THESIS PROPOSAL

**REPEAL OR AMEND ANTI-BLASPHEMY LAW? A Socio-Legal Study of the Enforcement of Indonesia’s Anti-Blasphemy Law**

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# Background and Rationale of the study

Seven decades after the adoption of the Universal Declaration of Human Rights (UDHR), Anti-Blasphemy Law (ABL) is still enforced in Indonesia and still existed in many countries, even though scholars considered it as a significant obstacle to freedom of religion and beliefs (FoRB) and freedom of expression (FoE) and had sparked a controversial debate in the past decade.[[1]](#footnote-1) The international communities resolved this issue with various responses, including removing, revising, making it a dead law, or ignoring the scholars and enforcing the law further. Countries such as Norway,[[2]](#footnote-2) Iceland,[[3]](#footnote-3) Denmark,[[4]](#footnote-4) and Canada[[5]](#footnote-5) have abolished their ABL because as a result of improving their respect for human rights and fundamental freedom (Fox, J and Sandler 2005). While in Australia, the United Kingdom (U.K.), or the U.S.A, the ABLs are mostly revised to reach high standards, become dead letters, or rarely used in practice.[[6]](#footnote-6) Other countries revoked their ABLs considering that the law violated human rights, restricting the right to FORB and FoE, and threatening democratization.

Whilst the wave of the abolishment of ABLs is world-wide increasing,[[7]](#footnote-7) Indonesia maintains the law.[[8]](#footnote-8) Some moderate religious groups, supported by human rights defenders, and many scholars have studied the Indonesia Anti Blasphemy Law (hereinafter the IABL) pointed out that the law contradicts the IHRL .[[9]](#footnote-9) The IABL restricts the right to religious freedom and criminalizes various minority groups of religions who were considered tarnishing the purity of state-recognized orthodox religion with severe punishments.

According to Menchik, Indonesia's government believes that the IABL is an essential law in upholding the State ideology of Godly Nationalism (Menchik, 2017:67), maintaining inter-religious tolerance, preventing horizontal conflicts, and avoiding the repetition of the dark history of the anti-religious movements. Crouch pointed out that historically, the IABL was endorsed to avoid the mass killings of innocent people and Islamic leaders carried out by the Indonesia Communist party in 1965 from reoccurring (Crouch, 2012). If the law is revoked, it creates a condition of legal vacuum. If a similar case occurs, then there is no legal basis that can be used to charge criminal offense. This time, the Government has received support from conservative as well as moderate Muslim groups, such as Front Pembela Islam (FPI), Nahdatul Ulama (NU) and Muhammadiyah, who want to maintain the law.

Melissa Crouch in her 2012 study on the IABL using a legal and socio-scientific method found that the law is maintained to avoid the recurrence of the past religious conflict. This study will review the enforcement of IABL and update her conclusions by accommodating the current socio-political context during the second period of Joko Widodo’s presidency where the number of blasphemy cases increases.[[10]](#footnote-10) A recent study concluded that some blasphemy cases, such as Ahok and Meiliana cases have been politicized to gain public support for local elections (Marshall, 2018). Those two cases as well as Ahmadiyya and Gafatar cases have triggered various levels of vigilante actions against the minority groups in the community (HRW, 2013).[[11]](#footnote-11) The government responded to the increasing number of blasphemy cases by expanding the blasphemy definition in the Bill of Criminal Code Article 304 to 309.[[12]](#footnote-12)

Following the current situation in the last decade, there has been limited study on the enforcement of the IABL, both inside and outside the court, and no study on the variety of community's response to this issue. Some blasphemy cases have been brought before the courts and received final decisions, and there are also cases where some groups of the community took justice into their own hands. This research aims to explore in-depth on factors and actors that shaped the enforcement of the IABL in time.

In 2009, some victims of false convictions of the IABL, supported by various Human Rights NGOs, submitted a petition to the Constitutional Court of Indonesia Republic (the CCIR) for a judicial review of the IABL. The CCIR, in various decisions, has pushed the Indonesian Parliament to amend the IABL. At least four decisions indicate that the 1965 Anti-Blasphemy Law needs to be revised, namely Decision No. 140/PUU/VII/2009, emphasized by No. 84/PUU-X/2012, No 56/PUU-XVI/2017. However, the CCIR took an ambiguous position by concluding that the IABL is flawed in legal substance and has multiple interpretations. But, at the same time, they decided that the IABL is constitutional and necessary for maintaining 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.[[13]](#footnote-13)

Crouch and Tømte indicated that the IABL is no longer aligned with the 1945 Constitution and the general standards for achieving human rights adhered to by the Government of Indonesia (Crouch, 2012a; Crouch, 2011; Tømte, 2012). Following the CCIR, until 2020, the efforts of the Indonesian Legislative Body (from now on referred to as the DPR) to amend the IABL reached a dead end. Whilst the DPR has not yet started discussion about the IABL’s substitute bill (DPR, 2019), the Bill of Criminal Code has instead added articles on crimes against religion that strengthened the legal position of the IABL. Although the ratification of the criminal code bill was postponed, and subsequent public protests on the bill gathered in September 2019, the Government continued to enforce the IABL and ignored its legal ambiguities. As a consequence, the number of blasphemy cases reported and processed by the court increased.[[14]](#footnote-14)

The progress and the enforcement of the IABL is not only dependent on the legislative process. Conflicts arising from national religions accusing minority religions for crimes, and many issues surrounding the enforcement of the law, as scholars have indicated, is influenced by factors such as the relationship between religion and politics (States), increasing Islamic populism in Indonesia (Salim dan Azra, 2020), and political manipulation on the religion (Marshall, 2018). For instance, several blasphemy cases involving high profile public figures instantly discontinued at the police level after the perpetrators publicly asked for apology (Tempo, 2018).[[15]](#footnote-15) At the same time, conservative Islamic groups reported new blasphemy cases to the law enforcement office and demanded that the perpetrators be brought to justice. Scholars indicated that the influence of identity politics is increasing in this society, therefore in Ahok case, the political narrative is always around the issue of Ahok’s race, that is. Chinese that were always portrayed as plutocrats and robbed the native people’s economy, and a political movement that pushed him to step down from his position as the governor of Jakarta (*The Jakarta Post*, 2020; Marshall, 2018). Other cases have triggered angered public responses or hate speech against minority religions.

Although the CCIR when decided to maintain the IABL was to avoid the vacuum of law that could lead to wider social conflicts, most of the public responses to recent blasphemy cases have always been one of advocating hatred, hostility, or violence that lead into further discrimination and human rights violations (HRW, 2012; House, 2015). The prolonged enforcement of the IABL and the ambiguity of Indonesia's legal policies in addressing its legal flaws created a paradox for Indonesia and created a big challenge to fully respects human rights[[16]](#footnote-16) and upholds the rule of law.[[17]](#footnote-17)

The discussions on ABLs are always linked to the relationship between state and religion. An-Na'im (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. An-Na'im (2009) 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 also defends heresy and argues that heresy accrues to the greater good of Islamic civilization. However, Durham and Scharffs (2010) argues that an extreme secular State does not always guarantee better religious freedom. In a secular State where the strict separation between State and religion exists, the State tends to prohibit religious life in the public space so that the State's discriminatory and repressive attitudes towards religion can still be found.

This study challenges An-Na'im's theory of secularism, the neutrality of the States towards religions, in which secularism requires States not to adopt religious laws as positive laws to regulate the public's life. An-Na'im (2008) emphasized that in a secular state, "State neutrality over religion" is necessary because it is only by separating religion and state that Sharia can play a positive and enlightening role in the life of the Muslim community and society itself. In other words, An-Na'im's thesis believes that secularism or the separation between state and religion is the right choice for Muslim countries to guarantee FoRB. An-Na’im argue that a lower degree of identification of the state-religion relationship protects FoRB better. Muslim countries should not apply the principles or rules of Sharia as positive law in regulating public interests, even though these principles and rules are part of Sharia. An-Na'im argues that religious doctrine and practice are not used as a basis for the formulation of law or public policy, except it has been accepted as a common ground and adopted in the country's Constitution. However, An-Na'im did not elaborate further on the meaning of this exception. According to Scharffs (2011), secularism is different from secularity. 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" (p.110). Secularism, in contrast, is "an ideological position committed to promoting a secular order" (p. 111). Scharffs convinces that secularism is an ideology whose arrows can lead to over restriction towards FoRB itself.

This study will use a socio-legal approach to understand the socio-political 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 extent to which those who support its enforcement believe that its abolishment would be dangerous, and in what cases lead to vigilante attacks or ‘main hakim sendiri’. Then, whether or not its enforcements done by the Courts are influenced by the politization of religion or populism of Islam in Indonesia.

# The objectives of the study

This study aims:

1. To asses if the IABL and its enforcement development uphold the principle of the Rule of Law.
2. To examine whether populism of religions and political manipulation of religions influence the enforcement of the IABL.
3. To examine factors and actors that shaped the enforcement of the IABL.
4. To identify the character of blasphemy cases that lead to vigilante acts or ‘main hakim sendiri’.

## To determine indicators the extent to which the Government of Indonesia is either a secular state or a non-secular state.

1. To determine the extent to which the Government of Indonesia is secular state. Research Questions

This study focuses on answering the following research questions:

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

# Theoretical and Conceptual Framework

To answer the problem formulated above, this study will use a socio-legal studies approach which according to Phillip Selznick, whom Lon Fuller influences, that socio-legal studies aim to study the meaning of legality and what conditions affect a law's legality (Weinberg, p.84). In a socio-legal study, a multidisciplinary approach needs to be carried out by looking at all important aspects, including the non-legal aspects (Bedner, p.174; Banakar 2019). Therefore, this study will examine the legal aspects of the anti-blasphemy law, and also non-legal aspects that might influence the development and enforcement of the anti-blasphemy law, such as the relationship between religion and politics, religious populism, and the politicization of religion. Therefore, this study departs from following theories.

**4.1. Theory of the Relationship of Religion and Politics**

First, this study refers to the theory of the relationship between religion and politics. In some literature this theory is also often referred to as the relationship between religion and the state (An-Naim, 2008; Durham and Scharffs, 2010; Salim and Azzra, 2020). In general, according to Durham and Scharffs (2010: 121-175), the relationship between religion and the state can be divided into types of: theocratic states, established religion states, religious status system states, endowed religion states, states with preferred set of religions, cooperation between states and religion, states accommodation to religions, separation between states and religions, laïcité, secular control regimes, abolitionist regime. Authors are of the view that the pattern of relations between the state and religion affects the degree of religious freedom in a country (p.123).

In this relationship pattern, the freedom of religion can exist in variety forms, in some institutional arrangements are less likely to promote religious freedom than others, and some are totally incompatible with it (p. 121). The pattern of the relationship between religion and the state is described using a loop, so it is more accurate to identify its influence on the right to freedom of religion. Through the diagram below, Durham and Brett illustrate the possibilities starting from complete or positive identification through non identification and continuing to negative identification in which the prosecution or hostility towards religion exists. Positive identification (such as recognizing only one religion) leads to diminished freedom for other religions. Negative identification in which State hostility towards religion results in lack of religious freedom.

This loop depicts the category of state-religion relationship, the attitudes of the state towards religion, and the degree of religious freedom in each category. The state can shift from one category such as from theocratic state (positive identification) to other category such as established religion, religious status system etc. until complete separation, but it can also move into abolitionist regime (negative identification) all depends on political and social condition of the country.

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Diagram 2. Theory of Relation between State and Religions Towards ForB

(Durham & Brett: 2010, p.121)

Many people assume that a high degree of religious freedom correlates with a low degree of religion-state identification or that a low degree of religious freedom correlates with a high degree of religion-state identification (Durham and Scharffs, 2010). Durham and Scharffs argue that separation between state and religion does not always result in a high degree of FoRB and vice versa because the system of religion-state relationship is never static (2010, p.121). A high degree of religious freedom correlates with a low degree of religion-state identification (recognition), and that a low degree of religious freedom correlates with a high degree of religion-state identification is not always the case. Some countries have complete identification or religious establishments, such as Norway, Finland, or the U.K, while still maintaining a high degree of religious freedom. On the other hand, a country has non-identification or non-establishment of religion. They have a low degree of religious freedom, such as the Soviet-era of Russia and Albania (p.122). In short, secularism is not the only factor that guarantees a high degree of religious freedom. Some other factors need to be examined, such as social and political factors and the flexibility of the religious law's interpretation by the communities. Therefore, in this study, to determine the relationship between religion and the state in Indonesia, it is necessary to examine in depth the extent to which anti-blasphemy law enforcement in Indonesia is influenced by political manipulation of religions and populism of religion has an impact on the violations of the right to freedom of religion.

**4.2. Theory of Political Manipulation of religion in Indonesia**

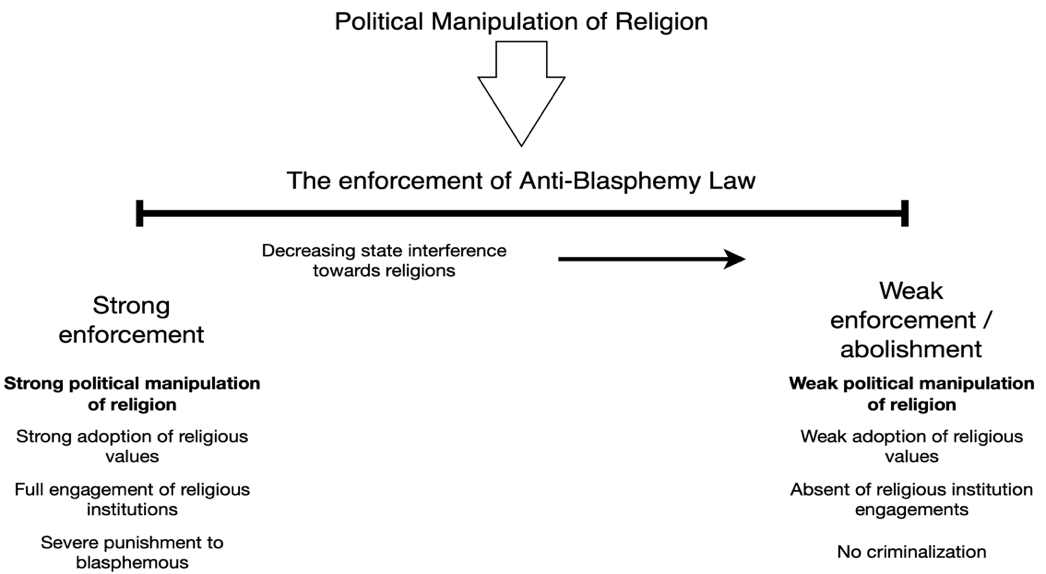
Jonathan Fox (2014) and Marshall (2018) argue that politics affects religion and vice versa (intertwined). This can be seen from three things, namely (1) the role of religion in government, how public policies support religion, and conversely how the government is influenced by religion in the formation of public policies; (2) the role of religion in people's lives, namely by looking at how religion is expressed in the public sphere, both by individuals and by public officials; (3) how religious institutions affect power and society; (4) how individuals are seen as religious, one of which is by maintaining religion-based laws and customs (p.15).

In Indonesia context, Salim and Azzra (2003, p.3) and Marshall (2018) explained Indonesia's ambiguity in placing the relationship between state and religion. According to Salim and Azzra (p.1-2), during reformation era, the relation between state and religion was stronger and it was indicated by four indications. First, Islamic political parties such as PPP and PBB have started to include Islamic ideology as substitution for Pancasila ideology. Second, several provinces started to incorporated Sharia values into local regulations and Aceh province was one of the initiator of this trend. Third, the emergence of hard-liner Islamic groups.[[18]](#footnote-18) Fourth, the ideas of hard-liner Islamic movement was supported by loosening the government grip on the press so that the underground publisher of Sabili (a hard-liner monthly publication with more than 100.000 subscribers) became a legal publisher. Salim and Azzra underlined their statement that it is not adequate to rely only on those four indicators to evaluate the level of politicizing of Islam in Indonesia, but scholars should also considering the level of Shariah law adopted into civil law by a State which can be seen on all policies, “the interrelation between Islam and politics depends much on the extent to which sharia is implemented by the state”. (p.3) Therefore Salim and Azzra concluded that the relation between Islam and the state of Indonesia is always unstable and on a high and low situations depending on the regime. They also suggested that to reduce inter religious conflicts in Indonesia, a law unification process should be taken that is removing any laws targeted for Islam adherent, and a general law that applies equally to everyone (p.6). This research will find out whether a law unification process or the application of Sharia law in some province of Indonesia were motivated by political interest of the government (the state interests) or there is a popular interest to apply Shariah law (p.15).

Paul Marshal (2018) viewed that inter-religious conflict or the criminalization of religion is not caused by religion but by the politicization of religion (political manipulation of religion). First, the way the government treats religions has experienced ups and downs from time to time interpreting religious freedom. After the reformation, only the Gus Dur presidency had pushed for open religious freedom. Meanwhile, the SBY Administration (2004-2014) and Jokowi's Administration (2014 to date) tend to support public policies to curb religious freedom. This support can be seen from the government's tendency to defend the IABL even though the Constitutional Court in 2009 explicitly ruled that the anti-blasphemy law is multi-interpretative and has punished many religious minorities (p.86). Second, even though Indonesia claims to be the largest tolerant Muslim country, where the 1945 Constitution guarantees the protection of the right to freedom of religion (vide Article 28E, 29), but, the state continues to allow laws that restrict religious freedom to come into effect. The enactment of the anti-blasphemy law as a basis for the state to legitimize its actions to criminalize minority religious groups that declare "heretical", such as Ahmadiyya, Shia, Gafatar, nurture extremist groups to commit intimidation, violence and attacks on other groups that display these "deviants" (p.87-89). Third, Marshall also revealed that the blasphemy law provides space for the state to borrow the hands of non-state institutions, such as the MUI to produce public policies that criticize the binding power of the anti-blasphemy law and sharpen the restriction of the right to religious freedom, through fatwas on heretical teachings. For example, MUI stated Ahmadiyya as a deviant sect, and in 2016 MUI declared Gafatar a heretical sect, while in the Ahok case, MUI issued a fatwa stating that Ahok had defiled Islam (Marshall, p. 90-92).

However, Marshal has yet to analyze the extent of public pressure to the development and the enforcement of the IABL can be seen by the public debates and from conservative groups responses which become the objective of this study. Telle (2017), said that the blasphemy law's ambiguous existence opens up a possibility for a monopoly on the interpretation of religions supported by the state and makes religious law a positive law to criminalize minority religions that are considered deviant. Therefore, this study seeks to analyze further whether the court when examining the blasphemy case; (1) only refers to the interpretation of the majority religion (Islam) as a basis for deciding cases; (2) do not use IHRL standards in deciding cases, or (3) whether the state entangles towards religious doctrine through adopt majority religious teachings (i.e., Islam) and makes these interpretations a positive law to punish other religions.

Referring to the theory of the relationship between religion and politics both put forward by Durham and Brett (2010), Jonathan Fox (2014), Salim & Azzra (2003), and Marshal (2018), this study aims to look at the history of the development of the Blasphemy Law describing the pattern of the relationship between religion and the state. In this case, this study will examine the extent to which court decisions in anti-blasphemy cases are influenced by political manipulation of religion because of the political constellation that occurred when the case emerged. For example by (1) identifying court considerations that interpret the Blasphemy Law based on certain religious values ​​or teachings (2) identifying the role of religious institutions that influence judges in deciding cases; (3) identify in cases where the court sentenced the Defendant with a severe verdict, and in cases where the court imposed a light sentence.



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Diagram 2. Conceptual Framework of the Enforcement of Anti Blasphemy Law Towards FoRB

* 1. **Theory of Islamic Populism in Indonesia**

The second theory used in this study is the theory of Islamic populism in Indonesia, where the evolution of the popularity of movements that carry Islamic ideology in Indonesia is getting stronger as an effort to fight the dominance of western (secular) forces and communism groups which are both considered to dominate the country (politics) and oppress (politics). economy). Islamic populism in Indonesia appears through the identity-political movement to gain support from community groups as well as violent approaches in the name of religion (Hadiz, 2016: p.187).

Historically, this was marked by the emergence of various Islamic organizations to fight against Dutch colonialism, including efforts to make Ethnic China (Eastern Foreigners - outsiders) as common enemies for the Islamic movement (Indigenous - insiders), because Ethnic China is considered to have mastered the resources Indonesian economy. Ideologically, efforts to make Indonesia a Muslim country through the strengthening of Islamic ideology in the text of Pancasila Precept I "Belief in One Supreme God with the obligation to carry out Shariah for its adherents" have been thwarted by the strengthening of secular groups through the Establishment of the Jakarta Charter which succeeded in erasing 7 words in Precepts 1 Pancasila by eliminating the phrase "the obligation to carry out Islamic Sharia for its adherents".

Then along with the defeat of the Soviet Union in the Cold war against America, the power of communism (Indonesian Communist Party) which had developed and removed the role of the Indonesian-Islamic group, finally collapsed in 1965. The PKI was overthrown by an Islamic movement that was again strengthening, this time supported by the forces of the Republic of Indonesia. Army and West (secular) (Hadiz; 2018). Islamic populism urged Sukarno to ratify the 1965 Presidential Decree of Anti Blasphemy Law to prevent the revival of movements that could endanger Islam.

Furthermore, this Islamic populism strengthened again in the Jokowi era. Hard-liner Islamic groups received public support in an effort to get rid of Ahok who was considered to continue to attack the interests of Islamic groups from various policies issued by Ahok during his time as governor of Jakarta replacing Jokowi who became President. Through the issue of Chinese ethnicity and the stigma of blasphemy and using Law Number 1/PNPS/1965 as a tool to thwart the election of Ahok (Hadiz, 2016; Hadiz, 2018). Referring to the second theory, this study aims to examine whether law enforcement of the Anti-Defamation Law encourages vigilante actions. This can be traced by identifying who the perpetrators of violence were during the process of enforcing the anti-religious law, what was the reason for the violence, and who were argue that the existence of the Anti-blasphemy Law was absolutely necessary, so that efforts to abolish the aquo law were considered dangerous for the community, and what were their reasons for this assumption? Is this influenced by past trauma (Crouch, 2012), or is it due to the other reasons, or because they were influenced by the increasing populism of the religion (Islamic) (Hadiz, 2016)?

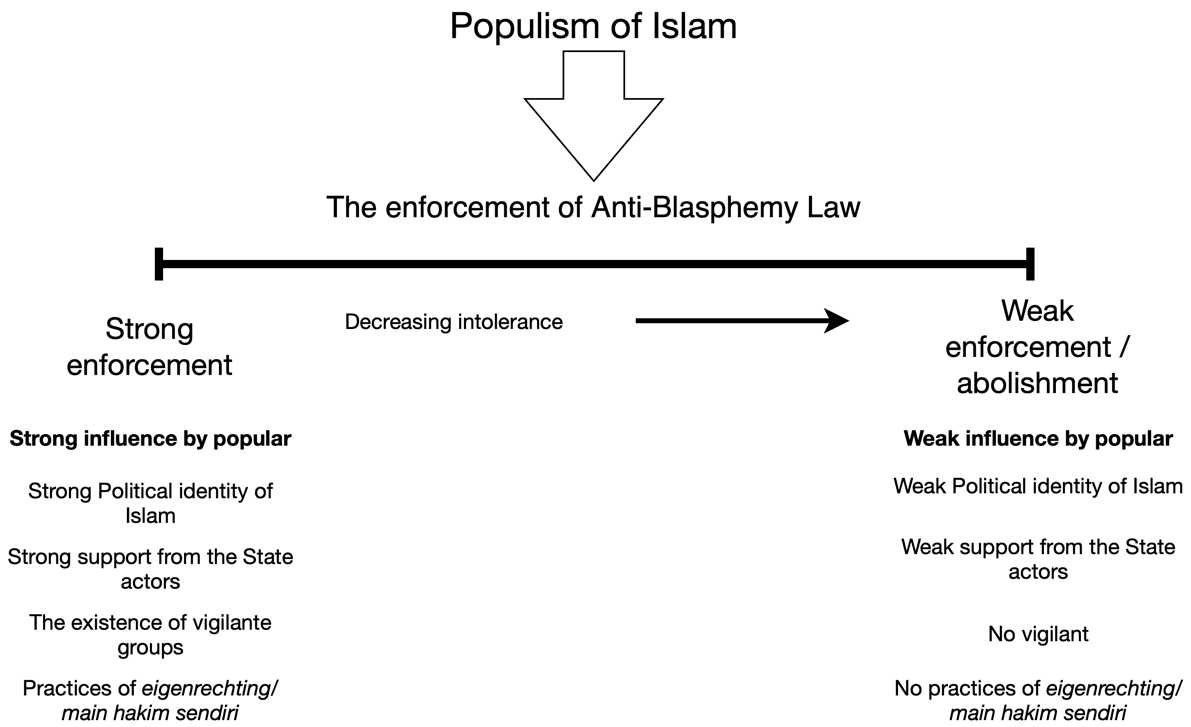


Diagram 3. Conceptual Framework of the Enforcement of Anti Blasphemy Law Towards Religious Identity

* 1. **Religion and the rule of law theory**

In socio-legal studies, the study of law itself is the central point. It is important to understand the extent to which legal substance, legal institutions, and legal procedures contain legal loopholes that allow external factors such as social and political dynamics to affect court independence and influence judges in interpreting law and deciding cases. Friedman (1975) indicated that law is a complex system involving the legal structure, legal substance, and public awareness. According to the principle of legal development proclaimed by the Indonesian National Law Development Agency (BPHN), during the legal development, its legal contents and procedures must be systematically discussed with related institutions, including law enforcement agencies, and the awareness and culture of the community (BPHN, 2011).

Therefore, in addition to examining non-legal factors that affect the enforcement of anti-blasphemy laws as described in the previous section, this study considers it important to refer to the rule of law theory to further examine how the anti-blasphemy law actually provides support or even obstacles. to the protection of the right to freedom of religion. According to Article 1 (3) of the 1945 Constitution of Indonesia stipulates that Indonesia is the rule of law. Articles 29, 28E, 28I guarantee the respect and protection of the right to freedom of religion. Meanwhile, Article 28J provides space for the state to limit a person's right to manifest the right to freedom of religion. The extent to which the anti-blasphemy law provides legal and proportional legitimacy in limiting a person's right to freedom, in examining the IABL and answering the problem formulations, this study will depart from the concept of the Rule of Law (ROL).

Bedner and Vel (2010) mentioned the three elements of the rule of law which are elements of procedure, elements of substance or contents of law, and elements of legal agencies (p.22-23). This study will follow the conceptual frameworks developed by Bedner and Vel (2010) by analyzing the IABL and its enforcement on their various elements of the ROL, namely substance of law, legal procedure, legal institutions while considering other factors, such as social, political, cultural, religion, and public awareness. Borrowing the framework of 'The Rule of Law led Governance' (ROLGOM) developed by Bedner and Jacqueline Vel, this study departs from this framework with several modifications that so-called ROLFORB (the Rule of Law for Freedom of Religion) to suit the objectives to be achieved in this study. Following the framework added by Vel, namely the existence of a supervisory agency other than the implementing agency, this research also needs to look at the role of the Constitution through judicial review of cases of blasphemy, as well as other state institutions involved in anti-blasphemy (Bedner & Vel, 2010).

a). The element of substantive or content of laws

Referring to Bedner (2010), the element of substantive or content of law will be analyzed using two indicators. First, the law and its enforcement must uphold the principle of justice. For example, by examining whether the case studies show that the IABL does not merely protect the interests of majority religious groups, or does it actually target religious minorities to be punished. In addition, whether the punishment imposed on the blasphemers group or the violence they experienced is in proportion to the mistakes they committed. Second, the law and its enforcement do not violate the right of religious freedom of everyone. For example, whether people were banned from practicing their own beliefs in the private and public sphere, and held their religions or pushed to leave their belief and to embrace other religion or beliefs. Whether they were free to live in their own land or whether the State supported the vigilante to push them to leave their home. In order to examine the compatibility of the IABLs towards the IHRL, the cases and the judicial decisions will be analyzed according to the ICCPR art 18[[19]](#footnote-19) and General Comment Number 22,[[20]](#footnote-20) since Indonesia obliged to respect and protect the principles of FORB, i.e., the right to adopt, renounce, change religion, the right to establish the house of worship, protecting the right of worship from coercion, and equal treatment toward any religions and beliefs.

## The element of legal procedure

The element legal procedure examines three indicators, first the law applies generally instead of targeting specific groups. Bedner refers to Raz calling this character rule by law. This means that a law must apply to everyone and be well understood by society, and not open up space for abuse by power for certain purposes that are detrimental to the public interest. The government's action is subject to the law, and the discretion act and policies must be reasonable (2010). Therefore, it is necessary to study the history of IABL that initially only dealt with the post-revolutionary emergency of the Communist Movement of 1965. However, it has been continually pushed by a certain group of people to be enforceable until today's normal situation. Bedner (2010) also pointed out that the existence of the law should be able to create clarity and stability in society instead of creating confusion and tension. The second indicator of the element of legal procedure is “state acts are subject to law” (58-59). This study will examine whether the limitations of the people's right to express or manifest their religions or beliefs are based on the high standard of limitation. The limitation must be prescribed by law, considering necessary aims and proportional principles without any intent to discriminate against a certain group of religions (Vide Article 18 (3) of the ICCPR, the General Comments of the ICCPR No.22). For example, the government's action and policies that come from various institutions, such as the Coordination and Surveillance Bodies of Traditional Beliefs (Bakorpakem), the Indonesia Ulama Council (MUI), the Freedom of Religious Community Forum (FKUB), will be assessed to what extent these policies were legitimate and based on the law, whether the institutions were acting neutral or merely acting as an extension of the government that pushed by certain groups of religion to provide an assessment of the religions or teachings that perverted. Second, whether the government's action in imposing the IABL is based on general rules or are there exemption clauses that allow the state to punish actions that hurt feelings or tarnish religions practiced in Indonesia with the threat of punishment.

The third indicator according to Bedner (2010) is 'formal legality', and this study will examine whether the legal norms of the IABL and their derivative regulations contain clarity, precise and are consistent or vice versa, or if they have multiple interpretations and often changing. Moreover, what is the community's view of the line, do people understand enough about what actions are actually prohibited or justified according to the IABL or do people have difficulty understanding them on the other hand. Does the IABL meet the other formal legality aspects, namely the extent to which the legal norms are non-discriminatory? As additional references, this study refers to the principle of proportionality as stipulated in Article 18 (3) of the ICCPR, in which the state should not misuse the limitation clause in the name of protecting national interest. Furthermore, a State is permitted to exercise the discretion of restrictions through its domestic law (Fraser, 2019; Altwicker, T., 2018). The restriction itself must be strict with clear interpretation, regulated by law, and used for the purpose stated in the agreement (Debeljak, 2008; McDonagh, 2013). Therefore, although FoRB restrictions are permitted under Article 18 (3) of the ICCPR, the standard restrictions must not conflict with the rights guaranteed under Articles 1, 2, and 4. Petcharamesree (2013) will have special attention if the participants countries of the ICCPR misuse the formulas "in accordance with the law" or "as provided by law" contained in some provisions, such as in articles 18 and 19 of the ICCPR, whereby using national law they violate international human rights standards (p.53).

## The element of Legal Institution

Apart from these substantive aspects, the rule of law is also concerned with the legal institutions, how the law is enforced to respect human rights (Waldron, 2010, p. 2; Fuller, 1969; 162). Therefore, in this study, the fair trial and the due process of law needs to be examined. Referring to Bedner (2010), the element of law enforcement examines whether the cases of blasphemy go through the independence and impartiality of the judiciary.

The fair trial principle can be traced back from the case studies of how the legal institutions fulfil the suspect's rights to a legal defense, including how judges listen to their voices equally. The judiciary's partiality and independence in deciding blasphemy cases will be examined, particularly concerning cases that have consumed a large amount of public tension and how the courts have dealt with the intertwined social and political pressures. Therefore, the experiences of religious minority groups who are the targets of punishment under the blasphemy law and other non-legal factors need to be explored. Were there 'vigilante' attacks, and was there an omission of these attacks? Whether the external pressure influenced the Judges?

Furthermore, due process of law means that the state has an obligation to ensure that law enforcement mechanisms at the domestic courts are consistent with IHRL. In this study, relevant legal facts and issues of the blasphemy cases will be identified and analyzed whether the judges in their decisions formulated and decided the criminal case correctly. Whether the judge's decision was following the principles applicable in Indonesia Criminal Procedure Law, i.e. supported by sufficient evidence. It is necessary to examine the extent to which the dimensions of the rule of law are fulfilled by the court in every case decided. In addition, institutions protecting human rights and guarding the constitution such as the ICCR and KOMNASHAM must also be assessed whether they respect the principles of the ROL.

So, the conceptual framework for understanding the correlation between the socio-political dynamics surrounding the blasphemy case studied in this study with the dimensions of substance, institutions, and legal procedures for anti-blasphemy law in Indonesia will be able to and how this affects the degree of the rule of law and the right to freedom religion can be illustrated in Diagram 4.

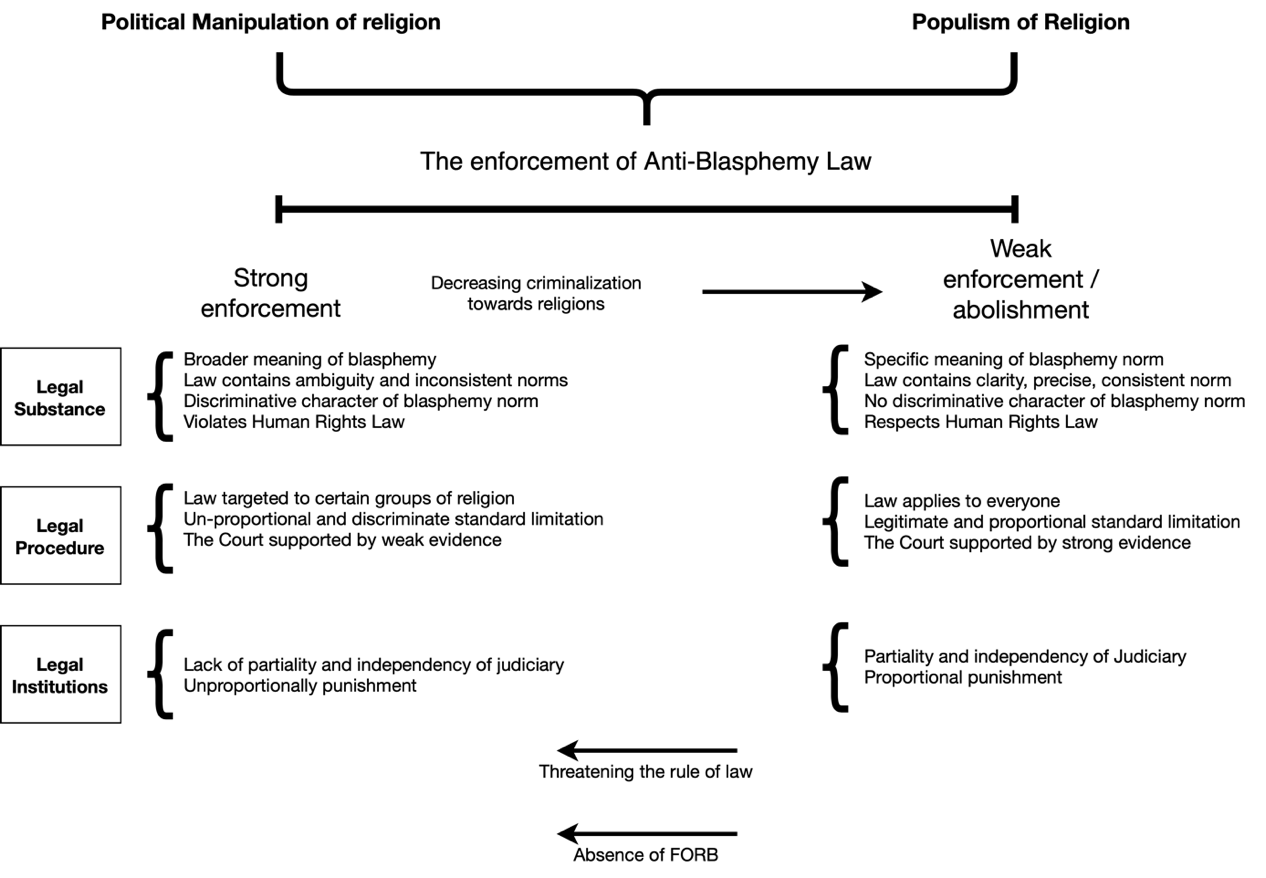


Diagram 4. Conceptual Framework of the Enforcement of Anti Blasphemy Law Towards the Relationship between Religion and the ROL

# Research Method and Design

## A Socio-legal study approach

This study uses a socio-legal study approach, or a top-down and bottom-up approach (Banakar, 2019:5) or an interdisciplinary field of study (p.10) in a broader context of social and political to generate empirical evidence to answer research questions (McConvelli & Chui, 2007). In other words, it aims to study the gap between law in book and law in action (Macaulay, Friedman, and Mertz, 2007; Bankowski & Nelken, 1981). Tamanaha (2011) mentions the principle of connectedness and emphasizes that "the law is related to everything in society", namely "history, culture, human and material resources, religious and ethnic composition, demographics, knowledge, economic condition, and political" (214-219), where legal development itself is related to aspects of culture, ethnicity, religion, and law (184). Using case studies approach, this study aims to gain empirical data, examines juridical experiences on various blasphemy cases, to understand the law and how the norms are treated (Gurvitch, 1947: p.30) and evaluates legal rules and or legal system through studying the relation between rules formulated by statute or judicial decisions and the conduct of citizens (Stone, 45-47) and how the law be applied to certain context to be criticized to evaluate on how does it work (Wiratraman, 2013). Thus, to answer the problems in this study, various empirical data, court experiences in deciding cases of blasphemy, as well as various existing regulations and policies will be studied in depth and will be use to explore and understand the socio-political dynamics that actually occur as well as the factors and actors involved and whether these socio-political dynamics influencing the enforcement of anti-blasphemy laws in Indonesia. First, the extent to which political manipulation of religion places the Anti-Defamation Law as a tool to eliminate political competition and whether this affects the courts in formulating legal considerations and making decisions in blasphemy cases. Second, the extent to which identity politics characterized by religious populism influence the courts (judges) in criminalizing religion.

* 1. The research tools and data collections

### Case Studies

This study uses a case studies approach of a selected number of blasphemy cases, namely the Ahok case,[[21]](#footnote-21) the Meliana case[[22]](#footnote-22), the Gafatar (Millah Abraham) case,[[23]](#footnote-23) and the case of Ahmadiyya.[[24]](#footnote-24) Each case will be discussed in depth to support the arguments provided in each chapter. Although there are cases that have similarities in one aspect, other aspects make these cases different and unique.

This study focuses on the Blasphemy law in Indonesia. Since Indonesia is a country based on a rule of law that recognizes multi-religions, where Muslims make up the majority of the population, 88% of the total population of over [265] millions,[[25]](#footnote-25) This complexity, coupled with dynamic socio-political conditions and the history of the development and implementation of the IABL, which has experienced ups and downs and changes in time, are challenging conditions for the protection of the FORB. The reason for selecting the four cases, besides the reasons mentioned in the research method above, is that the Ahok case, [[26]](#footnote-26) a Chinese Christian, represents the Jakarta area, Indonesia's capital city, where the people are multicultural, more open and have a higher educational background. Ahok's case contains very strong political nuances where Islamist groups mobilized the masses and used the issue of blasphemy to confront Ahok in the 2019-2024 Governor election, so Ahok was sentenced to 2 (two) years in prison and he lost in the 2019 Local Election.

The case of Ahmadiyya, [[27]](#footnote-27) a new religious movement, in Cikeusik, Pandeglang, Banten of West Java represents a conservative religious society. The Ahmadiyya case is colored by various forms violence of vigilante groups and how hardline groups get support from local and central governments to issue public policies to stigmatize the Ahmadiyya as a deviant group, even though formally the Ahmadiyya is a legitimate religious organization. In the end the court sentenced the Ahmadiyya leader to several years in prison and continued to ban the activities of his followers.

In the case of Gafatar, [[28]](#footnote-28) in Kalimantan, the members come from various Indonesia regions with middle to lower economies. The case of Gafatar is similar to the case of the Ahmadiyya, which is also characterized by various forms of violence by vigilante groups. Gafatar, which initially invited his followers to be independent and has been supported by many parties, was eventually accused of being affiliated with Millah Abraham whose leader was once considered a heretic and was still serving time when this case emerged.

In the case of Meiliana, [[29]](#footnote-29) a Chinese Buddhist women, live in Tanjung Balai Medan where people are heterogeneous and have a strong Malay culture character by upholding customary principles, “Adat bersendikan Syarak, Syarak bersendikan Kitabullah” or "the tradition is based on Sharia, and the Sharia is based on the Koran". Meiliana’s protest to a neighbor mosque on the call for pray was considered blasphemy against Islam. The Meilina’s case is considered to be related to the politicization of religion and economic sentiment, where Meiliana as a Buddhist minority and of Chinese descendants is part of identity politics for hard-liner Islamic groups to accuse Meiliana (Suryadinata, 2019: 5-6). This case was also colored by the Vigilante group's attack on the Vihara Temple where the Vigilante group used the excuse of protecting religion from Meiliana's actions which were considered insulting to Islam. The difference between the decision of the first instance court that ruled Meiliana acquitted and the decision of the Appellate Court which sentenced her to 1.5 years is interesting to examine to what extent the Court was affected by the politicization of religion and identity politics that occurred.

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

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

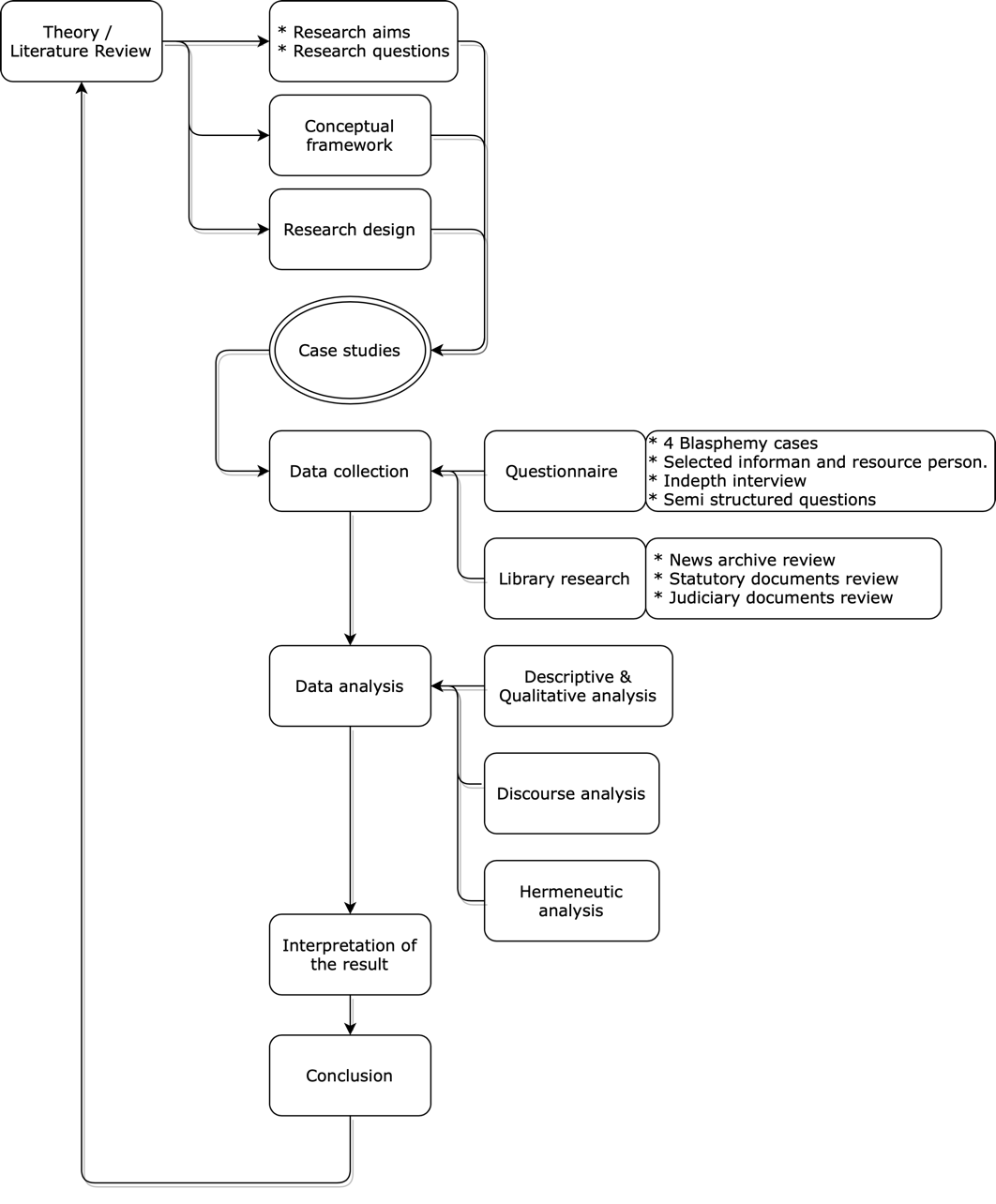


Diagram 1. Research Method and Design

### In-depth interview

This study will interview the parties involved in blasphemy cases, review public debates on the news, reports, articles, and other relevant materials, including videos of an interview on the parties involved, such as the perpetrators, the victims of religious minority groups as the target of blasphemy cases, the government officers, the lawyers, and the societies that have been published by various media. This study also interviews the party involved during the judicial review process of the IABL, using semi-structured questions, including but not limited to members of minority religious groups, members of Indonesia Ulama Council (MUI), a member of hardlines Islamic Groups, such as Front Pembela Islam (FPI), public prosecutors, lawyers, human rights NGOs, justices of the Supreme Court, justices of the CCIR, human rights experts, executive staff from the largest Islamic organizations, such as Nahdatul Ulama (NU) and Muhammadiyah, parliamentarians, staff of National Human Rights Commission. These interviews aim to provide valuable insights into this study about the party's experiences with the cases that shape the IABL enforcement, identify actors who push the strengthening of blasphemy laws and explore public views on the defend, revise, or delete the IABL. This in-depth interview to be conducted face-to-face with the sources. However, during the Covid-19 pandemic, interviews will be through other online media, such as zoom, skype, email, or other related applications.

|  |  |  |  |
| --- | --- | --- | --- |
| Type of Respondent | Sample Determination | | Estimated Number of Respondents |
| **Expert Interviews:**  (Judges of the Constitutional Court and the Supreme Court, Law & policy makers, National Commission of Human Rights, National Commission of Women, Human Rights Defenders, NGO’s staff, and Academics) | | - Their interpretations to the contents of the `blasphemy law under which the cases were charged.  - Their considerations of both legal and non-legal aspects when deciding the blasphemy cases.  - Judges’s arguments when referring certain religious values in deciding blasphemy cases.  - Their understanding towards the right to FoRB and the principles of non-discriminations.  - Their reasons when formulating various local regulation that strengthen the enforcement of the anti-blasphemy law.  - How the experts opinion about the political and legal debates surrounding the deadlock discussion of the bill of new anti-blasphemy law.  - Their understanding about the consequnces of the enforcement of blasphemy law towards the human rights, particularly the right to freedom of religion. | 15 |
| **Informant Interviews:**  Minority group’s members,  victims of blasphemy cases or his family, lawyers, the member of Indonesia Ulama Assembly, Conservatives and Moderate religious leaders/ members. | | - Reasons for arrest, criminalization, and punishment;  - Laws under which they were charged;  - Their understanding about the blasphemy law.  - The reasons of the Indonesia Ulama Assembly issuing fatwa against minority groups of religions and stigmatized them as deviant group of religions.  - The reasons and experiences of conservatives religious groups for engaging vigilante action, or mass mobilization against the minority groups of religions;  - Their experience and perception of the victims (perpetrators of blasphemy) before, after, and during the investigations and the trials.  - Their experience of the victims (perpetrators of blasphemy) towards unfair treatment or stigmatization or intimidation or violence during the process of blasphemy law enforcement. | 10 |

### Statutes and legal documents review

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

# Analysis of the Data

Since the socio-legal approach is a combination of doctrinal research and empirical research, this research is preceded by a document study to take an inventory of various regulations and policies related to anti-blasphemy law to examine the extent to which the substance of the regulation is consistent or does not conflict with one another, as well as to what extent the findings this affects the rights of religious minorities. The legal documents that become the material for all are laws and regulations related to the law of blasphemy, court decisions in related cases. Then, the findings of doctrinal approach will be studied further to find empirical data in the field. This is to further examine whether religious populism and the politicization of religion are the main factors that support the strengthening of the anti-blasphemy law in Indonesia. Tamanaha (2011) mentions the principle of connectedness and emphasizes that "the law is related to everything in society", namely "history, culture, human and material resources, religious and ethnic composition, demographics, knowledge, economic condition, and political" (214-219), where legal development itself is related to aspects of culture, ethnicity, religion, and law (184). Using case studies approach, this study aims to gain empirical data, examines juridical experiences on various blasphemy cases, to understand the law and how the norms are treated (Gurvitch, 1947: p.30) and evaluates legal rules and or legal system through studying the relation between rules formulated by statute or judicial decisions and the conduct of citizens (Stone, 45-47) and how the law be applied to certain context to be criticized to evaluate on how does it work (Wiratraman, 2013). Thus, to answer the problems in this study, various empirical data, court experiences in deciding cases of blasphemy, as well as various existing regulations and policies will be studied in depth and will be use to explore and understand the socio-political dynamics that actually occur as well as the factors and actors involved and whether these socio-political dynamics influencing the enforcement of anti-blasphemy laws in Indonesia. First, the extent to which political manipulation of religion places the Anti-Defamation Law as a tool to eliminate political competition and whether this affects the courts in formulating legal considerations and making decisions in blasphemy cases. Second, the extent to which identity politics characterized by religious populism influence the courts (judges) in criminalizing religion.

Data of this study will be analyzed using descriptive qualitative, hermeneutic, and cross discourse analysis. According to Van Dijk, the discourse analyses mean how the legal norm or socio-political context surrounding the cases encourage and influence the Court to make such decisions. Because referring to Heideger, every text is related to the context when and in what condition it was written. Then, referring to Miles and Huberman (1994:12), the collected data will be reduced and presented by first classifying or categorizing data based on themes that emerge systematically then from the notes of the case studies, the research findings are generated. Then, this study will elaborate on the connection between the theory and the research findings to find the conclusion.

# The period of study

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

# Literature Review

## Anti-Blasphemy Law in the world

Anti-Blasphemy law (ABL) has no single definitions. Its concept varies from countries to countries with mostly an ambiguous concept, contrary to the principle of legality, with the primary aim of protecting the state religion and disproportionate sentencing (Fiss and Kestenbaum, 2017). Many countries inherit[[30]](#footnote-30) the ABL from their colonial period (Durham and Scharffs, 2019: p.223), and they adopted it becomes national law using the concordantial principle (Octora, 2016:p.369) and still enforce nowadays. As an outdated legal concept, this law is maintained and strengthened by forming various regulations in a country,[[31]](#footnote-31) either at a national or local level.[[32]](#footnote-32)

According to Graham (2009), ABL originates from Christianity's teachings and adopted in Act 1703 in South Carolina. The last decade has invoked debates over its relevance to human rights. Blasphemy had various meanings,[[33]](#footnote-33) but it was generally interpreted as an act of dishonor for God (Michael Glazer, Inc. 1981).[[34]](#footnote-34) ABL has been used to restrict hate speech or religious insult against religious artefacts, holy personages, customs, or beliefs (Nash and Bakalis, 2007) as a government intervention to their citizens' religious life to maintain religious tolerance. It has no clear distinction whether the concept aims to protect religious adherents from hate speech or merely to protect majority religions[[35]](#footnote-35) and often changes into a form of censorship laws that punish critics and become a threat to democratization (Berman, 2011; Marshall & Shea, 2011).[[36]](#footnote-36) For instance, in Pakistan, the ABL has a wide range of interpretations and prohibiting blasphemous act toward God and symbols of religion, prophets, and any objects that are considered sacred objects. With these broad and various concepts, the BL is characterized as bias norms such as the use of the words "insult", or "criticism", or "blasphemous" that has no single legal interpretations and merely based on the feelings of the certain community. The law is purposed to protect the religious system, religious artefacts, religious symbols, or religious teachings rather than protecting the individual (Nash and Bakalis, 2007).

## Anti-Blasphemy Law in Indonesia (the IABL)

Historically, the IABL is regulated through Presidential Decree No. 1/ PNPS / 1956 signed January 20, 1965 under Soekarno's "Guided Democracy".[[37]](#footnote-37) Initially, this law was intended to reduce social conflicts between conservative citizens and non-religious groups including atheist[[38]](#footnote-38) which were considered to be against Pancasila and could threaten protected religions, national security, and cause the disintegration of the nation.[[39]](#footnote-39) The events of the 1965 communist revolution became a dark history that frightened the Indonesian people, and the people did not want a similar incident to happen again (Arief, 2008:7-8; Crouch, 2012a).[[40]](#footnote-40) This terrible incident has prompted the DPR to issue the Provisional People's Consultative Assembly of the Republic of Indonesia No. XXV / MPRS / 1966, which prohibits the teachings of communism, Leninism and Marxism, which promote non-religious ideology, can be considered as blasphemy of religion. [[41]](#footnote-41) Since then, the Presidential Decree has changed its title to Law No. 1/PNPS/1965 (now called the Indonesian Blasphemy Law / IABL), but the contents of the law remain the same.

During the new order period, the Suharto’s administration maintained the IABL and enhanced it by adding Article 156a to the Indonesia Criminal Code. Article 4 of the IABL, in conjunction with Article 156a of the 1981 ICC, states:

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

In that provision, there is no definition for "hostile," "misuse," and "desecrate" of religion even though it was intended only to protect "religions adhered to in Indonesia" from those actions. The phrase "religions adhered to in Indonesia" is defined narrowly as "recognized religions," namely Islam, Catholic, Christianity, Hinduism, Buddhism, and Confucianism. In Article 4 and Article 1 and 2 of the 1965 IABL, the religions other than those five could be labelled as "heretical religions".[[42]](#footnote-42)

## Religion in Indonesia after the IABL

In order to conduct a study on the development of the IABL and its enforcement, it is important to look at the non-legal influencing aspects, namely religion. What is defined as religion? Grim (2014) refers to the study conducted in 230 countries done by Pew Research Center. It identifies that other than 'widely recognized' religions, namely Buddhist, Christians, Hindus, Islam, and Jews, there are four 'other' groups called minority religions. First is the religiously affiliated, such as Ahmadiyya, Shi'a, Jehovah Witnesses. Second is folk or traditional religions, such as many mythical beliefs in Indonesia. The third is the religiously non-affiliated, such as the Baha'i faith, Shintoism, Sikhism, Zoroastrianism and many others (p.136). However, it is not the case of Indonesia, no law defines what a recognized religion is. Indonesia provides a different legal position between recognized religions and non-recognized religions that is including sects or traditional beliefs. Referring to Article 156a of the Indonesia Criminal Code and Article 1 of the IABL, Soekarno wanted to protect the established religions and beliefs to prevent the folks' religions or traditional religious systems all over Indonesia whose teachings were considered to contradict the fundamental principles of recognized religions. According to Article 1, Indonesia recognized five religions, which are Islam, Christian Protestant, Catholic, Hinduism, and Buddhism. However, it does not mean the government bans other beliefs such as Baha'i, Shinto, Jews, and many others. After the Reformation Era, under President Gus Dur administration, those five acknowledged religions become six by adding Confucianism.

Therefore, conceptually the IABL aims only to protect "[…] religions adhered to in Indonesia" […]. The phrase is defined narrowly as "recognized religions", namely Islam, Catholic, Christianity, Hinduism, Buddhism and Confucianism. The problem is that the provision is not only targeted penalties to the non-recognized religions and traditional beliefs but also to the non-believers. Moreover, the exclusion and restriction towards unrecognized religions, as stated in Article 4 and in Article 1 and 2 of the 1965 IABL, can make them be labelled as "heretical religions". In practice, this concept will override other religions, such as traditional beliefs or non-mainstream religious teachings groups (Ahmadiyya, Shiah, Gafatar). Therefore, it is important to examine in-depth whether the Courts, in the four cases of the study, treated the minority religions equally or vice versa, whether there was stigmatization language used in the Court decisions, whether the court has a certain reason why the perpetrators who practiced their own beliefs should be punished.

## Legal Pluralism and Shariah Law in Indonesia

Indonesia is the largest Muslim country in the world with high ethnic, religious and racial diversity (Hefner, 2020: p.3). Indonesia adheres to a legal pluralism system, where Islamic law only applies to Muslims specifically for family law. Indonesia declares itself as tolerant country. President Jokowi stated at 2015 meeting of the world’s largest Islamic Organization that “NU has used religion, peace, and progressiveness.” (Menchik, 2017). However, Hefner considers that Indonesia is still struggling in realizing inclusive citizenship, where everyone can live side by side, respect, protect one another and the relationship between religions is still tense (p.4-5). Meanwhile, Menchik (2017 believes that the majority of Muslims and the largest Muslim organizations, such as NU and Muhammadiyah support democracy, equality, and citizenship and more tolerant than other religious organizations in Indonesia or in the world. For example, the implementation of the IABL provides space for the state to limit one's religious expression with the consideration of maintaining public order. However, the definition of public order is monopolized by the majority of religions (Islam) (p. 6-7). In fact, the NU and Muhammadiyah were two biggest moderate Islamic Organization that still support the government to maintaining of the IABL.[[43]](#footnote-43)

The enactment of the IABL indicates support for Islam as the main religion. The favoritism can be traced from the birth of the Jakarta charter with the addition of the phrase: "[...] with the obligation to carry out Islamic law for its adherents', to be added to the 1st principle of Pancasila "Believe in One God the Almighty ". Although the national consensus did not agree with the idea of ​​the Jakarta Charter and made Indonesia a state based on the rule of law instead of a religious state, the G/30S/ PKI incident became a momentum for Muslims to gain a major position, namely by pushing for the enactment of the 1965 IABL. The main position of religion (Islam) can be seen from the provisions of Article 1 that the protection of the six recognized religions, including Islam, is the main priority compared to other non-recognized ones, including followers of beliefs or new sects. Analysts for legal substance elements will use the rule of law principle, rules with general norms that are predetermined public, clear, and determine legal norms whose meaning is not obscure (Waldron, 2010, p.1).

The Indonesian Constitution of 1945 clearly states that Indonesia is the rule of law, but recently there have been attempts by the Conservatives to make Indonesia a religious state. Arsekal and Azra (2008) state that strengthening the implementation of Sharia can be seen in three aspects. First, the use of Sharia law as a philosophical basis for the establishment of political parties or Islamic-based organizations, when previously in the Suharto era, they only allowed using Pancasila as the only state ideology. Second, Islamic political parties continue to fight for the formulation of Sharia Law. Third, the formulation of Sharia law in Aceh encourages other regions to implement Islamic Sharia. Even though Indonesia is a Muslim majority country, Indonesia is not a religious (Islamic) country. Arsekal and Azra believe that the efforts to make Indonesia an Islamic State do not receive support from majority religious groups. In addition, the Constitution Court also stated that "the traditional text of Islamic law are not the direct resources of the rules to be applied" (Butt, 2010: 299). In the effort to maintain the IABL and enforce cases of blasphemy, this study intends to examine the extent to which the Conservative groups also influence on strengthening Sharia law in the Courts and how the Courts can maintain its impartiality.

## Religious Conflicts in Indonesia

It cannot be denied that religious intolerance in Indonesia has recently increased. Lindsey and Pausacker (2016) indicate that first, religious intolerance in Indonesia is caused by a distortion in the meaning of the first principle of Pancasila, "Believe in One God the Almighty", which originally wanted to guarantee religious freedom because it respects diversity, becomes "a homogenous doctrine of One God" (p.9). Second, discrimination against minority groups continues to occur, either by stigmatizing 'deviant' groups (Crouch, 2012: 95), activating fatwas to declare certain religious groups 'deviant' (Afriyanti, 335), or punishing those who considered defiling religion (Hasani: 95). Lindsey and Butt (2016) also stated that Indonesia's ratification of IHR treaties and the recognition of human rights norms in the 1945 Constitution were unable to improve religious freedom. Instead of the Constitutional Court annulled the IABL, on the contrary, it states that the IABL does not contradict the Constitution (p.37). This study needs to explore further whether the IABL and its enforcement shaped by how the people understanding the divine ideology and whether people believe that the abolishment of the IABL could be dangerous to society.

## FORB is a fundamental right

Although Indonesia's ideology has shifted to a democratic ideology since 1998, the number of cases of blasphemy has increased compared to other neighboring countries. Even though Indonesia ratified the ICCPR in 2005, and human rights norms have been embedded in the 1945 Constitution in Indonesia, the application of the IABL continues to be debated because it has the potential to violate the right to freedom of religion. In implementing the IABL, the court considers more derivative regulations such as policies issued by the Indonesian Ulama Council (MUI), the Forum for Interreligious Harmony, or decisions of ministers. The existence of the IABL is even stronger after the enactment of the Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the Law of IET), particularly, in Article 28 is often used in conjunction with the IABL in 1965. Article 28 (2) states that: "Everyone knowingly and without right distributes the information intended to create a sense of hatred or hostility for individuals and /or groups certain communities based on ethnicity, religion, race."

One of the important features of the rule of law is the guarantee and protection of human rights. Therefore, in examining the development and enforcement of the IABL, it is necessary to look at the extent of human rights protection, particularly the right to religious freedom. Indonesia that has already ratified ICCPR and adopted it into its Constitution has the responsibility to respect, protect and fulfil the FoRB for every citizen. Thus, the extent to which the court has made IHRL as a basis for consideration in deciding blasphemy cases is important to examine. It is a general proposition of the Vienna Convention 1969 on the Law of Treaties (Bolintineanu, 1974).[[44]](#footnote-44) This commitment level can be seen from the treaty enforcement's determination at the domestic level (Hathaway, 2007).

The right to freedom of religion or belief (FoRB) and the right to freedom of Expression (FoE) are fundamental rights. The right to religious freedom is part of fundamental human rights emphasized in Art. 18 of the UDHR and Art.18 of the International Covenant on Civil and Political Rights (ICCPR).[[45]](#footnote-45) These documents comprise values, concepts, principles, standards, and rules that international communities have ratified and practiced. Other resources that should be considered by the State party of ICCPR when dealing with the FoRB are General Comment No.22[[46]](#footnote-46) concerning Declaration of the Elimination of All Forms of Intolerance and Discrimination Based on Religion or belief 1981 (Declaration 1981)[[47]](#footnote-47) and General Comment No. 34.

According to Heiner (2012), the right to religious freedom is a universal right inherent in every human being that cannot be revoked since neglecting this right will neglect other rights (p.20). Heiner explained that the FoRB has two dimensions, namely forum-internum and forum-externum (p.21). This international forum includes the right to choose, leave, have no religion at all, is an absolute right and cannot be contested by the state. While the forum-externum covers the right to worship, teach religion, and observance, which the state is allowed to limit within the framework of Article 18 (3). However, these restrictions have to be in strict and precise arrangements, do not reduce the essence of fundamental rights, and not for the purpose of discriminating against certain religious groups (p.23). Moreover, the limitation of religious expression or manifestation should be refers to the ICCPR art.19, 21, 22[[48]](#footnote-48) since the right to freedom of expression (FoE) is not an absolute right (Smith, 2007: p.268). However, it is a fundamental right of everyone in which no State or no one can deny. Therefore, the state is permitted to exercise the discretion of restrictions through its domestic law (Fraser, 2019; Altwicker, T., 2018) as long as the restriction itself must be strict with clear interpretation, regulated by law, and used for the purpose stated in the agreement (Debeljak, 2008; McDonagh, 2013). Dworkin (1980) argues that censoring other's opinions as insulting is the same as saying that other's opinions are not "worthy of equal respect" (p.51). Therefore, a person cannot be punished because of his/her belief, imagination, or thought (Medlow, 2017: 2345).

# Significance of the study

Expected significance from this study are: first, this study will expand the existing knowledge about the socio-political context surrounding the enforcement of the IABL in relation with the right to FoRB. Both the process, the results, and the publication of this study are part of the Researcher's efforts to actively participate in promoting human rights and increasing the awareness of society of FORB.

Second, because previous studies have looked more at the IABL from a top-down normative perspective of Human Rights Law, this socio-legal approach will bring additional understanding of scholars about the gap between the IABL and its enforcement by understanding the factors and actors that affecting its enforcement.

Third, the data collected and findings from this study will help law enforcers who are examining blasphemy cases to rethink that the misused application of the IABL could deprive citizen’s fundamental rights, so that courts put forward elements of the rule of law and protection of rights and prioritizing the fulfilment of aspects of justice that uphold humanity, and contribute on social science to improve the performance of legal systems.

The findings of this study may helpful for legislators to understand that the vague concept of IABL has an impact on the vulnerability of legal certainty and justice in its enforcement and to understand that reforming the cryptic, repressive, and discriminatory anti-blasphemy law will lead Indonesia to an authoritarian regime and violate citizens' rights. In addition, legislators can use the data, findings, and results of this study to enrich academic studies or assist them in formulating legal norms that have high standards, and can provide a complete picture of the development of the law on blasphemy and its enforcement and the implications for public debate or vigilante action can threaten democratization.

# Research Ethics

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

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

1. The methods of research will be well thought before the field research started. For example, interviewing key persons such as judges, experts, public officers, the leader of minority groups of religions 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 safer and more secure online platform than most messengers because of a process called end-to-end encryption and also Zoom meeting at participants and researcher’s convenience.

2. To avoid deception, the researcher will introduce herself openly, and the aims of the research will be well explained before the interview to all participants to obtain either a written and signed form of consent or verbal consent.

3. To respect and protect participants' privacy, all participants will be anonymous, and the researcher will keep the data anonymous. To ensure confidentiality, the data obtained will be saved in a personal external drive.

4. The data will also be collected from the experts in human rights law, and the NGO concerned with the religious freedom issue so that the identity of vulnerable subjects from minority groups of religions remain covered.

5. Finally, for safety reasons, the researcher should not put herself in the way of harm, whether it is political, physical, or psychological harm. The researcher will not discuss the teachings of each religion or belief.

To ensure the researcher's neutrality, the researcher will guarantee that all analysis of the data is free of bias from the researcher's background, position, or perspective and based on valid data or evidence that is trustworthy and legitimate.

Although the risks involved in this research may be greater than the benefits for religious minority groups, this study also allows their voices to be heard. The other parties could understand what pressure’s victims are experiencing and feeling. This opportunity can ease the burden that they have buried and do not get a solution. Their contribution will provide significant input to optimize the protection of FoRB in Indonesia.

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

This study will use the code system with categorization such as gender and age, not mention their name or the address. To guarantee nothing happened to the respondents, I will make sure that only I can access the data, and I will destroy them after two years this research finished.

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1. See Buruma, 2006; Siddique and Hayat 2008, Graham, 2009; Blitt, 2010, 2011; Danchin, 2010; Rollinson, 2011; Fagan, 2012, Uddin, 2015; Theodorou, 2016; Fiss and Kestenbaum, 2017. [↑](#footnote-ref-1)
2. In Norway, the blasphemy law was removed from the Penal Code in 2005. [↑](#footnote-ref-2)
3. In Iceland, the blasphemy law was repealed in 2017. *Id.* [↑](#footnote-ref-3)
4. In June 2017, the Danish Parliament repealed its blasphemy law. *See* USCRIF, 2017. *Id.* [↑](#footnote-ref-4)
5. In Canada, the blasphemy law was repealed since 2018. https://end-blasphemy-laws.org/ Accessed on January 26, 2017. *Id* [↑](#footnote-ref-5)
6. 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/ [↑](#footnote-ref-6)
7. 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. [↑](#footnote-ref-7)
8. According to the U.S. Commission on International Religious Freedom (USCIRF), among a few countries that have repealed the ABL, Indonesia is one of the nations across the globe that still implement and enforce ABL at various levels (2017). [↑](#footnote-ref-8)
9. See Hasse Risakotta and Bagir, 2011; Uddin, 2011; Graham 2009; Crouch 2011, 2012a, 2012b; Tømte, 2012; Menchik, 2016; Lindsey and Pausacker, 2016; Marshall, 2018; Hefner, 2020. [↑](#footnote-ref-9)
10. For example, Pratiwi (2019) reports that the case of BL in Indonesia between 1995 to 2018, from the total of 62 cases, 80% of the total perpetrators were punished and put imprison for over six months and only 20% they were found not guilty (p.27). In 2020, the Jakarta Post reported that around 38 cases of alleged blasphemy were reported to law enforcement institution (The Jakarta Post, 2020). [↑](#footnote-ref-10)
11. See Human Rights Watch, 2013. In Religion’s Name: Abuse against Religious Minorities in Indonesia. Available at hwr.org/report/2013/02/28/religions-name/abuses-against-religious-minorities-indonesiag Basic Rights. Available at hrw.org/news/2019/10/31/indonesia-expand-abusive-blasphemy-law. [↑](#footnote-ref-11)
12. See also Andreas Harsono, 2019. Indonesia to Expand Abusive Blasphemy Law. Revoke New Provisions Violating Basic Rights. Available at hrw.org/news/2019/10/31/indonesia-expand-abusive-blasphemy-law. [↑](#footnote-ref-12)
13. See Constitutional Court Decision No. 56/PUU-XVI/2017, p. 537. [↑](#footnote-ref-13)
14. In the year of 2020 alone, there are 38 cases of blasphemy have been reported to the law enforcement. (see Aswinawati and Santoso, A.B., (2020). the Report of YLBHI about the Blasphemy Between January to May 2020. YLBHI. Available at http://ylbhi.or.id [↑](#footnote-ref-14)
15. *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. [↑](#footnote-ref-15)
16. *See* Chapter X of Indonesia Constitution Article 28A to 28J. [↑](#footnote-ref-16)
17. *See* Article 1 Paragraph 3 of the 1945 Indonesia Constitution. [↑](#footnote-ref-17)
18. Salim dan Azzra mentioned the examples of Hardlines Islamic groups, such as the Lasykar Jihad (Jihad Troops), the Front Pembela Islam (FPI, or Front of Islamic Defenders), the Hizb al-Tahrir (Party of Liberation), and the Majelis Mujahidin Indonesia (the Council of the Jihad Fighter Groups of Indonesia) (p.3). [↑](#footnote-ref-18)
19. ICCPR opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976, Art. 18 (3). Indonesia has ratified the ICCPR through the Law Number 12 Year 2005. [↑](#footnote-ref-19)
20. CCPR General Comment Number 22; Article 18 (Freedom of Thought, Conscience or Religion), General Comment Article 18, UN HRC, 48th session (30 July 1993). [↑](#footnote-ref-20)
21. See Verdict No. 1537/Pid.B/2016/PN JKT. UTR and Verdict No. 11PK/Pid/2018; [↑](#footnote-ref-21)
22. See Verdict No. 784/PID/2018/ PT.MDN. [↑](#footnote-ref-22)
23. See Verdict No. 1107/PID.Sus/201/PN.Jkt.Tim. [↑](#footnote-ref-23)
24. See Verdict No. 56/PUU-XV/2017; Verdict No. 312/Pid.B/2011/PN Srg; Verdict No. 314/Pid B/2011/PN.Srg. [↑](#footnote-ref-24)
25. Davis, N J and Robinson, R V (2006). *The egalitarian face of Islamic orthodoxy: Support for Islamic law and economic justice in seven Muslim-majority nations*. AmericanSociological Review, 71:2, p. 167–190. [↑](#footnote-ref-25)
26. See Verdict No. 1537/Pid.B/2016/PN JKT. UTR and Verdict No. 11PK/Pid/2018; [↑](#footnote-ref-26)
27. See Verdict No. 56/PUU-XV/2017; Verdict No. 312/Pid.B/2011/PN Srg; Verdict No. 314/Pid B/2011/PN.Srg. [↑](#footnote-ref-27)
28. See Verdict No. 1107/PID.Sus/201/PN.Jkt.Tim. [↑](#footnote-ref-28)
29. See Verdict No. 784/PID/2018/ PT.MDN. [↑](#footnote-ref-29)
30. The BLs were initially introduced in 1860 under colonial rule incorporated in criminal law inherited from England. [↑](#footnote-ref-30)
31. According to Merriam Webster Dictionary, an Act is a statute, a formal product made by legislative body. While, a constitution is “the basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it” (See https://www.merriam-webster.com/dictionary/constitution). [↑](#footnote-ref-31)
32. 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). [↑](#footnote-ref-32)
33. 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 [↑](#footnote-ref-33)
34. See the First Laws of the State of South Carolina 159 (Michael Glazer, Inc. 1981) (cited hereinafter as "Act No. 202", supra note 3.) [↑](#footnote-ref-34)
35. *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). [↑](#footnote-ref-35)
36. *See* also the case of *Moh-Ezra vs. Malaysia*, In Selangor, Moh Ezra was convicted blasphemy under Section 16 of Selangor State Sharia 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 (Sing. [↑](#footnote-ref-36)
37. The President Stipulation No. 1/PNPS/ 1965 was enacted under the “Guided Democracy” of Soekarno. He was maintaining the State by took over the legislative power and tried to ensure that State was functioning. The characteristic of Soekarno’s regime was close to an absolute power which according to the President Decree, the President had the power to released Presidential Stipulation *(Penetapan Presiden/ PNPS)* or Presidential Directive (Peraturan Presiden). Therefore, the Law No.1/PNPS/1965 was enacted through President instead of Act *(Undang-Undang).* It was later in 1969, the government elevated it to the status of national legislation through the enactment of Law No. 5/1969. [↑](#footnote-ref-37)
38. Uli Parulian Sihombing, *Menggugat Bakor Pakem; Kajian Hukum terhadap Pengawasan Agama dan Kepercayaan di Indonesia* [Challenging Bakor Pakem; Legal Study on the Oversight of Religion and Belief in Indonesia], 2008, ILRC [the Indonesian Legal Resource Center], p25 and 40. [↑](#footnote-ref-38)
39. 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 s*antri* (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. See also Michael S. Densmoor, 2013. The Control and Management of Religion In Post-Independence, Pancasila Indonesia. A Thesis. Georgetown University Washington, DC April 13, 2013. [↑](#footnote-ref-39)
40. Barda Nawawi Arief, *Delik Agama dan Penghinaan Tuhan (Blasphemy) Di Indonesia dan Perbandingan Berbagai Negara*, Badan Penerbit Univesitas Diponegoro, Semarang, 2008, p. 7-8 [↑](#footnote-ref-40)
41. 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. [↑](#footnote-ref-41)
42. 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. [↑](#footnote-ref-42)
43. See the Constitutional Court’s decision Number No. 140/PUU-VII/2009. [↑](#footnote-ref-43)
44. See art. 11-14 Part II of the convention. [↑](#footnote-ref-44)
45. See International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 16, 1966, entry into force 23 March 1976, available at http://www.unhchr.ch/html/menu3/b/a\_ccpr.htm [hereinafter ICCPR] art. 18(3) [↑](#footnote-ref-45)
46. Its proclaimed by the General Assembly of the United Nations on November 25, 1981.See INTERNATIONAL INSTRUMENTS, supra note 13, at 490.1 [↑](#footnote-ref-46)
47. See GA res.No.36/55/1981 UN [↑](#footnote-ref-47)
48. See GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966) [↑](#footnote-ref-48)