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

CEKLI SETYA PRATIWI

A THESIS SUBMITTED IN PARTIAL FULFILLMENT

OF THE REQUIREMENTS FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

(HUMAN RIGHTS AND PEACE STUDIES)

FACULTY OF GRADUATE STUDIES

MAHIDOL UNIVERSITY

2022

Thesis

entitled

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

.....................................................

Mrs. Cekli Setya Pratiwi

Candidate

.....................................................

Prof. Patcharee Lertrit,

M.D., Ph.D. (Biochemistry)

Dean

Faculty of Graduate Studies

Mahidol University .....................................................

Vachararutai Boontinand,

Ph.D. (Human Rights and Peace Studies)

Program Director

Doctor of Philosophy Program in Human Rights and Peace Studies (International Program)

Project For the Establishment of the Institute of Human Rights and Peace Studies

Mahidol University

Thesis

entitled

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

was submitted to the Faculty of Graduate Studies, Mahidol University

for the degree of Doctor of Philosophy (Human Rights and Peace Studies)

on

.....................................................

Mrs. Cekli Setya Pratiwi

Candidate

.....................................................

Prof. Patcharee Lertrit,

M.D., Ph.D. (Biochemistry)

Dean

Faculty of Graduate Studies

Mahidol University .....................................................

Vachararutai Boontinand,

Ph.D. (Human Rights and Peace Studies)

Director

Project For the Establishment of the Institute of Human Rights and Peace Studies

Mahidol University

ACKNOWLEDGEMENTS

Cekli Setya Pratiwi

# Table of Content

# List of Abbreviations

# Abstract

# CHAPTER I

# AN INTRODUCTION TO A STUDY OF INDONESIA’S

# ANTI BLASPHEMY LAW

## Background of the problem

The rule of law is a fundamental aspect of democracy that relies on the presence of clear and certain legal norms to ensure substantive justice and safeguard human rights (Nijhar, 2021; Taniguchi, 2019). Upholding the rule of law is critical, as it brings about social justice and prevents laws from being manipulated for political purposes or used to discriminate against marginalized communities (Dagan, 2019; Mertz, 2018). However, when laws are vague and ambiguous, they can create significant challenges in balancing legal clarity and human rights protection since they are often subject to manipulation and selective enforcement (Makarov & Saveliev, 2021; Yoo, 2018). Legal reform is essential to overcome this challenge and uphold the rule of law effectively (Koch, 2019; Ruskola, 2020).

The Indonesian Anti-Blasphemy Law is an area where legal reform is necessary, and debates have arisen over whether to amend or repeal the law due to the disparity between the law on paper and the law in practice (Fealy & Hooker, 2020; Lindsey, 2019). To determine the direction of legal reform, a comprehensive study of the law's history and development, its impact on society, and the factors that influence its enforcement is critical, particularly for a country committed to upholding the rule of law (Amnesty International, 2020; Mahmud & Wilson, 2021).

Freedom of religion or belief (FoRB) is a crucial human right that contributes to the recognition and protection of human dignity, while its violation can negatively impact human rights (Khan, 2019; Shaheed, 2018). The interdependence of human rights implies that the realization of FoRB ensures the fulfillment of other rights, and the lack of it can compromise citizens' safety and right to life (Ahmed, 2019; Devereux & Rosand, 2019). Conversely, the ability to practice one's religion or belief without persecution or discrimination fosters peace, security, and individual freedom (Shaheed, 2018; Weisman, 2019).

The protection and fulfillment of human rights, including FoRB, require a democratic nation that upholds the rule of law and separation of powers among the executive, legislative, and judicial branches (Banaszak, 2021; Shaheed, 2018). In a functional democracy, these branches act as checks and balances to ensure the common good, while in non-democratic states, they serve as tools for maintaining autocratic rule, promoting autocratic legislation, and legitimizing human rights violations (Scheppele, 2018; Tamanaha, 2019). In autocratic legislation, the rule of law only exists in words, and courts legitimize human rights violations instead of upholding justice or providing remedies for victims. In such political systems, human rights are only used to present an image of respect for human dignity to the international community while being violated in practice (Khan, 2019; Shaheed, 2018).

Indonesia's Anti-Blasphemy Law (ABL) has been the subject of controversy for over a decade, and it represents an example of autocratic legislation that threatens the right to FoRB (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). Despite the revision or removal of similar laws in other countries, such as Norway, Iceland, Denmark, and Canada, Indonesia continues to enforce the ABL (Fox and Sandler, 2005). In contrast, other countries have revoked their ABLs due to the violation of human rights, restriction of the right to FoRB and freedom of expression, and threats to democracy.

Numerous scholars, human rights defenders, and moderate religious groups have studied the Indonesia Anti Blasphemy Law (IABL) and concluded that it is inconsistent with the International Human Rights Law (IHRL), infringes on religious freedom, and penalizes various minority religious groups with harsh penalties for allegedly defaming the state-recognized orthodox religion (Crouch, 2015, 2014, 2011; Graham, 2009; Lindsey and Pausacker, 2017; Marshall, 2018a; Menchik, 2014a; Tømte, 2012; Uddin, 2015). Despite these findings, the Indonesian government has not abolished or amended the law, despite several unsuccessful attempts to do so.

A decade ago, a proposal was presented to replace the anti-blasphemy statute in Indonesia's legislature, but it never materialized, and the 2009 Constitutional Court judgment on judicial review of the anti-blasphemy law also vanished. Following a petition from individuals who had been wrongly convicted under the Indonesia Anti-Blasphemy Law (IABL) and supported by human rights NGOs, the Constitutional Court of Indonesia Republic (CCIR) was asked to review the law in 2009. In several decisions, the CCIR has urged the Indonesian Parliament to revise the IABL, including Decision No. 140/PUU/VII/2009, emphasized by No. 84/PUU-X/2012, and No. 56/PUU-XVI/2017. Nevertheless, the CCIR found the law to be constitutional and necessary for preserving public order while recognizing the legal ambiguities of the IABL. The CCIR decided that the IABL does not limit a person's belief but only limits public statements that abuse or defame a religion adhered to in Indonesia.

While the CCIR recognized the legal ambiguities of the IABL, scholars such as Crouch (2011) and Tømte (2012) have argued that the IABL is not consistent with the 1945 Constitution and the fundamental principles of human rights upheld by the Indonesian government. Despite this, the Indonesian Legislative Body (DPR) has made no attempts to amend the IABL and has instead added articles on crimes against religion in the Bill of Criminal Code, reinforcing the law's legal position. 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 analyze the socio-political implications of the law and trace the anti-blasphemy statute's evolution since the Constitutional Court's judgment.

The Anti-blasphemy Law (ABL) in Indonesia has been exploited for political gains, leading to the politicization of religion and the weaponization of the law. This has resulted in a negative impact on the politics of religion, with hate-spin strategies being used to further political objectives. In the Ahok and Meiliana cases, the flaws of the ABL have allowed for false allegations against those accused of blasphemy, leading to the violation of the right to religious freedom. The Constitutional Court has cited the fear of creating a legal void and the possibility of horizontal conflict between religious believers as a justification for not repealing the ABL. However, this requires further investigation to determine whether the repeal of the ABL would actually lead to an increase in horizontal conflict.

To examine the phenomenon of vigilante justice in relation to blasphemy trials in Indonesia, this study investigates the causes of the Rizieq Shihab phenomenon and its association with the inability of the court to provide justice. The study also explores the influence of growing Islamic populism on the Rizieq Shihab case and other factors that contribute to it. Moreover, the study aims to identify the true supporters of the implementation of the ABL and investigate whether the strengthening of the law has affected attempts to enhance the right to religious freedom. The findings of this study are essential in understanding the socio-political implications of the ABL in Indonesia and the need for its reform.

This study posits that the existence of anti-blasphemy laws cannot be discussed without considering the state's connection with religion from a philosophical standpoint. Protecting human rights requires a sovereign state that can fulfil this responsibility, as individual efforts are insufficient. Safeguarding freedom of religion and belief (FoRB) as a negative right requires a non-interference approach, and the state should not restrict religions. A secular approach, which posits that the state should not interfere in religious matters, is viewed as the best option for realizing FoRB. Chapter VI will provide an in-depth discussion and analysis of the relationship between the state, religion, and anti-blasphemy laws in Indonesia.

The Islamic Blasphemy Law (IABL) is considered by the Indonesian government as 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 (Menchik, 2014b). Crouch (2012) points out that historically, the IABL was endorsed to prevent the recurrence of past religious conflict and to avoid mass killings of innocent people and Islamic leaders, which were conducted by the Indonesian Communist Party in 1965. 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.

However, recent studies suggest that some blasphemy cases, such as Ahok and Meiliana, have been politicized to gain public support for local elections, which triggered various levels of vigilante justice against minority groups (Marshall, 2018b; Andreas, 2019). Despite the increasing number of blasphemy cases, 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 (Harsono, 2019). Therefore, this research aims to explore the factors and actors that have shaped the enforcement of the IABL in each period in-depth, updating previous research and considering the current socio-political 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). This study seeks to shed light on the enforcement of the IABL and provide insights into the variety of community responses to this issue.

Indonesia's Blasphemy Law (IABL) is affected by various factors beyond the legislative process, including conflicts between dominant and minority religions, the relationship between religion and politics, the rise of Islamic populism, and political manipulation of religious issues (Salim et al., 2003; Marshall, 2018b). High-profile blasphemy cases in Indonesia demonstrate the complex interplay between religion, politics, and law enforcement, where apologies from perpetrators resulted in discontinued cases, while conservative Islamic groups reported new blasphemy cases and demanded justice (Hilmi, 2018). Identity politics also influenced public reactions to blasphemy cases, such as the case of Ahok, a Chinese governor of Jakarta, where the political narrative centered on issues of race and perceived economic oppression (Marshall, 2018a; Tehusijarana, 2018). The enforcement of the IABL has been influenced by the changing political landscape, making it easier for those in power to interpret the law as they wish. The law's vagueness allows those in power to determine the direction of interpretation, leading to manipulation for their own interests. Writing the law with clear and precise norms would make it harder for those in power to manipulate it for their interests. This study examines recent developments in the IABL and how political dynamics affect the state and religion's relationship, endangering freedom of religion in Indonesia.

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

The relationship between state and religion is a central aspect of discussions on ABLs. An-Naim (2008) advocates for a secular state that maintains neutrality towards religion and prohibits religious laws from regulating public life. He contends that a secular state, which does not enforce Sharia, is necessary for individuals to choose their religious beliefs without coercion or fear of state institutions. However, Durham and Scharffs (2019) dispute the idea that extreme secularism always leads to religious freedom. In strictly secular states, public religious practices are often restricted, and discriminatory attitudes towards religion can still exist.

This study aims to analyze the Indonesian court's decisions in blasphemy cases and how they affect the relationship between religion and the state. By examining legal aspects of blasphemy cases, the study intends to provide insights into how the state views religion and how it protects religious freedom. The analysis seeks to understand the type of relationship that is currently being reinforced as a result of these decisions. In particular, this study sheds light on how the issue of blasphemy affects the relationship between religion and the state in Indonesia.

## Objectives of the study

This study aims:

1. To assess if the IABL and its enforcement uphold the principle of the Rule of Law and its impacts.
2. To examine factors and actors that shaped the enforcement of the IABL; whether populism of religions and political manipulation of religions influence the enforcement of the IABL.
3. To analyze the state-religion relationship and if the decisions made by the court give rise to real construction between the state and religion in Indonesia and what type of relationship.

## Research questions

This study focuses on answering the following research questions:

1. To what extent the IABL enforcement degrade the rule of law and damage social justice?
2. What are the actors and factors shaping court decisions on the IABL enforcement? What are the impacts of the IABL and if it brings order to society and creating harmonious relations between religious adherents?
3. If the decisions made by the court gives rise to a real construction between the state and religion in Indonesia and what type of relationship?

## Originality of the Study

Over the last two decades, there have been multiple studies on Indonesia's Blasphemy Law, each with differing research objectives and analytical approaches. A number of normative studies were carried out by Al-Khanif (2008), Margiyono et al. (2010), Arifin (2010), Noorsena (2012), Arief, B.N. (2012), and Muktiono (2021) using a top-down approach to evaluate the law and court decisions. These studies aimed to assess the conformity of existing regulations with international human rights norms and standards. For instance, Al-Khanif's (2008) study focused on blasphemy cases of Ahmadiyya from the perspective of International Human Rights Law. Margiyono et al. (2010) reviewed the arguments made by judges of the Constitutional Court during their examination of the Anti-Defamation Law. Noorsena (2012) concentrated on normatively reviewing blasphemy cases to reformulate Article 156a of the Criminal Code, which is frequently utilized as the basis for criminalizing blasphemy. Arief, B.N. (2012) conducted a comparative study of blasphemy offenses in Indonesia with other countries. Muktiono's (2021) study also employed a normative approach to explore the importance of the principle of non-discrimination in cases of blasphemy in Indonesia (Al-Khanif, 2008; Margiyono et al., 2010; Arifin, 2010; Noorsena, 2012; Arief, 2012; Muktiono, 2021).

Arifin's (2010) study, which examined the judge's considerations on the statements of religious figures in court in the Shia vs. Sunni case, adopted a limited sociological approach. In contrast, the present study employs a socio-legal approach to analyze the sociopolitical dimensions of the enforcement of the Indonesian Blasphemy Law (IABL) and its impact on the right to religious freedom. This study seeks to expound on the development of the IABL and the reasons why its proponents consider its abolishment to be hazardous, which includes cases of vigilante justice. Additionally, the study investigates whether the enforcement of the IABL by the courts is influenced by the politicization of religion or the populism of Islam in Indonesia.

This study employs an interdisciplinary approach to investigate the enforcement of blasphemy cases in Indonesia. By considering various factors such as the political situation, sociological background, and legal structure, this study aims to offer a more comprehensive perspective than previous studies that primarily analyze legal construction from a top-down or normative approach (Al-Khanif, 2008; Margiyono et al., 2010; Arifin, 2010; Noorsena, 2012; Arief, 2012; Muktiono, 2021). The interdisciplinary approach employed here is advantageous as it reveals the gap between the idealistic level of law and its practical implementation in the field, a gap that cannot be uncovered by a normative approach. For instance, the study examines the reasons behind the recent strengthening of the Anti-Defamation Law and its potential manipulation for political purposes. Additionally, the study investigates the role of religious populism in the strengthening of the Blasphemy Law and its enforcement, and the possible influence it may have on the judges' decisions in blasphemy cases.

Prior studies, including those conducted by Al-Khanif (2008), Margiyono et al. (2010), Arifin (2010), Noorsena (2012), Arief (2012), and Muktiono (2021), utilize a normative approach to assess the conformity of domestic legal norms with international human rights standards. Although Crouch (2014) also employs a socio-legal approach, her study only focuses on the conflict between the Muslim and Christian communities in West Java, disregarding the judges' considerations and the factors influencing their decisions, which are critical aspects of this study. Therefore, this study aims to contribute to the existing literature by adopting an interdisciplinary approach that explores various factors affecting blasphemy cases' enforcement, including the judges' considerations and the law's practical implementation.

Efendi (2017) conducted a study on the judicial process in Indonesia, which primarily focused on the contested aspects of court decisions in general criminal cases at the appeals level, utilizing a construction approach. However, this present study differs in its methodological approach by adopting a hermeneutic and case-based approach to explore law enforcement studies on blasphemy cases and examine the extent to which judges' considerations are influenced by legal and sociopolitical factors. While Kamil, A. (2012) conducted a study on the independence of courts in deciding cases in general, this study specifically focuses on the independence of courts in blasphemy cases to uncover the various sociopolitical dynamics that surround them, including the phenomenon of eigenrichting carried out by vigilante justice groups. Therefore, this study aims to identify indicators that reveal the pattern of relations between the state and religion in Indonesia.

## Outline of the Thesis

The findings of this study are presented in a comprehensive and structured manner across seven chapters. Chapter I: An Introduction to a Study of Indonesia’s Anti Blasphemy Law. This chapter presents an introduction to the study of Indonesia’s Anti-Blasphemy Law, which includes the purpose, research questions, and objectives of the study. The chapter aims to provide a clear understanding of the issues surrounding Indonesia's Anti-Blasphemy Law, which have led to debates on whether to repeal or amend the law.

Chapter II: Theoretical and Conceptual Framework. This chapter provides an overview of the theoretical and conceptual frameworks that underpin the study. It discusses the different concepts and theories that relate to Indonesia's Anti-Blasphemy Law, including the concepts of religious freedom, human rights, and the rule of law.

Chapter III: Research Design: A Socio-Legal Study Approach Whilst Reforming Indonesia’s Anti Blasphemy Law. This chapter outlines the research design and methodology of the study, which involves a socio-legal approach. The chapter discusses the research design, data collection methods, and analysis techniques that were used to examine the enforcement of Indonesia's Anti-Blasphemy Law.

Chapter IV: Development of Anti-Blasphemy Law in Indonesia. This chapter provides a historical overview of the development of Indonesia's Anti-Blasphemy Law. It discusses the legal and political context that led to the enactment of the law, as well as the subsequent amendments to the law.

Chapter V: The Enforcement of Indonesia's Anti-Blasphemy Law and Its Impacts. This chapter analyzes the enforcement of Indonesia's Anti-Blasphemy Law and its impacts on society. It discusses how the law has been enforced, the different cases that have been prosecuted, and the impact of these cases on the rights and freedoms of individuals and groups.

Chapter VI: Examination of State-Religion Relations as Consequence of the Enforcement of the Anti-Blasphemy Law. This chapter examines the relationship between the state and religion in Indonesia and how it has been affected by the enforcement of the Anti-Blasphemy Law. It discusses how the law has influenced the relationship between the state and religious groups, and how this relationship has been affected by the different interpretations of the law.

Chapter VII: Conclusions: Reform or Repeal the Anti Blasphemy Law, What Is Possible in Indonesia and Why? This chapter presents the conclusions of the study, including the main findings and recommendations. The chapter discusses the different options for reforming or repealing the Anti-Blasphemy Law, and the factors that may influence these options in Indonesia. It also highlights the potential implications of these options on the rights and freedoms of individuals and groups in Indonesia.

# CHAPTER II

# THEORETICAL AND CONCEPTUAL FRAMEWORK

## 2.1 Theoretical Framework

### 2.1.1 Theory of the rule of law

### 2.1.2 Theory of social justice

### 2.1.3 The rule of law and social justice

### 2.1.4 The rule of law and law enforcement

### 2.1.5 Law Enforcement to uphold the rule of law and maintaining social justice

### 2.1.6 Law Reform and Human Rights

## 2.2 Conceptual Framework

### 2.2.1 History and Development of ABL in the World

### 2.2.2 Factors and Actors Influence the Enforcement of ABL

### 2.2.3 Relation between Political Manipulation of Religion and the enforcement of ABL

### 2.2.4 Relation between Populism of Religion and the Enforcement of ABL

### 2.2.5 The Impacts of ABL's enforcement towards society

### 2.2.6 The existence of ABL create the type of State and Religion Relationship?

### 2.2.7 Law reform of Anti Blasphemy Law, between amendment and repeal a law

# CHAPTER III

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

## 3.1 Introduction

## 3.2 Reflection on Socio Legal Research for Indonesia’s Anti-Blasphemy Law

## 3.3 Rational for chosen methodology of socio-legal study approach

## 3.4 Significance of the study

## 3.5 The research tools: Case studies

## 3.6 Data collection: in-depth interview and semi structured interview

## 3.7 The period of study

## 3.8 Analysis of the data

## 3.9 Research ethics

# CHAPTER IV

# DEVELOPMENT OF ANTI-BLASPHEMY LAW IN INDONESIA

# CHAPTER V

# THE ENFORCEMENT OF INDONESIA'S ANTI-BLASPHEMY LAW AND ITS IMPACTS

# CHAPTER VI

# EXAMINATION OF STATE-RELIGION RELATIONS AS CONSEQUENCE OF THE ENFORCEMENT OF THE ANTI BLASPHEMY LAW

# CHAPTER VII

# CONCLUSIONS:

# REFORM OR REPEAL THE ANTI BLASPHEMY LAW, WHAT IS POSSIBLE IN INDONESIA AND WHY?

# Bibliography