

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

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CHAPTER I

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

1.1 Background of the problem

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

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

Indonesia's anti-blasphemy statute is an example of autocratic legislation that poses a serious threat to the right to FoRB. Despite several countries revising their policies on FoRB, Indonesia still enforces the Anti-Blasphemy Law (ABL), which significantly obstructs the right to FoRB. This controversy has sparked debates over the past decade (Blitt, 2011; Buruma, 2007; Danchin, 2010; Dundon and Rollinson, 2011;

Fagan, 2019; Fiss and Kestenbaum, 2017; Graham, 2009; Siddique and Hayat, 2008; Theodorou, 2016; Uddin, 2015). However, the international community has responded to this issue in various ways, such as removing, revising, making the law inactive, or further reinforcing it. Countries such as Norway¹, Iceland², Denmark³, and Canada⁴ have abolished their ABLs as this improves their respect for human rights and fundamental freedoms (Fox and Sandler, 2005). Australia, the United Kingdom, and the United States have revised their ABLs to meet high standards, made them inactive, or abandoned them in practice⁵. Other countries⁶ that considered their ABLs to be violations of human rights, restricting the right to FoRB and freedom of expression, and threatening democracy, have revoked them.

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

Initially, a proposal to replace the anti-blasphemy legislation was introduced in the legislature, but it disappeared in the recent decade along with the 2009 Constitutional Court judgment on judicial review of the anti-blasphemy statute. In 2009, some individuals who had been wrongly convicted under the IABL, backed by various

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

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

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

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

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

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

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

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

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

Furthermore, the strengthening of the IABL has significantly affected attempts to reform the law to enhance the right to religious freedom, particularly in the Ahok and Meiliana cases, where the law's inherent flaws have allowed for the politicization of religion. The exploitation of the IABL for political objectives has enabled hate-spin

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

strategies, which have had a damaging impact on the politics of religion. The hate-spin approach has not only benefited political parties but has also encouraged law enforcement officials to make false allegations against those accused of blasphemy, thereby disregarding the rule of law. In these circumstances, the state's weaponization of political parties and law enforcement with anti-blasphemy legislation legitimizes continued violations of the right to religious freedom.

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

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

Furthermore, this study argues that, from a philosophical standpoint, the existence of the anti-blasphemy statute cannot be discussed apart from the state's connection with religion. The protection of human rights requires a sovereign state that can fulfill this responsibility, as individual efforts will not be sufficient. Given the nature of FoRB as a negative right, a state that safeguards FoRB should adopt a non-interference approach and not limit faiths. The concept of secularity, which positions the state not to intervene in the religious matters of its inhabitants, is viewed as a reasonable choice for the best realization of the right to freedom of religion.

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

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

The implementation and progress of the Indonesian Blasphemy Law (IABL) are influenced by various factors beyond the legislative process. Scholars have suggested that conflicts stemming from accusations by dominant religions against minority religions, as well as challenges related to the enforcement of the law, are shaped by the complex relationship between religion and politics in the country, the rise of Islamic populism, and political manipulation of religious issues (Salim et al., 2003; Marshall, 2018b).

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

Despite a decision by the Constitutional Court of Indonesia to maintain the IABL, public responses to recent blasphemy cases have often been marked by hostility, hatred, and violence, leading to further discrimination and human rights violations (Harsono, 2019; Prud'homme, 2010). The prolonged enforcement of the IABL, combined with the ambiguity of legal policies for addressing its flaws, presents a significant challenge for Indonesia in its efforts to respect human rights⁹ and uphold the rule of law¹⁰.

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

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

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

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

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

¹⁰ See Article 1, Paragraph 3 of the 1945 Indonesia Constitution.

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

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

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

1.2 Objectives of the study

This study aims:

1. To assess if the IABL and its enforcement uphold the principle of the Rule of Law.
2. To examine factors and actors that shaped the enforcement of the IABL.