indonesia. In 2011, the Constitutional Court rejected a request to review the constitutionality of the SKB, ruling that it did not contradict the constitution.

Furthermore, there have been several court rulings related to the Ahmadiyya case. In 2011, the Cianjur District Court sentenced two Ahmadiyya members to prison for engaging in religious activities deemed disturbing to society. In 2013, the Serang

District Court sentenced three Ahmadiyya members to prison for engaging in religious activities perceived as spreading deviant teachings. Lastly, in 2020, the Depok District Court sentenced an Ahmadiyya member to prison for engaging in religious activities deemed a threat to national security.

3.4.4.3 Gafatar Case

The Gafatar case[36] in Kalimantan involved members from various regions of Indonesia with middle to lower economies. This case is similar to the Ahmadiyya case, which is also characterized by numerous incidents of violence carried out by vigilante justice groups. Initially, Gafatar invited its followers to be independent, which was supported by many parties. However, the organization was later accused of being affiliated with Millah Abraham, whose leader, once considered a heretic, was still serving time when the Gafatar case emerged.

In gathering information on the Gafatar case, this study collected data from diverse sources, including news articles from relevant sources, research reports, and reports from non-governmental organizations that supported Gafatar in defending their rights throughout the process. The researcher was successful in establishing direct contact and conducting interviews with members of Gafatar through several communication channels, thereby obtaining insider perspectives on the Gafatar legal case. This enabled the researcher to gather information on the Gafatar case from an insider's point of view.

Members of the Gerakan Fajar Nusantara (Nusantara Sunrise Movement) or Gafatar were subjected to various forms of violence. While defendants T. Abdullah Fattah, Fuadi Mardhathilla, Ridha Hidayat, and Althaf Mauliyul Islam were found guilty under Article 156a of the Indonesian Criminal Code for blending teachings from Islam, Judaism, and Christianity, the government's pressure on Gafatar persisted. On January 14, the Minister of Home Affairs, Tjahjo Kumolo, instructed local governments to close all Gafatar offices. On March 24, Attorney General Muhammad Prasetyo, together with Minister of Religion Lukman Saifuddin and Minister of Home Affairs Tjahjo Kumolo, issued a Joint Decree (SKB) warning that "former members and administrators of Gafatar" involved in "dissemination, interpretation, and activities

[36] See Verdict No. 1107/PID.Sus/201/PN.Jkt.Tim.

that deviate from the main teachings of Islam" may face up to five years in prison, in accordance with the 1965 blasphemy crime article.

Furthermore, Human Rights Watch reported that from January to February, a total of 7,916 individuals, including children, from 2,422 families, were forcibly expelled from West and East Kalimantan. The Indonesian government detained over 6,000 Gafatar members and placed them in six illegal detention centers located in Jakarta, Yogyakarta, Bekasi, Boyolali, and Surabaya. Subsequently, these members were evacuated to the Bekangdam Supply and Transportation Complex of the Tanjungpura Military Command XII in Pontianak, West Kalimantan.

3.4.4.4 Meiliana Case

Meiliana, a Chinese Buddhist resident of Tanjung Balai Medan, a community strongly influenced by Malay culture and adhering to the principle of "Adat bersendikan Syarak, Syarak bersendikan Kitabullah" or "custom based on Sharia, and Sharia based on the Quran," faced accusations of blasphemy against Islam due to her objections to the loud call to prayer from a nearby mosque. This case, involving the accusation of Meiliana by a hardline Islamic group, highlights the politicization of religion and economic sentiments, as well as the use of identity politics. The case was further marred by vigilante justice when the Vihara Temple was attacked, with Meiliana's actions being falsely portrayed as insulting to Islam and used as a pretext for the temple attack in the name of protecting religion.

In this study, information was gathered from various sources, including research reports, news articles, and reports from non-governmental organizations, to analyze the factors at play in this case. Furthermore, an analysis was conducted on the local government's responses to the developments of this case. Of utmost significance is the court ruling that resulted in Meiliana's sentencing. The researcher was able to have the opportunity to interview members of the legal team that supported Meiliana throughout the judicial process, thus providing valuable insights from Meiliana's perspective and that of her legal counsel.

3.4.5 The period of study

Through this comprehensive approach, the study aims to examine the implementation of Indonesia's blasphemy law (IABL) and its implications for the rule of law and justice over the past decade, considering significant changes in legal, political, and social contexts. The research specifically focuses on four blasphemy cases that occurred during President Joko Widodo's administration (2019-2020).

Throughout the course of the study, new cases with patterns similar to the four examined cases have emerged. However, the researcher does not extensively delve into these phenomena. Nevertheless, these occurrences further reinforce the objective of the study, namely that Indonesia as a nation must seriously contemplate viable solutions to address the challenges posed by anti-blasphemy laws.

3.4.6 Analysis of the data

In a socio-legal study approach, legal analysis is conducted first to evaluate the current development of Indonesia's anti-blasphemy law (ABL). The findings from the legal analysis are then used to explore empirical data in the field. Heidegger's philosophical perspective suggests that the text must be understood in its historical context, including the circumstances under which it was written. Thus, the initial step in data analysis is to identify research questions and determine the qualitative data needed to address all questions.

This study aims to investigate the current development of Indonesia's anti-blasphemy law and its impact on the rule of law and justice. The legal content analysis methodology, along with a doctrinal and hermeneutic approach, is employed to collect qualitative data in the form of textual data such as constitutional court decisions, statutes, and other relevant regulations and public policies. The collected data is systematically categorized into themes and patterns to facilitate analysis and answer research questions.

Furthermore, correlation analysis is utilized to identify the factors and actors influencing the enforcement of the ABL and its impact on justice. Tamanaha (2011) underscores the importance of connectedness and the law's relationship to various societal factors such as history, culture, religion, and politics. Hence, empirical data, court experiences, and regulations are investigated to explore the sociopolitical

dynamics and factors influencing the enforcement of anti-blasphemy laws in Indonesia.

The study employs a case study approach to collect empirical data from various interviews and juridical experiences on different blasphemy cases. In addition, to evaluate the effectiveness of the law and understand how it is treated and applied to specific contexts, criminal court rulings on blasphemy cases are studied. To present the research findings, the collected data is first reduced and categorized based on emerging themes, as suggested by Miles and Huberman (1994). Finally, the research findings are analyzed using theoretical concepts to draw conclusions.

3.5 Research ethics

The objectives of this study do pose a moderate risk to the researcher when conducting interviews, especially when the interview questions are not carefully formulated. The risk of the study becoming viral on social media and attracting public criticism is also present. Law enforcement officers may arrest the researcher to subdue the public's response. However, the research is possible for several reasons: scholars have discussed this issue at various forums, and most of the data is obtained from secondary data resources such as news, judge verdicts, legislation, and local regulations that are easily accessible through the Parliament's, Supreme Court's, or Constitutional Court's website.

Nonetheless, the study could still face rejection, particularly from the respondents who belong to minority religious groups or may feel social discomfort due to prejudice or discrimination against them. To overcome this issue, the researcher must obtain voluntary participation consent from these groups before conducting any surveys.

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, data analysis will be free from any bias based on the researcher's background, position, or perspective. It will be based on valid and trustworthy data or evidence. Despite the risks involved, the study provides an opportunity for religious minority groups to be heard. This will facilitate a better understanding of the pressure these individuals experience and enable us to optimize the protection of FoRB in Indonesia.

The study also guarantees confidentiality for all participants. Any information related to their identity, such as names, addresses, and positions, will not be revealed. Instead, the study will use abbreviations, fake names, or codes to label them and ensure that nobody can be identified within the research. Interviews will be conducted at a safe and confident venue and time for the respondents, either recorded or noted down. The study will use a code system with categorization such as gender and age, without mentioning their name or address, to further protect their privacy. To ensure the safety of the respondents, the researcher will be the only person with access to the data, and all data will be destroyed after two years.

CHAPTER 4
DEVELOPMENT OF THE INDONESIA'S ANTI-BLASPHEMY LAW UNDER THE RULE OF LAW AND ITS IMPACT ON HUMAN RIGHTS

4.1 Introduction

The reformation era in Indonesia, which followed the fall of Suharto in 1998, significantly influenced the development of the Anti-Blasphemy Law. The legal politics of this period have had a significant impact on the law's evolution, particularly regarding the 1965 ABL. Despite the need for amendments and improvements, the ABL remained largely unchanged until the reformation era, with its norms being reinforced by new laws and public policies at the local level (Tyson, 2021). During President Joko Widodo's administration, the ABL legal politics have continued to be implemented, reinforced by Article 156a of the Criminal Code and various related regulations, such as the EIT Law of 2008, which was later revised in 2016, culminating in the approval of the New Criminal Code in 2022.

Originally, the 1965 ABL did not define any criminal sanctions. However, after the insertion of Article 156a into the Criminal Code, the law was more widely used to prosecute individuals for religious blasphemy. The application of the blasphemy law has become more prevalent in Indonesian courts during Joko Widodo's administration following the enactment of the EIT Law and a Constitutional Court judicial review ruling affirming the constitutionality of the 1965 ABL. According to Crouch, at least 130 individuals were convicted under the ABL between 1988 and 2012, with an additional 66 cases being resolved by the courts between 2012 and 2018.

Law is not a static set of rules, but rather a dynamic system of norms, principles, and values that respond to the changing needs and circumstances of society. Culture, morals, beliefs, and norms play a significant role in law development and can affect how people and groups view law and justice. Discrimination based on factors such as gender, race, faith, and caste can limit legal rights and freedoms for certain groups.

The governance framework and effectiveness of a nation also shape law development, which impacts legal decision-making and execution. Additionally, political turmoil and violence may weaken the rule of law and public faith in legal institutions.

The Anti Blasphemy Law (ABL) used during Jokowi's administration, from 2019 until the time of writing this thesis, is the same law that has been implemented since 1965 with no significant amendments to date. In addition to the 1965 ABL, other related laws used by the government when charging someone with blasphemy include the Information and Electronic Transactions Law (ITE Law) of 2008 and 2016, as well as the Criminal Code. The Constitutional Court of the Republic of Indonesia (CCRI), responsible for determining whether law provisions are inconsistent with those of the 1945 Constitution, reviewed Indonesia's 1965 ABL in 2009. This study focuses on at least four requests for additional investigation, namely Decision Numbers 140/PUU-VII/2009, 140/PUU-VII/2010, 76/PUU-XVI/2018, and 84/PUU-X/2012. The Constitutional Court's various decisions provide guidance on the legal status of the ABL 1965, which subsequently led to the creation of new provisions on religious offenses in the Criminal Code.

This chapter examines how current developments in Indonesia's ABL and its related laws and regulations degrade the rule of law and the extent to which law development impacts human rights.

4.2 The Current Development of the Indonesia’s ABL

4.2.1 The Prolonged Application of the Law Number 1/PNPS/ Year 1965

As previously stated, the 1965 Anti-Blasphemy Law in Indonesia has not undergone significant revisions since it was validated. This study indicates that during Joko Widodo's administration, the ABL has continued to be enforced and reinforced through several related laws and public policies. Consequently, the ABL remains active under Joko Widodo's administration.

The law comprises four articles, with Article 1 stipulating that actions that are considered blasphemy of religion are prohibited. Article 1 states:

> *"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."*

As stated in Article 1, the use of the term "everyone" implies that this law aims to prohibit all individuals, regardless of their religion or beliefs. However, the subsequent sentence, "religion adhered to in Indonesia or to carry out religious activities that resemble religious activities from the main points of religious teachings," suggests that the law only provides protection for religions practiced in Indonesia. Furthermore, the term "religion" used here is narrow in meaning, omitting "traditional beliefs" or "new religions" that are not within the definition of religion intended to be protected by this law.

The scope of defiling religion is extensive in Indonesia and includes, but not limited to:

1) publicly interpreting a religion practiced in Indonesia;
2) recommending and seeking public support to interpret a religion adhered to in Indonesia; and
3) carrying out religious activities that resemble religious activities from the main points of religious teachings.

With the qualification of blasphemy as stated in Article 1, teachings of religions that differ from those practiced in Indonesia can be classified as "blasphemy." This may potentially infringe upon the right to freedom of religion, which is an internal freedom. The use of the term "intentionally" indicates that the prohibited actions must be deliberately committed, with the perpetrators consciously aware of their intention to commit them.

Articles 2 and 3 provide for administrative sanctions in the event that blasphemy is committed by an organization or a sect of belief. Article 2 paragraph (1) and (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."*

In fact, the ABL 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 interpretations or activities that are considered deviant.

Bagir Manan emphasizes the need for a non-violent approach in dealing with violators, with warnings being the first resort and criminal sanctions being imposed only if violations persist. If an organization violates the ABL, it can be dissolved, and members of the management or adherents of the organization can be punished with a maximum of five years imprisonment. However, in practice, administrative sanctions are rarely pursued.

Mudzakir emphasizes that the application of Articles 1, 2, and 3 of this law emphasizes gradual development and efforts, which means that administrative sanctions are more commonly sought if there are interpretations or activities that deviate from the religions adhered to in Indonesia. Thus, a gentle approach is taken, where violators are first warned. If they continue to violate, criminal sanctions may be imposed. Second, if the violation is committed by an organization, the organization can be dissolved, and if the violation persists, the person(s) or members of the management/adherents of the concerned organization may be punished with imprisonment for a maximum of five years.

Therefore, law enforcers should only apply Article 4 if the act seriously endangers state security and has undergone the administrative procedures regulated in Articles 2 and 3.

Article 4 orders a new article, Article 156a, to be added to the criminal code. Article 4 states:

> *"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."*

Article 4 provides the basis for the insertion of Article 156a in the Criminal Code, which states that a violation of Article 1 resulting in the impact described in Article 4 is a criminal offense. This impact involves:

a) being hostile, abusing, or blaspheming against a religion practiced in Indonesia;
b) intending to influence people to not follow any religion based on belief in the One God.

Article 4 does not provide a detailed explanation of what constitutes "hostile, abusing, or blaspheming", therefore, its definition is wholly left to the subjective interpretation of law enforcement.

4.2.2 The Problematic Extended Regulations

4.2.2.1 Insertion of Article 156a on Indonesia Criminal Code

Prior to the enactment of Law No. 1/PNPS/1965 or the 1965 ABL, the Criminal Code did not recognize the crime of "blasphemy." Crimes against religion were regulated in various other articles such as Articles 156, 175, 176, 177, 503, 530, 545, 546, and 547. However, after the enactment of the 1965 ABL, Article 4 ordered the legislature to insert a new crime known as "blasphemy" into Article 156a of the Criminal Code (Sidharta, 2007).

It is worth noting that Article 156a was incorporated into the Criminal Code twenty years after the 1965 ABL officially became positive law in Indonesia.

Therefore, the 1965 ABL cannot stand alone or apart from Article 156a of the Criminal Code. Rather, Article 156a was inserted into the Criminal Code to make the 1965 ABL more forceful. Article 156a reads as follows:

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 ABL does not provide definitions for "hostile", "misuse", and "desecrate" of religion, despite being intended to protect only the "religions adhered to in Indonesia" from such actions. The phrase "religions adhered to in Indonesia" is defined narrowly as "recognized religions", namely Islam, Catholicism, Christianity, Hinduism, Buddhism, and Confucianism. Due to the combination of Article 4 and Articles 1 and 2 of the 1965 ABL and Article 156a of the Criminal Code, religions other than those six could be labelled as "heretical religions"[37].

The insertion of Article 156a in the Indonesian Criminal Code created the concept of religious blasphemy, which was not previously present in the original provisions of Article 156. While Article 156 prohibited hostile, hateful, or insulting statements against groups in Indonesia, Article 156a specifically prohibited the interpretation of religious teachings adhered to in Indonesia. Furthermore, Article 156a only protects 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 level of protection, and the provisions of this article may specifically target them.

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[37] For instance, in Article 1 of the 1965 Defamation Law states: “Everyone is prohibited from deliberately telling in public, advocating, or seeking public support, to interpret a religion adhered to in Indonesia or to carry out religious activities that “resemble” the religious activities of that religion, which interpretations and activities deviate from the main principal of that religion.” The blasphemy violation as referred to in Article 1, then according to Article 2, if it is committed by an individual, the government can give a warning mostly to stop the act. But if it is done by an organization or a group of traditional beliefs, the government can dissolve the organization or declare it as a banned organization or deviant sect. In Article 2 states: (1) Anyone who violates the provisions mentioned in article 1 is given an order and a strong warning for his actions in a joint decree of the Minister of Religion, the Minister / Attorney General and the Minister of Home Affairs. (2) If the permit in paragraph (1) is carried out by an organization or a religious sect, the President of the Republic of Indonesia can dissolve the Organization and label the Organization or sect as a prohibited organization/sect, one after the President has received consideration from the Minister of Religion, the Minister / Attorney general and the Minister of Home Affairs.

Articles such as 156 and 156a of the Indonesian Criminal Code are open to multiple interpretations and do not provide clear limitations. It remains unclear what is meant by a statement that creates "feelings of hostility, hatred, and contempt" or "blasphemy". The principle of legality in criminal law demands that articles be clearly formulated so as to prevent the arbitrary imposition of sanctions through subjective interpretations by law enforcement officials.

In various blasphemy cases, Article 156a of the Indonesian Criminal Code has been applied, and the accused have been found guilty of "emitting emotions or carrying out deeds that degraded a religion in Indonesia"[38]. For instance, in the case of Gafatar, if the organization was accused of disrupting public order by applying coercive regulations to its adherents to enforce its teachings and encourage them to renounce their previous beliefs, then the court must establish this as fact. Thus, the court would not deviate from its primary objective of "protecting the sensibilities of the majority of faiths," while neglecting to recognize "the sentiments of Gafatar adherents." In this case, the court failed to comprehend the distinction between the forum-internum and the forum-externum in relation to the right to freedom of religion or belief. The court should have concluded its investigation into this case and declared the defendant innocent. However, this has not occurred in most blasphemy trials in Indonesia, except in cases with strong political overtones, beginning with the police halting their investigation (Tehusijarana, 2018).

4.2.2.2 The Enactment of the Law Number 16 Year 2008 junto Year 2016 concerning Informatics and Transaction of Electronic

Critiques of the flaws within the Anti Blasphemy Law (ABL) during Joko Widodo's administration, unfortunately, were not sufficient enough to prompt legislative action to amend the law. In 2008, the ABL was further reinforced by the reformist government's ratification of Law Number 11 of 2008 on Electronic Information and Transactions (EIT Law), in conjunction with the preceding laws (see Table 2). The EIT Law, initially designed to prohibit illegal electronic transactions and harm to the people, has faced criticism, particularly for strengthening the legal

[38] 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)

standing against blasphemy, a concept that holds numerous weaknesses. Minority religious groups who utilize social media or other electronic media to express religious teachings perceived as heretical or question mainstream religious teachings face charges under the ITE Law's Article 28.

Article 28 of the ITE Law specifies that an individual who knowingly and without authority broadcasts false and misleading information that leads to consumer losses in electronic transactions may be held liable. Additionally, an individual who knowingly and without authority disseminates information that seeks to incite hatred or hostility towards individuals or certain social groups based on ethnic, religious, racial, and inter-group (SARA) distinctions may also be held accountable.

In 2016, the 2008 EIT Law underwent some modifications. However, the fundamental issue of Article 28, which empowered Article 156a of the Criminal Code pertaining to blasphemy, remained largely unchanged. The primary concern regarding the existence of the ITE Law is the emergence of the term "hostility," which is rendered difficult to prove as it is abstract and relies on the complainant's feelings. Analyses of the five cases examined in this study indicate that all of the defendants were charged with not only Article 156a of the Criminal Code, which is a section associated with the Anti-Defamation Law, but also with Article 27 and Article 28 of the ITE Law. Consequently, despite the implementation of the EIT Law in 2008 and its revision in 2016, followers of religious minorities continue to be criminalized for purported blasphemy. In a study conducted by YLBHI, Asfinawati (2019), the former chairman of YLBHI, stated in an interview:

> *"There has been a recent trend of employing the EIT Law to bring charges against individuals who have been accused of blasphemy. In 2020, there were 67 instances of blasphemy, of which 32 cases, approximately half, were prosecuted using Article 27 and Article 28 of the EIT Law. This utilization of the EIT Law is distressing as there exists no precise definition of blasphemy, and the investigative procedures are deemed inadequate."*

This demonstrates that despite enhancements to the EIT Law, the ambiguity surrounding the definition of "blasphemy" under the 1965 ABL remains unresolved. The notion of hate speech, as prescribed in Articles 27 and 28 and typically employed in cases of blasphemy, merely incorporates a new concept, thereby equating

blasphemy with hate speech. Additionally, neither the 1965 ABL nor the EIT Law of 2008 or its 2016 update offer a comprehensive set of regulations outlining the requisite constraints on the right to religious expression.

4.2.3 The ABL After the Constitutional Court Judicial Review's Decisions

The Constitutional Court of the Republic of Indonesia (CCRI) possesses the power to scrutinize a statute and determine its constitutionality, provided that it adheres to the corresponding Constitution (Arato, 2012). When an act of legislation contradicts or infringes on the Constitution, it is deemed unconstitutional. Typically, the judicial branch, such as the Constitutional Court or Supreme Court, interprets legislation and scrutinizes whether a statute or law is unconstitutional via the mechanism of judicial review. According to several sources, the CCIR often utilizes an Austrian model grounded in Hans Kelsen's thesis. In accordance with this paradigm, a Constitutional Court analysis of a statute aims to establish the compatibility of legislative laws with the country's Constitution. In this regard, the CCIR possesses the power to nullify and invalidate a portion of the law, and its decisions have an erga omnes effect, binding on all individuals and organizations (Asshiddiqie, 2018).

To redress the constitutional rights that have been breached as a result of the implementation of the 1965 ABL, various adherents of minority religions have lodged claims for judicial review of the provisions within the 1965 ABL that are deemed to impinge on their constitutional rights guaranteed under the 1945 Constitution. The CCRI has delivered at least three judgments on judicial reviews of the 1965 ABL, namely Decision Number 140/PUU-VII/2009, Decision Number 84/PUU-X/2012, and Decision Number 76/PUU-XVI/2018.

In brief, the arguments of the petitioner, the responses of the respondents in this case the DPR and the Government, and the verdicts of the CCRI are as follows:

Decision Number	Petitioner's Reason/Evidence	Respondent's Reason/Evidence	Essence of the Decision/Main Point of the Ruling
Decision number 140/PUU-VII/2009			- The CCRI 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.* - *The CCRI argues that* "*the need for a revision of the Law on the Prevention of Blasphemy Against*
Decision Number 84/PUU-X/2012	Shia's follower claimed that Article		
Decision Number 76/PUU-XVI/2018	Ahmadiyya's follower claimed that Article		

			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). - However, the CCRI concluded that the 1965 ABL is constitutional because it does not restrict the freedom to believe, but rather restricts public religious speech that is antagonistic, abusive, or desecrates the religion practiced in Indonesia.

In decisions 140/PUU-VII/2009, 84/PUU X/2012, and 76/PUU XVI/2018, the CCIR has opined that the IABL does not prohibit individuals from holding beliefs that differ from other religions or beliefs. However, the IABL does limit the methods through which such beliefs may be expressed or disseminated to others in public. The Court has held that, in accordance with Article 28J and the IHRL, religious speech can be regulated by law. It is worth noting that limits on the freedom of religion and the freedom of expression are also applicable to Article 18(3) and Article 19(3) of the ICCPR.

4.3 Discussion and Analysis

4.3.1 The Current Development of the ABL Degrade the Rule of Law

4.3.1.1 Unclear norms result in a lack of definitiveness

Regarding blasphemy laws, there has not been a significant improvement in their development during President Joko Widodo's administration compared to the previous regime. In fact, the laws on blasphemy have been strengthened. Despite several amendments to the EIT Law, the ambiguous legal norms regarding blasphemy have not been clarified. Multiple decisions by the MK (Constitutional Court), which declared the 1965 ABL as constitutional, have ignored the rule of law principles.

The absence of precise definitions of "religious defamation" in Article 1 and 2 of the 1965 ABL, as well as Articles 27 and 28 of the EIT Law, creates ambiguity. The wide-ranging application of defamation of religions under Article 1 is problematic. At

least five acts can be considered as religious blasphemy: (a) insulting a religion; (b) persuading someone to be an atheist; (c) disrupting a religious ceremony or creating noise near a place of worship; (d) insulting a clergyman while performing a ritual; and (e) criticizing the teachings of religion, including criticizing other religious activities.

The lack of specificity concerning the scope of the act or utterance of "blasphemy" suggests that law enforcement authorities would interpret "blasphemy" broadly, subjectively, and without clarity. Thus, the law will find it challenging to distinguish between incitement or violence based on religious hatred, criticism of religious teachings, and practicing, believing, and adhering to religious teachings that deviate from the teachings of the dominant religion.

Restrictions on the first action are justifiable limitations. However, restrictions on the second and third actions could jeopardize the essence of the right to freedom of religion and freedom of expression. As discussed previously, to constitute an incitement to hatred under the Rabat Plan of Action (RPA), a statement must meet the following criteria: "context, speaker, intention, substance, extent, and likelihood of incitement to hatred"[39]. Only a public leader who intentionally encourages his audience to assault individuals based on their religion or race may be charged with hate speech. However, in practice, the Court only prosecutes actions or statements that qualify as blasphemy under Article 1 of the IABL, rather than hate speech. The five types of blasphemy mentioned earlier aim to protect the feelings of the adherents of the major religions. Whether a person feels humiliated depends on the sentiments of other people, which renders each form of blasphemy open to interpretation and subjectivity by the evaluating judge.

In the Gafatar case, Musadeq, a prominent member of the group, was found guilty under Article 28 (2) of the EIT Law, which criminalizes "remarks that incite hostility," by the East Jakarta District Court. Nonetheless, there is no precise definition of "hostility sentiments" under this article, making it overly broad and possibly subject to subjective interpretation by the authorities. Moreover, the court failed to determine whether Gafatar's conduct constituted dangerous speech or instigated violence against

[39] 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).

specific groups, as required by Article 20 of the ICCPR. In its ruling, the court aimed to "preserve public order" in line with the tenets of Islam and Christianity, the two recognized major religions in the country. Nonetheless, the vague laws criminalize any offender and result in severe punishment.

Secondly, according to multiple judicial review decisions by the CCIR regarding the ABL, the court argues that the right to religious expression is not absolute and that the IABL, a lawful statute that limits rights, is comparable to the 1945 Constitution. Furthermore, the court emphasizes that the law to prevent religious blasphemy remains necessary and does not conflict with the 1945 Constitution's protection of human rights. The court's decision is anchored in Article 28J of the 1945 Constitution and is restricted to the accepted IHRL communication in Indonesia. The CCIR does not address the flaws in the law, which may have been sufficient grounds to declare it illegal.

Furthermore, the CCIR notes that "the anti-blasphemy law is a threat to anyone who expresses animosity towards other religions or propagates different teachings from the major faiths." However, as previously discussed, the broad definition of blasphemy renders it too generic and an ordinary tool for criminalizing minority religious groups. Criminalization of minority religions becomes apparent when the government or the dominant religion feels threatened by minorities' religious followers.

In conclusion, the current development of the ABL in Indonesia under President Joko Widodo's administration still suffers from deficiencies in legislation substance. Therefore, the Court permits the 1965 ABL to remain effective, despite its implementation potentially violating the rights of citizens, particularly the rights of minority religious groups. In this sense, the Court neglects the rule of law.

4.3.1.2 Godly Nationalism poses a threat to the rule of law

The foundation of Godly Nationalism underpins the prolonged enforcement of the anti-blasphemy law, which condones mob violence or public protests. In his study, Menchik (2014) argues that upholding Godly Nationalism in Indonesia results in the production of religious intolerance. According to Menchik, the value of the Almighty God is central to the First Sila of Pancasila: "Believe in One God the Almighty," in

which every citizen has an inherent moral obligation to preserve religion as part of safeguarding the nation. In this perspective, insulting, blaspheming, and promoting atheism oppose holy nationalism. The Soekarno administration, adhering to this notion of Godly Nationalism, granted recognition to six religions, enforced the Law on Anti-Defamation of Religion, and established the Indonesian Ulema Council (p. 607-610). During his tenure, Soekarno issued Presidential Decree No.1/1965, commonly 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"*[40].

This definition of "Godly Nationalism" also appears in the Constitutional Court's legal arguments that support the Blasphemy Law's legality. The Chairperson of the Leader of Muhammadiyah also believes that Indonesia is not a secular state; rather, it is a country that believes in God Almighty, holding values that differ from those of a secular state.

Godly Nationalism condemns anarchist activities and taking the law into one's hands by persecuting religious groups or beliefs not recognized by the government among the six major religions. However, it is also evident that various state policies combine with Godly Nationalism to implement oppressive, accusatory, or condemning measures against diverse religious groups or viewpoints. These actions can encourage individuals to act as their judges.

Furthermore, Telle (2017) argues that Indonesia's current political dynamics, which emphasize Godly Nationalism, are responsible for growing enforcement of the Blasphemy Law. It aims to repel atheism, protect "orthodox" religion from "deviant" religious teachings, and safeguard existing faiths from intolerant acts or remarks that undermine their sanctity. During the Soeharto administration, the BL was maintained to secure national stability and avoid horizontal conflicts that could disrupt government operations. The BL has been used numerous times to eliminate

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40 "Penetapan Presiden No. 1/1965 tentang Pentjegahan Penjalahgunaan Dan/Atau Penodaan Agama," Suara Merdeka, 9 Mar. 1965: 1. Cite from Menchik, Ibid. p. 608.

communism and atheism and limit the freedoms of unrecognized religions. At least three concerns posed a potential danger to Indonesia's unity. The first was the spread of mystical ideas that contradicted Pancasila and its first premise, "Belief in One God, the Almighty." This notion was interpreted as requiring Indonesians to be religious or believe in God. Consequently, many Indonesians who did not believe in God were expected to learn about and acquire knowledge from other recognized religions to live in accordance with Pancasila's fundamental principle.

After the reform era, the BL encountered a dilemma. On the one hand, the state seeks to enhance human rights protection, but on the other hand, national stability and security remain utmost priorities. The Indonesian Constitutional Court, as the defender of the Constitution and human rights protector, determined that the BL must be revised as it does not comply with the Indonesian Constitution and human rights legislation. However, the socio-political circumstances in Indonesia necessitate the existence of this law. In examining the constitutionality of the 1965 Anti-Blasphemy Law , the Constitutional Court reaffirmed that Godly Nationalism is reflected in Pancasila Sila I, "Belief in One God," enshrined in Article 29 of the 1945 Constitution.

In contrast, the phenomenon of vigilante justice becomes widespread when the blasphemy law regime is robust. According to Yilmaz and Barton (2021) research, Front Defenders of Islam (FPI) is a radical Islamic group whose operations are defined by vigilantism under the leadership of Rizieq Shihab (RS). Vigilante justice has been crucial to the FPI's operations. RS uses hate narratives to incite individuals outside the organization and encourages his followers to carry out vigilante justice against all acts that are harmful to Islamic beliefs. Under the guise of protecting Islam, the "Action of Defending Islam," RS utilized his influence to mobilize the FPI in anti-Ahok rallies, where he was accused of damaging Islam. The FPI is frequently involved in vigilante justice when charges of blasphemy are made against individuals or groups.

The objective of sustaining the BL in Indonesia rapidly shifted from preventing public unrest and safeguarding national unity to "preventing national stability." It indicates that the BL must prioritize political goals over maintaining public order. Instead of preserving people's or religious groups' rights, the government uses the BL as a repressive instrument against resistance. The legislation is also used to oppress minority religions to gain support from the majority and preserve their political power.

4.3.2 The impact of the ABL's Development on Enjoyment of Human Rights

4.3.2.1 The threat to religious freedom rights remains a concern

The rule of law obliges the state to fulfill its responsibility to respect, protect, and fulfill every citizen's human rights. However, the development and implementation of the ABL under Joko Widodo's administration pose a further threat to freedom of religion. The Constitution (Article 28E, Article 29) and international instruments, such as Article 18 of the UDHR and Article 18 of the ICCPR, guarantee the right to freedom of religion. But these were not used as the basis for the creation of the EIT Law and Criminal Code to address the weaknesses in the 1965 ABL.

There are various regulations that threaten "the right to freedom of religion for individuals." Firstly, based on Article 1, the primary purpose of the ABL is to defend orthodox religions, rather than treating all religions or beliefs equally. Anyone who spreads teachings that differ from orthodox religious teachings is prohibited or can be classified as committing the offense of "religious blasphemy." This means there is no protection for those who embrace, believe, or spread new religious teachings. Secondly, although the 1965 ABL or EIT Law does not provide categories for deviant sects, the policies used to determine those sects are based on MUI Fatwas.

Table 1. list of new religious sects accused of deviance based on MUI Fatwas from 1976 to 2010

No.	Name of the Sect	Stigmatized as Defiant Sect based on:
1.	Kerajaan Ubur-ubur	MUI Fatwa of Serang, Banten Province.
2.	Hakekok Blakatsu	MUI Fatwa, in Banten Province.
3.	Ahmadiyah Qadhiyan	MUI Fatwa 26 May 1980 claimed that
4.	Lia Eden or Salamullah	MUI Fatwa Number 768/MUI/XII/1997 December 22th 1997
5.	Al-Qiyadah Al-Islamiyah	MUI Fatwa Yogyakarta Province Number B-149/MUI-DIY/FATWA/IX/ 2007
6.	Gerakan Fajar Nusantara (Gafatar)	MUI Fatwa Number 04 Year 2007
7.	Tarekat Tajul Khalwatiyah Syekh Yusuf Gowa	MUI Fatwa Number 01/MUI-Gowa/XI/2016 November 9th Year 2016.

The government has cited MUI's fatwas that declare religious schools of thought as "deviant" to craft policies that discriminate against their adherents regardless of the veracity of the claims articulated by MUI. It indicates that public laws and policies are

enacted by the state to afford special protection to adherents of established religions, specifically Islam. Therefore, the Indonesian government has confined the meaning of the right to religious freedom, limiting it to established religions alone. In addition, Article 1 of the ABL presupposes religious uniformity, thereby prohibiting advocacy of atheism or non-conforming interpretations of the doctrines of major religions (Lindsey & Pausacker, 2017).

The fundamental principles of FoRB are enshrined in several articles of the Indonesian Constitution, such as articles 28D, 28E, 28I, and 29. However, the ABL assigns distinctive ideals and principles, as it states that Indonesia is founded upon the "Belief in One God, the Almighty" in Article 29 of the Constitution.

Thus, under the ABL regime, the respect and fulfillment of the right to religious freedom face significant challenges. This is mainly because Indonesia still distinguishes between orthodox religions, new religions, and beliefs or non-religious groups. The ABL only protects religious freedom for orthodox religions, yet it fails to provide a place for or even criminalizes those who practice or propagate different beliefs, new religions, or atheism.

4.3.2.2 Targeting religious minorities

The rule of law demands that laws should be applied equally to everyone, irrespective of their religion, race, gender, or any other differences. Article 18 of the Universal Declaration of Human Rights (UDHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR) protect an individual's freedom to maintain a neutral religious identity or practice his or her chosen faith. The state carries the obligation, through its legal and political systems, to treat every person equally and without any interference, restriction, or other conditions that affect the exercise of this right (Henkin, 1981). In Indonesia, principles of non-discrimination and equality are expressly safeguarded by Articles 27, 28I, 28D, and 28H of the 1945 Constitution (Eddyono, 2016).

According to Article 1 of the ABL, "religions" are defined as the six religions recognized by the government: Islam, Hinduism, Buddhism, Christianity, Catholicism, and Confucianism. Law enforcement's interpretation of this article is that the law only protects these major religions. Thus, faiths outside of these six are often excluded from

legal protection. Furthermore, Article 4 of the ABL combined with Article 156a of the Criminal Code, along with Articles 27 and 28 of the EIT Law, threaten punishments for those who propagate religious teachings that differ from orthodox religions or those who advocate non-religious beliefs.

Under these provisions, the main targets for punishments under the ABL are minority religious groups whose doctrines differ from orthodox religions or non-religious groups. Studies indicate that minority religious groups are the primary targets of punishment using the ABL. These groups can be divided into two categories: first, religions practiced in Indonesia with a small number of followers (minorities) such as Buddhism, Christianity, Hinduism, and Catholicism. The second category includes new religions and beliefs of minorities. Subsequently, in various blasphemy trials, more than 150 individuals from minority religious groups were convicted and criminalized under the ABL (Andreas, 2019). This demonstrates that Indonesia's ABL is a law that is unequal and discriminatory, particularly for religious minority groups.

During Joko Widodo's regime, the decisions made by the CCIR are vastly different from the previous rulings of the Constitutional Court, which strongly upheld the principles of non-discrimination and equality in several critical cases. For instance, Judgment Number 97/PUU-XVI/2016 nullified a provision of the Residency Law that deprived traditionalists of obtaining resident identification cards and family cards. The Court reasoned that "restrictions based on religious beliefs that result in uneven treatment of citizens are discriminatory." This consideration is consistent with earlier decisions, including Judgments 070/PUU-II/2004, 27/PUU-V/2007, and 024/PUU-III/2005. In other cases, such as Decision Number 011-017/PUU-1/2003, the Court invalidated discriminatory laws, such as Article 60s of the General Election Law, which prohibited former Communist Party members from running for office, as such policies were discriminatory and inconsistent with Articles 27 and 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 invalid as they discriminated against victims of past human rights violations, by denying them their right to compensation and rehabilitation unless they forgave the culprits.

Unlike the rule of law principle, which stipulates that no individual or group should receive special protection based on their religion, the ABL has discriminatory provisions that solely target minority religious groups. Numerous cases have only punished those who insult religious symbols or hold beliefs different from major religions, showing that the ABL, unlike the principles set forth in the International Human Rights Law, does not prevent hatred and merely safeguards the religious establishment or personal feelings of others (Temperman, 2015).

4.3.2.3 The Right to religious expression

The rule of law concept maintains that when two rights overlap, any restriction on those rights should occur through lawful, significant, and proportional reasoning without any discriminatory intentions. The ABL not only limits the freedom of religion but also restricts the freedom of expression, particularly religious expressions. Article 28E of the Indonesian Constitution guarantees the right to freedom of expression, which states that "everyone shall have the right to the freedom of worship and to express his opinion and thoughts in accordance with his/her conscience." Since 2002[41], the IHRL has been incorporated into the Indonesian Constitution in Chapter IV Articles 28A to 28J. However, the ABL tends to curtail the ability of members of religious or philosophical minorities to express their religious beliefs, contravening the IHRL.

Limitations on the expression of religious beliefs under Article 4 of the ABL combined with Article 156a of the Criminal Code are not consistent with Article 20 (2) and General Comment No. 34, as the limitation does not fall under “incitement to discrimination, hatred, or violence”[42]. Additionally, the prosecution of a person

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41 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.

42 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).

because of their religious beliefs is irregular and violates Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Although an individual's freedom to express their religious convictions may be restricted under Article 18 (3) or 19 (3), the State cannot penalize the individual unless the speech incites discrimination, hatred, or violence as indicated in Article 20 (2) and (3).

The ABL protects "religious feelings," which is distinct from the objective of the IHRL that aims to safeguard "an individual's right to express oneself." According to Jeroen Temperman (2015), Article 19 protects the right to freedom of speech for everyone, but the ICCPR does not protect an individual's right not to have their feelings hurt or offended. The Otto Preminger v. Austria case[43] ruled that protecting the right not to offend others' religious sensibilities was a reasonable objective. However, in light of Article 20 (2), the accused should be acquitted, and the Otto Preminger v. Austria case should be considered contradictory to it.

Furthermore, the 2012 Rabat Plan of Action advises that States parties to the ICCPR evaluate six factors, namely “context, speaker, intent, content, extent, and possibility of incitement to hatred” (Shepherd, 2017), when regulating religious speech. This strategy aims to defend the freedom of individuals to be free from harmful speech that encourages violence or discrimination against persons of a particular race, religion, or ethnicity, as provided by Article 20. An individual is a right holder from a human rights perspective, and 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, 2012a).

As outlined in the previous section, the Rabat Plan of Action (RPA) stipulates that for a statement to qualify as an incitement to hatred, it must satisfy the following criteria: "context, speaker, intent, substance, extent, and likelihood of incitement to hatred." Only a leader who purposefully incites their audience to attack another person based on their hatred of their religion or race while speaking in public at a public assembly can be accused of hate speech[44]. In reality, the Court only criminalizes

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43 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).

44 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

actions or statements that qualify as blasphemy under Article 1 of the IABL, not hate speech. The five types of blasphemy aimed to preserve the "feelings of the major faiths' adherents," leaving the interpretation of whether one is humiliated dependent on the sentiments of others - a subjective analysis for the judge (M. A. Crouch, 2011).

The CCIR's emphasis on the constitutionality of the flawed ABL in Indonesia has overlooked the essential principle of non-discrimination from a legal and political perspective. The CCIR asserts that if a limitation on religious expression is enacted by law, the limitation is reasonable, irrespective of whether it results in discriminatory treatment of certain religious groups.

4.4 Conclusion

As an institution assigned to protect human rights, the Court's judgment regarding the blasphemy legislation reveals its failure to safeguard the freedom of religion of its citizens. The Court is also entangled in religious (Islamic) populism, as visitors to the hearings and demonstrations invariably support keeping the anti-blasphemy law. However, the Court neglected to educate the public on the significance of respecting everyone's freedom to choose, embrace, and believe in their own religions and beliefs without interference from any party, including the state.

The CCIR overlooks the fact that Freedom of Religion and Belief (FoRB) consists of two components: the forum-internum, which cannot be restricted under any circumstances, and the forum-externum, which can be limited. Although the Court has strictly construed Article 28J of the 1945 Constitution, it does not differentiate between the forum-internum and forum-externum, both of which may be limited by the State. This perspective is problematic since neither the Constitution nor the IABL explicitly defines the normal ban on religious speech. The CCIR fails to consider the four phases of legitimate and proportional limits under GC No.22, namely, the legitimacy test, necessity test, proportionality test, and non-discrimination test (W. Durham, 2011).

The Court's analysis is unclear and inconsistent since it asserts that the IABL protects those with diverse religious or philosophical beliefs, but its shortcomings in

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that constitutes incitement to discrimination hostility, or violence. (See United Nations General Assembly A/HRC/22/17/Add.4).

law enforcement and legal content cannot be separated. In blasphemy cases, the government is not impartial. Firstly, 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. Durham (2011) argues that neutrality is a prerequisite for satisfying the legitimacy test concerning permitted limitations on the right to Freedom of Expression (FoE). However, as no such limiting criterion is listed in the IABL, the legality test cannot be used to Gafatar. Consequently, several courts have condemned Gafatar's followers.

Article 156a of the Indonesian Criminal Code was applied in all blasphemy trials, and the defendants were found guilty for "issuing emotions or carrying out deeds that degraded a religion in Indonesia." If Gafatar was accused of disrupting public order by enforcing coercive regulations on its followers to adopt new teachings and abandon their previous beliefs, then the Court must establish this. Therefore, the court has not deviated from its primary objective of "protecting the sentiments of the majority of faiths," but it has never investigated "the feelings of Gafatar adherents." In such cases, the court fails to comprehend the distinction between the forum-internum and the forum-externum concerning the right to FoRB. It is crucial for the court to conclude its investigation in this case and declare the defendant innocent, although this rarely occurs in blasphemy trials in Indonesia, except in cases with strong political undertones, beginning with the police halting their investigations (Tehusijarana, 2018).

The State has a responsibility through its laws and system to treat all individuals equally, without any interference, limitation, or other impediments that make it difficult for any person to exercise this right (Henkin, 2009). Articles 27, 28I, 28D, and 28H of the Indonesian Constitution of 1945 explicitly protect both non-discrimination and equality. As a result, these principles are essential human rights principles that the CCIR must examine while evaluating human rights concerns.

The CCIR has previously supported the principles of non-discrimination and equality in several significant cases. In decision number 97/PUU-XVI/2016, the Court invalidated a provision of the Residency Law that prevented traditionalists from obtaining identification and family cards, stating that "restrictions based on religious

convictions that result in discriminatory treatment of citizens are discriminatory." This consideration is consistent with previous judgments such as 070/PUU-II/2004, 27/PUU-V/2007, and 024/PUU-III/2005. Additionally, the Court has invalidated discriminatory laws in other instances, such as in decision number 011-017/PUU-1/2003, where 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 discriminatory as they prevented victims of past human rights violations from claiming their right to compensation and rehabilitation unless they were willing to forgive the criminals. However, in the case of the IABL, the CCIR disregarded the fundamental principle of non-discrimination. The CCIR contends that if a limitation on the freedom of religious expression is imposed by law, then the limitation is justified, regardless of whether or not it results in discriminatory treatment of specific religious groups. In this regard, the CCIR has used the Particular Constitutionalism theory, which interprets the Human Rights principles enshrined in the Constitution in a restrictive sense.

Regarding Article 18(3) of the ICCPR and Article 20(2) and (3), the IABL should focus on religious statements or actions that lead to discrimination against other religious groups and not on limiting an individual's beliefs. The various religious beliefs among Islam, Protestantism, Catholicism, and Hinduism are an example of diversity that Indonesians have long embraced due to their social diversity. Society can embrace the multiplicity of schools within a religion without using it as an excuse to persecute other diverse groups. The state need not restrict the beliefs of its citizens since the six major religions have thrived due to the freedom of their adherents to choose, accept, and exercise their beliefs without government sanction or punishment.

Finally, there is no doubt that hate speech against any religion should be banned, and offenders must be punished. In the revised Resolution on the "Combating Defamation of Religions," Resolution No. 16/18 emphasizes that all member states should combat acts of intolerance against all religions and beliefs - not only against

Islam[45]. Meanwhile, the government must also equally respect all religions and beliefs. Indonesia is among the countries that continue to uphold and implement anti-blasphemy laws. Although the UPR findings in documentation rounds I, II, III, and IV urged Indonesia to repeal or amend the Anti-Defamation Law urgently, Indonesia did not comply. However, based on the above information, Indonesia is hesitant to declare the IABL as unconstitutional or in need of modification. As a member of the Organization of Islamic Cooperation, which initiated Resolution 16/18, Indonesia should increase its efforts to implement it. The primary goal of the Combating Blasphemy Act is to safeguard faiths or religious symbols, not individual rights. In keeping with international standards, Indonesia must take prompt action to repeal the IABL and revise its draft Criminal Code by changing the punishment of blasphemy to the criminalization of inciting discrimination, hatred, and violence.

Based on the above analysis, it is evident that the Constitutional Court does not fully comprehend the concept of the rule of law, as highlighted in Article 1 paragraph 3 of the 1935 Constitution. The Constitutional Court did not thoroughly examine the defects in the blasphemy law's legal essence. The Court also fails to recognize that legal standards' history may deviate from the most fundamental constitutional rights granted by the Constitution. The history of legal substance is a critical issue that can cause a law to lose its validity. When legislation loses its authority, it can no longer be used to restrict citizens' rights.

The current development of Indonesia's ABL, particularly during Joko Widodo's presidency, has increasingly undermined the principle of the rule of law. The rule of law necessitates that the law be supreme, which requires precise and unambiguous laws that cannot be achieved under the ABL regime, which contains ambiguous provisions that have not been revised or maintained even with the passage of the EIT Law in 2008 and its amendment in 2016.

Upholding the rule of law means giving optimal respect for citizens' human rights. The Constitutional Court, expected to be a human rights protector, failed to overturn the discriminatory provisions of the ABL. The ABL, which primarily protects

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[45] 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 center of the protection regime.

orthodox religions and targets new religions or traditional beliefs or non-religious beliefs, was not seen by the Constitutional Court as a norm that could undermine the constitutionality of a law. The Court's inability to distinguish between the internal and external aspects of freedom of religion and its failure to incorporate the principle of non-discrimination in limiting the right to practice religion in external spaces indicates that the Court does not fully understand the norms of international human rights law. Although the Court has effectively adopted the principle of non-discrimination in other cases, such as invalidating an article in the Citizenship Law that prohibited citizens from indicating their "belief" on their identification card, it did not deem the Anti-Blasphemy Law as violating the principle of non-discrimination during its review. The pressure from hardline Islamic groups and strong government support for upholding the Anti-Blasphemy Law during the trial raises doubts about the Court's independence.

Furthermore, the Constitutional Court has also disregarded the principle of legitimate and proportionate limitations. The ABL is frequently used to criminalize any act or statement that portrays an interpretation of religious teachings that differs from orthodox religion or an urging to reject a religion, which could be stigmatized as a deviant religious teaching and subject the perpetrator to criminal charges. This indicates that the Anti-Blasphemy Law's legal and political development is moving in the opposite direction of the rule of law and degrading human rights principles.

CHAPTER 5
LAW ENFORCEMENT OF THE INDONESIA'S ABL AND POLITICAL MANIPULATION

5.1 An overview of blasphemy law enforcement in Indonesia

Over the past decade, several normative legal studies on Indonesia's anti-blasphemy laws have indicated that the enforcement process does not fully adhere to standard legal procedures (Cohen, 2018; M. A. Crouch, 2011; Fiss & Kestenbaum, 2017; Prud'homme, 2010). The enforcement of the rule of law stresses that social problems must be addressed through legal mechanisms established by law or by entrusting the resolution to law enforcers. While there are no universal standards for law enforcement across the world, at least in criminal proceedings, the enforcement process typically consists of several key steps. These include receiving reports of suspected crimes, investigating the crime by gathering evidence and interviewing witnesses, identifying potential suspects based on the evidence, apprehending suspects with sufficient evidence, reviewing evidence to decide whether to file charges, setting a court date for arraignment, conducting a trial to determine guilt or innocence, and, if found guilty, imposing a sentence.

The enforcement of anti-blasphemy laws varies around the world and is influenced by a range of factors and actors, including social, cultural, and political factors. Religion is one such factor that plays a significant role in countries with deeply religious populations, such as Pakistan and Iran. In these countries, strict enforcement of blasphemy laws is often used to protect religious sensibilities, and religious leaders and groups may exert pressure on the government to enforce these laws. Unfortunately, these laws are often used to target vulnerable religious minorities, such as Christians and Ahmadiyya Muslims in Pakistan, leading to widespread human rights abuses. In Iran, any criticism of Islam is considered a severe offense and can result in harsh punishment, including the death penalty.

In cases of blasphemy in Indonesia, almost all cases begin with an abrupt increase in public attention towards the accused's actions, which are deemed as insults against

religion. This high level of public attention often triggers the emergence of opinions that the followers of the religion who feel defamed should directly defend their faith and punish the offender. When the intensity of public attention and related rumors regarding the blasphemy issue become uncontrollable, law enforcement officials often abandon the standard procedures for handling criminal cases. The perpetrators are often arrested without investigation in order to quell the public's anger, as seen in the cases of Ahmadiyya followers, Gafatar followers, Ahok, and Meiliana.

Some cases that occur outside the national capital have led to physical attacks and violence by mobs who feel offended by the accused's actions. The perpetrators are often minorities, while the attackers are from the majority group. At this stage, law enforcement officials no longer investigate the facts related to the issue that triggered the mob's anger. Instead, the victims of attacks, such as those in the Shia and Gafatar cases, are immediately apprehended and relocated to a shelter to prevent further conflict.

Permitting individuals to take the law into their own hands is not only illegal but also a violation of human rights. The state has the primary responsibility to protect the human rights of citizens as victims of vigilante attacks or any other form of violence through its law enforcement system. The Indonesian Constitution stipulates that the state is based on the rule of law. However, enforcing the ABL has led to an increase in vigilante justice, also known as "Main Hakim Sendiri," against minority groups, such as the Ahmadiyya, Gafatar, and Meiliana cases, which have generated significant public attention. Previous studies have linked vigilante activities to political transitions (Marzuki, 2017), and others have studied the criminal liability of the perpetrators (Panjaitan & Wijaya, 2018; Rambe, 2018).

This study aims to examine the vigilante activities that have increased over the past decade since the enforcement of the ABL. While the government defends the law's necessity to prevent horizontal conflict and disruption of public order, social reality often contradicts the law's execution. In fact, according to USCIRF's report in 2020, 76 incidences out of 164 anti-blasphemy cases in various countries have involved public mobilization, threats of violence, and violence. Furthermore, vigilantism has become more deliberate in blasphemy cases and is supported by the government. Pratiwi, CS., and Sunaryo, S. (2021) suggest that vigilante violence

surrounding blasphemy charges in countries such as Pakistan, Malaysia, and Indonesia is due to state-induced structural violence through the preservation of legislation.

This chapter aims to investigate the factors and actors responsible for shaping blasphemy enforcement and to what extent political manipulation of religion has led to Indonesia's widespread prosecution of blasphemy cases.

Table 2. 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

No.	The Court	Year	Defendant's Name	Defendant's Religion	Indictment	Punishment
8	District Court Central Jakarta	2007	Ahmad Musadeq	A follower of Alqiyadah Al Islamiyah and the leader of Gafatar	156a CC	4 years sentence
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	2009	Lia Aminudin / Salamullah	Habib Abdurrahman Assegaf / Islam	156a CC	2 years and 6 months sentence
14	District Court Central Jakarta	2009	Wahyu Andito Putro Wibisono / Salamullah	Habib Abdurrahman Assegaf / Islam	156a CC	2 years sentence
15	District Court South Jakarta	2009	Agus Imam Solihin / Satriyo Piningit	- / Islam	156a CC	2 years and 6 months sentence
16	Ciamis District Court	2011	Ondon Juhana	Sri Asriyati and Victims / Islam	156a CC and 378 CC	4 years sentence
17	District Court of Tasikmalaya	2011	Oben Sarbeni	MUI / Islam	156a CC	4 years sentence
18	Temanggung District Court	2011	Antonius Richmond Bawengan / Distribution of 3 brochures and 2 books	Community members and administrators	156a CC	5 years sentence
19	District Court Sumber Cirebon	2011	Ahmad Tantowi / Heaven of Eden	Victim / Islam	156a CC and article 289 CC	10 years sentence

No.	The Court	Year	Defendant's Name	Defendant's Religion	Indictment	Punishment
20	Klaten District Court	2012	Andreas Guntur Wisnu Sarsono, Mandate of Divine Greatness	FKAM / Islam	156a CC	4 years sentence
21	District Court Padang	2012	Alexander Aan / Account Atheis	/ Islam	156a CC	2 years and 6 months sentence
22	Ciamis District Court	2012	Subastian Joe Bin Abdul Hadi / FB Allah Stingy and Arrogant	FPI, LPI and MUI / Islam	156a CC	4 years sentence
23	Ende District Court	2013	Herison Yohanes Riwu / Host Case	Church leadership / Catholic	156a CC	4 years and 6 months sentence
24	District Court Lubuk Pakam	2013	Khairuddin or Udin / Islam Kaffah sect	society / Islam	156a CC	4 years sentence
25	Pati District Court	2013	Muhamad Rokhisun bin Ruslan	victim / Islam	156a CC, Art. 45 & Art. 28 ITE Law.	4 years sentence
26	District Court Bale Bandung	2013	Rohmansyah / Qur'aniyah sect	Bandung / Islamic Organizational Society	156a CC	2 years and 6 months sentence
27	Sangatta District Court	2014	Syeh Muhammad (Teacher of Bantil)	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 a

Sources: Cited from Court Decision Directory at Indonesia Supreme Court and Categorized by Author.

5.2 Factors and Actors Shaped the ABL's Enforcement in Indonesia

Now, let us examine the factors that influence the enforcement of anti-blasphemy laws in Indonesia. As previous studies have suggested, these factors include the rise of godly nationalism, which has been fueled by the explosive popularity and easy access to social media lately. Besides, the government's efforts to monopolize the truth and reject all ideas/opinions that conflict with it have reduced democratization and sidelined efforts for dialog to resolve issues. Therefore, society has become

accustomed to using physical force and the number of groups to settle differences of opinion that may have been sparked by trivial matters. The government's inability to manage potential interfaith conflicts has compelled it to continue enforcing anti-blasphemy laws, as this law allows the government to charge perpetrators accused of violating the law with criminal offenses.

The potential for interfaith conflicts and the potential for the politicization of the dominant religious groups in Indonesia have led the government to feel the need to intervene in regulating religious life, even though the Indonesian Constitution explicitly states that Indonesia is not a religious state. To regulate religious life, the state involves various devices to control religious communities. These devices include State Actors, Semi-State Actors, and Non-State Actors, which will be fully explained in this chapter.

5.2.1 Godly Nationalism Emerges in the Court's Arguments

Soekarno's approval of the Anti-Blasphemy Law (ABL) in 1965 was based on the concept of godly nationalism, which emphasizes punishment for blasphemy acts . The underpinning of godly nationalism has contributed to the ongoing enforcement of the ABL, which often results in mob violence or public protests. However, some argue that this value system creates religious intolerance in Indonesia. Menchik (2014) asserts that the value of God Almighty is central to the First Sila of Pancasila, "Believe in One God the Almighty," which every citizen has a moral obligation to uphold to maintain religion as part of safeguarding the nation. Therefore, acts such as insulting or blaspheming other religions, or urging others to have no faith, go against the principle of godly nationalism.

This definition of godly nationalism is also reflected in the Constitutional Court's supporting legal arguments regarding the Blasphemy Law's legality. The Chairperson of the Muhammadiyah organization believes that Indonesia is a country that believes in God Almighty, not a secular state. As such, it has values that cannot be compared with those of a secular state. According to godly nationalism, anarchist activities or taking the law into one's own hands to prosecute religious groups or beliefs that are not among the six recognized by the government are unacceptable. However, this principle is often distorted by various state policies that are oppressive, accusatory or

condemnatory towards different religious groups or views, and that encourage individuals to act as their own judges.

According to Telle (2017), the current emphasis on godly nationalism in Indonesian politics is responsible for the increasing trend of legal enforcement against blasphemy. The law is used to combat atheism, protect "orthodox" religion from "deviant" religious teachings, and guard existing faiths against intolerant acts or remarks that degrade their sanctity. During Soeharto's administration, the ABL was frequently used to eradicate communism and atheism and to restrict the freedom of non-recognized religions. The propagation of mystical beliefs conflicting with Pancasila's first premise, "Belief in One God, the Almighty," posed at least three threats to Indonesia's unity. This understanding requires Indonesians to be religious or to believe in God, so those who do not believe in God must learn and acquire knowledge from other recognized religions to live according to Pancasila's fundamental principle.

After the reform era, the BL faced a crossroads. On the one hand, the state aims to enhance human rights protection, but on the other hand, national stability and security remain vital. As the defender of the Constitution and the protector of human rights, the Indonesian Constitutional Court has ruled that the ABL must be revised because it is incompatible with the Indonesian Constitution and human rights laws. Nevertheless, given Indonesia's socio-political situation, this law remains necessary.

The CCRI asserts that godly nationalism is embodied in Pancasila Sila I, "Belief in One God," which is stated in Article 29 of the 1945 Constitution and reasserted by the Constitutional Court in its decision when examining the constitutionality of the 1965 Anti-Blasphemy Law. On the other hand, the rise of the vigilante phenomenon has been linked to the robustness of the blasphemy law regime. Yilmaz and Barton (Barton et al., 2021) argue that Front Defenders of Islam (FPI), a radical Islamic group led by Rizieq Shihab (RS), has engaged in vigilantism as a crucial part of its operations. RS uses hate narratives to incite individuals outside the organization, including politicians and the government, and encourages his followers to engage in vigilantism against any actions deemed harmful to Islamic beliefs. RS has also utilized his influence and popularity to mobilize the FPI in various anti-Ahok rallies where he

was accused of insulting Islam. In cases where individuals or groups have been charged with blasphemy, the FPI is often involved in vigilante actions.

The objective of maintaining the BL in Indonesia has shifted rapidly from preventing public disruption and protecting national unity to "ensuring national stability." This suggests that the BL prioritizes political objectives over maintaining public order. Instead of protecting the rights of individuals or religious groups, the government uses the BL as a repressive tool against resistance. The law is also used to punish minority religions in an effort to gain majority support and preserve their political power.

5.2.2 Vigilantism in Indonesia

Vigilantism, or what is commonly known as "mob justice" or "main hakim sendiri" in Indonesian language, is not a new phenomenon in the history of law enforcement in Indonesia, particularly when it comes to cases of "blasphemy." Although sociologically, Indonesian society is known for its friendliness, patience, forgiveness, and preference for consensus in resolving issues, anthropologists also describe that Indonesian society can engage in acts of "amok" or mob justice when the patience of the community is exhausted.

The Anti-Blasphemy Law is one of the most controversial laws, where law enforcement has often resulted in mob violence or vigilantism. This means that the community seeks to judge those they deem guilty outside of the court process. Vigilantism, often linked to religious identities, has emerged as a significant aspect of Indonesian politics over the past two decades. Studies have extensively discussed its complexity, focusing on the connection of vigilante groups with the rise of identity politics and the threats these groups pose to the future of Indonesian democracy. However, only a few studies have attempted to analyze its roots, and pinpointed its origins in the late 1990s, prior to the fall of the New Order. In this study, the author argue that (Islamic) vigilantism in Indonesia can be traced back to the period between the 1940s and 1950s, a formative period of Indonesia’s modern and independent history, during which vigilantism found fertile ground to grow and develop.

Vigilantism or mob justice against those deemed to have blasphemed Islam is not solely caused by public dissatisfaction with law enforcement in cases of religious

blasphemy, as theories have suggested. Rather, mob justice has become a part of the power play in politics that exploits the majority (Islamic) group to punish minority

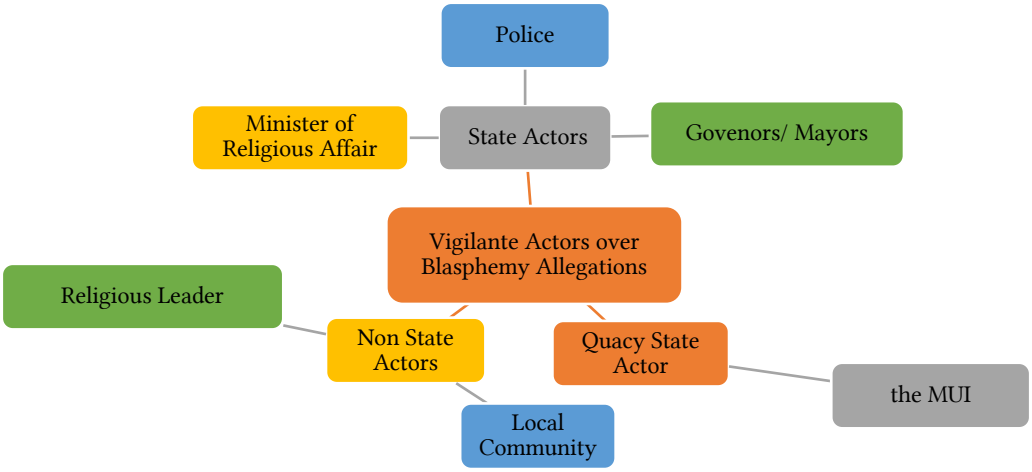

Figure 4. The Actors of Vigilantism (Main Hakim Sendiri) Amid Blasphemy Allegations

groups perceived to threaten the established Islamic community.

Sources: Cited from various sources and analysed by the author.

The state is playing a double game. On the one hand, the state wants to show off its respect for religious freedom by delaying the law enforcement process or gradually implementing the stages of law enforcement against followers of new religions or beliefs that are accused of blasphemy against Islam. For example, in the cases of Ahok, Meiliana, and Gafatar, the investigative process began several months after the initial reports. Of course, politicization of cases of religious blasphemy has provoked public anger, leading to acts of mob justice. Along with this, however, various incidents of mob justice have been seemingly tolerated by the state, despite the fact that they are criminalized under criminal law. The intelligence apparatus, which is

supposed to be capable of early detection of such attacks, has failed to do so, resulting in significant violence. Fear among minority groups of public wrath is then leveraged by law enforcement to intimidate them into accepting the law enforcement and punishment to be executed. Under such circumstances, judges are no longer burdened by complex evidentiary processes.

Therefore, the author argues that the Anti-Blasphemy Law is intentionally maintained by the Indonesian state to arm the community so that the coercive character of the state toward minority religious groups is represented by hardline Islamic groups. At the same time, the state has succeeded in leveraging the psychology of minority groups' fear, causing them to accept the verdicts to be imposed by law enforcement.

This study demonstrates that the government's efforts to maintain the Anti-Blasphemy Law are primarily based on the need to use the law for political power rather than the reasons given by the Constitutional Court, which are to avoid greater horizontal conflicts. Law enforcement, on the other hand, has not eliminated vigilantism; rather, it continues to occur repeatedly.

Jafrrey's view, which argues that vigilantism against those who blaspheme religion is caused by two factors, namely the collective violence pattern built by religious leaders and collusion between citizens and law enforcement to intimidate the victims by exploiting existing laws, is quite reasonable. This study has also identified another significant factor, which is the contribution of the state through its power apparatus, making the Anti-Blasphemy Law, which is flawed and ambiguous, an added ammunition in rebuilding authoritarianism under the Joko Widodo government.

On one side, the state easily gains the sympathy of the majority population by exploiting the Anti-Blasphemy Law to punish those who blaspheme religion and are disliked by the majority Islamic group. On the other hand, the state can easily intimidate its political enemies with accusations of religious blasphemy and threaten them with punishment under the law. Law enforcement officials are merely actors of the state who are required to use the Anti-Blasphemy Law as a means to subdue political enemies and, at other times, gain the support of their followers. It is therefore not surprising that the majority of the parliament, which supports the government, is reluctant to discuss revisions to the law.

Existing scholarship describes violence, or the lack thereof, as a consequence of interaction between formal and informal sources of coercion. This research builds on these studies by examining how parallel realms of order and disorder are produced when grassroots civil society structures are mobilized to complement the state's coercive power. Civic structures such as neighborhood associations and ethnic councils have long served as a way for the state to organize society and make it legible for purposes of control. This research argues that when states face threats from insurgents, dissidents, and terrorists, they also draw on these structures for fine-grained surveillance, electoral control, and provision of manpower for security patrols. Over time, this reliance turns into institutional dependence whereby the state's access to society is mediated through civic leaders, and the state's own coercive apparatus is built around the expectation of predictable support from these leaders. Within this context of institutional dependence, two changes generate impunity for vigilantism: a loss of the state's political control over civic structures and an expansion of the state's formal coercive apparatus. In authoritarian settings, compliance with coercive tasks is sought through high levels of political control over the leadership of these grassroots structures. When political liberalization diminishes this control, states manage the legacy of dependence by expanding the presence of their formal coercive apparatus.

At the micro-level, these changes provide street-level bureaucrats with incentives to provide selective impunity for extra-legal violence as a way to earn the goodwill of civic leaders, which is needed for performing high-priority tasks. At the macro-level, the selective enforcement of the law by these bureaucrats cumulatively creates security trade-offs for the state in which it has to allow society latitude for violence against local offenders to maintain support for combating national threats. Thus, the author argues that vigilantism flourishes not because the state is weak, but because its strength can be leveraged by vigilantes to protect them from the risks of engaging in violence. The author supports their claims with original quantitative data from Indonesia and qualitative evidence collected during 14 months of fieldwork. An analysis of 240,000 incidents of violence, including 33,000 cases of vigilantism, shows that the rapid expansion of formal police presence in Indonesia is associated with higher levels of vigilantism. Studies of 20 specific cases, with 186 interviews conducted with perpetrators and victims of vigilantism, local law enforcement

officials, and community leaders, provide a deep insight into the fears that govern vigilantes' conduct and the concerns that shape the response of state agents.

5.2.3 State Monopoly Truth

The rise of intolerance in Indonesia, which manifests as vigilante justice against groups accused of blasphemy or deviance from orthodox religious teachings, is linked to the rigid attitude of hardline religious followers who claim to possess the correct interpretation of religious scriptures. Such groups tend to monopolize religious truth and force their interpretations on others while rejecting alternative interpretations. Religious leaders with inflexible attitudes are supported by followers, including their families.

According to two prominent Indonesian scholars, Gus Mus (Nahdlatul Ulama) and Quraish Shihab (a specialist in Qur'anic exegesis), the monopoly of religious truth by certain groups constitutes 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"*[46].

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."*

According to Hashim Kamali, "God reveals the truth in a variety of ways, sometimes explicitly and other times through allusions, mainly through verses in order to engage the human intellect" (Kamali, 2006). Therefore, it is imperative to understand that the Qur'an acknowledges that humans use their senses, knowledge, and reason to comprehend religion and the world. Around 750 verses, or nearly an

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[46] 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.

eighth of the Qur'an, encourage readers to study nature, history, the Qur'an, and humanity in general.

The example of the sound of the Adhan issue illustrates the problem of religious truth monopoly. When Meiliana criticized the loud Adhan and faced accusations of blasphemy, it demonstrated an inflexible attitude towards religion that rejected reason, conscience, or science. Likewise, Ahmadiyya and Gafatar cases highlight this problem. The Indonesian Ulema Council's heretical fatwa against Ahmadiyya and Gafatar groups was grounded solely on a one-sided claim to truth and did not provide a platform for Ahmadiyya to express their beliefs or provide an opportunity to be heard. Similarly, the MUI's allegations of blasphemy against Gafatar, which acknowledged that it was not a religious organization, were made without regard for actual facts. Such claims, followed by restrictions and prohibitions against a group, provoke public indignation and may result in vigilante justice.

The one-sided truth claim by MUI was supported by the court as well, as demonstrated in the sentencing decision issued by the South Jakarta District Court and upheld by the High Court of Jakarta. The court deemed Mahful Muis and Ahmad Musaddeq guilty of blasphemy, stating that they had 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[47], 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"*[48].

Both the trial court and high court in the Ahmadiyya case maintained that any person who holds religious beliefs different from the dominant religion in Indonesia is committing religious blasphemy if they intentionally engage in a public act that

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47 Asfinawati, the former lawyer for the defendant and former chief of legal aid at YLBHI, was interviewed by the author on March 2022.

48 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.

offends the dominant religion. This means that Ahmadiyya followers cannot preach their religion in Indonesia if it challenges mainstream Islam, the dominant religion in the country.

Ahmadiyya is not a new religious organization and has coexisted with other Muslims for a long time. However, when public policies label Ahmadiyya as "deviant," it provokes vigilantism and recurrent violence. Similarly, Gafatar, as a licensed organization, established various work programs and collaborated with multiple state institutions. Before the deviant fatwa, people did not view Gafatar as a deviant organization. The pressure on Ahmadiyya adherents began in the 1980s when MUI issued a Fatwa on Ahmadiyya Qadiyan during its second National Conference from May 26 to June 1, 1980. The MUI urged the Indonesian government to ban the dissemination of Ahmadiyya teachings in Indonesia through a National Working Meeting. The MUI has issued three decrees on Ahmadiyya, including two fatwas in 1980 and 2005 and a 1984 recommendation declaring Ahmadiyya as a heretical group not following Islamic teachings correctly. Moreover, the MUI not only issued a deviant fatwa against Ahmadiyya but also against Gafatar and Meiliana. Meiliana's acts against the call to prayer were also labeled as blasphemy by the MUI. All acts of persecution against Ahmadiyya, Gafatar, and Meiliana followers took place after the issuance of the MUI fatwa.

5.2.4 Strengthening the flawed anti-blasphemy law is weakening the rule of law

In the previous chapter, the legal framework of the Anti-Blasphemy Law (ABL) was examined, with a focus on the law's ambiguity. The study concluded that the ABL lacks clear definitions and boundaries regarding what constitutes "blasphemy," "defamation of religion," or "interpretation of religion that differs from the religion practiced in Indonesia." This lack of clarity has resulted in law enforcement officials interpreting these terms broadly and subjectively.

Law enforcement officials are also unable to remain independent in cases of blasphemy, which often begin with vigilante justice by powerful societal groups against weaker ones. As a result, legal enforcement procedures no longer prioritize the presumption of innocence and a fair trial for the accused party. The study also found

that judges' rulings are influenced by social conditions and the need to appease public anger.

Moreover, judges in blasphemy cases also face pressure to not act independently due to the Supreme Court's issuance of Circular Letter Number 11 of 1964, which calls for harsh punishments for blasphemy. The presiding judge in the Gafatar case, Mohammad Sirad, stated: "Juridically, the Panel of Judges must comply with the Supreme Court's circular letter." This is supported by statements from the Supreme Court spokesperson, who confirmed that the Supreme Court's Circular Letter Number 11 of 1964 has not been revoked. "...and formally, it has never been declared as revoked."

As an example, if we examine the verdict of the judges in the Ahok case (the former governor of Jakarta), the ethical violation that Ahok committed during a public discussion that was later accused of blasphemy, in which Ahok wore his official governor attire for campaigning, should have been punished administratively, not criminalized. This was also reaffirmed by the Constitutional Law expert, Refly Harun, who said, "Ahok had already been reprimanded by the Home Affairs Minister and had apologized. However, this was highly politicized, which led to it becoming a legal case."

According to Wahyu Wagiman of the Institute for Policy Research and Advocacy, ELSAM, "the independence of the Panel of Judges of North Jakarta District Court is not reflected in Decision No. 1537/PidB/2016/PNJktutr, because it can be concluded that the verdict was not based on facts." The reason for this: "the Panel of Judges at North Jakarta District Court should also have critically analyzed and elaborated on the elements of 'intention, deliberate insult' that Ahok possessed during the incident in the Thousand Islands. It seems like the Panel of Judges did not pay attention to and disregarded the element of mens rea or the state of Ahok's mind during the incident in the Thousand Islands."

If we look at other cases where Meiliana was accused of blasphemy, at least four aspects have led to the questioning of the court's independence in the eyes of the public. First, the Panel of Judges did not properly examine the testimony of the witnesses presented, which differed from Meiliana's honest testimony. Second, the Panel of Judges were unable to prove the "intentional element" that Meiliana

"expressed feelings or committed acts that were fundamentally hostile, abusive, or blasphemous against a religion practiced in Indonesia." Third, Meiliana was declared a suspect under insistence from the Tanjung Balai MUI Chairman who stated concerns about the detention of 12 rioters for causing a disturbance. Meanwhile, Meiliana was "only a witness" and pleaded with the Tanjung Balai Police Chief "to increase Meliana's status from witness to a suspect." Fourth, the Panel of Judges only followed the Fatwa of the MUI (Council of Muslim Scholars) of North Sumatra Province No. 001/KF/MUI-SU/I/2017, but disregarded numerous testimonies provided by experts during the trial. However, according to Indonesia's legal system, MUI Fatwas are not binding and do not have legal force. The MUI Fatwa was based on the request "Request for MUI Fatwa relating to blasphemy committed by Chinese ethnicity named Meliana." This MUI Fatwa was then used as one of the bases for the ruling of the Medan District Court. Some people accused Meliana of being a "woman who incited the riot."

In the ruling No. 1612/PID.B/2018/PN.Mdn on Tuesday, August 21, 2018, Meiliana was found guilty of committing acts of hostility, abuse, or blasphemy against a religion as regulated in Article 156a of the Criminal Code (KUHP) and was sentenced to 18 months in prison. This sentence is much harsher compared to the verdicts received by the perpetrators who vandalized places of worship in Tanjungbalai, North Sumatra, ranging from 1 (one) to 4 (four) months imprisonment.

Therefore, the government's efforts to maintain the anti-blasphemy law, aimed at avoiding interreligious conflicts, ultimately turned out to be a trigger for the emergence of conflicts between religious communities. The quick-fix solutions employed by the government in quelling such conflicts ultimately undermined the obedience to the law enforcement principle of the rule of law. The legal framework could then be easily bent with the justification of the need to pacify social conflict, even though the conflict itself arose due to the ambiguity of the legal framework.

5.2.5 The Government interference toward religion

The Indonesian Constitution declares that Indonesia is not a religious state, and the state should stand at an equal distance between all religions practiced by Indonesian citizens. However, the amended 1945 constitution also acknowledges just six religions

in Indonesia. Other religions that individuals practice and believe in are not prohibited, but they do not receive legal protection if there is a social conflict.

The government's involvement in religion is evident not only from the constitution, which acknowledges only six religions but also from matters related to religious worship, which should fall under the domain of each respective religious group. The government established the Ministry of Religious Affairs, which oversees all aspects of its citizens' religious life, especially those of the Islamic faith. The Ministry of Religious Affairs regulates everything from marriage, birth, determining the start and end of fasting, managing how citizens perform the hajj pilgrimage, and ultimately funerary procedures.

As Islamic religion has been under the control and regulation of the government since the beginning, unconsciously, its adherents, who constitute the majority in Indonesia, feel that they are the most influential group, and their religion is protected from any criticism or hostility. Even if a new group shares the same Islamic faith, but if the majority Islamic group views them differently, the new group may be rejected from being part of Islam. This assessment process is not fair in judicial terms, but only based on the opinions of those who have a significant following or influence in their group.

The recent incident demonstrating the government's involvement in its citizens' religious affairs occurred at the end of Ramadan in 2023. The Indonesian government planned to announce the end of the fasting month but did not agree with the second-largest Islamic organization in Indonesia, Muhammadiyah, in their announcement of the Eid al-Fitr holiday date. Muhammadiyah had already calculated the date on its calendar, but the government decided on a different date.

The discrepancy between the dates chosen by Muhammadiyah and the government for the start and end of the Ramadan fasting period is not a new occurrence. It has happened dozens of times before, and it has not caused significant conflict. However, in 2023, the difference in dates created such a stir on social media that there were even death threats against the Muhammadiyah group.

From this, it is clear that although the government initially tried to regulate citizens' religious affairs to protect religion from blasphemy, its intervention caused social conflicts among religious groups. This occurred because the government did not

clearly position itself among all religious groups, tended to favor larger groups, and changed policies to gain political support from the majority, ultimately making it easier for social conflicts to arise.

Let us now revisit the government's intervention in cases of blasphemy, which have plagued followers of the Ahmadiyya and Gafatar groups and Meiliana. As discussed in the previous chapters, adherents of the Ahmadiyya and Gafatar groups and Meiliana were victims of vigilante justice.

Due to the lack of law enforcement to prevent vigilante justice, Ahmadiyya and Gafatar adherents, as well as Meiliana, were victims of vigilante justice, as described in the preceding subchapter. The expansion of vigilante organizations and the inability of law enforcement to prevent recurring vigilante justice 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 justice, 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 vigilante justices, 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. 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.

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 administration tended to allow the actions of main hakim sendiri 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.

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; Jones, 2012). 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 justice by the FPI continue because the state allowed them to happen and was justified by various public policies declaring Ahmadiyya and Gafatar teachings heretical long before a court decision was made.

The vigilante justice phenomenon 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)[49].

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

[49] See Anonym, Fatwa MUI untuk luruskan penyimpangan, cited from http://www.eramuslim.com/berita/nas/7b14122123-fatwa-mui-luruskan-penyimpangan.htm. accessed on April 2, 2022.

"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.

5.2.5.1 State actors

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[50], 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)[51]. 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.

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50 See USCIRF (2020). Violating Rights Enforcing the World's Blasphemy Laws. Retrieved from https://www.uscirf.gov/sites/default/files/2020%20Blasphemy%20Enforcement%20Report%20_final_0.pdf

51 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.

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 3. 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 Homa 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, members, and/or community members of the Indonesian Ahmadiyya Muslim Community (JAI).	Central Government
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/013/2011regarding 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	Province Government in West Java.

No.	State Actors	Name of Regulations	Area
		Congregation in West Java.	
5.	Mayor of Depot 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 188/94/KPTS/013/2011 concerning Prohibition of Ahmadiyya Congregational Activities Indonesia in East Java	Province Government of East Java.

5.2.5.2 Semi-state actors

MUI stands for the Ulema Council of Indonesia. At the time of its founding during the Soeharto era, on July 26th, 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."*

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 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."*

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 center 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 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.

5.2.5.3 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.

5.3 Political Dynamic surrounding Blasphemy Cases

5.3.1 Ahok's case

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 4 below:

Table 4. The chronology of the case of Ahok

Time	Chronology of the case	Socio-Political Dynamics
Sept 27th, 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 28th, 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 6th, 2016		Budi Yani uploaded video footage of Ahok to various social media, with the addition of

Time	Chronology of the case	Socio-Political Dynamics
		the provocative narrative "Blaming Religion". The video went viral.
Oct 6th, 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 9th, 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 10th, 2016	Ahok knows that there is an incomplete narration and provocation from Budiyani's video, but Ahok still apologizes to the public	
October 11th, 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 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 15th 2016	Police carry out the case.	
October 16, 2016	Police issued a warrant for Ahok's investigation to be named a suspect.	
November 4th, 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 Rizieg Shihab (chairman of FPI) demanded that Ahok punished. The demonstration ended in chaos, 2 residents and 79 police officers were injured.[52]
December 2nd, 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	Ahok was tried for the first time at	

[52] 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 4th, 2016.

Time	Chronology of the case	Socio-Political Dynamics
13th, 2016	the North Jakarta District Court	
December 20th, 2016	Ahok's second trial was held.	The public demonstrated in front of the court demanding that Ahok be imprisoned.[53]
April 20th, 2017	The prosecutor read out the charges with a sentence of 1 year in prison with 2 years -probation for Ahok.	
April 25th, 2017	Ahok reads the Memorandum of Defense "Still Fighting Even though they are slandered"	
May 8th, 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.[54]
February 17th, 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 9th, 2017	Ahok was found guilty of blasphemy and sentenced to 2 years-probation.	

The table 4 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

53 See Detik News. Masa Anti Ahok Ramaikan PN Jakarta Utara. Dec 2oth, 2016.
54 *See* Detik News. GUIB Jatim Aksi Anti Ahok, Risma Turun Tangan, May 08th, 2017.

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.

5.3.2 Meiliana’s case

The table 5 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.

Table 5. Meiliana case: list of events related to Meiliana case and its surrounding socio-political dynamics

Time	Chronology of the case	Socio-Political Context
July 29th, 2016	Meiliana protested to Nazir Masjid [Kasidi] about the very loud sound of Adzana from Al Maksun Mosque. “Sis, please tell the person, lower the mosque's voice, Sis, my ears hurt, it's noisy. Sis in the past the sound of our mosque was not that big, right, now it's a bit bigger.”	Meiliana is an ordinary housewife, Buddhist and of Chinese descent.
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

Time	Chronology of the case	Socio-Political Context
		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 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 Smatera Province for the blasphemy by issuing Letter Number: A.056/DP-2/MUI/XII/2016
14 December 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 24th, 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 INDONESIAN 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 13th, 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.[55]	
27 Augustus 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	
Thursday, 25 October 2018	The High Court upheld the decision of the Court of first instance. Considerations of the	Various agencies sent Amicus Currie for the court to consider not convicting

[55] See Court Decision No. 1612/Pid.B/2018/PN Mdn

Time	Chronology of the case	Socio-Political Context
	Court of First Instance are taken over and considered by the Court of Appeal.[56]	Meiliana: 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 the submission of the Amicus Curiae. Letter from the Institute for Criminal Justice Reform regarding Non-Criminal Complaints, published in September 2018. 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. 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. 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. 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;
March 27, 2019	Meiliana's Cassation Application was rejected by the Supreme Court. Decision No. 322/K/PID/2019	

In general, cases of blasphemy involving religious leaders or figures end with the perpetrator apologizing to the public[57]. But Ahok and as well as Meiliana are different

[56] See Court Decision Nomor 784/Pid/2018/PT MDN, p. 15.

[57] 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 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 (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/ Meanwhile, a well-known cleric, Ustad Abdul Somad, who said “The cross is inhabited by the genie of the heathen, because of the

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.[58] 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.[59] 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 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

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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

58 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).

59 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).

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.[60] 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.[61] 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 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

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60 See BBC Indonesia. Pelaporan Ahok Atas tuduhan menghina agama dan pemilih. October 2016.Retrieved from bbc.com.

61 See Kompas.com. Ahok Dilaporkan Dua Organisasi ke Polda Metro Jaya. October 7th, 2016. 19:20 WIB.

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.

5.3.3 Blasphemy Law Enforcement Failed to Preserve Justice

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).”*

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 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.

5.3.4 Blasphemy Law Enforcement Failed to Preserve Justice

5.3.4.1 Continuing Public Disorder

The increasing actions of vigilante hostility against religious minority groups show that the enforcement of the ABL law has failed to uphold justice. Members of religious minority groups, such as Gafatar or Ahmadiyya, who have been accused of religious defamation, have been tried and sentenced, but this has not satisfied the public, especially the religious vigilante groups. The court's verdict has failed to bring about justice, as the punishment given to those who committed acts of religious defamation has not effectively deterred the community from committing similar acts, and its impact is not widely known among the public.

Furthermore, in the instance of Meiliana, the court's concluded that Meiliana had insulted Islamic religion. Without backed by adequate evidence and witnesses, the court construed Meiliana's criticism of the loudness of the mosque's loudspeaker, which was excessively loud, as blasphemy. Various defenses, both in the form of Amicus Currie, 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.

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 mosque was not that big, now it's a bit bigger, right?" 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. Meanwhile, Meiliana herself was sentenced to 18 months in prison.

The facts above show that in Ahmadiyya, Gafatar and Meiliana cases, their 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 justice.

The act of vigilantism is a criminal act that is prohibited by the Indonesia Criminal Code, especially in Article 170 as follow:

> *"(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) 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 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 justice against Ahmadiyya or Gafatar followers has been passive or one of omission. The vigilante justice 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. 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,"*

In the case of vigilante justice 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 6. The incidents of vigilante justice carried out by the Islamic Defenders Front (FPI)

No	Date	The Forms of *Vigilante Actions*
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 Ahmadiyya 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.

No	Date	The Forms of *Vigilante Actions*
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 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.

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 vigilante justices 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 Conclusion

In contrast to vigilantism in ordinary crimes, where public outrage is typically aimed at punishing perpetrators who are caught or for crimes that continue to occur where law enforcement fails to punish the perpetrators, vigilantism in cases of religious blasphemy is driven not solely by the existence of crime in society, but by the religious monopoly of established religions that view differing religious teachings as crimes. The notion of "Godly nationalism" is defined narrowly, whereby 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 interpretation contradicts the right to freedom of religion and belief guaranteed in the Indonesian Constitution. Articles 28E and 29 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 increasing in Indonesia amid the failure of democracy, declining democracy index, corruption among nationalist parties, and low people's welfare (which includes rising poverty rates). The Islamic Party is collaborating with hardline Islamist groups in the opposition. The strengthening of the Blasphemy Law is a result of growing Islamic populism, with moderate Islamic organizations infiltrated by radical Islam, supporting the strengthening of anti-religious laws. This is evident from moderate Islamic groups supporting the criminalization of religious minorities, appearing in court to support the government in defending the Blasphemy Law,

reporting witnesses in various blasphemy cases, giving expert testimony on blasphemy cases, and participating in supporting the 212 movement.

The Ahmadiyya case is distinct from other blasphemy cases in Indonesia and differs from the Ahok case, which has a political undertone. The Ahmadiyya are classified as a splinter Islamic group and considered heretical since they are not recognized as an official religion in Indonesia, as stated in Article 1 of the Anti-Defamation Law. The accusation of heresy was also used as a reason to dissolve Gafatar. This is a contrast to the case of Ahok, who is a Christian and a member of one of the recognized official religions in Indonesia.

The growth of vigilantism is closely intertwined with 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 policies become a legitimacy tool for the public to take justice into their own hands when trust in the police decreases. The police, as an institution tasked with maintaining public order and protecting the public, have failed to anticipate and prevent vigilante justice, allowing such incidents to continue. Meanwhile, religious leaders continue to sharpen religious polarization by positioning their religion as an exclusive religion, making it an easy target for the issuance of heretical fatwas by semi-state institutions like the MUI.

The existence of an anti-blasphemy statute in Indonesia not only fosters unnecessary and excessive law enforcement but also encourages mob behavior by individuals who take the law into their own hands. Recognizing the rule of law in Indonesia's Constitution is not sufficient. The rule of law must be strictly enforced at all times and locations. Sustaining flawed anti-blasphemy laws and utilizing them to punish individuals recklessly is a form of resistance or denial to the rule of law. Anti-blasphemy law enforcement that solely targets political enemies and religious minorities is indicative of the court's failure to achieve social justice. Through anti-blasphemy cases, the court becomes a legal institution that perpetuates the unequal treatment of the religious majority versus religious minorities before the law.

CHAPTER 6
EXAMINATION OF STATE RELIGION RELATIONSHIP FOLLOWING THE ENFORCEMENT OF INDONESIA'S ABL

6.1 Introduction

The relationship between state and religion is often depicted by scholars by analyzing how the state regulates legislation related to religious organizations, establishment of places of worship, tax regulations, and assets of religious organizations. However, there have been limited studies that connect the patterns of state-religion relationship to the implementation of blasphemy laws.

Prior to the enactment of the Anti-Blasphemy Law, individuals accused of blasphemy were considered part of the same societal entities as other citizens and were able to exercise their freedoms. This study aims to demonstrate that the implementation and enforcement of anti-blasphemy laws relate to the dynamics of the state-religion relationship and how the accused individuals respond to law enforcement.

This chapter briefly discusses the patterns of state-religion relationship in Indonesia resulting from the enactment of the Anti-Blasphemy Law. The first section explores the relationship between state and religion as reflected in Indonesian laws. The second section examines the state-religion relationship in the practical enforcement of the Anti-Blasphemy Law. The third section analyzes the sociopolitical implications of these relationship patterns, drawing upon the perspectives of experts. The chapter concludes with a summary of key findings.

6.2 The Patterns of State-Religion Relationship

Numerous experts have discussed the patterns of state-religion relationship, including the following factors. A state can establish an official religion in accordance with international norms, as long as it upholds fundamental rights such as freedom of thought, conscience, religion, or belief for all individuals without discrimination. The

existence of a state religion should not be used to discriminate against or curtail the rights of followers of other religions, non-believers, or their communities. Providing exclusive benefits to official state religions while withholding them from other faiths would constitute discrimination. Similarly, exempting state religions from costly formalities required for other faith communities to obtain legal recognition would also be discriminatory.

According to the International Covenant on Civil and Political Rights of 1966 and the Human Rights Committee's General Comment No. 22, the recognition of a religion as a state religion or its official or traditional status, as well as the fact that its adherents comprise the majority of the population, should not result in any infringement of the rights guaranteed under the Covenant.

While international law does not prescribe a specific form of state-religion relationship, it does require states to impartially guarantee the rights of all individuals and groups within their territories. States have a duty to ensure the exercise and enjoyment of freedom of religion or belief. The level of entanglement between states and the institutions of their preferred religion or belief, the nature and extent of state support, restrictions, regulations, and limitations on religion in public or private spheres, and the extent to which state actions protect not only freedom of religion but also other related rights, all play a significant role in determining the ability of states to foster an environment that respects these rights.

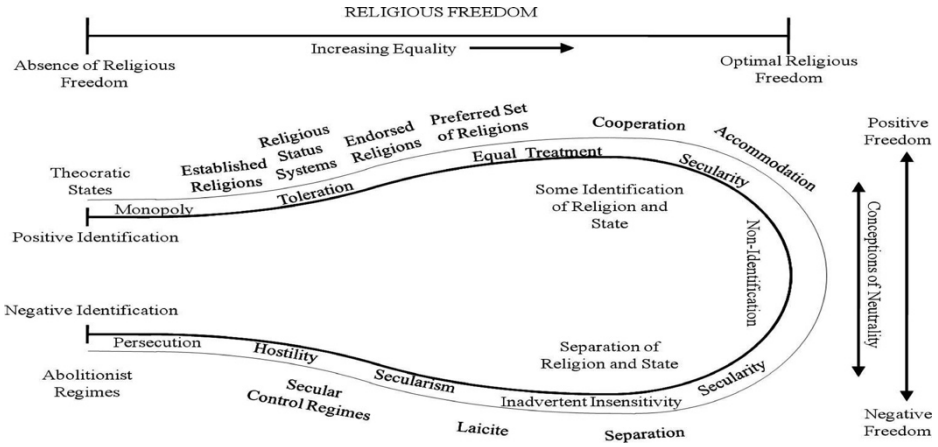

Figure 5. State–religion identification pattern depicted as a loop

Identifying the form of the relationship between the state and religion is the first step towards analyzing the impact of this relationship on society and political factors

further. Because the description of this relationship is not clearly defined in the constitution, such as in Indonesia, it is subject to change, and its shape can shift over time with ongoing socio-political configurations.

Generally, forms of the relationship between the state and religion can be explained by following a scheme presented by Durham and Scharffs (Durham and Scharffs 2019). They suggest that the religious-state identification continuum should be reconceptualized in two ways. Firstly, it should be recognized that the range of possible relationships runs not just from complete identification to non-identification. In actuality, the possibilities run from complete (and positive) identification through non-identification to outright hostility and persecution (negative identification). Secondly, in order to understand the correlations between institutional configurations and the religious freedom continuum, the identification continuum needs to be laid out as a loop. This schematization suggests that a lack of religious freedom correlates with a high degree of either positive or negative identification of the state with religion.

The selection of this model is due to several reasons, as cited by Durham and Scharffs when they included the model in their book, Law and Religion: National, International and Comparative Perspectives. In the preface to the first edition, they explained that "the guiding philosophy of this casebook is that less is more and more is more." They aimed to cover the subject matter of law and religion using fewer pages than most casebooks while focusing on international and comparative law material. Hence, this model is appropriate for describing the current relationship between the state and religion in Indonesia.

The author convinced that Indonesia, as depicted in figure 5 above, has a relationship between the state and religion positioned at the level of endorsed religions, as evidenced by research (Barker, 2022). Nonetheless, there is still a push from certain community groups to shift towards an established religion relationship, as stated by Fauzi (2022). Islamic authorities had to adjust Islamic law with modern law and national sovereignty to make its norms possible. However, for Muslims, the issue was not only the formation of the national legal system but also rules on the application of matrimonial matters as stipulated in Islamic legal doctrines.

6.3 The Patterns of State-Religion Relationship in Indonesian Law

Safa'at (2022), in his paper argues that the pattern of the relationship between state and religion in Indonesia is mutually influential. Safa'at's conclusion is based on an analysis of the nature of the products of laws that govern religion in Indonesia, such as the Law on the Establishment of Houses of Worship, the Zakat Law, the Waqaf Law, the Sharia Banking Law, the Sharia Insurance Law, among others, as well as the considerations of the Constitutional Court in various judicial review decisions pertaining to religious-based laws.

The characteristics of the relationship between the state and religion in Indonesia can be described as follows:

Firstly, Indonesia is a legal state as defined by Article 1 Paragraph 3 of the 1945 Constitution. Additionally, in further developments, The Constitutional Court reaffirmed that Indonesia is a Pancasila-based legal state, meaning that it is neither religious nor secular. In this context, the relationship between the state and religion is mutually influential. As Pancasila promotes belief in One Supreme God, the state implies that:

(1) The state prohibits non-religion.

(2) The state prohibits blasphemy against religion, sacred values, and God.

Secondly, it is important to note that Indonesia does not adhere to any holy scripture as its primary source of law. Law Number 12 of 2011 that regulates the various sources of law in Indonesia does not include any statements indicating that verses from holy scriptures are the basis of law in Indonesia, except in cases regulated by religious law concerning issues such as marriage, inheritance, and others.

Thirdly, Indonesia's constitution protects religions and belief systems. Indonesia not only recognizes six officially recognized religions but also acknowledges the existence of other beliefs and their forms of worship (as explained in Article 1 of the Anti-Blasphemy Law). Therefore, any deviation from this principle, such as prohibiting a religious group from practicing their beliefs in a way that is perceived as different from the majority group, constitutes a violation of the constitution.

Fourthly, it is crucial to understand that the Anti-Blasphemy Law does not aim to limit the freedom of religion (forum internum), but rather to regulate the expression of religion (forum externum) that creates animosity (as stated in Article 1 of the Anti-

Blasphemy Law). Therefore, the implementation of the Anti-Blasphemy Law should not be interpreted as an opportunity to eliminate the differences in religious expression that arise in public spaces and are perceived as different or peculiar by the majority group.

Thus, the legal basis for the Anti-Blasphemy Law in the Indonesian legal system, which is based on the reason that the law can prevent religious conflict, is rendered irrelevant. This is because legal regulations in Indonesia can utilize other laws, such as criminal law, to manage conflicts efficiently and prevent mass disturbances.

6.4 The relationship between state and religion, in practice

This sub section examines the relationship pattern between the state and religion in the practice of enforcing blasphemy law in Indonesia. Specifically, it will examine this pattern through the content of court decisions related to blasphemy cases in Indonesia and compared to the decision of the Constitutional Court, which states that the anti-blasphemy law is not revoked and remains valid. From the four blasphemy cases studied, it is evident that not all of the court decisions are in line with the Constitutional Court's decision, and the details of these differences can be seen in the table below.

No	Constitutional Court's Judicial Review	Blasphemy Cases Decisions
1	Sacred texts and fatwas from religious leaders are not sources of law	the MUI fatwa became the main basis for the court's decision.
2	The state protects religion and beliefs	the judges sentenced beliefs that were deemed deviant or different from the dominant religion
3	The state protects the freedom of religion and belief	the judges sentenced individuals who held beliefs that were different or accused of being different
4	Encouraging tolerance, protecting differences, and preventing interfaith conflicts	interfaith conflicts still occur, and thus, individuals who committed blasphemy were sentenced for triggering such conflicts.
5	The Blasphemy Law is considered discriminatory	the Blasphemy Law remained the basis for sentencing the defendant.
6	The state prohibits the defamation of religion and God	Judges failed to prove the existence of intent to insult by the perpetrator, yet they still sentenced the perpetrator based on blasphemy.
7	The Blasphemy Law does not restrict people's freedom to choose or believe in religion, nor does it restrict the expression or interpretation of the adopted religious teachings	Judges sentence individuals who are reported to have held religious beliefs that are deemed different from the main or orthodox religious teachings.

Viewed through the lens of the state and religion relationship theory, which categorizes Indonesia as having an endorsed religion relationship, the court decisions in blasphemy cases and the Constitutional Court's decision present notable differences. In the blasphemy cases where the MUI fatwa was used as the basis for the judgment, it is evident that the panel of judges did not adhere to Law Number 12 of 2011, which stipulates the types of legal sources that can be used as the basis of legal judgments.

6.5 The state regulates religion

Based on the table above, it is depicted that the legal politics reflected in the Constitutional Court's Decision on the judicial review of the Blasphemy Law describes the mutually influential relationship between state and religion. The Constitutional Court strongly emphasizes that as a consequence of the choice that Indonesia is neither a religious state nor a secular state. It is not a religious state because religious law is not a source of law, and it is not a secular state because the state has the authority to limit external freedom. Consequently, the Constitutional Court affirms that Indonesia is a state based on the belief in One Supreme God, thus referring to Indonesia as a Pancasila-based legal state. The Court also confirms that the Pancasila-based legal state is distinct from the concept of the rule of law known in various literature worldwide, not to imply that Indonesia is not actually a rule of law state.

Indonesia cannot be categorized as a rule of law state, even though it is embraced by the 1945 Constitution, because Indonesia uses religious laws as a source of law. In the cases of blasphemy, such as the case of Ahok, Meiliana, Ahmadiyya, Gafatar, and various other blasphemy cases, the Court views religious law as the main source of law in making decisions. The source of law referred to is the fatwa of MUI. The fatwa of MUI is the result of ijtihad issued by ulama, not a legislative body where the fatwa should not have the force of law. However, in various blasphemy cases, the Court does not dig the truth about whether or not there was an insult to religion through the facts that arise during the trial, but rather relies on the content of the Fatwa as a parameter in making the decision based on Islamic Law, as a religion acknowledged in Indonesia.

Therefore, if religious teachings are deemed to be contrary to Islamic law, the Fatwa can categorize those teachings as "heretical."

The court's decision to sentence Ahmadiyya and Gafatar followers shows that the Criminal Court is not conforming nor enforcing legal considerations drafted by the Constitutional Court. Firstly, in the practical application of law enforcement, the Constitutional Court's emphasis on the legal state based on Pancasila that respects religious freedom and beliefs cannot be realized. Secondly, in practice, religious or minority belief groups are targeted with blasphemy charges and sentencing. Thirdly, the instructions given by the Constitutional Court through the judicial review highlighting that the Anti-Blasphemy Law is discriminatory have not been taken into consideration by the Criminal Court. Judges in the Criminal Court continue to examine and prosecute blasphemy cases using the law that has been declared discriminatory. Even after court decision, there are still cases being examined and prosecuted in the Criminal Court based on the Blasphemy Law. Fourthly, the Constitutional Court affirms that in the Pancasila-based legal state, the state is allowed to limit expressions of religious-associated elements that insult recognized religions. This is only to maintain tolerance between religious communities and prevent divisiveness. Nonetheless, vigilantism against the accused persists and reoccurs in various cases, including the cases of Ahok, Meiliana, Ahmadiyya, and Gafatar. This means that religious conflicts arise because the concept of "insulting" is determined by the main religion, thus categorizing a minority group whose religious teachings differ from the main religion as an insult to the main religion.

The relationship pattern between state and religion formulated by the Constitutional Court as the inter-shaped relationship is, in fact, failing to be implemented by the Criminal Court in blasphemy cases. The state allows the dominant religions to monopolize the truth. The monopolized truth is adopted by the state and used as a basis to punish followers of a particular religion or belief whose teachings or beliefs differ from the dominant religion. In such a relationship pattern, Durham and Brett categorize the relationship pattern between state and religion as a "State with Favored Religion."

Pew Research Center describes a state with favored religions as having government policies or actions that clearly favor one or more religions over others,

typically with legal, financial, or other practical benefits. These countries may or may not mention the favored religion in their constitution or laws, often referring to the country's "traditional" or "historical" religion (but not as the official state religion). Although some of these countries also call for freedom of religion in their constitutions, in practice, they do not treat all religions equally.

In the context of Indonesia, the Criminal Court, in various blasphemy cases, adopts MUI's fatwa on heretical religions and various public policies that support the fatwa to punish the followers of religions or beliefs accused of heresy. Although the Indonesian Constitution does not mention the names of religions that receive primary protection, at least six official religions that are protected are mentioned in the explanation of the Anti-Blasphemy Law (Safa'at, 2022). Although the 1945 Constitution protects religious freedom, in practice, only the dominant religions receive primary protection.

6.6 State with Favored Religion Impede Justice

This subchapter discusses how the relationship pattern of state with favored religion, as reflected in the enforcement of blasphemy cases, creates injustice for the community, especially for minority religious followers. Various blasphemy case decisions have a wide impact.

By looking at the history of the development of anti-blasphemy law in Indonesia from its origin to its current development, as discussed in the previous chapter, it still places the state in a dominant position as a state with favored religions. In such a position, it is not surprising that the enforcement of the Anti-Blasphemy Law tends to satisfy the politics of power, by continuing to utilize the use of this law to criminalize the critics of six religions in Indonesia and thus receives political sympathy and support. Or by taking advantage of the existence of this law to equip law enforcement to criminalize state political enemies.

In a relationship pattern where the state controls religion, according to Durham and Brett's views, freedom of religion is endangered of being violated. Violation of the right to freedom of religion and worship will certainly correlate with the violation of other intertwined rights, as discussed in chapter 3. Therefore, in such a situation,

discussing the future of the Anti-Blasphemy Law in Indonesia cannot be separated from discussing the relationship between state and religion.

The Constitutional Court, which continues to strengthen the position of the Anti-Blasphemy Law through its various judicial review decisions, is the main focus in this study. Because the Constitutional Court is consciously strengthening the position of the state as a controller of religion, a determiner of religious truth, and a punisher for those who deviate from the religious truth determined by the state.

The Constitutional Court's decision on the judicial review of the Anti-Blasphemy Law also continues to encourage criminal courts to use flawed laws to punish religious critics. With the lack of a clear definition of blasphemy and intent as a prerequisite, it becomes very easy for courts to interpret the articles in the law subjectively. Cases of Ahok, Meiliana, Gafatar, and Ahmadiyya are some concrete examples in this study where the courts interpret "blasphemy" broadly, ranging from statements that contain "hostility," "insults," "blasphemy," where each of these terms is not given a concrete definition. In practice, blasphemy is interpreted by the majority religious groups or the religions practiced in Indonesia and becomes the reference for judges, ranging from criticizing the politicization of the interpretation of religious scriptures (Ahok's case), criticizing intolerant religious practices (Meiliana's case), teaching and proselytizing.

The effect of the Constitutional Court's decision stating that the Anti-Blasphemy Law is in line with the Indonesian Constitution has suppressed human rights and created social injustice in society. Minority groups who have become the target of this law continue to experience discriminatory treatment. As described above, the legal politics formulated by the Constitutional Court are not being implemented by the Criminal Court. The Constitutional Court continues to punish blasphemy defendants even though the Anti-Blasphemy Law has not been amended.

Therefore, it is very reasonable if the Constitutional Court reconsiders the constitutionality of this law. The Constitutional Court needs to provide clear guidance for the legislative body to improve the substance of the Anti-Blasphemy Law. The Constitutional Court needs to assert, in its legal considerations, the flawed nature of this law.

6.7 The State's Failure of Managing Religious Diversity

This study suggests that the state-sponsored religion pattern under the Anti-Blasphemy Law regime has resulted in the failure of managing religious diversity. The conflicts between religions and repeated vigilante justice during the enforcement of the blasphemy law demonstrate that the current pattern of state and religion relations has failed to manage diversity (Hasan, 2017). Diversity is a sociological reality that has taken root in Indonesian society. The motto "Bhineka Tunggal Ika" (unity in diversity) loses its meaning as the state continues to utilize the Anti-Blasphemy Law.

Historically, Soekarno's struggle at the beginning of Indonesian independence to establish the country as a secular state through the Jakarta Charter has evidently failed with the increasing prominence of the Anti-Blasphemy Law. The efforts to eliminate Islamic exclusivism through the Jakarta Charter by removing the phrase "with the obligation to apply Sharia for its adherents" behind the sentence in the first principle of Pancasila "Belief in the One and Only God" have not been successful enough due to two reasons.

Firstly, the implementation of Sharia Law into national law is no longer limited to family law matters such as marriage, inheritance, adoption, and zakat, but has been expanding into various criminal law fields, including the emergence of religious crimes provisions in the Criminal Code and business law, such as banking (Hasan, 2017; Safa'at, 2022).

Secondly, the current legal politics under the Anti-Blasphemy Law regime has continued to place minority religions in a marginalized position. With various court decisions declaring minority religious groups as misguided, they no longer receive equal protection in society. Meiliana can no longer live comfortably, and she was evicted from her home. Gafatar group was forced to leave their place of residence and return to their respective homes, but their families did not recognize them as members. Ahmadiyya has experienced various forms of intimidation and violence.

Thirdly, under the Anti-Blasphemy Law regime, the court's decision to prosecute minority religious groups for their beliefs has caused a strain on interreligious relationships, characterized by suspicion and distrust. In cases such as Ahmadiyya or Gafatar, the communities that used to coexist peacefully and regarded the presence of these groups as a religious social dynamic now view them as a "common enemy"

following the Fatwa MUI and various public policies in the regions. Thus, when hard-line Islamist groups call for resistance, public anger is easily stirred up. As a result, the fear of expressing their religious beliefs has become stronger among minority groups (PB House, 2014). For instance, after the issuance of the 3/2008 Joint Ministerial Decree, which prohibits the Ahmadiyya from promoting their activities and spreading their religious teachings and warns that Ahmadiyya followers could be prosecuted for blasphemy if they violate it, and followed by the court's decision that the Ahmadiyya leaders are guilty of defiling Islamic teachings, the Ahmadiyya group has been secretive in practicing their religious rituals and beliefs. Various difficulties faced by Ahmadiyya followers, such as the lack of government recognition of their residency status, access to public services, property ownership status, and security concerns, have caused Ahmadiyya followers to fear expressing their freedom of worship according to their beliefs.

6.8 Conclusion

Maintaining the enforcement of the flawed and discriminatory Anti-Blasphemy Law means maintaining the relationship pattern of state with favored religion. Such a relationship pattern will continue to threaten the right to freedom of religion. Therefore, it is necessary to formulate an accommodating relationship pattern between the state and religion. The accommodating relationship pattern between the state and religion is intended as a relationship where the state is not anti-religion but facilitates the needs of every religious adherent, whether the majority or minority. The consequence of an accommodating relationship is the absence of truth claims by a small group of religions. Therefore, all religions, whether minority or majority, should receive equal protection. Criminalization of religious adherents only because their religious teaching differs from the majority religion (Ahmadiyya case), such as Ahmadiyya, should no longer be stigmatized by the state as "blaspheming" religion. Conflicts between and among religions should be given wide and free space for dialogue without state interference, let alone with threats of punishment. Criticism of intolerant religious practices (Meiliana's case) should be regarded as part of the right to freedom of expression that must be respected, not criminalized. The state, through

its law enforcement agencies, needs to educate the public about the importance of respecting differences. Any attempt at vigilantism must be prevented and firmly acted upon by law enforcement officials.

CHAPTER 7
CONCLUDING REMAKS:
REFORM OR REPEAL INDONESIA'S ABL?

7.1 Introduction

This chapter serves as a concluding chapter that succinctly summarizes the findings of the study and provides important recommendations simultaneously, both directed towards the government or non-state actors, as well as the general public. Specifically, this study also identifies the limitations that cannot be addressed and offers recommendations for future studies by scholars in the future.

7.2 Enhancing Religious Freedom and Justice in Indonesia through Revisions to the Blasphemy Law

This study indicates that the ambiguity of the concept of "blasphemy" has resulted in confusion in the enforcement of the Anti-Blasphemy Law and hindered the realization of justice. As a country whose constitution adheres to the rule of law and has a commitment to protect human rights, it is Indonesia's duty and responsibility to adopt international human rights standards in adapting outdated and obsolete domestic laws, such as the anti-blasphemy law. The country should not, on the contrary, defend and strengthen it.

If the state intends to protect religions for the purpose of maintaining public order and avoiding horizontal conflicts, then firstly, the concept of blasphemy must be given a clear definition to avoid ambiguity. The category of insulting religion should be directed towards advocacy that contains incitement to the public to insult a particular religion aimed at preventing followers of that religion from exercising their rights and freedoms altogether. Thus, blasphemy is no longer defined too broadly, such as criticizing interpretations of religious teachings or practicing and disseminating different religious teachings.

Second, incitement to religious hatred should apply to all existing and future religions and beliefs. The state's preference for certain religions or beliefs should be avoided so that all religions or beliefs receive equal treatment and protection. Third, the country's laws, including the Anti-Blasphemy Law, should not be based on recommendations from certain religious organizations. This is to prevent the monopoly of truth about that religion from becoming the basis for judges to punish other religious teachings. The clarity and certainty of the Anti-Blasphemy Law must be emphasized and reformulated so that the guarantee and protection of the freedom of religion can be optimally realized.

7.3 Rethinking the Constitutionality of the ABL by Constitutional Court

This study found that the strengthening of the Anti-Blasphemy Law during Joko Widodo's administration cannot be divorced from the ambiguity of the Constitutional Court's decision that the ABL is constitutional. The Constitutional Court is the guardian of the constitution and protector of human rights, and its mandate requires a high level of legal and moral responsibility. In performing its authority to test the constitutionality of the Anti-Blasphemy Law, the Constitutional Court should interpret constitutionality not narrowly or solely based on the Indonesian Constitution. Instead, constitutionality should be broadly interpreted, including various international human rights law standards, which Indonesia has ratified, such as the ICCPR and its derivative instruments. This means that the Constitutional Court should not limit its interpretation of constitutionality to the provisions of the Indonesian Constitution alone. Rather, it should consider international human rights law, which has universal application and has been accepted by Indonesia as a world constitution, in making its decisions.

Although the Constitutional Court has repeatedly declared that the Anti-Blasphemy Law is not unconstitutional, this is not the final say. Citizens whose freedom of religion continues to be violated and criminalized under the enforcement of the Anti-Blasphemy Law may still have the opportunity to file a judicial review of the law in the future. The ambiguity of the Constitutional Court's decision should no longer occur. If the Constitutional Court believes that the Anti-Blasphemy Law is

open to multiple interpretations and can be used to criminalize certain religions, then this understanding must be aligned with the Constitutional Court's final decision, which should declare the Anti-Blasphemy Law unconstitutional. This tradition has long been practiced by the Constitutional Court through various landmark decisions to restore and uphold the constitutional rights of citizens that have been violated by specific laws.

Second, the Constitutional Court should not hesitate to declare the Anti-Blasphemy Law unconstitutional out of fear that its annulment will create a legal vacuum that could lead to public chaos or greater horizontal conflicts. This is because the Criminal Code already contains provisions that threaten criminal sanctions for all forms of violence and destruction of private and public facilities.

Third, the Constitutional Court cannot ignore the reality of the law enforcement of the Anti-Blasphemy Law, which continues to open up space for the politicization of religion and triggers the occurrence of religious populism in society, as well as the real impact of discriminatory actions and violence experienced by minority religious groups. Therefore, it is imperative that the Constitutional Court reconsider the constitutionality of the Anti-Blasphemy Law by opening the door as wide as possible for any citizen who wishes to file a judicial review of the law. This opportunity should be used to the fullest by the Constitutional Court to render a more just decision.

7.3.1 The New KUHP does not improve the content of the Criminal Code

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 ratified a Bill on Amendment to the Criminal Code into the New 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 New 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 New Criminal 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 new 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 New 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?

7.3.2 To End Utilizing the ABL For Politization of Religions

This study has found that there are at least several factors influencing the enforcement of ABL law. First, there is a weakness in the substance of the law, second, there is manipulation of religion in politics, and third, these factors are reinforced by state and non-state actors.

Therefore, this study recommends that law enforcement officials, particularly in criminal justice, exercise prudence in receiving and pursuing cases of blasphemy. Not all reports by the public need to be followed up, as not all claims of blasphemy are based on the intent to insult religion. Criticisms of certain religious teachings or the fact that some communities hold different beliefs should be respected and protected by the state. Manipulation of religion for political purposes, as reflected in the cases of Ahok or Gafatar, should be considered by law enforcement officials to maintain their independence, which means refraining from imposing punishment without sufficient intention and adequate evidence. The role of populist actors who mobilize the masses to continue to pressure for punishment should not undermine the independence of judges to examine and decide cases based on fair trials. Court decisions based on strong evidence will actually increase public awareness of the importance of respecting the decisions of judges.

7.4 The Middle Ground to Reform the ABL to Preserve Justice

This study found that 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. As described in Table 15., the moderate Islamic 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 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, the hard-line Islamists supported by the MUI, claim that the blasphemy law needs to be maintained for various reasons. Meanwhile, the government of Indonesia tends to support the hard-line groups' point of view, while continuing to maintain the ABL, the government believes that the abolition of the law leads to horizontal conflict.

Table 7. 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 so that they are not in line with the religion of 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 *Main Hakim Sendiri* that cause recurrent conflicts among religious groups.

The aforementioned debate poses a challenge to the efforts aimed at reforming the ABL, particularly if the government remains hesitant in upholding the rule of law and human rights. Therefore, this study posits that a middle path that upholds justice needs to be pursued by the Government.

7.5 Recognizing the Impact: Anti-Blasphemy Laws and the Targeting of Religious Minority and Majority Groups

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. The study of Mietnzer (2020) 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 (2014) 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 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. 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 Indonesia has been run in very slow because of the deadlocked in Indonesia Parliament and the fear of the spread of communism. 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.

7.6 Shifting from Defamation to Hate Speech: Rethinking Approaches to Combatting Religious Hostility

Another idea of revising the ABL 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, 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 (Temperman, 2015). In predominant Muslim countries who hesitate to repeal the law, it is possible to amend the law as long as the new law could reach fully realization of human rights protection of FoRB and FoE. This study is started from analyzing 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 analyzing why the idea of secular state proposed by An-Naim (2008b) 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).

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 (M. A. Crouch, 2011; Marshall, 2018b). 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 Pakistan's Blasphemy Law. 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 pedophile (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 pedophile which would imply that he had primary sexual tendencies towards children more generally. E.S. is disregarding the notion that the marriage had continued until his death. 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 corelate 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. This 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 contains 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.

7.7 Future Step to Reform the ABL

According to the Report from Theodorou (2016), some have successfully repealed the ABL law, but Indonesia has yet to transform into a country that is willing to abolish blasphemy laws. The author believes that the term "abolishment" will face various sharp rejections, and in the end, will harm the essence of achieving optimal justice and respect for the freedom of religion of minority religious groups. In fact, the abolition of the Blasphemy Law has not been successful as a way to dampen phobias against religion or non-religion in European and Western countries. Therefore, shifting the direction, meaning, and purpose of the Blasphemy Law to prevent intolerance and advocacy of hate speech based on hatred against certain religions is considered a more appropriate step than abolishing it. This is especially true in today's world, where diversity and the merging of cultures and societal values can no longer be avoided as the world becomes increasingly borderless.

Therefore, in the Indonesian context, reforming the law through an amendment process is a more promising middle ground for achieving justice and gaining public support compared to the "abolition" strategy. The strategy of revising the law has received sufficient support from moderate and hardline Islamic groups, religious minorities, the government, and human rights defenders who argue that the efforts to abolish the ABL through the Constitutional Court have not yielded optimal results due to strong opposition from various parties. Thus, the strategy to press for the abolition of the ABL needs to be reconsidered.

This change in strategy makes sense for several reasons. First, international human rights law essentially allows restrictions on religious expression with the aim of protecting public morals. However, as Nevelle Cox (2015) notes, what constitutes public morals needs to be agreed upon through dialogue and deliberation mechanisms to accommodate the diversity of moral standards in society. This can serve a positive function by promoting social cohesion and preventing discrimination based on religion. This is solely to prevent the abuse of the anti-blasphemy law to criminalize dissenting opinions or minority rights.

Therefore, the first step that needs to be taken is for the Constitutional Court to review the constitutionality of the Blasphemy Law. One mechanism that could be used is for the Constitutional Court to remain open to judicial review petitions filed by civil society organizations who feel that their constitutional rights have been violated by the existence of the Blasphemy Law. The Constitutional Court needs to use the lens of "world constitutionalism" to carefully examine the international human rights law standards that are not fully accommodated in the Blasphemy Law, and order the lawmakers to fix it.

Although Neville Cox's view states that the existence of blasphemy law is not inherently contrary to international human rights law, the issue lies in how the law is formulated and enforced. This study argues that if the formulation and enforcement of a law deviate from or are not fully compatible with international human rights law norms, then the law is in conflict with international human rights law. Therefore, this study recommends that amendments to the Blasphemy Law need to be formulated carefully with high normative standards and in line with international human rights law. The normative formulation must be valid, with limitations only possible for necessary purposes, such as important considerations (such as protecting public morality and maintaining tolerance), and reasonable sanctions.

The concept of legitimate limitation norms involves several essential elements. Firstly, law-makers need to reconsider the definition of the term "blasphemy" to ensure that it is expressed clearly and explicitly. This means that the scope of blasphemous acts, which are considered to be harmful and prohibited, must be explicitly formulated so that it is not interpreted widely and subjectively by law enforcement officials. Exemptions from punishment must be regulated, such as

criticism of the interpretation of religious teachings, or worship or propagation of religious teachings that differ from orthodox teachings that should not be qualified as "blasphemy". Secondly, the element of "intent" should be introduced so that acts or words that are not intended to insult or defame religion should not be punished. This includes cases where such acts or words are committed by those who cannot be held criminally responsible, such as the mentally ill, children, or those under guardianship. Thirdly, the prohibition of blasphemy should apply to all religions or beliefs, meaning that all religions or beliefs should be guaranteed equal treatment. Therefore, ABL does not need to mention the names of religions or beliefs that will be protected, to anticipate the possibility of emerging religions or beliefs in society in the future. Finally, the formulation of sanction norms should be accurate and proportional. The threat of a prison sentence of more than 2 years up to 10 years is too heavy and disproportionate, except in cases where the blasphemous actions lead to hate speech, inciting others to attack or commit violence against a person or group of people based on religious hatred. The concept of hate speech as a form of blasphemy must also be formulated accurately and precisely by clarifying its definitions and essential elements.

The process of amending the ABL must be accompanied by the revocation of various public policies that are no longer relevant and discriminatory. The existence of a clear and precise law should no longer require implementing regulations at the central or local level, such as ministerial regulations, governor regulations, or regent/mayor regulations, which only broaden the interpretation of what is regulated in the law. Therefore, it is important for the state, through the work programs of the National Commission on Human Rights or the National Commission on Women, to raise awareness of human rights law at the national and local government levels, as well as among religious leaders and organizations. This is important to ensure that public officials and religious leaders do not become actors supporting intolerance and are able to avoid structural violence against minority religions caused by the emergence of public policies that have the potential to violate the human rights of religious minorities and become a source of inspiration or legitimacy for vigilante actions by society.

Moderate religious organizations such as Nahdlatul Ulama and Muhammadiyah should not easily fall into practical politics and should provide guidance to other religious organizations to be more inclusive in responding to conflicts between religions. The positive and real contributions that these two moderate religious organizations have made in various forms of public service for all races, all groups, and all religions should be maintained and can serve as a good example in building tolerance and diversity in Indonesia.

Equally important is to ensure that the law enforcement process against the Anti-Blasphemy Law is based on the principles of fair trial and justice. The judiciary should be able to realize its independence, so that the "presumption of innocence" must be prioritized. Public dynamics that take the form of public mobilization, protests, vigilante justice, or viral reporting should not be the main basis for deciding on a case. The principle of fair trial obliges the judiciary to examine and decide cases based on convincing evidence, and to pay attention to the rights of the accused, including the right to legal counsel. Evaluation and monitoring of the judiciary over the law enforcement process needs to be periodically carried out.

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