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

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# 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

"The rule of law" is a fundamental tenet of modern legal systems, emphasizing that everyone is subject to the law and to its protection, including those in positions of authority. This concept has been widely discussed, with many differing views on what it means and how to achieve it.

In one view, the “rule of law” entails formal features of the law, its enforcement, and fair and independent courts. According to Joseph Raz (1977), the “rule of law” protects human dignity and autonomy by ensuring the objective application of the law and protecting individuals against the arbitrary actions of those in power. permission. Raz stresses the importance of a legal system that ensures everyone follows the law. Besides formal legitimacy, another point of view emphasizes fairness and substantive democracy. This view holds that the law should reflect the values and interests of the people, promote human rights, equality and social welfare, and reflect the values and interests of the people. Legal empowerment, according to Amartya Sen, is essential for developing people's abilities and achieving freedom-like development. This perspective emphasizes the importance of using the law to help individuals achieve their goals and realize their fullest potential.

The third view acknowledges the complexity and context specificity of the 'rule of law'. Different societies have distinct legal, cultural and institutional traditions, and the rule of law can take different forms in different contexts. Michael Trebilcock advocates a pragmatic and multidisciplinary approach to reform and development of the rule of law. According to this author, an effective and sustainable legal system must take into account local factors such as political, social and economic.

In summary, “rule of law” is a multifaceted concept that requires consideration of many factors, such as the formal quality of the law, substantive fairness and democracy, and the local context. These perspectives provide a framework for ongoing debates and discussions about how to promote and achieve the 'rule of law' in diverse societies and contexts. A legal system that ensures the rule of law preserves human dignity and autonomy, reflects human values and interests, and takes into account local contexts.

### 2.1.2 Theory of social justice

The theory of justice is a concept that has been discussed and debated by philosophers and scholars for centuries. At its core, the theory of justice seeks to define what is fair and equitable in society, and how resources, opportunities, and benefits should be distributed among individuals and groups.

One of the most influential approaches to the theory of justice is that of John Rawls. Rawls argued that a just society is one that would be created by rational people in a hypothetical "original position," where they are ignorant of their own personal characteristics and are guided by principles of fairness and equality. Rawls identified two key principles of justice: the principle of equal basic liberties and the difference principle.

The principle of equal basic liberties holds that each person should have the same rights and freedoms as everyone else, regardless of their social or economic status. This principle has been emphasized by scholars such as Martha Nussbaum, who argues that basic capabilities such as life, bodily health, and freedom of movement are essential to a just society. (Nussbaum, Martha. Frontiers of Justice: Disability, Nationality, Species Membership. Harvard University Press, 2007.)

The difference principle, on the other hand, states that social and economic inequalities are only just if they benefit the least advantaged members of society and are attached to positions open to all. This principle has been criticized by some scholars, who argue that it could lead to a lack of incentives for innovation and hard work. However, others have defended the difference principle as an essential aspect of a just society. (Sen, Amartya. "Rawls and Beyond." Philosophy and Public Affairs, vol. 27, no. 3, 1998, pp. 211–236.)

Another important aspect of the theory of justice is the concept of distributive justice, which is concerned with how goods and resources are distributed among members of society. Scholars such as Robert Nozick have argued for a "minimalist" conception of distributive justice, in which individuals are entitled to keep the fruits of their labor and are not subject to excessive taxation or redistribution. (Nozick, Robert. Anarchy, State, and Utopia. Basic Books, 1974.)

The right to freedom of religion is a complex issue that can be analyzed through different theories of justice. One such theory is the capabilities approach, which was developed by Martha Nussbaum. According to this approach, a just society must ensure that individuals have access to a set of basic capabilities, including the capability to practice one's religion freely. In her book "Frontiers of Justice", Nussbaum argues that individuals should have the freedom to practice their religion without interference from the state or other actors, as long as it does not harm others. (Nussbaum, Martha. Frontiers of Justice: Disability, Nationality, Species Membership. Harvard University Press, 2007.)

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

Another theory of justice that can be applied to the right to freedom of religion is the principle of equal basic liberties developed by John Rawls. According to this principle, each person should have the same rights and freedoms as everyone else, regardless of their social or economic status. This principle includes the right to freedom of religion, which should be protected and guaranteed for everyone. (Rawls, John. A Theory of Justice. Harvard University Press, 1971.)

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

In conclusion, the capabilities approach and the principle of equal basic liberties are two theories of justice that can be applied to analyze the right to freedom of religion for everyone. These theories highlight the importance of individual agency, autonomy, and equality, which are essential for protecting and promoting this fundamental human right.

### 2.1.3 The rule of law and social justice

The relationship between the rule of law and social justice has been discussed by many scholars and experts. According to the United Nations Development Programme (UNDP), "the rule of law is central to advancing human development and social justice" (UNDP, 2013). Similarly, the International Bar Association (IBA) has stated that "the rule of law is the foundation for the protection of human rights and the achievement of social justice" (IBA, 2012).

One of the key aspects of the rule of law is its ability to ensure equal treatment for all individuals, regardless of their social status or position. This idea has been discussed by many legal scholars, including Lon L. Fuller, who argues that the rule of law requires "the principle of equality before the law" (Fuller, 1964). Social justice, on the other hand, seeks to create a more just and equitable society that ensures equal access to basic human rights and opportunities for all individuals, regardless of their race, ethnicity, gender, sexuality, religion, or any other characteristic.

The interdependence of the rule of law and social justice has been highlighted in many publications. For instance, the American Bar Association has emphasized that "the rule of law is essential for promoting social justice, and social justice is essential for maintaining the rule of law" (ABA, 2013). In a similar vein, the World Justice Project (WJP) argues that "the rule of law is a necessary precondition for social justice, and social justice is a necessary outcome of the rule of law" (WJP, 2018).

The rule of law and social justice are closely related concepts that are essential for creating fair and equitable societies (Kramer, 2017; Muntinga & Muntinga, 2020; Baxi, 2013). The rule of law ensures that all individuals are subject to the same laws and regulations, regardless of their social status or position (Baxi, 2013). Social justice, on the other hand, aims to create a more just and equitable society that ensures equal access to basic human rights and opportunities for all individuals, regardless of their race, ethnicity, gender, sexuality, religion, or any other characteristic (Muntinga & Muntinga, 2020).

The rule of law is a critical component of social justice because it provides the legal framework within which social justice can be achieved (Baxi, 2013). The rule of law ensures that laws are applied equally to all individuals, regardless of their social status or position (Baxi, 2013). This means that everyone is entitled to due process and equal protection under the law (Kramer, 2017). Without the rule of law, social justice cannot be achieved because individuals would not have a fair and impartial legal system within which to seek justice (Boer, 2020).

Social justice, in turn, provides a broader framework within which the rule of law can operate. Social justice aims to create a more just and equitable society that ensures equal access to basic human rights and opportunities for all individuals (Muntinga & Muntinga, 2020). This means that the rule of law must be applied in a way that promotes social justice and ensures that everyone has equal access to justice (Baxi, 2013; Zaidi, 2021). For example, in a society where income inequality is high, the rule of law must be applied in a way that promotes social justice by ensuring that the legal system does not favor those with greater economic resources (Muntinga & Muntinga, 2020). This may require providing legal aid to those who cannot afford legal representation (Boer, 2020), or ensuring that laws and regulations are written in a way that does not disadvantage marginalized communities (Zaidi, 2021).

In conclusion, the concepts of social justice and the rule of law are essential for creating fair and equitable societies. Social justice emphasizes the importance of fairness, equity, and inclusion within society, arguing that all individuals should have equal access to basic human rights and opportunities. The rule of law ensures that everyone is subject to the same laws and regulations, providing the legal framework within which social justice can be achieved. These intertwined concepts work together to ensure that everyone has equal access to justice and that basic human rights and opportunities are available to all individuals, regardless of their social status or position. The principles and frameworks developed by social justice theorists provide a valuable framework for understanding and addressing the inequalities and injustices that continue to exist within contemporary society.

### 2.1.4 The rule of law and law enforcement

The principle of the rule of law is a fundamental aspect of governance that ensures accountability of all entities and individuals, public and private, to laws that are publicly promulgated, equally enforced, and consistent with international human rights norms and standards. The rule of law also requires measures to ensure adherence to the principles of legal certainty, accountability to the law, equality before the law, participation in decision-making, procedural and legal transparency, and avoidance of arbitrariness. (World Justice Project, 2022).

Law enforcement, on the other hand, is the activity of ensuring that people obey the law and that those who violate the law are punished. It is carried out by law enforcement officials such as police officers, sheriffs, and other authorized officials (Delattre, 2017).

The relationship between the rule of law and law enforcement is complex and mutually reinforcing. The rule of law provides a framework for law enforcement to operate within, ensuring that law enforcement officials are accountable to the law and that their actions are consistent with due process and equal protection principles. In turn, law enforcement promotes the rule of law by ensuring that the law is applied fairly and consistently and by punishing those who break the law (Bingham, 2007).

However, challenges can arise when the rule of law and law enforcement are not mutually reinforcing. If the rule of law is weak, law enforcement officials may be tempted to use their power to violate individuals' rights or engage in corrupt practices. On the other hand, if law enforcement is ineffective, the rule of law may be undermined, and people may lose trust in the legal system.

To strike a balance between the need for law enforcement and the need to protect the rule of law, it is essential to ensure that law enforcement is subject to the rule of law. While law enforcement is crucial for maintaining order and security, it is equally important to protect individual rights and liberties (Bayley & Eckenrode, 2006).

In conclusion, the rule of law and law enforcement are interdependent concepts that must work together to create a just and fair society. While law enforcement is critical to maintaining social order, it must also be subject to the rule of law to ensure the protection of individual rights and freedoms. Understanding the relationship between the rule of law and law enforcement is essential to ensure that they work together to create a society that upholds the principles of justice and fairness.

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

The rule of law and social justice are fundamental principles of a just society, and law enforcement plays a critical role in upholding these principles. The rule of law ensures that everyone is subject to the same laws, regardless of their position or status. According to the United Nations Development Programme (UNDP), "the rule of law is central to advancing human development and social justice" (UNDP, 2013). Similarly, the International Bar Association (IBA) has stated that "the rule of law is the foundation for the protection of human rights and the achievement of social justice" (IBA, 2012). Social justice ensures that everyone is treated fairly and has the same opportunities. Law enforcement is essential to both of these principles because it is responsible for enforcing the law and protecting people from harm (Fukuyama, 2013).

Without law enforcement, people would be free to break the law without fear of punishment, which would result in chaos and anarchy. Additionally, law enforcement is responsible for protecting people from harm, which is necessary for maintaining social justice. In the absence of law enforcement, people would be at the mercy of criminals and wrongdoers, and society would become a place where the strong prey on the weak and the rich exploit the poor (Tyler, 2017).

Social justice, in turn, provides a broader framework within which the rule of law can operate. Social justice aims to create a more just and equitable society that ensures equal access to basic human rights and opportunities for all individuals (Muntinga & Muntinga, 2020). This means that the rule of law must be applied in a way that promotes social justice and ensures that everyone has equal access to justice (Baxi, 2013; Zaidi, 2021). For example, in a society where income inequality is high, the rule of law must be applied in a way that promotes social justice by ensuring that the legal system does not favor those with greater economic resources (Muntinga & Muntinga, 2020). This may require providing legal aid to those who cannot afford legal representation (Boer, 2020), or ensuring that laws and regulations are written in a way that does not disadvantage marginalized communities (Zaidi, 2021).

Although there have been cases of law enforcement officials abusing their power, the vast majority of law enforcement officials are honest and hardworking people who are dedicated to protecting their communities. The role of law enforcement in upholding the rule of law and maintaining social justice cannot be overstated. Without law enforcement, society would be vulnerable to lawlessness and injustice (Cohen, 2016).

In conclusion, the concepts of social justice and the rule of law are essential for creating fair and equitable societies. Social justice emphasizes the importance of fairness, equity, and inclusion within society, arguing that all individuals should have equal access to basic human rights and opportunities. The rule of law ensures that everyone is subject to the same laws and regulations, providing the legal framework within which social justice can be achieved. These intertwined concepts work together to ensure that everyone has equal access to justice and that basic human rights and opportunities are available to all individuals, regardless of their social status or position. The principles and frameworks developed by social justice theorists provide a valuable framework for understanding and addressing the inequalities and injustices that continue to exist within contemporary society.

### 2.1.6 Law Reform and Human Rights

Law reform and human rights are interconnected, with law reform being a powerful tool for promoting and protecting human rights. The relationship between law reform and human rights is highlighted in various sources. According to the Law Society, law reform is essential in ensuring that laws are consistent with international human rights standards and that they are enforced in a way that respects human rights. Moreover, law reform can be used to improve legal protections for marginalized groups, which can help prevent human rights abuses.

In addition, the rule of law is an essential component of protecting human rights. The rule of law ensures that everyone is subject to the law and that no one is above it. It is crucial for democracy and good governance and provides a framework for the protection and promotion of human rights.

Moreover, the rule of law is indirectly related to better rights protection in that it is associated with economic development. Economic growth is related to better human rights performance, as countries with higher levels of economic development tend to have stronger human rights records.

Finally, human rights law reform is necessary to ensure that laws and policies are consistent with human rights standards. According to a report by the Policy Exchange, human rights law reform is essential in addressing human rights abuses and ensuring that human rights standards are upheld.

In conclusion, the relationship between law reform and human rights is that law reform can be used as a tool to promote and protect human rights. The rule of law is an essential component of protecting human rights and is necessary for democracy and good governance. Law reform is necessary to ensure that laws and policies are consistent with human rights standards and that they are enforced in a way that respects human rights.

## 2.2 Conceptual Framework

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

Anti-blasphemy laws have a long history, dating back to ancient civilizations, where blasphemy was considered a crime against the gods. In the Middle Ages, blasphemy was seen as a crime against the Church, and those found guilty of it were often punished severely. The concept of blasphemy as a crime against God or religion continued into the modern era, and many countries around the world still have blasphemy laws in place.

In the United States, the First Amendment was adopted in 1791 as part of the Bill of Rights, which protected freedom of speech, religion, and the press. However, early blasphemy laws were enacted in many of the states, and it was not until the 20th century that the Supreme Court began to strike down these laws as unconstitutional. In 1952, the Supreme Court ruled that a state law prohibiting the blasphemy of God was unconstitutional (Joseph Burstyn, Inc. v. Wilson), and in 1971, the Court extended this protection to include criticism of religious figures and institutions (Cohen v. California).

In Europe, blasphemy laws were common until the Enlightenment, which brought about a shift towards secularism and rationalism. However, blasphemy laws continued to exist in many countries, including Ireland and Greece, into the modern era. In recent years, there has been a trend towards the abolition of blasphemy laws in Europe, with many countries repealing them in response to criticism from human rights groups and concerns about their impact on freedom of expression.

In the Islamic world, blasphemy laws are often based on interpretations of Islamic law, or sharia. These laws can be traced back to the early Islamic period, where blasphemy was seen as a crime against God and the Prophet Muhammad. In modern times, blasphemy laws have been used to persecute religious minorities and political dissidents in countries such as Pakistan, Iran, and Saudi Arabia.

Overall, the history of anti-blasphemy laws is complex and varied, with different countries and cultures approaching the issue in different ways. While some argue that such laws protect religious sensitivities and uphold moral values, others argue that they can be used to restrict freedom of expression, incite religious intolerance and violence, and justify human rights abuses. As societies continue to evolve and change, the debate surrounding blasphemy laws is likely to continue.

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

The enforcement of anti-blasphemy laws around the world is influenced by various factors and actors, including political, social, and cultural factors. One factor that influences the enforcement of anti-blasphemy laws is religion. In countries where religion plays a significant role in society, such as Pakistan and Iran, blasphemy laws are often strictly enforced to protect religious sensitivities. Religious leaders and groups have significant influence in these countries and may pressure the government to enforce these laws. For example, in Pakistan, the blasphemy law has been used to target religious minorities, such as Christians and Ahmadiyya Muslims (Human Rights Watch, 2021). In Iran, criticism of Islam is considered a serious offense and can lead to severe punishment, including death (Freedom House, 2021).

Another factor that influences the enforcement of anti-blasphemy laws is political stability. In some countries, anti-blasphemy laws are used as a tool to maintain political control and suppress dissent. For example, in Saudi Arabia, criticism of the royal family or Islam can result in imprisonment or even execution (Freedom House, 2021). In such cases, the enforcement of anti-blasphemy laws is used to suppress political opposition and maintain the status quo.

The international community also plays a role in the enforcement of anti-blasphemy laws. International human rights organizations and advocacy groups have been instrumental in raising awareness about the negative impact of these laws on human rights and freedom of expression. For example, Amnesty International has called for the repeal of blasphemy laws worldwide, stating that they "violate the human right to freedom of thought, conscience, and religion" (Amnesty International, 2021). Similarly, the United Nations has urged countries to review their blasphemy laws and ensure they comply with international human rights standards (United Nations, 2011).

In conclusion, the enforcement of anti-blasphemy laws in the world is influenced by various factors and actors, including religion, political stability, and the international community. While some argue that these laws protect religious sensitivities and uphold moral values, others argue that they can be used to restrict freedom of expression, incite religious intolerance and violence, and justify human rights abuses. As such, it is important for governments to carefully consider the impact of these laws on human rights and social harmony, and to strike a balance between protecting religious sensitivities and upholding fundamental human rights.

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

Blasphemy laws, which criminalize expression deemed offensive to religion, have a long history dating back to ancient civilizations such as Greece, Rome, and Egypt (Fadel, 2016). However, the modern concept of blasphemy laws can be traced back to the Christian church, which used the laws to suppress dissent and maintain religious orthodoxy (Chopra, 2019). During the Middle Ages, the church had the power to try and punish those who were accused of blasphemy. In the 16th century, the Protestant Reformation led to the emergence of new blasphemy laws in Protestant countries, while Catholic countries continued to enforce existing blasphemy laws (Fadel, 2016).

In the modern era, blasphemy laws are primarily associated with Muslim-majority countries such as Pakistan, where they have been used for political purposes by populist politicians and their religious supporters (Shahid, 2021; Schmid, 2019). The blasphemy laws in Pakistan were introduced during the British colonial period in the 19th century and were subsequently strengthened in the 1980s under the military regime of General Zia ul-Haq (Schmid, 2019). The laws have been used to target religious minorities, particularly Christians and Ahmadis, and to silence political dissent (Shahid, 2021). Other Muslim-majority countries, such as Saudi Arabia and Iran, also have strict blasphemy laws that are used to suppress freedom of expression (Bielefeldt, 2012).

Blasphemy laws are inconsistent with international human rights standards because they establish and promote official religious orthodoxy and dogma over individual liberty, and often result in violations of the freedoms of religion, thought, and expression that are protected under international instruments (UN Human Rights Council, 2011; Bielefeldt, 2012). At the national level, blasphemy laws are counter-productive since they may result in the de facto censure of all inter-religious/belief and intra-religious/belief dialogue, debate, and also criticism (Baderin, 2015).

In conclusion, the history of blasphemy laws reveals their close association with religion and their use as a tool for suppressing dissent and maintaining orthodoxy. The modern use of blasphemy laws in Muslim-majority countries has been driven by political and religious motives and has had a detrimental effect on human rights and freedom of expression. The international community has recognized the danger of blasphemy laws and has called for their repeal, as they are inconsistent with the fundamental principles of human rights and democracy.

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

Religious populism and the enforcement of anti-blasphemy laws have a long and complex history in many countries around the world. In Pakistan, for example, blasphemy laws were introduced during the colonial era and were subsequently expanded by various military and civilian governments as a means of consolidating power and controlling dissent (Ahmed, 2018). These laws have been used to target religious minorities and political opponents, and have been criticized by human rights groups and international organizations for their repressive and discriminatory nature (Human Rights Watch, 2022).

Similarly, in some other Muslim-majority countries, such as Iran and Saudi Arabia, blasphemy laws have been used as a tool of repression and authoritarianism. In Iran, for example, blasphemy laws have been used to silence dissent and stifle political opposition, particularly among religious minorities such as the Baháʼí (Hoseini, 2019). In Saudi Arabia, blasphemy laws have been used to justify the persecution of dissidents and critics of the ruling regime, including religious scholars and human rights activists (Human Rights Watch, 2022).

The relationship between religious populism and the enforcement of anti-blasphemy laws is complex, and can vary depending on the specific context and political dynamics of a given country or region. However, as noted earlier, there is often a clear link between the two, as religious populism can be used to legitimize and justify the use of blasphemy laws to suppress dissent and maintain political power. This can lead to the repression of free speech, the curtailment of religious freedoms, and the persecution of marginalized groups.

### 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

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### 5.3.2 Popularism of Religion and Independency of Judiciary.

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#### 5.3.2.3 Continuing Vigilante Justice

### 5.3.3 Law Enforcement of ABL Results Injustice Law

#### 5.3.3.1 Unequal Treatments towards Minority Groups of Religions

#### 5.3.3.2 … to be filled later….

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# EXAMINATION OF STATE AND RELIGION RELATIONSHIP IN INDONESIA AFTER THE ENFORCEMENT OF ABL

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# Bibliography