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

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# List of Abbreviations

ABL Anti-Blasphemy Law

FORB Freedom of religion or belief

IHRL International Human Rights Law

CCIR Constitutional Court of Indonesia Republic

NGO Non-Governmental Organization

FPI Front Pembela Islam / Islamic Defender Front

NU Nahdlatul Ulama

# 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 Indonesian Anti-Blasphemy Law (ABL) 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 preserve justice.
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 in Indonesia 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 Indonesia’s ABL enforcement degrade the rule of law?
2. What are the factors and actors shaping court decisions on the Indonesia’s ABL enforcement? If political manipulation of religions influence the enforcement of the IABL. What are the impacts of its enforcement to society? If the enforcement successful to preserve justice?
3. If the decisions made by the court gives rise to a real construction of relationship 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 studies were carried out by Al-Khanif (2008), Margiyono et al. (2010), Arifin (2010), Noorsena (2012), Arief, B.N. (2012). All of them using a top-down approach to evaluate the law and court decisions 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. (Al-Khanif, 2008; Margiyono et al., 2010; Arifin, 2010; Noorsena, 2012; Arief, 2012). This study does not intend to avoid the top-down approach, unlike the previous studies. This means that the top-down approach is still necessary to examine the current development of the latest anti-blasphemy law in Indonesia. This is because in the last ten years, the legal politics of the Anti-Blasphemy Law have experienced significant changes, especially after the issuance of several Constitutional Court decisions on the judicial review of the Anti-Blasphemy Law and the enactment of some new laws related to it. The question is whether the current legal politics can uphold the principle of the rule of law and respect human rights, especially the right to freedom of religion or belief, or vice versa.

In addition to a top down approach, this study also adopts a bottom-up approach and aims to elucidate the current development of the Indonesian Anti-Bribery Law (IABL). It investigates whether the enforcement of the IABL by the courts is influenced by the shortcomings of the law itself or by other non-legal factors. The purpose of this study is to investigate the factors and actors that influenced the implementation of the IABL; and to explore the extent to which religious and political populism affected the enforcement of the IABL. This study differs from Arifin's (2010) research, which examined the judge's ruling in the case of Shia vs. Sunni and adopted a sociological approach. Although Crouch (2014) also employs a socio-legal approach, Crouch focused on the conflict between the Muslim and Christian communities in West Java. Efendi (2017) primarily focused on the contested aspects of court decisions in general criminal cases at the appeals level and Kamil, A. (2012) focused on the independence of courts in deciding criminal cases in general. However, the Authors were disregarding the judges' considerations and the factors influencing their decisions, which are critical aspects of this study. In contrast, the present study employs aims to offer a more comprehensive perspective than previous studies. This study employs a socio-legal approach or so called interdisciplinary approach to reveals the gap between the law in book and its practical implementation in the field, a gap that cannot be uncovered by a normative approach alone. Whether the court rules give the impacts towards society and enable to preserve justice, this study aims to identify various factors and actors that shaped the court rulings on various blasphemy cases, including to examine whether or not populism of religions and political manipulation of religions influence the enforcement of the IABL.

Additionally, this study aims to further analyze whether court decisions have created a tangible construction between state and religion in Indonesia. All of these objectives will assist the author in examining the possibility of repealing or reforming the blasphemy laws in Indonesia. These further steps are not covered in the studies conducted by Telle (2018) or Tyson (2019) which provide guidance for this study on how the enforcement of the blasphemy laws is influenced by the politicization of religion, while Moektiono (2021) emphasizes the importance of the non-discrimination principle as the basis for the court in deciding cases of blasphemy.

## 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 theories, namely the theory of the rule of law and the theory of justice that ……... There are some conceptual framework such as………. including the concepts of religious freedom, human rights.

Chapter III: Research Design and Methodology. 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. This chapter provides the picture of four cases study.

Chapter IV: Development of Anti-Blasphemy Law in Indonesia and Its Impacts towards Human Rights. This chapter provides the development of Indonesia's Anti-Blasphemy Law. It discusses the legal and political context that led to the strengthen of the law by the Constitutional Court of Indonesia, as well as the presence of the related laws that support the ABL. Then, this chapter analyzed the impacts of its developments towards human rights, particularly the right to FoRB and other related rights.

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.

# CHAPTER II

# THEORETICAL AND CONCEPTUAL FRAMEWORK TO STUDY INDONESIA’S ANTI BLASPHEMY LAW

## 2.1 Theoretical Framework

This thesis refers to theory of the rule of law and theory of justice. The rule of law supports social justice by ensuring that everyone is subject to fair and equal laws and legal institutions. Social justice protects human rights by ensuring that everyone’s basic needs and dignity are respected and fulfilled. Human rights and law enforcement balance each other by ensuring that both security and liberty are maintained in society. Law reform facilitates law enforcement by improving the quality, effectiveness and legitimacy of laws and legal systems. Law enforcement requires law reform by creating a demand for new or updated laws to address new challenges or opportunities. The rule of law also depends on law reform by evolving with changing circumstances and expectations.

Diagram

Description automatically generated

Anti-Blasphemy Law

Figure 1. Theoretical and conceptual framework of this study

### 2.1.1 Theory of the rule of law and its elements

"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.

A.V. Dicey setidaknya memberikan tiga karakter pada the rule of law, yaitu supremacy of law, equality before the law, and due process of law. Pertama, supremacy of law menghendaki agar hukum ditempatkan pada posisi yang lebih tinggi dibandingkan kekuasaan, sehingga hukum mampu melindungi hak seluruh warga negara tanpa intervensi dari pihak manapun. Kekuasaan eksekutif yang absolut dan sewenang-wenang tidak diijinkan. Kedua, equality before the law berarti everyone should be treated equally. Hukum tidak boleh hanya mengakui hak istimewa kepasa seseorang atau kelompok tertentu. Hukum juga tidak boleh memberikan perlakuan yang berbeda kepasa seseorang atau kelompok orang berdasarkan agama, sex, ras, etc. Ketiga, due process of law menghendaki peradilan diselenggarakan secarqa adil, proporsional, dan benar. Hanya mereka yang melakukan pelanggaran yang patut diberikan sanksi.

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. The second 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.

Researching the law is at the heart of socio-legal studies. Understanding the amount to which external influences, such as social and political dynamics, can undermine court independence and influence judges in interpreting law and determining cases requires knowledge of the rule of law, which includes legal content, legal institutions, and legal procedures. Sebagai negara hukum, tidak heran jika dalam studi tentang UU Anti Penodaan Agama di Indonesia ini perlu dimulai dari memahami sejarah perkembangan hukum tersebut serta implikasinya terhadap hak asasi manusia dan sejauhmana socio-political dynamics mempengaruhi penegakan hukumnya.

According to Friedman (1975), law is a sophisticated system that integrates institutionalized law, substantive law, and public understanding. During the development of law, its legal contents and procedures must be systematically discussed with related institutions, such as law enforcement agencies, and the community's awareness and culture must be taken into account. This principle was proclaimed by the Indonesian National Law Development Agency *(BPHN).* According to Bedner and Vel (2010), the rule of law theory consists of three elements, namely elements of procedure, elements of substance or contents of law, and elements of institution (p.22-23). Frist, the element of substance or content of legislation will be studied using two indicators, with reference to Bedner (2010). The law and its execution must preserve the notion of justice as a prerequisite. The element legal procedure evaluates three indicators, the first of which is whether the legislation applies broadly rather than targeting certain groups.

Figure 3. Three Elements of Law Enforcement under the Rule of Law

The second element legal procedure evaluates three indicators, the first of which is whether the legislation applies broadly rather than targeting certain groups. Bedner refers to Raz's description implies that a law must apply to everyone, be easily understood by society, and not provide room for authority to misuse it for objectives that are against the public interest. The actions of the government are subject to the law, and discretionary acts and policies must be justified. Bedner (2010) also argued that the existence of the law ought to foster clarity and stability in society, rather than uncertainty and stress. The second indicator of the legal procedural aspect is “state activities are subject to the law” (58-59).

The third element of the rule of law is the element of legal institutions and the manner in which the law is enforced to protect human rights (Waldron, 2010, p. 2; Fuller, 1969; 162). In this study, it is necessary to investigate the fair trial and legal due process. Referring to Bedner (2010), the factor of law enforcement assesses whether blasphemy cases are adjudicated with impartiality and independence. The notion of a fair trial may be traced back to case studies demonstrating how legal institutions uphold the suspect's right to a legal defence, including how judges listen to their views equally. The impartiality and independence of the judiciary in judging blasphemy cases will be analysed, with a focus on instances that have generated a great deal of public controversy and on how the courts have responded to the linked social and political forces. Therefore, the experiences of religious minority groups that have been punished under the blasphemy legislation and other non-legal factors must be investigated. Were 'vigilante' assaults committed, and were these acts omitted? Whether the Judges were affected by extraneous pressure. In addition, according to the concept of due process of law, the state is obligated to ensure that the domestic courts' law enforcement procedures are compliant with IHRL. In this study, pertinent legal problems and facts pertaining to blasphemy cases will be discovered and studied to determine if the judges appropriately constructed and decided the criminal case in their conclusions.

Figure 4. Elements of the Rule of Law

Theory the rule of law menjadi landasan dalam studi ini karena Indonesia merupakan negara yang menganut konsep the rule of law sebagaimana tercermin dalam Pasal 1 Ayat (3); Pasal 27 ayat (1), Pasal 28D ayat (1) Konstitusi Indonesia (sebelum amandemen) (Asshiddiqie, 2005). Meskipun pada awalnya, sebagai bekas jajahan Belanda, konsep the rule of law yang digunakan di Indonesia lebih dekat dengan konsep “rechstaat” yang diterjemahkan sebagai “State of law”, dimana konsep ini menghendaki bahwa pemerintah didasarkan pada written law (Budihardjo, 2008). Written law atau hukum positif merupakan Civil Law yang diadopsi dari hukum-hukum yang diwariskan negara penjajah. Namun demikian, perkembangan sejarah, budaya, dan hubungan internasional mempengaruhi the development of law in Indonesia. Keberadaan hukum adat yang bertumpu pada customary law (Alting, 2019) dan hukum Islam yang telah lama established di masyarakat tidak bisa diabaikan begitu saja. Bahkan Arsekal dan Azra (2020) berpandangan pemberlakuan hukum Islam kian menguat di Indonesia. Hal ini ditandai dengan dijadikannya hukum Islam sebagai landasan hukum berdirinya partai politik berbasis Islam, terus berlanjutnya upaya partai politik Islam mengadopsi Hukum Islam ke dalam hukum nasional, serta diadopsinya Hukum Pidana Islam di Aceh. Dengan demikian, sampai saat ini Indonesia memberlakukan legal pluralism, dimana setidaknya ada tiga sistem hukum yang berlaku yaitu positivif law, customary law, and Islamic law. Pluralism hukum tersebut dapat mempengaruhi bagaimana the rule of law mengalami pergeseran dan tantangan dalam implementasinya, terutama ketika ketiganya mengalami intersection, termasuk dalam mengkaji perkembangan dan penegakan UU Anti Penodaan Agama di Indonesia.

### 2.1.2 Theory of 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, social justice and human rights

The relationship between the rule of law and social justice has been discussed by many scholars and experts. 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).

### 2.1.4 Law enforcement uphold the rule of law to preserve social justice

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).

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).

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.

## 2.2 Conceptual Framework

### 2.2.1 Anti-Blasphemy Law in the world

Anti-blasphemy laws have a long history, dating back to ancient civilizations, where blasphemy was considered a crime against the gods. 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. 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. Anti-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 anti-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 anti-blasphemy laws in Protestant countries, while Catholic countries continued to enforce existing blasphemy laws (Fadel, 2016).

In the modern era, anti-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 anti-blasphemy laws that are used to suppress freedom of expression (Bielefeldt, 2012). Therefore, anti-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, such as in Pakistan, anti-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).

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). Blasphemy had various meanings,[[1]](#footnote-1) but it was generally interpreted as an act of dishonour for God (Michael Glazer, Inc. 1981).[[2]](#footnote-2) 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[[3]](#footnote-3) and often changes into a form of censorship laws that punish critics and become a threat to democratization (Berman, 2011; Marshall & Shea, 2011).[[4]](#footnote-4) 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).

Many countries inherit[[5]](#footnote-5) 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,[[6]](#footnote-6) either at a national or local level.[[7]](#footnote-7)

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.

**2.2.2 Human Rights Under Anti Blasphemy Law Regime**

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 Indonesia’s Anti Blasphemy Law, 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).[[8]](#footnote-8) This commitment level can be seen from the treaty enforcement's determination at the domestic level (Hathaway, 2007).

The clauses of the IABL that restrict the freedom to religious expression fall between the rights to freedom of religion (FoRB) and the right to freedom of expression (FoRB). Both rights are fundamental rights. The right to FoRB is emphasized in Article 18 of the UDHR and Article 18 of the International Covenant on Civil and Political Rights (ICCPR).[[9]](#footnote-9) 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[[10]](#footnote-10) concerning Declaration of the Elimination of All Forms of Intolerance and Discrimination Based on Religion or belief 1981 (Declaration 1981)[[11]](#footnote-11) 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. The State is not permitted to deny such rights under Article 4 (2) of the ICCPR.

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). According to Article 18 (3), restrictions are acceptable if mandated by law and required to achieve a legitimate purpose such as “the preservation of public safety, order, health, or morality, or basic rights,” and the limitation must meet the proportionality test. The legitimate criterion of limitation must be understood in order to avoid over-limiting of such right, as will be described more in the next section.

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[[12]](#footnote-12) 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).

Moreover, the right to FoRB is protected at the international level by the Universal Declaration of Human Rights (UDHR) [[13]](#footnote-13) and the International Covenant on Civil and Political Rights (ICCPR),[[14]](#footnote-14) namely in Articles 19 and 20. Both treaties have been established as a common benchmark for achieving human rights safeguards for all people everywhere. [[15]](#footnote-15) Other tools include the United Nations General Comment (UNGC) No. 34.[[16]](#footnote-16) These texts encapsulate all of the ideas, beliefs, principles, norms, and laws that international communities, including Indonesia, have accepted and implemented.

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

“Everyone has the right to [FoE][[17]](#footnote-17) […] [that] includes the right to seek, receive and impart information and all ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of Art, or through any other media of his choice”.[[18]](#footnote-18)

Unlike the right to FORB, the right to FoE is not an absolute right (Smet, 2011b). A State is permitted to exercise discretion of restrictions through its domestic law (Fraser, 2019). However, the restriction itself must be strict with clear interpretation, regulated by law, and used for the purpose stated in the agreement (Debeljak, 2008). Therefore, when a person needs to manifest their religion or beliefs, a person cannot be punished because of his/ her belief, imagination, or thought, except if the religious expression of the person advocates an incitement of hatred against other religions or belief (Article 20 (3) or danger other people’s life or safety.

According to Scanlon, the term “freedom” denotes that each individual has the autonomy to autonomously determine what the people should think and do (Scanlon, 1972). Consequently, government policies that suppress an individual's views, opinions, or beliefs expressed through various media violate Article 19 of the ICCPR, unless IHRL grants a legitimate and proportional justification. Especially if this measure solely targets political opponents of the government or other minority groups through different types of restriction or prosecution. This is because the right “to seek, acquire, and disseminate information or ideas of whatever type” is equally protected and may only be restricted under Article 19 (3)[[19]](#footnote-19) or Article 20 (2) and (3).

The restriction of FoRB is similar to the restriction of the right to FoE, therefore their applicability could be overlap (Howard, 2017; Uddin, 2015), and defending the right to FoE would enhance the practice of FoRB. On the other hand, both rights may potentially conflict with one another and limit one another (Mondal, 2016). Moreover, the right to FoE is a prerequisite for the enjoyment of other rights, and the limitation of FoE should not violate other rights, such as the right to FoRB (Schmitter and Karl, 1991), as a state may apply restrictions through its domestic legislation, such as anti-blasphemy laws (ABL). [[20]](#footnote-20)

Summarizing Article 19 (3), the Syracuse principles, and UNGC No. 22,[[21]](#footnote-21) Durham and Scharffs elaborates four stages that the court must carry out in limiting the right to freedom of religion and expression. The limiting policy should pass those four stages of test respectively and thoroughly, and when the policy fails the test, the defendant should be released on behalf of the law (Durham and Scharffs, 2019).

Stage I. The restrictions must be set out in the law. This requirement consists of two elements, a formal element, and a qualitative element. A formal element requires that the State interference be legally authorized (Durham, 2011). Legally authorized means that the law is enacted by law-making bodies, through a legitimate process, and not contradictory with the respective State's Constitution. The most important is that the limitation on the right should “be compatible with the objects and the purpose of the Covenant.”[[22]](#footnote-22)

Stage II. The restrictions are only for violations committed in public. The explanation of this aspect can be found in the Rabat Plan of Action (RPA).[[23]](#footnote-23) The RPA (2011) recommends that the court consider first the status or position of the speaker in the society, particularly when he or she speaks in public, whether the speech is intentionally targeted to certain groups. Second, the speaker's intention means that the action requires a relationship between the object, speech subject, and the audience. Third, whether the likelihood or imminence of incitement happens, this means that some degree of risk of harm must be identified.[[24]](#footnote-24) Fourth, “publicly” means that the speaker cannot be punished if the expression is done in a private room. Fifth, the speech should be considered as public nature, which means that “the statements circulated in a restricted environment or widely accessible to the general public.” Lastly, the context should be prevalent with social and political conditions when the speech was delivered and shared.

Stage III. The restrictions must meet the “necessity test” with at least one of the following objectives such as (a) maintaining public order; (b) protecting people's morality; (c) protecting public health; (b) protect and respect the rights of others. Durham reminds that although the limitation must be tested on a case-by-case basis when exercising such limitation, the state cannot breach the fundamental right of “freedom of thought, conscience and religion,” and the state cannot prefer to only protect a certain religion with imposing arbitrary punishment to hold back the right to manifest one's religion (Durham, 2011). The most important thing is that the limitation grounds should be strictly related only to the enumerated grounds and with clear interpretation.[[25]](#footnote-25) The extended limitation grounds that are not stated in Art. 19 (3) or 20 (2) may not be invoked to justify a limitation.[[26]](#footnote-26)

Stage IV. The restrictions must meet the “proportional test,” which means the restrictions should guarantee equal treatment to everyone considering the proportional punishment and not be prone to discrimination against other minority groups.

In sum, untuk mengkaji dampak dari pemberlakuan UU Anti Penodaan Agama di Indonesia selaras dengan tujuan the rule of law pada dasarnya mengkaji sejuahmana UU ini menyerang hak kebebasan beragama dan sejauhmana hak kebebasan ekspresi beragama telah dilakukan by a strict requirement, having necessary and certain purpose, without any means to discriminate others, following the steps of legitimation limitation under IHRL and Indonesia Constitution and without any means to reduce the essential rights that are protected under Article 18, 19, and 20 of the ICCPR.

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

Anti-blasphemy laws are legal provisions that prohibit speech or actions that are deemed to be contemptuous of God or of people or objects considered sacred. Anti-blasphemy laws have also been used by political and religious authorities to silence dissent and marginalize minorities. One example of religious populism and anti-blasphemy laws is Pakistan, a Muslim-majority country that has the world's second-strictest blasphemy laws after Iran. Pakistan inherited its blasphemy laws from British colonial rule, but they were expanded and enforced by successive military regimes and civilian governments that sought to appease Islamist parties and mobilize religious sentiments among the masses. Since 1986, blasphemy has been punishable by death for insulting the Prophet Muhammad, and in 2023, the law was further extended to cover insults to the prophet's companions, which could target Shiite Muslims who are critical of many early Muslims. Blasphemy laws have been used to persecute religious minorities, such as Christians and Ahmadis, as well as secular activists, journalists, academics and artists. Blasphemy accusations have also triggered mob violence and extrajudicial killings by vigilantes who claim to defend the honor of Islam (Villa, 2022; Kuru, 2023).

Another example of religious populism and anti-blasphemy laws is Italy, a predominantly Catholic country that has one of the harshest blasphemy laws among non-Muslim-majority countries. Italy's blasphemy law dates back to 1930, when it was introduced by the fascist regime of Benito Mussolini as part of a concordat with the Vatican. The law prohibits any public offense to the "Deity" or to any religion admitted by the state, and carries a maximum penalty of two years in prison. Although the law is rarely enforced, it has been invoked by populist politicians and conservative groups who claim to protect Italy's Christian identity and values from secularization and multiculturalism. Blasphemy laws have been used to target comedians, singers, writers and activists who have criticized or mocked the Catholic Church or religion in general (The Conversation, 2017).

These two examples illustrate how religious populism and anti-blasphemy laws have been connected in different historical and cultural contexts. Blasphemy laws are not only a matter of religious doctrine or personal belief, but also a tool of political power and social control. Blasphemy laws violate the human rights of freedom of expression and freedom of religion or belief, and they can fuel intolerance, discrimination and violence against those who hold different or dissenting views.

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

Anti-blasphemy laws can have significant impacts on society, both positive and negative, depending on how they are enforced and interpreted. One of the possible impacts of anti-blasphemy laws is that they can protect the religious feelings and beliefs of the majority group, and prevent social unrest or violence that may result from religious offense. For example, some Muslim-majority countries have strict anti-blasphemy laws that aim to preserve the sanctity and honor of Islam and its prophet Muhammad. These laws may deter people from expressing views or producing materials that could provoke anger or resentment among Muslims, and thus maintain social harmony and order. However, this impact may also depend on the level of tolerance and diversity in the society, as well as the availability of alternative channels for dialogue and debate.

Another possible impact of anti-blasphemy laws is that they can restrict the freedom of expression and religion of the minority groups, and violate their human rights. For example, some Christian-minority countries have faced persecution and discrimination under anti-blasphemy laws that favor the dominant religion or ideology. These laws may limit the ability of Christians to practice their faith, share their views, or criticize the authorities. Moreover, these laws may also be abused or misused by extremists or opportunists who seek to silence dissent or settle personal vendettas. In some cases, anti-blasphemy laws can even lead to death sentences or extrajudicial killings for alleged blasphemers.

A historical example of anti-blasphemy laws is the case of England and Wales, where blasphemy against Christianity was a common law offence until 2008. These laws originated from the canon law of the medieval times, which allowed the bishops to arrest and imprison heretics, and in some cases, burn them at stake. The common law offences of blasphemy and blasphemous libel were later declared by the Court of King's Bench in the 17th century, and were punishable by fines, imprisonment, or corporal punishment. However, these laws were rarely enforced in modern times, and were eventually abolished by the Criminal Justice and Immigration Act 2008.

A contemporary example of anti-blasphemy laws is the case of Pakistan, where blasphemy against Islam is a criminal offence under section 295-C of the Penal Code. This law was introduced in 1986 by General Zia-ul-Haq as part of his Islamization policy, and it carries a mandatory death penalty for anyone who defiles the name of Muhammad. This law has been widely criticized by human rights groups and activists for being vague, arbitrary, and prone to abuse. According to a report by Pew Research Center (2022), at least 17 individuals were sentenced to death on blasphemy charges in 2019 in Pakistan, although none of them were executed. The most famous case is that of Asia Bibi, a Christian woman who was accused of blasphemy by her Muslim co-workers in 2009. She was acquitted by the Supreme Court in 2019 after spending eight years on death row.

In conclusion, some of these impacts may be positive, such as protecting religious sentiments and preventing social conflict; while others may be negative, such as violating freedom of expression and religion and endangering human lives. Therefore, it is important to examine these laws critically and carefully, and to balance between respect for diversity and respect for 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.

**2.3. Reformation of Anti Blasphemy Law in the World**

Although several countries still operate the law, some have succeeded in amending and harmonizing the law with IHRL norms, but Indonesia is still struggling. For instance, studies that discuss how to avoid the ambiguity of ABL with strict restrictive standards are inadequate. If the IHRL allows States to impose restrictive standards on the right FoE or speech and the right to FoRB, then the existence of ABL should be acceptable, provided the norms are following IHRL. Secondly, literature shows that some countries have succeeded in amending their ABL to comply with IHRL. For instance, instead of revoking the ABL, some Australian states such as New South Wales, Melbourne corrected the elements of blasphemous offences, the kind of penalties and the criminal procedure with the aim to protect all religions rather than focusing on Christianity in order to attenuate the law rather than strengthening it, making it less frequent to be enforced (Blitt 2010, p.7-9; Doe and Sandberg 2008). Another example, such as in Germany, Hillgruber (2016) argues that the law of blasphemy is amended more sensitive to local contexts, namely by considering that insulting any religions may disturb public order. Furthermore, in Ireland, the revision of blasphemy qualifications to be directed to banning hate speech with the threat of sanctions that are not always brought in the direction of criminal punishment, but enough on administrative sanctions (Rollinson 2011).

Regarding that, insulting other religions as acts or expressions that contain hate also needs to be considered by IHRL, considering that up to now, the "right to insult" is not prohibited by IHRL. However, "the obligation not to insult others" is also the norm recommended by IHRL. Respecting other religions by prohibiting "defamation of religion" through blasphemy law with conditions of strict restrictions or high norms and in accordance with IHRL is important to consider as a middle way so that harmonization of religious relations can be created, incitement to religious hatred could be avoided (Danchin 2010), public morality can be upheld, horizontal conflicts can be prevented (Cox 2014), and acts of discrimination against minority religions could be eliminated.

Learning from other countries experiences, either amending or abolishing the IABL, it is very urgent to make sure that the future law must be in line with the principles of the rule of law and human rights. Every new law must be prepared with high legal standards, avoid multiple interpretations, carried out legitimate limitations, and pay attention to the principle of proportional necessity, oriented towards protecting individual rights rather than focusing on protecting the religious system so that an accommodative state relation for all religions is created.

### 2.4 History of the ABL in Indonesia

Indonesia adalah salah satu negara mayoritas Muslim yang memberlakukan ABL sejak jaman Demokrasi Terpimpin Soekarno (1965), dilanjutkan pada jaman Order Baru Soeharto (1965-1998), dan dilanjutkan pada jaman Reformasi (1998 sampai sebelum Pemerintahan Jokowi 2019). Sedangkan perkembangan UU ABL pada masa Jokowi sampai sekarang akan menjadi obyek kajian dalam penelitian ini yang akan dijelaskan pada bab 4 dan seterusnya.

### 2.3.1 During the Guided Democracy of Soekarno (1965)

The Anti-Blasphemy Law (ABL) in Indonesia has a historical background that dates back to the period of guided democracy[[27]](#footnote-27) under President Soekarno. Presidential Decree No. 1/PNPS/1956 was signed on January 20, 1965, which aimed to minimize social conflicts between conservative citizens and non-religious groups, including atheists. The government considered these groups to be against Pancasila, Indonesia's founding ideology, and believed that their existence could threaten protected religions, national security, and the unity of the nation[[28]](#footnote-28) (Sihombing, 2008).

During this time, Indonesia was in a period of guided democracy, following President Soekarno's Decree of July 5, 1959. Later, Presidential Decree No. 150 of 1959 further strengthened this period by ordering the return to the 1945 Constitution and forming a Provisional Consultative Assembly and a Provisional Supreme Advisory Council[[29]](#footnote-29) as soon as possible.

The events of the 1965 communist revolution created a sense of fear among the Indonesian people, who did not want a similar incident to occur again (Arief, 2012; Crouch, 2011). This led to the issuance of 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 and can be considered as blasphemy of religion.[[30]](#footnote-30)

Since then, Presidential Decree No. 1/PNPS/1956 has changed its title to Law No. 1/PNPS/1965, also known as the Indonesian Blasphemy Law (IABL). The law remains the same, despite the changes in its title. It is worth noting that Indonesia, Malaysia, and Pakistan are predominantly Muslim countries[[31]](#footnote-31), and their blasphemy laws are not original. These laws have different historical contexts.

In Indonesia, the blasphemy laws consist of two components. The first is President Stipulation No. 1/PNPS/1965 concerning the Prevention of Abuse and/or Defamation of Religion (Law No. 1/PNPS/1965), signed by President Soekarno on January 20, 1965.[[32]](#footnote-32) The second is the corporation law, known as Indonesia's Criminal Code Article 156a, which adopted its concepts from the Netherlands, the colonizing country.

Soekarno’s decision to declare Indonesia in a state of emergency was motivated by two conditions. First, the fall of Ali Sastroamidjojo’s Cabinet prompted him to use martial law as a reference basis to form a new cabinet and appoint himself as the supreme commander of the armed forces (Mardani, 2019). The cabinet formed by Soekarno was called the Gotong Royong Cabinet and consisted of major parties, including PNI, Masyumi, NU, and PKI. Djuanda Kartawijaya was appointed as chairman, and several people outside political parties became ministers (Fealy, 1998). However, the Gotong Royong Cabinet did not receive support from some political parties such as Masyumi, the Catholic Party, and the Indonesian People's Party.

Second, the emergency condition arose due to the Darul Islam (DI)/Indonesian Islamic Army (TII) rebellion, which aimed to establish an Islamic state. The Conference of Muslims in West Java in 1948 gave birth to the idea of establishing the Islamic State of Indonesia (NII), which was motivated by the disappointment of the Islamic fighters over the Renville agreement (Dewanto, 2011). The rebellion began when the Dutch invaded Yogyakarta and announced the fall of the Unitary State of the Republic of Indonesia (NKRI) and the birth of the NII, making West Java the de facto area of the NII. Kartosoewirjo, the leader of the rebellion, was a follower of traditional Islam and had succeeded in encouraging the proliferation of religious sects to hundreds of groups (Gus Sholahuddin, 2011; Dewanto, 2011).

The government was concerned about the rise of traditional beliefs, which it considered to be contrary to the Pancasila Precepts I “Belief in One the Only God” and article 29 of the 1945 Constitution “A State based on One the Only God” (Kahin, 1952). The Kartosuwirjo rebellion, which was finally suppressed in 1962, had killed 22,895 people, destroyed 115,822 houses, and caused state losses of more than Rp. 650 million (Fealy, 1998).

Therefore, Soekarno issued Presidential Decree PNPS No. 1/PNPS/1965 to secure the country from rebellions caused by deviations or misunderstandings in the interpretation of a particular religion in Indonesia. This decree aimed to prevent the rise of traditional beliefs and uphold the state’s foundation based on the belief in one and only God (Mardani, 2019).

In 1957, Indonesia was facing two major political crises which prompted President Sukarno to declare a state of emergency. The first crisis was the fall of the Ali Sastroamidjojo Cabinet, which led to the appointment of Sukarno as the supreme commander of the armed forces and member of the formation board to form a new cabinet under martial law. This new cabinet was called the Gotong Royong Cabinet and included major political parties like the PNI, Masyumi, NU, and PKI. However, it did not receive support from other political parties such as the Catholic Party and the Indonesian People's Party (Dewanto, 2011).

The Darul Islam (DI)/Indonesian Islamic Army (TII) rebellion in Indonesia was a significant crisis that aimed to establish an Islamic state. It was triggered by the dissatisfaction of Islamic fighters over the Renville agreement, which they believed did not protect the citizens of West Java. In 1948, the Conference of Muslims in West Java, attended by 160 representatives of Islamic organizations, gave birth to the idea of establishing the Islamic State of Indonesia (NII)[[33]](#footnote-33) (Dewanto, 2011). The rebellion was led by Kartosuwirjo, a follower of traditional Islam who believed in mysticism and succeeded in encouraging the proliferation of religious sects to hundreds of groups[[34]](#footnote-34) (Gus Sholahuddin, 2011; Dewanto, 2011).

The DI/TII rebellion gained momentum when the Dutch invaded Yogyakarta, the nation's capital, and declared the fall of the Unitary State of the Republic of Indonesia (NKRI) and the birth of the NII, making West Java the de facto area of the NII. The Soekarno government was alarmed by the DI/TII rebellion, which caused significant losses to the state, including the deaths of 22,895 people, the destruction of 115,822 houses, and losses exceeding Rp. 650 million[[35]](#footnote-35). In response to the crisis, President Sukarno issued a Presidential Decree (PNPS No. 1/PNPS/1965) aimed at securing the country from rebellions caused by deviations or misunderstandings in the interpretation of a particular religion in Indonesia (Dewanto, 2011).

The rise of traditional beliefs was seen by the Soekarno government as being contrary to the Pancasila Precepts I, "Belief in One the Only God," and Article 29 of the 1945 Constitution, "A State based on One the Only God." The Presidential Decree allowed the government to take measures to curb the spread of these beliefs and maintain the unity of Indonesia. The state of emergency was lifted in 1962 after the DI/TII rebellion was suppressed, but its impact on Indonesia's political and social landscape continued for years to come (Dewanto, 2011).

The DI/TII rebellion was a significant event that demonstrated the potential threat of religious-based movements in Indonesia. It highlighted the need for the Indonesian government to prioritize religious harmony and maintain the unity of the country. The rebellion also had long-lasting effects on the social and political landscape of Indonesia, underscoring the importance of addressing issues of discontent and ensuring equal protection and opportunities for all citizens. Understanding the historical context and factors that led to the DI/TII rebellion is crucial in developing effective strategies to prevent similar crises in the future.

The 1965 Presidential Decree on the Prevention of Abuse and Blasphemy of Religion (PNPS) was utilized by President Soekarno as a means of controlling belief systems that posed a threat to the power and existence of the Republic of Indonesia. The PNPS was based on the First Principle of Pancasila, which stipulates belief in one God, and Article 29 of the 1945 Constitution, which allows for the prohibition of deviant beliefs or teachings that insult the five recognized religions: Islam, Protestant Christianity, Catholicism, Hinduism, and Buddhism. The purpose of the decree was to ensure state security and the success of the national revolution by preventing abuse and blasphemy of religion and maintaining public peace[[36]](#footnote-36). However, the primary aim of the 1965 PNPS was not to protect religions, but rather to suppress belief systems that posed a threat to the unity of the Republic of Indonesia. The decree was used as a tool to eliminate beliefs that endangered the state, and it was not revoked even after the state of emergency, which had been imposed to subdue Kartosoewirjo (DI/TII) in 1962, was lifted.

### 2.2.7.2.2 During New Order of Soerharto (1965-1998)

During Soekarno's guided democracy, the status of the 1965 PNPS was converted into law and subsequently strengthened through various legislative measures. However, the legitimacy of the PNPS was called into question due to its origin as a decree made solely by the President. The MPRS Decree Number XIX/MPRS/1966 addressed this issue by providing the opportunity for the review of state legislative products not aligned with the 1945 Constitution, such as the 1965 PNPS, to become fully legitimate laws. This decree mandated that the DPR conduct a comprehensive review of all legislative products that were intended to improve the 1945 Constitution. According to the decree, Presidential Decrees and Presidential Regulations that aligned with the conscience of the people and served to secure the national revolution would be accepted as valid laws. Those that failed to meet these requirements would be declared invalid.[[37]](#footnote-37) The DPR was required to complete this review process within two years.

The socio-legal and political-ideological environment of the period between 1950 and 1965 was focused on developing national law, which required a decision between implementing legal pluralism or pursuing national law unification (Wignjosoebroto, 1994). The acceptance of the 1965 PNPS as a legitimate law was based on Oemar's proposal. Oemar argued at the 1963 National Seminar on offenses against religion that all religious adherents in Indonesia had the same right to practice their religion and that everyone was obliged to respect the religious rights of others. This was a critical aspect to ensure that Indonesia, as a pluralistic country, avoided religious conflict.

“[…] Doesn’t the acknowledgment of the precepts of One the Only God as the prime cause states in the Pancasila, with article 29 of the 1945 Constitution which must be the basis of religious life in Indonesia, justify and even oblige us to create the religious offenses in the Criminal Code? […] Religion in our life and legal reality is a fundamental factor, so it can be understood if this factor can be used as a strong basis for bringing religious offenses to life.”

Oemar's idea is none other than to ensure that first, as a Pancasila’s the rule of law, it is necessary for the State to ensure that the precepts of Pancasila and Article 29 of the 1945 Constitution are properly implemented. Second, so that Indonesia does not become a secular state that separates religion from the state as has happened in liberal countries. In terms of line Oemar views as follows:

“[..] Our rule of law is based on Pancasila, which is not a religious state, based on “Einheit” between religion and the state and which does not adhere to “separation” within sharp and strict boundaries, as adopted by western countries, and socialist countries that even include criminal sanctions on the principle of “the separation […]” (Adji, O., 1983: 50).

According to Oemar, the protection of religion is of utmost importance due to three reasons. Firstly, religion is a legal interest that must be safeguarded, as per the Friedensschutz theory or the "religious interconfessional joy." Secondly, the protection of religion aims to secure citizens' feelings of safety, in line with the Gefühlsschutz theory or the "holiest inner life of the community." Finally, the state must protect religion as a legal interest, in consideration of the Religionschutz theory or the "cultural property of religion and the immense idealism that emerges from it for a large number of people" (p.50).

Following the provisions of TAP MPRS No. XIX and Oemar's ideas, Presidential Decree No. 1/1965 was converted into a law via Law No. 5/1969, under the condition that there were improvements, changes, or additions to the material, which would be utilized for the formation of the succeeding law. However, as of the time of this study, Law no. 1/PNPS/1965 has not been altered, expanded, or had any material added to it. While the 1965 PNPS Law received formal approval from the two authorized institutions for drafting laws, namely the President and the DPR, the law itself has not been perfected as mandated by Law Number 5 of 1969.

During the New Order period, Suharto's administration maintained the IABL and strengthened 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.

The enactment of the Law No. 1/PNPS/1965 aimed to reduce social conflict between conservative religious groups and non-religious, belief groups, and atheists that were in conflict with the First Sila of Pancasila[[38]](#footnote-38). These groups were perceived to threaten the established religion, national security, or cause national disintegration (Densmoor, 2013)[[39]](#footnote-39). The 1965 communist movement and revolution became a dark history that frightened Indonesian society and they want to avoid a similar incident from happening again (Arief, 2012). This event led to the issuance of the Provisional People's Consultative Assembly of the Republic of Indonesia No. XXV/MPRS/1966, which banned the teachings of communism, Leninism, and Marxism[[40]](#footnote-40). The revolution also prompted President Soekarno to resign from his office and gave the mandate to Soeharto to replace him[[41]](#footnote-41). From then on, the administration law under President Soeharto's administration or the "New Order" was changed.

### 2.3.4. During Early Reformation Era (1998 – before Jokowi’s Era of 2016)

The Anti-Blasphemy Law in Indonesia during the Reform era from 1998 until before the Jokowi Administration did not experience any significant changes, remaining similar to the law during the Soeharto era. However, during the Reform era, which included the presidencies of Habibie, Susilo Bambang Yudhoyono, and Megawati, the Anti-Blasphemy Law was rarely used to punish religious minority groups.

From the aforementioned, it can be concluded that the history of the development of the Anti-Blasphemy Law in Indonesia during the Old Order (post-Indonesia's independence), the New Order, and early Reform experienced significant changes. During the Old Order, the Anti-Blasphemy Law was intended to prevent religious-based movements that could disrupt national stability. This was understandable since Sukarno prioritized national unity. Interestingly, although the Constitution used during the Old Order did not contain articles on human rights, no one was criminalized under the Anti-Blasphemy Law as it did not include criminal sanctions and had not yet been linked to the Criminal Code. This differed from the New Order era, where to maintain national stability and protect established religions (Islam) in order to garner support from the majority Muslim population, Soeharto began using the Anti-Blasphemy Law to criminalize his political opponents whom he deemed as blasphemous against Islam. During the early reformation era, when the Indonesian Constitution had been amended to include human rights articles, cases of blasphemy were rare.

However, during the Joko Widodo’s administration, the number of cases increased significantly. Therefore this study focuses to study (i) to what extent the Indonesia’s ABL enforcement degrade the rule of law; (ii) what are the factors and actors shaping court decisions on the Indonesia’s ABL enforcement? If political manipulation of religions influence the enforcement of the IABL. What are the impacts of its enforcement to society? If the enforcement successful to preserve justice?; (iii) If the decisions made by the court gives rise to a real construction of relationship between the state and religion in Indonesia and what type of relationship?. All of these questions will be answered systematically in the subsequence chapters.

# CHAPTER III

# METHODOLOGY AND RESEARCH DESIGN

## 3.1 Introduction

This chapter outlines the methodology and research design employed in this study. As mentioned in the previous chapter, the study utilizes the socio-legal research approach. Therefore, this chapter begins by elucidating the rationale for selecting this approach to examine the Anti-Blasphemy Law. The author then presents the significance of the study, research tools, data collection methods, study period, data analysis, and research ethics. As the data used in this study are diverse, including statutes, case studies, interview results, and other secondary data, this chapter provides a clear and systematic description of the types of data used.

## 3.2. Rational for choosing methodology of socio-legal study approach

The socio-legal study approach is a suitable methodology for anti-blasphemy law research because it allows the researcher to examine the law as a social phenomenon that interacts with various aspects of society, such as culture, religion, politics, and human rights. The socio-legal study approach is an interdisciplinary approach that draws on perspectives and methods from the humanities and the social sciences, such as sociology, anthropology, political science, and economics (INFLIBNET Centre, n.d.). By using this approach, the researcher can explore the origins, functions, effects, and challenges of anti-blasphemy laws in different contexts and jurisdictions.

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

The socio-legal study approach also allows the researcher to critically evaluate anti-blasphemy laws from different theoretical and normative perspectives, such as legal pluralism, human rights, democracy, secularism, and religious freedom. The researcher can use these perspectives to question the assumptions, values, and interests that underlie anti-blasphemy laws and to assess their implications for social justice and social change (Sussex University, n.d.).

Therefore, the socio-legal study approach is a rational methodology for anti-blasphemy law research because it provides a comprehensive, contextualized, and critical framework to analyze and interpret the law as a social phenomenon that has multiple dimensions and impacts on society.

## 3.3 Significance of the study

This study aims to contribute to the understanding of the sociopolitical context surrounding the enforcement of Indonesia's blasphemy law (IABL) in relation to the right to freedom of religion or belief (FoRB). It seeks to expand existing knowledge in this area by adopting a socio-legal approach that considers the factors and actors that influence the enforcement of the law.

Previous studies on the IABL have predominantly taken a top-down normative perspective of Human Rights Law. However, this study aims to provide an additional understanding of the gap between the IABL and its enforcement by examining the sociopolitical context that shapes the application of the law.

The data collected and findings from this study can be useful for law enforcers who examine blasphemy cases. Specifically, it highlights the potential for misused application of the IABL to deprive citizens of their fundamental rights. Therefore, the study emphasizes the importance of courts prioritizing the rule of law, protection of rights, and aspects of justice that uphold humanity in blasphemy cases. Furthermore, this study can also contribute to the field of social science by improving the performance of legal systems.

In terms of legislative impact, the findings of this study may help legislators understand that the vague concept of the IABL has a significant impact on the vulnerability of legal certainty and justice in its enforcement. This study argues that reforming the cryptic, repressive, and discriminatory anti-blasphemy law can prevent Indonesia from becoming an authoritarian regime that violates citizens' rights. The data, findings, and results of this study can enrich academic studies and assist in formulating legal norms that have high standards and provide a complete picture of the development of the law on blasphemy and its enforcement. By doing so, legislators can prevent public debate or vigilante justice from threatening democratization.

Overall, this study seeks to expand the knowledge base on the sociopolitical context surrounding the enforcement of the IABL and its impact on FoRB. It aims to provide insights for law enforcers and legislators to promote human rights and uphold the rule of law while enhancing legal certainty and justice in Indonesia.

## The research tools and data collection:

Untuk menjawab pertanyaan dalam studi ini secara kompherenship, Penulis menggunakan beragam research tools dan pengumpulan data sebagai berikut:

## 3.4.1 Constitutional Court Decisions and Statutes studies

Untuk mengkaji perkembangan politik hukum ABL saat ini serta dampaknya terhadap the rule of law dan hak asasi manusia, maka Penulis perlu mengkaji terlebih perkembangan politik-hukum anti-penodaan agama setelah dikeluarkannya beberapa putusan Mahkamah Konstitusi tentang judicial review the 1965 ABL, namely Decision Numbers 140/PUU-VII/2009, 140/PUU-VII/2010, 76/PUU-XVI/2018, and 84/PUU-X/2012; serta peraturan-peraturan dan kebijakan publik lainnya yang memperkuat kedudukan the 1965 ABL. Selain itu, Penulis juga mengkaji isi dari the Law No. 1/PNPS/1965 concerning the Prevention and Eradication of Religious Abuse and/or Defamation (hereinafter the 1965 ABL), the 1981 Criminal Code of Indonesia (hereinafter the 1981 CCI) of Article 156a, the Law No. 11 Year 2008 concerning the Information and Electronic Transaction (hereinafter the IET Law) and various extended regulations and public policies that support blasphemy law.

The Constitutional Court judges' reasons and considerations on judicial review of the ABL is examined refer to the Indonesia Constitution Pasca Amandemen, particularly Chapter X article 28 A-J and 29, including the human rights treaties ratified by Indonesia, namely the International Covenant on Civil and Political Rights, and other related Statutes, such as the Law Number 39 Year 1999 concerning Human Rights. All current statutes and regulations concerning anti-blasphemy will be critically analyzed for their meanings, implications, and impacts on the rule of law and justice, particularly towards the human rights of the people.

## 3.4.2 Criminal Court Decisions studies

Untuk menggambarkan politik hukum dari the current development of the Indonesia’s ABL and its impact towards human rights, Penulis juga menelusuri the criminal court decisions on blasphemy cases from 2008 to 2020 to obtain information on the court decisions trends, terutama data perihal kelompok agama mana yang paling banyak memanfatkan hukum blasphemy sebagai pihak pelapor, jenis blasphemy apa yang paling banyak dituduhkan kepada terdakwa, berapa tahun hukuman yang dijatuhkan pengadilan, serta siapa atau dari kelompok agama mana yang menjadi target penghukuman.

## 3.4.2 In-depth interview and semi structured interview

This study aims to provide valuable insights of the enforcement of the Indonesia’s ABL’s and its impact towards justice. This study is conducted through interviews with two types of respondents: experts and informants. A total of 42 respondents are interviewed, including experts such as the Commissioner of the National Commission of Women, justices of the Supreme Court and the CCIR, human rights experts, parliamentarians, staff of the National Human Rights Commission and Human Rights NGOs, and the former head of YLBHI – Jakarta. The experts' interviews are conducted using open-ended questionnaires to explore the experiences with the cases that shape the ABL enforcement, identify actors who push for the strengthening of blasphemy laws, and explore public views for defending, revising, or deleting the ABL. These in-depth interviews are conducted face-to-face or through online media such as Zoom, Skype, email, or other related applications, given the Covid-19 pandemic.

Additionally, this study interviews informants and victims who have experienced or have been involved in blasphemy cases, including perpetrators or victims of religious minority groups as the target of blasphemy cases. Due to various reasons, some of the data from government officers, lawyers, and members of minority religious groups regarding the law enforcement will be extracted from various secondary sources such as documentary videos published by mass media, interviews on the parties involved, and the societies that have been published by various media, including YouTube channel officials and news from Islamic organizations, FPI, and others.

## 3.4.3 Case studies

This study uses a case studies approach of a selected number of blasphemy cases, namely the Ahok case,[[42]](#footnote-42) the Meiliana case,[[43]](#footnote-43) the Gafatar (Millah Abraham) case,[[44]](#footnote-44) the case of Ahmadiyya and the case of Bambang Bima.[[45]](#footnote-45) Each case are discussed in depth to support the arguments provided in each chapter to explain a complete picture of the socio-political dynamic of the enforcement of the IABL, factors and actors that shaped blasphemy enforcements, including the vigilante actions against minority groups of religion that happened during the law enforcement, and how the state has favor towards certain religious groups.

Although there are cases that have similarities in one aspect, other aspects make these cases different and unique. Gambaran tentang empat kasus yang dikaji adalah sebagai berikut:

1. **Ahok Case**

Ahok is [[46]](#footnote-46) 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.

Ahok's case was reported by the Indonesian Ulema Council (MUI) South Sumatra, Habib Novel Chaidir Hasan, was reported to the Criminal Investigation Agency (Bareskrim) LP/1010/x/2016 on charges of violating Article 156a of the Criminal Code in conjunction with Article 28 paragraph (2) of Law Number 11 2008 concerning Electronic Transaction Information with the threat of five years in prison.[[47]](#footnote-47) Then followed by Muhammadiyah Youth who participated in reporting Ahok with the report number TBL/4846/X/2016/PMJ/Dit Reskrimum. 2016/PMJ/Directorate of Crime.[[48]](#footnote-48) Ahok was accused of blaspheming Islam because of his statement:

“[...] this [local] election is being pushed forward, so if I am not elected, I will stop it in October 2017 so if we run this program well, ladies and gentlemen, even though I am not elected as governor, this story will inspire you, so it doesn't matter. Don't worry, ah... later if you don't vote, Ahok's program will be disbanded, no... I'm until October 2017, so don't trust people, you can just in your heart you can't choose me, right? right, being lied to using Al-Maidah 51, various kinds of things are the rights of parents, so if you feel you can't be elected because I'm afraid to go to hell because of being fooled like that, it's okay papa, because this is your personal call, ladies and gentlemen, this program just goes on, So ladies and gentlemen, you don't have to feel bad, in your conscience you can't choose Ahok, you don't like Ahok, but if you accept the program, it's not good, so I owe you a debt of gratitude, don't you have a bad feeling, you'll die slowly from a stroke.”

1. **Ahmadiyya Case**

The case of Ahmadiyya,[[49]](#footnote-49) a new religious movement, in Cikeusik, Pandeglang, Banten of West Java represents a conservative religious society. The Ahmadiyya followers faced various forms of violence from vigilante justice and how hardliner 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.

Ahmadiyya is a legal entity founded by the Indonesian Islamic Community and was approved by the Ministry of Law in 1953. However, since 1980 the Ahmadiyya has been declared heretical for the first time by the MUI Fatwa, following other fatwas. Since then, Ahmadiyya adherents in various parts of Indonesia, such as in Lombok, West Nusa Tenggara, in Tangerang, in Bogor, in East Java, etc., have often been victims of acts of vigilantism, either in the form of expulsion, death threats, houses worship is burned, etc. Since Ahmadiyya was founded in 1953 until before the MUI Fatwa declared Ahmadiyya heretical (1980), Ahmadiyya adherents lived peacefully side by side with other Muslims. Then the Ahmadiyya were declared heretical by the MUI because they considered Mirza Gulam Ahmad as the last prophet and possessed a holy book other than the Qur'an. The former chairman of the MUI who once issued a heretical fatwa against Ahmadiyya and currently serves as Vice President of the Republic of Indonesia, Ma'ruf Amin, once told the BBC:

''Because Ahmadiyya considers there is a prophet after Prophet Muhammad. It's an opinion that can't be disputed anymore. In the agreement of all Muslims in the world, tajdid (reform) is allowed but it is a movement. But if the tajdid then says there was a prophet after the Prophet Muhammad, it is a deviant. It goes beyond the definition of tajdid. carry the name of Islam.”[[50]](#footnote-50)

This has been denied by Ahmadiyya, but this has not stopped MUI from continuing to declare Ahmadiyya as a heretical religion. Ahmadiyya adherents deny the understanding of mainstream Muslims to Ahmadiyya, which states that there is a misunderstanding in understanding Ahmadiyya. This is as stated by JAI spokesman, Yendra Budiandra:

“The Qur'an is the holy book of the Ahmadiyya Muslim community that must be read and is a guide for life, while the Tazdkirah is like other books of Hazrat Mirza Ghulam Ahmad that are recommended to be read, but not a holy book as in the context religious scriptures. We Ahmadiyya Muslims are the same as following and believing in these criteria, both from the creed, the Pillars of Faith, the Pillars of Islam, and the Holy Qur'an.”[[51]](#footnote-51)

The MUI solution that recommends Ahmadiyya leave Islam is seen as not solving the problem and will be difficult to accept because Ahmadiyya adherents practice Islamic teachings. This was stated by an expert and explained by Alauddin Makassar, Professor DR. Qasim Mathar, a theology lecturer at the State Islamic University (UIN), who stated that:

“It is impossible for them to be called a religion that is not Islam, for example they are told to take another name. Because their practice of religion is Islam, their mosque and way of praying is Islam. They fast during Ramadan, they go for Hajj too, and so on.”[[52]](#footnote-52)

The wave of rejection of the Ahmadiyya as part of the Muslim community that occurred in Indonesia was also influenced by the rejection that occurred in various countries, such as Pakistan, Malaysia, and among members of the Organization of Islamic Committee, or OIC. Ahmadiyya is a religious sect (Islam) that is most often the target of the main Hakim Sendiri actions. Table 6 contains a list of *Main Hakim Sendiri*, or vigilantism violence against Ahmadiyya in Indonesia. In the case of Ahmadiyya, various MUI fatwas that declared Ahmadiyya a heretical religion immediately received reactions from a hard-line Islamic group calling itself the Islamic Defenders Front.

Table 6. Main Hakim Sendiri experienced by Ahmadiyya in Indonesia.

| No | Date & Place | Forms of Vigilantism Violence |
| --- | --- | --- |
| 1 | In Cisalada, West Java, in October 2010 | A group of people burning of the Ahmadiyya mosque of An Nur.  In 2007 there was a Joint Decree at the Ciampea District level, which was signed by the Camat, the MUI, the KUA which stated that there should be no activities of the Ahmadiyya congregation. Then, on Monday, July 12, 2010, thousands of Cisalada residents visited the location of Ahmadiyya followers and refused to build several buildings. The thousands of people asked for the demolition of houses of worship, schools, and the foundations of mosques belonging to Ahmadiyya followers. The foundation of the building belonging to Ahmadiyya followers was dismantled by the local Civil Service Police Unit. On August 9, 2010, there was an incident of throwing stones at one of the children of Ahmadiyya followers.[[53]](#footnote-53) |
| 2 | 6 February 2011 in Cikeusik, Bogor, West Java. | Hundreds of mobs stormed and killed JAI 3 members killed and 5 injured. In 2000 violence against Ahmadiyya residents increased in West Java. In 2005, the MUI issued a “heretical” fatwa against the Ahmadiyya. Hardliner Islamic groups attack the Ahmadiyya Congregation in Bogor. In 2008 FPI committed acts of violence against Ahmadiyya residents who rejected the Decree of the Three Ministers regarding the prohibition of Ahmadiyya. The Three Ministerial Decree was issued on 9 June 2008 which prohibits Ahmadiyya from carrying out deviant religious activities in public. February 2011, 3 FPI members were killed and 5 injured. 12 criminals 3-6 months in prison, Ahmadiyya followers who defend their lives are sentenced to 6 months.[[54]](#footnote-54) |
| 3. | Friday, February 17, 2012, Cianjur Regency, West Java. | The Nurhidaya Mosque belonging to the Indonesian Ahmadiyya Congregation was damaged by 20 people. The Cianjur Resort Police has named 20 people as suspects, namely residents of Cisaar Village, Cipeuyeum Village, Haurwangi District, Cianjur Regency, West Java.[[55]](#footnote-55) |
| 4. | May 23rd, 2016, in Kendal, Central Java | The Al-Kautsar Mosque belonging to the Indonesian Ahmadiyya Community in Purworejo Village was damaged by a group of residents, even though the construction of the mosque has obtained a certificate and building permit (IMB) since it was built in 2004.[[56]](#footnote-56) |
| 5. | On May 19-20, 2018, in East Lombok Regency, West Nusa Tenggara. | A group of people attacked, vandalized, and expelled members of the Ahmadiyya Congregation in Grepek Tanak Eat Hamlet, Greneng Village, East Sakra District.[[57]](#footnote-57) The destruction was carried out for two consecutive days. The first vandalism was reported by JAI to the local police, but no action was taken, resulting in a second vandalism on 20 May 2018. On October 1, 2010, the Ahmadiyya Mosque in Cisalada was attacked, and burned to the ground. |
| 6. | September 3rd, 2021, in Sintang Regency, West Kalimantan. | Destruction of mosques and burning of buildings belonging to the Ahmadiyya Congregation in Balai Harapan Village, Temunak District, Sintang Regency.[[58]](#footnote-58) 20 heads of families and 74 members of JAI were transferred to another place for safekeeping, 200 people who took vigilante justice on behalf of *Aliansi Umat Islam* were taken into custody by the Indonesian National Police. [[59]](#footnote-59) |

From Table 6 above, it can be seen that vigilante justice against the Ahmadiyya resulted in damage to houses of worship and buildings, the victim suffered minor and serious injuries, the victim died, and Ahmadiyya followers were expelled from their homes.

**(iii) Gafatar Case**

In the case of Gafatar,[[60]](#footnote-60) in Kalimantan, the members come from various Indonesia regions with middle to lower economies. The case of Gafatar is like the case of the Ahmadiyya, which is also characterized by various forms of violence by vigilante justice. 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 2017, when the Ahmadiyya criminalization case was still ongoing, a new criminalization toward five members of the *Fajar Nusantara Movement* (Gafatar) emerged, where those who were formerly members of the Ajaran Millah Abraham accused to use the Gafatar organization to re-start the heretical teachings of Millah Abraham whose leader, Musadeq, received punishment.[[61]](#footnote-61) For this accusation, Gafatar's followers became victims of vigilante justice carried out by two villages, Moton Panjang Village and Tanjung Pasir Village, in East Mempawah District, Mempawah Regency, West Kalimantan, which they established by clearing forests.

According to Adam, a member of Gafatar, in an interview, he explained that Gafatar was declared in January 2012 with its head office in Jakarta, has 55,000 members, and has branches in 34 provinces in Indonesia. The Gafatar organization received a permit from the Ministry of Home Affairs, but in 2015, the Ministry of Home Affairs rejected the application for an extension of Gafatar's permit, causing its management to disband. In the interview, AD explained that:

“Gafatar is not a religious organization, members of Gafatar go to West Kalimantan to farm, make Kalimantan a national food barn, we plant rice, vegetables, so that our members have food sovereignty.”[[62]](#footnote-62)

Table 7. Main Hakim Sendiri experienced by Gafatar

|  |  |  |
| --- | --- | --- |
| No | Date and Place | Form of Vigilantism Violence |
| 1. | Wednesday on 15-18th January 2016 | From January 15 to 18, 2016, a mob armed with batons and machetes approached the Gafatar farmer group in Mempawah District, West Kalimantan, and demanded that they leave Mempawah. As many as 700 Gafatar members had their homes burned down by thousands of residents on Wednesday, January 20, 2016. As a result of the village's burning, women and children also became victims. It is important to note that when the Gafatar members opened the land, they had already sold their homes and property from their hometowns and were determined to improve their fate by farming in the Kalimantan region. |
| 2. | January 19th, 2016. | After crowded burned Gafatar houses, the 1,124 members of Gafatar were evicted from their two villages in Mempawah Regency, West Kalimantan although they have declared their absence from Gafatar membership. This act of eviction was allowed by the local government. They were evacuated at the supplies and transportation complex (Bekangdam) of Kodam XII/Tanjungpura in Pontianak, West Kalimantan.[[63]](#footnote-63) |

1. **Meiliana Case**

In the case of Meiliana,[[64]](#footnote-64) a Chinese Buddhist woman, 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 neighbour mosque for a too loud call of praying was considered blasphemy against Islam. The Meiliana’s case is 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 hardliner Islamic groups to accuse Meiliana (Suryadinata, 2019: 5-6). This case was also tainted by the vigilante justice's attack on the Vihara Temple, where the vigilante justice 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.

The chronology of the accusations against Meiliana of blasphemy because of her protesting the call to prayer, Apparently, before this case was processed by law enforcement, vigilante justice also happened to Meiliana and her family. When the mediation process was ongoing, vigilante groups provoked the residents and continuously carried out the narrative that “Meiliana forbade the Adhan,” thereby causing their anger. In contrast, in a pledoi delivered by *Meiliana's* attorney, who said that *Meiliana* had never banned the call to prayer, she conveyed to the shop owner in a low tone on July 22, 2016, that: “Sis, the voice of our mosque was not that big, now it's a bit bigger, right?”[[65]](#footnote-65) The twists of hatred against *Meiliana* managed to quickly spark public anger for violent vigilantism. Not much different from followers of religions that are considered heretical, such as *Ahmadiyya* and *Gafatar*, followers of minority Buddhist religions like *Meiliana* are very vulnerable to becoming victims of hate crimes.

The Muslim community where *Meiliana* lives ended up taking vigilante justice. They are not only damaged *Meiliana*'s house but destroyed a Buddhist place of worship. The vigilante justice carried out by mobs have damaged the Tri Ratna Temple and the Dewi Samudera Temple on the banks of the Asahan River. At least three monasteries, eight temples, two Chinese foundations, a medical center, and *Meiliana's* house have been damaged. Due to this vigilante justice, the police finally named eight suspects for acts of violence and Meiliana as a suspect for blasphemy (Islam). The eight suspects were then tried at the Tanjung Balai Court with the head of the Panel of Judges, Ullina Marbun, and in the end they were sentenced to a very light sentence, namely 1.5 months in prison, deducted from the prison term.[[66]](#footnote-66) Meanwhile, Meiliana herself was sentenced to 18 months in prison.

## 3.4.4 The period of study

Through this multi-faceted approach, the study seeks to shed light on the enforcement of the IABL and its impact on the rule of law and justice in the last decade, taking into account significant changes in legal, political, and social contexts. The study focuses on four blasphemy cases that occurred during Joko Widodo’s era (2019-2020).

## 3.4.5 Analysis of the data

In socio-legal study approach, legal analysis must be conducted first to evaluate the current development of the Indonesia’s ABL. The findings of legal analysis are then used to explore empirical data in the field. As Heidegger suggests, every text is related to its historical context, including the circumstances and conditions under which it was written. Therefore, the initial step in data analysis is to identify the research questions and determine the qualitative data needed to address all questions. This study aims to investigate the current development of the anti-blasphemy law in Indonesia and its effect on the rule of law and social justice. To achieve this goal, the study employs legal content analysis with a doctrinal and hermeneutic approach. This method collects qualitative data in the form of textual data such as constitutional court decisions, statutes, and other relevant regulations and public policies. The collected data is systematically categorized into themes and patterns to facilitate analysis and answer research questions.

The study then utilizes correlation analysis to identify the factors and actors influencing the enforcement of the anti-blasphemy law and its impact on social justice. Tamanaha (2011) emphasizes the principle of connectedness and the law's relationship to various societal factors such as history, culture, religion, and politics. Therefore, the study will explore empirical data, court experiences, and regulations to investigate the sociopolitical dynamics and factors influencing the enforcement of anti-blasphemy laws in Indonesia.

Using the cases study approach, the study collects empirical data from various interviews and juridical experiences on different blasphemy cases. In addition, to understand how the law is treated and applied to specific contexts to evaluate its effectiveness, the criminal court rulings on blasphemy cases are studied.

To present the findings, the collected data is first reduced and categorized based on emerging themes, as suggested by Miles and Huberman (1994). Finally, the research findings are analyzed using theoretical concepts to draw conclusions.

## 3.5 Research ethics

This study's objectives probably brought moderate risk to the researcher when conducting 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-out before the field research starts. For example, interviewing key persons such as judges, experts, public officers, the leader of minority religious groups, can minimize the risk rather than an open survey to ordinary people. For online interviews, the researcher will use more secure online-platforms to safeguard the identity of participants and researchers, as well as to reduce data leaking. To ensure the confidentiality of data or information shared and the privacy of conversations, the researcher will use Signal app which is a safer and more secure online platform than most messengers because of a process called end-to-end encryption and Zoom meeting at participants and researcher’s convenience.
2. To avoid deception, the researcher will introduce herself openly, and the aims of the research will be well explained before the interview to all participants to obtain either a written and signed form of consent or verbal consent.
3. To respect and protect participants' privacy, all participants will be anonymous, and the researcher will keep the data anonymous. To ensure confidentiality, the data obtained will be saved in a personal external drive.
4. The data will also be collected from the experts in human rights law, and the NGO concerned with the religious freedom issue so that the identity of vulnerable subjects from minority groups of religions remain covered.
5. Finally, for safety reasons, the researcher should not put herself in the way of harm, whether it is political, physical, or psychological harm. The researcher will not discuss the teachings of each religion or belief.

To ensure the researcher's neutrality, 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 mentioning 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.

# CHAPTER IV

# DEVELOPMENT OF THE ANTI-BLASPHEMY LAW AND ITS RELATED LAWS IN INDONESIA

## 4.1 Introduction

The reformation era in Indonesia, marked by the fall of Suharto in 1998, had significant impacts on the development of the Anti-Defamation Law. The legal politics that took place during this period influenced the evolution of the law, particularly in relation to the 1965 ABL. Despite the need for amendments and improvement, the 1965 ABL remained unchanged until the reformation era, and its norms were reinforced by various new laws and public policies at the local level (Kusumawijaya & Chozin, 2018). Nyatanya, politik hukum pada masa pemerintahan Joko Widodo masih memberlakuan the 1965 IABL yang dikuatkan dengan Pasal 156a KUHP, serta berbagai peraturan terkait seperti pengesahan the Law Number 11 of 2008 on Electronic Information and Transaction (EIT Law) yang kemudian diperbaharui pada tahun 2016, sampai dengan disahkannya KUHP Baru pada tahun 2022.

The 1965 ABL pada awalnya tidak memuat ancaman pidana. Pun, setlah Pasal 156a KUHP disisipkan, sangat jarang Pasal ini digunakan untuk menghukum pelaku penodaan agama. Tetapi sejak EIT Law disahkan dan sejak Mahkamah Konstitusi dalam putusan judicial review menyatkan bahwa the 1965 ABL is constitutional, maka selama Pemerintahan Joko Widodo the applications of the ABL were frequently used in the court. The applications of the BL were frequently used in the court. At least according to Crouch's record, from 1988 to 2012, there were at least 130 people convicted using the BL (Crouch, 2014). Dalam studi ini juga mencatat bahwa sejak 2012 until 2018, there were 66 cases which have been decided by the court.

The law is not a static or fixed set of rules, but rather a dynamic and evolving system of norms, principles and values that respond to the changing needs and circumstances of society. Culture, morals, beliefs, and norms influence law development. These factors can affect how people and groups view law and justice. Gender, race, faith, and caste discrimination can limit legal rights and freedom for certain groups. The governance framework, system, and effectiveness of a nation shape law development. These factors affect legal decision-making and execution. Political turmoil and violence can weaken the rule of law and public faith in legal institutions.

This chapter examines how the development of anti-blasphemy law in Indonesia during the Joko Widodo administration (2014-2020) has affected the rule of law. During Jokowi's administration, from 2019 until the time of writing this thesis, the Blasphemy Law (ABL) used is the same as the one implemented since 1965, as there have been no amendments to the law until now. In addition to the Blasphemy Law Year 1965, other related laws used by the government when charging someone with blasphemy include the Information and Electronic Transactions Law (ITE Law) 2008 jo 2016, as well as the Criminal Code. In 2009, the Indonesia's ABL 1965 underwent judicial review by the Constitution Court of the Republic of Indonesia (CCRI). The CCRI is responsible for determining whether a law's provisions are inconsistent with those of the 1945 Constitution. This study focuses on at least four requests for additional investigation, namely Decision Numbers 140/PUU-VII/2009, 140/PUU-VII/2010, 76/PUU-XVI/2018, and 84/PUU-X/2012. Various decisions made by the Constitutional Court provide guidance on the legal status of the ABL 1965, which subsequently led to the creation of new provisions on religious offenses in the Criminal Code.

In this section, we analyze to what extent the development of the Indonesian ABL law upholds the rule of law or threatens it, and to what extent the ABL respects human rights, particularly freedom of religion.

4.2. The Current Development of the Indonesia’s ABL (2014 to 2020)

**4.2.1. The Content of the Indonesia’s ABL**

As earlier mentioned, despite being enacted in 1965, this ABL has never undergone any substantial changes, meskipun sejak reformasi 1998 dan dilanjutkan pada pemerintahan Joko Widodo, perlindungan dan pemajuan hukum hak asasi manusia kian mengaut. Bahkan pada tahun 2006, melalui UU Nomor 12 Tahun 2006, Indonesia telah meratifikasi the International Covenant on Civil and Political Rights. Therefore under Joko Widodo’s administration, the Indonesia’s ABL continue to be applied.

The law consist of four articles. In Article 1 prohibits actions that are considered blasphemy of religion. Article 1 states:

*“Everyone is prohibited from intentionally telling in public, recommending and seeking public support, to interpret a religion adhered to in Indonesia or to carry out religious activities that resemble religious activities from the main points of religious teachings.”*

As stated in Article 1, penggunaan kata “everyone” menunjukan bahwa UU ini ditujukan untuk melarang semua orang, tidak ditujukan pada orang dengan agama atau keyakinan tertentu. Tetapi dalam kalimat berikutnya: “*religion adhered to in Indonesia or to carry out religious activities that resemble religious activities from the main points of religious teachings.”* Menunjukan bahwaUU ini hanya akan melindungi agama-agama yang dianut di Indonesia. Penggunaan kata “agama” disini juga mempersempit makna, dimana “traditional beliefs” atau “agama-agama baru” di luar dari 6 agama yang dianut di Indonesia, tidak termasuk ke dalam definisi agama yang hendak dilindungi.

Sedangkan yang dimaksud menodai agama itu cakupannya sangat luas, yaitu meliputi:

1. Telling in public *to interpret a religion adhered to in Indonesia*
2. *recommending and seeking public support* *to interpret a religion adhered to in Indonesia*
3. *to carry out religious activities that resemble religious activities from the main points of religious teachings.”*

Dengan kualifikasi penodaan agama sebagaimana Pasal 1, maka terhadap ajaran-ajaran agama yang bersifat berbeda dengan ajaran-ajaran agama yang dianut di Indonesia dapat dikategorikan sebagai “menodai agama”. Hal ini tentunya dapat menyerang hak kebebasan beragama yang bersifat internum freedom.

Penggunaan kata “intentionally” ini menunjukan bahwa Tindakan yang dilarang tersebut memang sengaja dilakukan dengan maksud yang disadari oleh pelakunya.

In Articles 2 and 3 provide for administrative sanctions if blasphemy is committed by an organization or a sect of belief. Article 2 paragraph (1) and (2):

*“(1) Whoever violates the provisions in Article 1 is given an order and a stern warning to stop his actions in a joint decision of the Minister of Religion, the Minister/Prosecutor General and the Minister of Home Affairs.*

*(2) If the violation referred to in paragraph (1) is committed by an organization or sect of faith, the President of the Republic of Indonesia may dissolve the organization and declare the organization or sect as a prohibited organization/cult, one after the other after the President has received consideration from the Minister of Religion, Minister/Prosecutor General and Minister of Home Affairs.”*

Article 3:

*“If, after taking action by the Minister of Religion together with the Minister/Prosecutor General and the Minister of Home Affairs or the President of the Republic of Indonesia according to the provisions in Article 2 against a person, organization or sect of belief, they still continue to violate the provisions in Article 1 , then the person, adherent, member and/or member of the management of the organization concerned from that sect shall be sentenced to a maximum imprisonment of 5 years.”*

Actually, the ABL prioritizes the use of administrative sanctions over criminal sanctions, as stipulated in Articles 1, 2, and 3 of the law. The prohibited actions include advocating or seeking general support for carrying out religious interpretation or deviant religious activities. Bagir Manan emphasized the need for a gentle approach in dealing with violators, with warnings being the first resort and criminal sanctions being imposed only if violations persist. If an organization commits a violation, it can be dissolved, and members of the management or adherents of the organization can be punished with a maximum of five years imprisonment. However, in practice, the administrative sanctions were rarely proceed. In accordance with Mudzakir's view that the application of Articles 1, 2, and 3 of this Law emphasizes more on gradual development and efforts. This means that administrative sanctions are more sought if there are interpretations or activities that deviate from the religions adhered to in Indonesia. Thus, the approach chosen is a gentle approach, namely those who violate the provisions will be subject to a warning. If the violation continues then criminal sanctions may be imposed; Second, if the violation is committed by the organization, the organization can be dissolved, and if an action has been taken and still violates, the person, or adherents, members and/or members of the management of the organization concerned from that sect shall be punished with imprisonment for a maximum of 5 years. Therefore, law enforcers should apply Article 4 only if the act seriously endangers state security and has gone through the administrative procedures as regulated in Articles 2 and 3, then this is too much.

Article 4 orders a new article, Article 156a, to be added to the criminal code (Kusumawijaya & Chozin, 2018). Article 4 states:

*“In the Criminal Code, a new article is issued which reads as follows: Article 156a.” “Criminalized by a maximum imprisonment of five years whoever intentionally publicly expresses feelings or commits an act: a. basically hostile, abusing or blaspheming against a religion professed in Indonesia; b. with the intention that people do not follow any religion, which is based on the belief in the One God.”*

Ketentuan Pasal 4 inilah yang kemudian menjadi dasar disisipkannya Pasal 156a KUHP, sehingga bagi seseorang yang melanggar pasal 1 dan tindakan tersebut menimbulkan dampak sebagaimana dimaksud dalam Pasal 4.

(a) *basically hostile, abusing or blaspheming against a religion professed in Indonesia;*

*b. with the intention that people do not follow any religion, which is based on the belief in the One God.”*

Pasal 4 tidak menjelaskan secara detail mengenai apa yang dimaksud sebagai “*hostile, abusing or blaspheming”,* sehingga definisi tersebut sepenuhnya diserahkan kepada subyektifitas penegak hukum.

**4.2.2. The Problematic Extended Regulations**

**(i) Criminal Code Number….. Year….**

Sebelumnya KHUP tidak mengenal tindak pidana “penodaan agama.” Yang diatur dalam KUHP adalah tindak pidana terhadap agama, yaitu diatur dalam Pasal 156, 175, 176, 177, 503, 530, 545, 546, and 547. Tetapi setelah diberlakukannya UU No. 1/PNPS/ 1965 atau the 1965 ABL, maka Pasal 4 memerintahkan pembentuk UU untuk menyisipkan kejahatan baru yaitu “penodaan agama” dalam Article 156a of the Criminal Code (Sidharta, 2007). It is important to note that Article 156a was inserted in the Criminal Code twenty years after it officially became Indonesian positive law through the enactment of Law No.1/PNPS/1965.

Dengan demikian the 1965 ABL tidak bisa berdiri sendiri atau terlepas dari Pasal 156a KUHP. Article 156a of the Criminal Code to make the 1965 ABL to be more repressive. Pasal 156a berbunyi:

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. The combination of Article 4 and Article 1 and 2 of the 1965 ABL and Article 156a of the Criminal Code, the religions other than those five could be labelled as “heretical religions”.[[67]](#footnote-67)

The insertion of Article 156a in the Indonesian Criminal Code created the concept of blasphemy of religion, which was not present in the original provisions of Article 156. While Article 156 prohibited statements of hostility, hatred, or insults against groups in Indonesia, Article 156a specifically prohibited interpreting religious teachings adhered to in Indonesia. Moreover, Article 156a of the Criminal Code protects only the six religions recognized in Indonesia: Islam, Protestant Christianity, Catholicism, Hinduism, Buddhism, and Confucianism. This means that other religions and sects of belief do not receive the same protection, and the provisions of this article may target them.

However, these articles are multi-interpretative and do not provide clear limitations. It is unclear what is meant by a statement that creates "feelings of hostility, hatred and contempt" or "blasphemy". The principle of legality in criminal law requires clear formulation of articles to prevent subjective interpretations by law enforcers and to avoid sanctions being imposed arbitrarily. In various blasphemy cases, Article 156a of the Indonesian Criminal Code was applied in all blasphemy trials, and the culprits were found guilty of “issuing emotions or carrying out deeds that degraded a religion in Indonesia.”[[68]](#footnote-68) For instance, in the case of Gafatar, If Gafatar was accused of disrupting public order by applying coercive regulations to its devotees in order to impose its new teachings and renounce their former beliefs, then the Court must establish this. Therefore, the court has not deviated from its primary objective of “safeguarding the sentiments of the majority of faiths,” but it has never examined “the feelings of Gafatar adherents.” In this case, the court could not comprehend the distinction between *the forum-internum* and *the forum-externum* with regard to the right to FoRB. The court should conclude its investigation of this case and pronounce the defendant’s innocent. However, this has never occurred in blasphemy trials in Indonesia, with the exception of situations with strong political undertones, beginning with the police ceasing their investigation (Tehusijarana, 2018).

**[**Masukan table kasus penodaan agama yang dihukum dengan 1965 ABL dan Pasal 156a KUHP]

**(i) The Law Number 16 Year 2008 Concerning Informatics and Transaction of Electronic**

During Joko Widodo’s administration, various criticisms of the flaws in the Blasphemy Law (ABL) were not sufficient to urge the legislative body to amend the law. In 2008, the BL have been strengthened by the reformation government when the legislative body ratified the Law Number 11 of 2008 on Electronic Information and Transaction (hereinafter the EIT Law) in conjunction to the previous laws (See **Table 2.).** The 2008 EIT Law, which were originally intended to prevent illegal electronic transactions and harm the people, has drawn criticism, one of which is because this law has strengthened the legal standing anti-blasphemy which has many weaknesses. Religious minority groups who spread religious teachings that are seen as heretical or criticize mainstream religious teachings through social media or other electronic media will be charged with the articles contained in the ITE Law, Article 28.

Article 28 states: “……”

[Insert table kasus penodaan agama yang menggunakan UU ITE, dimana target penodaan agama masih pada minoritas agama].

Furthermore, in 2016, the 2008 EIT Law was amended. However, the core of the issue of the existence of Article 28 which strengthened Article 156a of the Criminal Code regarding blasphemy did not undergo significant changes. The crucial issue that is the subject of discussion of the existence of the ITE Law is the emergence of the phrase “hostility” which is difficult to prove and is abstract and depends on the feelings of the complainant. Among the five cases studied in this study, all the defendants were not only charged with Article 156a of the Criminal Code as an article related to the Anti-Defamation Law, but the defendant was also charged with Article 27 and Article 28 of the ITE Law.

Oleh karena itu, setelah berlakunya the EIT Year 2008 dan diperbaharui tahun 2016, masih banyak pemeluk agama minoritas yang dikriminalisasi dengan tuduhan melakukan penodaan agama. Dalam studi yang dilakukan oleh YLBHI, Asfinawati (2021) selaku mantan ketua YLBHI dalam interview menyatakan:

*“terdapat trend penggunaan UU ITE untuk memidanakan pelaku penodaan agama. Terdapat 67 kasus penodaan agama pada tahun 2020, hampir setengah diantaranya yaitu 32 kasus diusut menggunakan pasal 27 dan pasal 28 pada UU ITE. Penggunaan UU ITE dinilai mengkhawatirkan karena tidak ada definisi penodaan agama yang jelas dan pengusutannya tidak memadai.”*

Hal ini menunjukan bahwa meskipun UU ITE telah diperbaiki, namun ketidakjelasan definisi tentang “penodaan agama” yang ada dalam the 1965 ABL tidak juga diselesaikan. Konsep ujaran kebencian yang diatur dalam pasal 27 dan 28 yang sering dituduhkan pada pelaku penodaan agama justru menambahkan konsep baru sehingga menyamakan antara “penodaan agama” dan “ujaran kebencian”. Kedua, baik the 1965 ABL maupun UU ITE Year 2008 jo 2016 tidak memberikan pengaturan yang jelas mengenai persyaratan pembatasan hak espresi beragama.

## 4.2.2. The ABL After the Constitutional Court Judicial Review

Sebagai bentuk upaya untuk mengembalikan hak-hak konstitusional yang dilanggar akibat penerapan the 1965 ABL, berbagai pemeluk agama minoritas mengajukan judicial review atas pasal-pasal yang ada dalam the 1965 ABL. Tentang siapa yang mengajukan, apa alasan pengajuannya serta putusan Mahkamah Konstitusi tercatat dalam table di bawah ini:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Nomor Putusan | Alasan Pemohon | Alasan Termohon | Pertimbangan Hakim | Inti Putusan |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

## 4.6 Discussion and Analysis

**4.6.1 Existence of Ambiguity Norms degrade the rule of law**

Perkembangan Hukum Penodaan Agama di Era Joko Widodo tidak mengalami perbaikan dibandingkan pada era pemerintahan sebelumnya. Justru dengan lahirnya UU EIT serta Perubahannya, Putusan Mahkamah Konstitusi yang menyatakan UU Anti Penodaan Agama bersifat Konstitusional, serta disahkannya KUHP menunjukan terancanmnya the rule of law.

Referring to Article 1 and 2, the 1965 ABL, Article 156a Criminal Code, as well as the IET Law have no clear definition of what constitutes religious defamation. Article 1's vague definition of defamation of religions has a very broad application. At least five deeds might be called religious blasphemy: (a) Insulting a religion; (b) convincing someone to be an atheist; (c) disturbing a religious ceremony or creating noise near a place of worship; (d) insulting a cleric while conducting a ritual; and (e) criticizing the teaching of religion, including criticizing other religious activities. Dengan tidak adanya definisi yang spesifik mengenai cakupan perbuatan atau perkataan “blasphemy” baik pada the 1965 ABL, Pasal 156a KUHP, UU EIT 2008 jo 2016, serta KUHP baru, menunjukan bahwa “blasphemy” masih akan terus diartikan secara luas, tanpa clarity, serta menurut subyektifitas penegak hukum. UU ini akan sulit membedakan antara hasutan atau kekerasan yang didasarkan atas kebencian agama, kritik atas ajaran agama, dengan memeluk, meyakini serta menyearkan ajaran agama yang kebetulan ajaran tersebut berbeda dengan ajaran agama dari agama mayoritas. Pembatasan atas perbuatan yang pertama tentu merupakan pembatasan yang dapat dibenarkan. Namun demikian, pembatasan atas perbuatan yang kedua dan ketiga akan mengancam esensi dari hak kebebasan beragama dan ekspresi beragama itu sendiri.

As elaborated in previous section, to qualify as an incitement to hatred under the Rabat Plan of Action (RPA), a statement must satisfy the following criteria: “context, speaker, intent, substance, extent, and likelihood of incitement to hatred.”[[69]](#footnote-69) The only individual who may be accused with hate speech is a leader who purposefully incites his audience to attack another person based on their hatred of his religion or race while speaking in public at a public assembly. In reality, therefore, the Court exclusively criminalizes actions or statements that qualify as blasphemy under Article 1 of the IABL, rather than hate speech. The five types of blasphemy listed above aim to preserve the “feelings of the major faiths' adherents.” Whether one is humiliated depends on the sentiments of the others. Therefore, each form's interpretation rests on the subjectivity of the judge who analyses the deed. Each form is open to interpretation (Crouch, 2011).

In the case of Gafatar, Musadeq, a key leader of Gafatar, was sentenced in the East Jakarta District Court under Article 28 (2) of the EIT Law, which stipulates, *“[...] a remark that incites enmity is criminal [...].”*  However, there is no precise description of “hostility sentiments.” The term is overly vague and might be subjectively construed by the authorities. The court failed to establish whether the act of Gafatar could be classified as a hazardous expression or encouraged the assault of particular groups, as required under Article 20 of the International Covenant on Civil and Political Rights (ICCPR). The court's judgment was intended to 'maintain public order' in accordance with the precepts of Islam and Christianity, the two major religions recognized by the state. However, all offenders are criminalized based on vague legislation and punished severely.

According to the CCIR’s ruling repeatedly in its various judicial review decisions concerning the judicial review of the ABL argues that religious expression is not an absolute right and that the IABL is a lawful statute limiting rights: *“The Court simply compares the provisions of the statute to the 1945 Constitution.”* [[70]](#footnote-70) The court also said, *“The law concerning the prevention of religious blasphemy is still necessary and has no problem with the 1945 Constitution's protection of human rights.* [[71]](#footnote-71)*“* The judgment is based on Article 28J of the 1945 Constitution and is limited to communication with the IHRL accepted by Indonesia. The CCIR did not address the law's flaws, which may have been sufficient grounds to declare it illegal.

Moreover, the CCIR indicates that *“the anti-blasphemy law threatens anybody who openly shows enmity against other religions or who communicates divergent doctrines to the major religions.”* However, as previously discussed, the definition of blasphemy is so broad that it has become too generic and a typical weapon for criminalizing minority religious groups. Criminalization becomes evident when it includes minority faiths because the government or the dominant religion feels under assault by adherents of the minority religion.

In conclusion, the CCIR maintains that deficiencies in the substance of legislation are not the court's purview, but rather the legislative branches. It means the Court allows the 1965 ABL to remain in effect and ignore if its implementation violates the rights of citizens, particularly the right of minority groups of religion. In this sense the Court just disregarded the rule of law.

**4.6.2 Ancaman Hak Kebebasan Beragama Berlanjut**

Perkembangan dan penerapan the ABL di era Jokow Widodo semakin mengancam hak kebebasan beragama. Jaminan hak kebebasan beragama dalam Konstitusi (Pasal 29, Pasal 28E) dan instrument Internasional, Pasal 18 DUHAM, Pasal 18 ICCPR tidak dijadikan landasan bagi pembentuk UU IET dan KUHP untuk memperbaiki the 1965 ABL. Berbagai regulasi tersebut mengancam “hak kebebasan beragama seseorang atas ajaran agama-agama baru yang mereka yakini” dimana ajaran tersebut sangat mungkin berbeda dengan ajaran agama-agama mapan.

Di bawah regime the 1965 ABL, aliran-aliran agama baru akan mudah diberikan stigma sebagai “ajaran sesat” sehingga pemeluknya dikriminalisasi.

Meskipun the 1965 ABL maupun UU ITE tidak memberikan kategori terhadap aliran-aliran sesat, namun selama ini kebijakan yang digunakan untuk menentukan aliran-aliran sesat didasarkan pada Fatwa MUI.

**Daftar aliran-aliran agama baru yang dinyatakan sesat berdasarkan Fatwa MUI Tahun 1976 sampai dengan 2010.**

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

Terlepas dari apakah claimed yang disampaikan oleh MUI benar atau tidak, fatwa MUI yang menyatakan aliran-aliran tersebut sebagai “sesat” dimana fatwa-fatwa ini dijadikan rujukan oleh Pemerintah untuk membuat kebijakan yang mendeskriminasikan para pengikutnya menunjukan bahwa hukum dan kebijakan publik dihadirkan oleh negara untuk memberikan perlindungan khusus kepada pemeluk agama (Islam) yang mapan. Pemerintah telah mempersempit makna hak kebebasan beragama, dimana kebebasan tersebut hanya diberikan kepada “agama-agama yang mapan.”

**4.6.2 Hak Otonomi Bagi Minoritas Agama**

Dimana, hukum berlaku secara equal terhadap semua orang tanpa memandang agama, ras, jenis kelamin atau perbedaan lainnya. The State is obligated, through its law and system, to treat all individuals equally, without any interference, limitation, or other conditions that make it difficult for any individual to exercise this right (Henkin, 2009). Articles 27, 28I, 28D, and 28H of the Indonesian Constitution of 1945 expressly protect both the non-discrimination and equality values (Eddyono, 2016).

Secara politik hukum, the CCIR who emphases the constitutionality of the Indonesia flawed’s ABL has disregarded the fundamental principle of non-discrimination. The CCIR argues that if a restriction on the freedom to religious expression is imposed by law, then the restriction is justified, regardless of whether or not it results in discriminatory treatment of specific religious groups.[[72]](#footnote-72) In this regard, the CCIR has utilized the Particular Constitutionalism theory, which interprets the Constitution's enshrined Human Rights principles in a restrictive meaning.

Apa yang diputuskan oleh the CCIR pada era Joko Widodo sangatlah berbeda dengan keputusan Mahkamah Konstitusi in the past era, in which the CCIR has supported the principles of nondiscrimination and equality in a number of significant cases. First, in judgment number 97/PUU-XVI/2016, the Court invalidated a provision of the Residency Law that prevented traditionalists from acquiring resident identification cards and family cards. The Court held, *“Restrictions based on religious convictions that result in differential treatment of citizens are discriminatory.”* [[73]](#footnote-73) This consideration is comparable to the preceding decisions, including 070/PUU-II/2004, 27/PUU-V/2007, and 024/PUU-III/2005. In addition, the Court has invalidated discriminatory laws in other cases, such as the decision number 011-017/PUU-1/2003, in which the Court ruled that Article 60s of the General Election Law, which prohibited former Communist Party members from running for office, is a form of discriminatory policy that contradicts Articles 27, 28D of the 1945 Indonesian Constitution. In decision number 006/PUU-IV/2006, the Court ruled that Article 2c and 3 of the Law of Commission Reconciliation and Rehabilitation were in conflict with the constitution because they discriminated against victims of past human rights violations by preventing them from claiming their right to compensation and rehabilitation unless they were willing to forgive the criminals.

Secara empiris, keberadaan the Indonesia’s ABL menjelma sebagai hukum yang tidak equal dan diskriminatif. UU ini telah mengancam hak bebasan beragama, terutama bagi kelompok minoritas agama. Studi menunjukan bahwa target utama yang dihukum menggunakan the ABL adalah anggota dari kelompok minoritas agama. Kelompok minoritas agama ini dapat dibedakan dalam dua kategori, pertama adalah agama-agama yang dianut di Indonesia tetapi memiliki jumlah pemeluk yang sedikit (minoritas), seperti Budha, Kristen, Hindu, Khatolik. Kedua, agama-agama baru dan atau kepercayaan-kepercayaan menoritas.

The 1965 ABL contains discriminatory provisions since it exclusively applies to or targets members of religious minority groups. Article 1 of the Law defines the term “religions” as the six government-recognized religions: Islam, Hinduism, Buddhism, Christianity, Catholicism, and Confucianism. According to law enforcement's interpretation of Article 1, the legislation solely protects these major religions. Consequently, faiths other than these six are frequently excluded from the protection of the law. Evidently, in various blasphemy trials, more than 150 individuals from minority religious groups were convicted and criminalized under the ABL (Andreas, 2019).

**4.6.3 Ekspresi Beragama Dapat Diancam Pidana**

According to Article 1, the primary purpose of the IABL is to defend religions rather than “religious people” themselves, so that it is reasonable to penalize persons who belong to a religion or belief rather than criticize religions. Although the fundamental concepts of FoRB are expressed in Articles 28D, 28E, 28I, and 29 of the 1945 Constitution, the IABL has distinct ideals and standards. Article 29 states that Indonesia is founded on “Belief in One God, the Almighty.” Article 1 of the IABL views this as homogenous religion, in which no one may advocate for atheism or interpret the religious teachings of the major faiths differently (Lindsey and Pausacker, 2017).

Moreover, Article 18 of the UDHR and Article 18 of the ICCPR defend a person's freedom to remain religiously neutral or to believe in their own faith. As opposed to avoiding the inciting of hatred, several cases determined under the IABL simply penalized those who offend religious symbols or have differing doctrines from the major religions. Consequently, it would not conform with the IHRL, as it just protects the religious system or personal sentiments of others (Temperman, 2015). The ABL in Indonesia prohibits intentional public expressions, recommendations, or seeking public support to interpret a religion adhered to in Indonesia or to carry out religious activities that resemble religious activities from the main points of religious teachings. Violators of the provisions are given an order and a stern warning to stop their actions, and if committed by an organization or sect of faith, the President of the Republic of Indonesia may dissolve the organization and declare it as a prohibited organization/cult. Those who continue to violate the provisions may be sentenced to a maximum imprisonment of 5 years.

Prior to the insertion of Article 156a, cases of blasphemy were rarely processed, and the concept of blasphemy only had an administrative impact as referred to in the provisions of Articles 2 and 3. However, the insertion of Article 156a made blasphemy a more repressive offense. The provision shifted the focus of the 1965 PNPS from the security of the state and national revolution to the protection of religion. This shift was significant because the Anti-Defamation Law of 1965 was originally enacted to address disturbances in state security.

Although Article 156a is included in Chapter IV of the Criminal Code, which covers "Crimes against Public Order," not "crimes against religion," it has been used primarily to criminalize blasphemy. This implementation of the law has been discriminatory and has violated the right to freedom of religion, as it has resulted in the criminalization of minority religions. The tendency in blasphemy cases in Indonesia has been to prioritize the application of Article 4 in conjunction with Article 156a of the Criminal Code. The insertion of Article 156a in the Indonesian Criminal Code created the concept of blasphemy of religion and made blasphemy a more repressive offense.

Blasphemy against religion which under the Law PNPS Year 1965 previously only had an administrative impact as referred to in the provisions of Articles 2 and 3, then under Article 4 which ordered the insertion of Article 156a of the Chapter IV of the Criminal Code, the law became very repressive. The existence of Article 156a of the Criminal Code has shifted the purpose of the formation of the 1965 PNPS which was originally for “security of the state and national revolution” towards “protection of religion”. Thus, disturbances in state security were the main background for the enactment of the ABL of 1965 at that time. If the background and purpose of the formation of this law is not understood by law enforcers at this time, then this law becomes very repressive. Because the state of emergency, namely the existence of a rebellion to establish a new state and the revolutionary movement that caused disturbances to state security, have passed, so implementing this law today, when the country is in a state of safety and there is no revolutionary emergency, is irrelevant.

In light of the arguments supporting the IABL's shortcomings, this section explains why the IABL's legality must be reconsidered. In general, the constitutionality of a statute or legislation is the condition that laws established by Parliament comply with the relevant constitution or the condition that a certain norm is deemed constitutionally legitimate (Arato, 2012). When the content of legislation violates or conflicts with the Constitution, they are unconstitutional. Typically, the judicial branch, such as the Constitutional Court or Supreme Court, interprets legislation and determines whether a statute or law is unconstitutional through the process of judicial review. According to several sources, the CCIR often employs the Austrian model based on Hans Kelsen's thesis. According to this paradigm, a Constitutional Court review of a statute of law seeks to determine whether the laws passed by the legislative body are consistent with the nation's constitution. On this issue, the CCIR has the authority to declare a portion of the law null and invalid, and its rulings have an erga omnes impact, binding all persons and organizations (Asshiddiqie, 2018).

Consequently, there is no dispute that these principles constitute the fundamental human rights principle that the CCIR must examine while assessing human rights issues.

In addition, with reference to Article 18(3) of the ICCPR and Article 20(2) and (3), the IABL should focus on religious statements that incite discrimination against other religious groups and not on limits on one's beliefs. The diverse religious views between Islam and Protestantism, Protestantism and Catholicism, and Islam and Hinduism are a sort of variety that has been embraced by Indonesians for a long time due to the country's social diversity. Society may embrace the multiplicity of schools within a religion without using it as a justification to persecute other diverse groups. However, the state does not need to restrict the beliefs of its citizens, since the main six faiths have flourished due to the freedom of their adherents to choose, accept, and practice their beliefs without governmental sanction or punishment.

Lastly, there is little question that hate speech against any religion should be prohibited and offenders punished. As a correction to the Resolution on Anti-Defamation (of Islam), Resolution No. 16/18 underlines that all member states should confront acts of intolerance against all religions and beliefs, not only Islam. [[74]](#footnote-74) In the meanwhile, but the government must also respect all religions and beliefs equally. Indonesia is among the nations that continue to preserve and implement anti-blasphemy legislation. Although the UPR findings in documentation rounds I, II, III, and IV urged that Indonesia repeal or amend the Anti-Defamation Law quickly, Indonesia did not comply. However, based on the above information, Indonesia is reluctant to declare that the IABL is unconstitutional or needs to be changed. As a member of the Organization of Islamic Cooperation, which started Resolution 16/18, Indonesia should increase its efforts to implement it. The purpose of the Combating Blasphemy Act is to safeguard faiths or religious symbols, not individual rights. In accordance with international standards, Indonesia should take urgent action to abolish the IABL and change its draft Criminal Code by changing the punishment of blasphemy to the criminalization of inciting to discrimination, hatred, and violence.

Based on the above analysis, it is evident that the Constitutional Court does not completely comprehend the notion of the rule of law highlighted in Article 1 paragraph 3 of the 1935 Constitution. The flaws in the blasphemy law's legal essence were not examined in depth by the Constitutional Court. The Court also does not comprehend that the history of legal standards might depart from the most fundamental constitutional rights provided by the Constitution. The history of legal substance is a crucial issue that might lead to a law's loss of validity. If a legislation loses its authority, it can no longer be utilized to restrict the rights of citizens.

### 4.6.1 Strengthen ABLs and Godly Nationalism violates the right to FoRB

Underpinning of Godly Nationalism manufactures the prolong enforcement of the anti-blasphemy law that applaud the presence of mob violence or public protest. Menchik (2014a) in his study argues that Godly nationalism that is upheld in Indonesia produces religious intolerance. Menchik believes that the value of God Almighty is central to the First Sila of Pancasila, “Believe in One God the Almighty,” in which every citizen has an intrinsic moral commitment to maintain religion as part of safeguarding the nation. In this view, insulting, blaspheming, blaspheming religion, and urging others to have no faith are acts that oppose holy nationalism. The Soekarno administration extended recognition to six religions, enacted the Law on Anti-Defamation of Religion, and founded the Indonesian Ulema Council in accordance with this notion of godly nationalism (p. 607–610). During his administration, Soekarno issued Presidential Decree No. 1/1965, often known as the 1965 Anti-Defamation Law, which stated:

“Every person shall be prohibited from deliberately before the public telling, encouraging, or soliciting public support for making an interpretation of a religion adhered to in Indonesia or performing religious activities resembling the activities of such religion when the interpretation and activities are deviant from the principal teachings of such religion.”[[75]](#footnote-75)

This definition of “godly nationalism” also emerges in the Constitutional Court's legal arguments in support of the Blasphemy Law's legality. The Chairperson of the Leader of Muhammadiyah is likewise of the opinion that Indonesia is not a secular state. However, Indonesia is a country that believes in God Almighty, and as such, it has values that cannot be matched with those of a secular state.

Godly nationalism condemns anarchist activities or taking the law into one's own hands by persecuting religious groups or beliefs that are not among the six recognized by the government.

Traditional values are thriving in Indonesia. However, godly nationalism is perpetually warped by various state policies that are oppressive, accusatory, or condemning of diverse religious groups or views and that encourage individuals to behave as their own judges.

Furthermore, Telle (2017) contends that the current political dynamics in Indonesia, which emphasizes godly nationalism, are responsible for the growing tendency of legal enforcement against blasphemy. It is provided to repel atheism, safeguard “orthodox” religion from “deviant” religious teachings and protect existing faiths from intolerant acts or remarks that degrade their sanctity. The Soeharto Administration maintained the BL during the period of the new order because he desired national stability and wished to avoid horizontal confrontations that would disrupt government operations. Numerous times, the BL has been used to destroy communism and atheism and to restrict the liberties of non-recognized religions. At least three concerns posed a potential danger to Indonesia's unity. The first was the propagation of mystical ideas that contradicted Pancasila and its first premise, “Belief in One God, the Almighty.” This notion has been interpreted as requiring Indonesians to be religious or to believe in God. In this way, many Indonesians who did not believe in God were expected to learn and acquire information from other recognized faiths in order to live according to Pancasila's fundamental principle.

After the reform era, the BL found itself at a crossroads. On the one hand, the state strives to increase the protection of human rights, but on the other, national stability and security remain of the utmost significance. As the defender of the Constitution and the protector of human rights, the Indonesian Constitutional Court has determined that the BL must be revised since it is not in conformity with the Indonesian Constitution and human rights legislation. In the meanwhile, socio-political situations in Indonesia continue to need this law. According to the Constitutional Court, godly nationalism is reflected in Pancasila Sila I, “Belief in One God,” which is enshrined in Article 29 of the 1945 Constitution and reaffirmed by the Constitutional Court in its ratio decidendi decision when examining the constitutionality of the 1965 Anti-Blasphemy Law.[[76]](#footnote-76) In contrast, the vigilante justice phenomenon rises when the blasphemy law regime is robust. According to research done by Yilmaz and Barton (2021), Front Defenders of Islam (FPI) is a radical Islamic group whose actions are always defined by vigilantism under the leadership of Rizieq Shihab (RS). Thus, vigilantism has been crucial to the FPI's operations (p. 8). RS employs hate narratives to provoke individuals outside the organization, including politicians and the government, and urges its adherents to conduct vigilante justice against all types of action that are harmful to Islamic beliefs (p. 8–10). Under the guise of protecting Islam (the “Action of Defending Islam”), RS utilized his popularity to influence the FPI in many anti-Ahok rallies where he was accused of damaging Islam (p. 12). When charges of blasphemy are made against an individual or group of individuals, the FPI is frequently involved in the vigilante justice.

The objective of sustaining the BL in Indonesia rapidly switched from preventing public disruption and safeguarding national unity to “preventing national stability.” It indicates that the BL must prioritize political goals over maintaining public order. Instead of preserving the rights of people or religious groups, the government uses the BL as a repressive instrument against resistance. The legislation is also used to punish minority religions in an effort to garner the support of the majority and preserve their political power.

But on the other hand, when the blasphemy law regime is strong, the vigilante justice phenomenon increases. For instance, a study conducted by Yilmaz and Barton (2021) states that Front Defender of Islam (FPI) is a hard-liner Islamic organization, where under the leadership of Rizieq Shihab (RS) its activities are always characterized by vigilante justice. “Thus, a core part of FPI’s activities has been vigilantism (p.8). RS uses hate narratives to antagonize those outside its group, including politicians and the government, and encourages its followers to take vigilante justice against all forms of action that are contrary to Islamic values (p.8-10). RS used his popularity to influence FPI in various anti-Ahok protests accused of tarnishing Islam, under the pretext of defending Islam (Action of Defending Islam) (p.12). When there are accusations of blasphemy against a person or group of people, the action of Main Hakim Sendiri accompanies it which FPI is often involved in.

There was a swift aim in maintaining the IABL from maintaining to avoid public disorder and protecting national unity into “preventing national stability.” It means that the IABL are needed to support more to political interest rather than maintaining public order. Therefore, in practice the IABL are used by the government as a repressive tool against opposition rather than protecting the right of individual or religious groups. The law is used also to prosecute minority religions to get sympathy from the majority’s voices to maintain their political power.

### 4.6.2 The ABL violates the right to religious expression

The right to freedom of expression is intertwined with the right to freedom of religion. The ABL not only restricts the right to freedom of religion but also limits the right to freedom of expression, particularly religious expression. The Indonesian Constitution guarantees the right to freedom of expression through Article 28E, which states: “every person “shall have the right to the freedom to believe his/her faith and to express his/her views and thoughts, in accordance with his/her conscience”” The Constitution of 1945 has been changed four times, with the adoption of the IHRL,[[77]](#footnote-77) which is contained in more than ten sections of Chapter IV of Human Rights, being the most significant. Historically, the IABL was established in 1965, when the 1945 Constitution had not yet embraced human rights legal standards, and their contents have remained unchanged to the present day. Therefore, it may be assumed that the IHRL rules enshrined in the 1945 Constitution were not considered as a reference point in the establishment of the IABL. This section will elaborate on why the IABL is believed to be a flawed statute.

The IABL, like other anti-blasphemy laws in many nations, according to Durham and Scharffs (2019) was inherited from its respective colonizers and has been in place for a long time to ban hate speech or religious insult against religious items, holy persons, practices, or beliefs (Nash and Bakalis, 2007). In reality, the IABL tends to restrict the ability of members of religious or philosophical minorities to express their religious convictions, which is incompatible with the IHRL. First, according to Article 20 (2) and General Comment No. 34, the limitation is only permitted if it is “strictly restricted to preventing incitement to discrimination, hatred, or violence” when applied to the external forum of the FoRB.[[78]](#footnote-78) However, persecuting someone because of their religion or belief is deemed aberrant and a violation of Article 18 of the International Covenant on Civil and Political Rights (ICCPR). The freedom of a person to display or express his religious beliefs may be subject to such limitations under Article 18 (3) or 19 (3), but the State is not required to punish the individual unless the speech violates Article 20 (2) and (3) by inciting discrimination, hatred, or violence. [[79]](#footnote-79)

Jeroen Temperman (2015) underlines that Article 19 protects everyone's right to freedom of speech, but the ICCPR does not safeguard a person's right not to have their feelings wounded or offended. However, in *Otto Preminger v. Austria,* the ECtHR[[80]](#footnote-80) determined that protecting the right not to offend others' religious sensibilities constituted a reasonable objective.[[81]](#footnote-81) State intervention in the FoE is permitted if such expression is meant to offend the religious sentiments of others. In this regard, the *Otto Preminger v. Austria* case should be deemed irreconcilable with Article 20 (2), and the defendant should be acquitted (Temperman, 2015).

Moreover, the 2012 Rabat Plan of Action recommends that, when regulating religious speech, States parties to the ICCPR evaluate six factors, namely “context, speaker, intent, content, extent, and possibility of incitement to hatred” (Shepherd, 2017). This strategy strives to defend the freedom of individuals to be free from harmful speech encouraging violence or discrimination against persons of a certain race, religion, or ethnicity, as provided by Article 20. An individual is obviously a right holder from a human rights standpoint. Therefore, Heiner argues that honouring the human dignity of every individual is essential to the protection of human rights. This means treating everyone equally regardless of colour, religion, gender, or other factors (Bielefeldt, 2012).

To create a balance between FoRB and FoE, the anti-blasphemy law's applicability should shift from safeguarding religious symbols or sentiments to defending the rights of persons against incitement to hatred. Further discussion will determine if the IABL's only purpose is to prohibit the promotion of hatred against the individual. In addition, it is crucial that the standard limitation of the right be implemented legitimately and proportionately to avoid too restrictive measures that might undermine other fundamental and vital human rights.

Since the IABL corresponds with government measures to limit religious expressions, this study only focuses on examining standards for limiting FoE. Unlike the right to FORB, the right to FoE is not an absolute right (Smet, 2011b). A State is permitted to exercise discretion of restrictions through its domestic law (Fraser, 2019). However, the restriction itself must be strict with clear interpretation, regulated by law, and used for the purpose stated in the agreement (Debeljak, 2008). Therefore, when a person needs to manifest their religion or beliefs, a person cannot be punished because of his/ her belief, imagination, or thought, except if the religious expression of the person advocates an incitement of hatred against other religions or belief (Article 20 (3) or danger other people’s life or safety. The permissible scope of legal limitations of FoE described in both Article 19 (3)[[82]](#footnote-82) and 20 (3) of the ICCPR and explains further by the Economic and Social Council of the UN through the adoption of the Syracuse Principles on the Limitation and Derogation Provisions in International Covenant on Civil and Political Rights[[83]](#footnote-83) and adopted by UNGA through the GC No. 22.[[84]](#footnote-84) These principles aim to avoid misinterpretation by the State members and help them understand the provisions when adopting it into domestic laws.

The ABL can be categorized as a flawed law since it has deficient in terms of both its substance and the mechanism used to create it. The defective law is presumed to be legitimate until it is repealed by the legislative body or annulled by the Constitutional Court if its substance is contrary to the country's Constitution.

First, the primary purpose of the IABL is to defend religions rather than “religious people” themselves, so that it is reasonable to penalize persons who belong to a religion or belief rather than criticize religions. Although the fundamental concepts of FoRB are expressed in Articles 28D, 28E, 28I, and 29 of the 1945 Constitution, the IABL has distinct ideals and standards. Article 29 states that Indonesia is founded on “Belief in One God, the Almighty.” Article 1 of the IABL views this as homogenous religion, in which no one may advocate for atheism or interpret the religious teachings of the major faiths differently (Lindsey and Pausacker, 2017). Moreover, Article 18 of the UDHR and Article 18 of the ICCPR defend a person's freedom to remain religiously neutral or to believe in their own faith. As opposed to avoiding the inciting of hatred, several cases determined under the IABL simply penalized those who offend religious symbols or have differing doctrines from the major religions. Consequently, it would not conform with the IHRL, as it just protects the religious system or personal sentiments of others (Temperman, 2015).

Second, the IABL has no clear definition of what constitutes religious defamation. Article 1's vague definition of defamation of religions has a very broad application. At least five deeds might be called religious blasphemy: (a) Insulting a religion; (b) convincing someone to be an atheist; (c) disturbing a religious ceremony or creating noise near a place of worship; (d) insulting a cleric while conducting a ritual; and (e) criticizing the teaching of religion, including criticizing other religious activities. The IABL is established in accordance with Law No. 1/PNPS/ 1965 and Articles 156a and 157 of the Indonesian Criminal Code. In 2008, Indonesia enacted the IET Law and bolstered the IABL by adding Article 28 Paragraph 2 to Article 28. While Paragraph 2 of Article 45a may be used to punish hate speech, Nonetheless, the Court seldom implements the later provisions.

As elaborated in previous section, to qualify as an incitement to hatred under the Rabat Plan of Action (RPA), a statement must satisfy the following criteria: “context, speaker, intent, substance, extent, and likelihood of incitement to hatred.” [[85]](#footnote-85) The only individual who may be accused with hate speech is a leader who purposefully incites his audience to attack another person based on their hatred of his religion or race while speaking in public at a public assembly. In reality, therefore, the Court exclusively criminalizes actions or statements that qualify as blasphemy under Article 1 of the IABL, rather than hate speech. The five types of blasphemy listed above aim to preserve the “feelings of the major faiths' adherents.” Whether one is humiliated depends on the sentiments of the others. Therefore, each form's interpretation rests on the subjectivity of the judge who analyses the deed. Each form is open to interpretation (Crouch, 2011).

#### **4.6.2. The ABL less acknowledge the right of minority groups of religion**

The IABL contains discriminatory provisions since it is not guarantee the right to minority groups of religion. Article 1 of the Law defines the term “religions” as the six government-recognized religions: Islam, Hinduism, Buddhism, Christianity, Catholicism, and Confucianism. According to law enforcement's interpretation of Article 1, the legislation solely protects these major religions. Consequently, faiths other than these six are frequently excluded from the protection of the law. Evidently, in various blasphemy trials, more than 150 individuals from minority religious groups were convicted and criminalized under the ABL (Andreas, 2019). The IABL contains discriminatory provisions since it exclusively applies to or targets members of religious minority groups. Article 1 of the Law defines the term “religions” as the six government-recognized religions: Islam, Hinduism, Buddhism, Christianity, Catholicism, and Confucianism. According to law enforcement's interpretation of Article 1, the legislation solely protects these major religions. Consequently, faiths other than these six are frequently excluded from the protection of the law. Evidently, in various blasphemy trials, more than 150 individuals from minority religious groups were convicted and criminalized under the ABL (Andreas, 2019).

### 4.6.3. Constitutional Court Judicial Review on the ABL Diminishing the

### Rule of Law and Degrade the FORB

*The inability of the Constitutional Court to comprehend the difference between the internal and external aspects of freedom of religion, and its failure to accommodate the principle of non-discrimination in limiting the right to practice religion in external spaces, indicates that the Court has failed to fully understand the norms of international human rights law. While the Court has been able to adopt the principle of non-discrimination effectively in other cases, such as when it annulled an article in the Citizenship Law that prohibited citizens from writing their "belief" on their identity card, it did not consider the principle of non-discrimination violated by the Anti-Blasphemy Law when it was reviewed. The public pressure, especially from hardline Islamic groups, and strong government support to uphold the Anti-Blasphemy Law during the trial, suggest that the Court's independence is being questioned.* As an institution with the designation of defender of human rights, the court's judgment regarding the blasphemy legislation demonstrates that it has failed to protect the freedom of religion of its inhabitants. The Court is likewise entangled in religious (Islamic) populism, since every time the anti-blasphemy statute is reviewed in court, visitors to the hearings invariably support for the keeping of the law. There were also demonstrations in front of the courtroom. The Court failed to educate the public on the significance of respecting the freedom of every person to choose, embrace, and believe in their own religions and/or beliefs without interference from any party, including the state.

In addition, the CCIR's judgment number 140/PUU-VII/2009 upheld the ambiguity of the IABL and declared that “*the substance of the Law on the Prevention of Blasphemy against Religion has to be modified in terms of the form of regulation, formulation, and legal principles.”* Moreover, the court declared that “*the need for a revision of the Law on the Prevention of Blasphemy Against Religion, both within the formal framework of law and in content, in order to have more clear material aspects that will not lead to ambiguity in reality”* (Crouch, 2011). Another ruling numbered 76/PUU-XVI/2018 and 84/PUU-X/2012, reflected the same position. The CCIR concludes that the statute in dispute does not restrict the freedom to believe, but rather restricts public religious speech that is antagonistic, abusive, or desecrates the religion practiced in Indonesia. Nonetheless, the term 'abuse or blasphemy' is frequently used to describe heretical religious doctrines that differ from the six major faiths embraced in Indonesia. In the instance of Ahmadiyya or Shia, who were the applicants in judicial review cases 76/PUU-XVI/2018 and 84/PUU X/2012, respectively, the CCIR finds that the IABL is employed to respect and safeguard the faiths from such aberrations. The influential Ulama can determine whether or not such teachings are aberrant. Contrary to the RPA, anybody can be charged with blasphemy under the IABL, even if they are not a prominent personality whose statement is not intended to incite his followers to detest other religious groups and conduct acts of violence.

In numerous decisions, including numbers 140/PUU-VII/2009, 84/PUU X/2012, and 76/PUU XVI/2018, the CCIR has stated that the IABL does not prohibit a person from holding beliefs that differ from other religions or beliefs; however, the IABL does restrict how these beliefs may be expressed in public or disseminated to others. The Court believes that, pursuant to Article 28J and the IHRL, religious speech can be restricted by law. It is true that FoRB and FoE limits also apply to the IHRL, Article 18 (3), and Article 19 (3) of the ICCPR. However, the CCIR disregards the fact that the FoRB has two components: the forum-internum, which cannot be limited under any circumstances, and the forum-externum, which can be limited. While the Court has strictly construed Article 28J of the 1945 Constitution, it does not distinguish between the forum-internum and the forum-externum, both of which may be limited by the State. This view is problematic since neither the Constitution nor the IABL expressly define the normal ban on religious speech. The four phases of legitimate and proportional limits under GC No.22, namely, the legitimacy test, the necessity test, the proportionality test, and the non-discrimination test, are not considered by the CCIR (Durham, 2011).

The Court's analysis was extremely unclear and inconsistent since, on the one hand, the court asserts that the IABL protects those with diverse religious or philosophical beliefs. The CCIR overlooked the fact that shortcomings in law enforcement and legal content cannot be separated. In blasphemy cases, the government is not impartial. First, the government, through the Ministry of Law and Human Rights, requested that the Indonesian Ulama Council issue a fatwa on heresy against Gafatar. Secondly, the government issued a letter of prohibition to Gafatar, stating that the dissemination, interpretation, and activities of Gafatar deviate from the main points of Islamic teachings. In terms of permitted limitations on the right to FoE, notably the legality test, Durham (2011) asserts that neutrality is a prerequisite for satisfying the legality test. However, as there is no such limiting criterion listed in the IABL, the legality test cannot be used to Gafatar. As a result, several courts have condemned Gafatar's followers.

Article 156a of the Indonesian Criminal Code was applied in all blasphemy trials, and the culprits were found guilty of “issuing emotions or carrying out deeds that degraded a religion in Indonesia.”[[86]](#footnote-86) If Gafatar was accused of disrupting public order by applying coercive regulations to its devotees in order to impose its new teachings and renounce their former beliefs, then the Court must establish this. Therefore, the court has not deviated from its primary objective of “safeguarding the sentiments of the majority of faiths,” but it has never examined “the feelings of Gafatar adherents.” In this case, the court could not comprehend the distinction between the forum-internum and the forum-externum with regard to the right to FoRB. The court should conclude its investigation of this case and pronounce the defendant’s innocent. However, this has never occurred in blasphemy trials in Indonesia, with the exception of situations with strong political undertones, beginning with the police ceasing their investigation (Tehusijarana, 2018).

**Questioning the Constitutionality of the ABL**

The State is obligated, through its law and system, to treat all individuals equally, without any interference, limitation, or other conditions that make it difficult for any individual to exercise this right (Henkin, 2009). Articles 27, 28I, 28D, and 28H of the Indonesian Constitution of 1945 expressly protect both the nondiscrimination and equality values (Eddyono, 2016). Consequently, there is no dispute that these principles constitute the fundamental human rights principle that the CCIR must examine while assessing human rights issues.

The CCIR has supported the principles of nondiscrimination and equality in a number of significant cases in the past. First, in judgment number 97/PUU-XVI/2016, the Court invalidated a provision of the Residency Law that prevented traditionalists from acquiring resident identification cards and family cards. The Court held, *“Restrictions based on religious convictions that result in differential treatment of citizens are discriminatory.”* [[87]](#footnote-87) This consideration is comparable to the preceding decisions, including 070/PUU-II/2004, 27/PUU-V/2007, and 024/PUU-III/2005. In addition, the Court has invalidated discriminatory laws in other cases, such as the decision number 011-017/PUU-1/2003, in which the Court ruled that Article 60s of the General Election Law, which prohibited former Communist Party members from running for office, is a form of discriminatory policy that contradicts Articles 27, 28D of the 1945 Indonesian Constitution. In decision number 006/PUU-IV/2006, the Court ruled that Article 2c and 3 of the Law of Commission Reconciliation and Rehabilitation were in conflict with the constitution because they discriminated against victims of past human rights violations by preventing them from claiming their right to compensation and rehabilitation unless they were willing to forgive the criminals. In the instance of the IABL, however, the CCIR disregarded the fundamental principle of non-discrimination. The CCIR argues that if a restriction on the freedom to religious expression is imposed by law, then the restriction is justified, regardless of whether or not it results in discriminatory treatment of specific religious groups.[[88]](#footnote-88) In this regard, the CCIR has utilized the Particular Constitutionalism theory, which interprets the Constitution's enshrined Human Rights principles in a restrictive meaning.

## 4.7 Conclusion

# CHAPTER V

# LAW ENFORCEMENT OF INDONESIA'S ABL, POLITICAL MANIPULATION AND ITS IMPACT.

## 5.1 Introduction

The phenomena of law enforcement against religious blasphemy not only threatens the right to religious freedom, but it also weakens the basis of democracy by disregarding the rule of law. Several publications on Indonesia's anti-blasphemy legislation have highlighted normative legal study throughout the past decade (Cohen, 2018; Crouch, 2011; Fiss and Kestenbaum, 2017; Prud’homme, 2010). These scholars are particularly critical of the normative flaws inherent in the Legislation Against Blasphemy of Religion, where the substance is inconsistent with international human rights law, resulting in discriminatory treatment of minority religious groups and a danger to religious liberty.

This chapter seeks to investigate how the tightening of the anti-blasphemy statute affects law enforcement procedures. In addition to major legal issues, might socio-political elements affect the application of the blasphemy law? To what degree is political manipulation of religion behind Indonesia's widespread prosecution of blasphemy cases?

## 5.2 An Overview of Law Enforcement of Indonesia's ABL.

### 5.2.1 The Court Decisions of Blasphemy Cases in Indonesia

Table 12. The Criminalization of Blasphemy Cases Based on the IABL Junto Article 156a Indonesia Criminal Code with Punishment for Maximum 1 Year in Prison

| No. | The Court | Year | Defendant’s Name | Defendant’s Religion | Indictment | Punishment |
| --- | --- | --- | --- | --- | --- | --- |
| 1 | Medan District Court | 1968 | HB. Jassin | Muslim who made  short story “The sky is getting cloudy” (1968) | 156a CC | 1-year sentence with 2-year probation |
| 2 | Polewali Mandar District Court | 2005 | Sumardin Tappayya | Village Leader who Praying by Whistling (2005) | 156a CC | 6 months sentence with 1-year probation |
| 3 | Makassar District Court | 2008 | Hikmat Faturiddin, Abdul Qadri, Fadli, Maulid Syawal and Asrul AB | Follower of Al-Qiyadah belief (2008) | 156a CC | 4 months sentence with 6 months’ probation |
| 4 | Kupang District Court | 2009 | Nimrot Lasbaun and Friends | Christianity who believes Sion as the city of God (2009) | 156a CC | 6 months sentence |
| 5 | District Court Ambon | 2009 | Wilhelmina Holle /  Musohi - Maluku Public Unrest | Islam | 156a CC | 1-year sentence |
| 6 | Blitar District Court | 2011 | Miftakhur Rosyidin bin Winarko (RIP) | A Muslim person who drew a cross inside a mosque. | 156a CC | 4 months sentence |
| 7 | Garut District Court -2012 | 2012 | Sensen Komara | A follower of Indonesian Islamic Nation. | 156a CC | 1-year treatment in mental Institution |
| 8 | Sampang District Court | 2012 | Tajul Muluk | A Shia leader | 156a CC | 1-year sentence and 4 years sentence by High Court |
| 9 | Dompu District Court | 2012 | Charles Sitorus / | Christianity Teaching of Kindness Books distribution (2012) | 156a CC | 1 year and 2 months sentence |
| 10 | Pontianak District Court | 2012 | Sandi Hartono as son of Khu Khim Chiung (2012) | Islam | IET Law No.11/2008 | 6 months sentence and 500 million rupiah fine |
| 11 | Kalabahi District Court | 2013 | Alfred Waang | Islam who forced a kid to eat pork meat | 156a CC | 1-year sentence |
| 12 | District Court of Trenggalek | 2013 | Agus Santoso or Tesy bin Kijaelani | Islam | 156a CC, 335 (1) CC | 4 months sentence |
| 13 | District Court Denpasar | 2013 | Rusgiani | Hinduism | 156a CC | 1 year and 2 months sentence |
| 14 | Medan District Court | 2018 | Meiliana | Budhism who complain adzan/ call for prayer volume | 156a CC | 1 year and 6 months sentence |
| Sources: Cited from Court Decision Directory at Indonesia Supreme Court and Categorized by Author | | | | | | |

Table 13. The Criminalization of Blasphemy Cases Based on the IABL Junto Article 156a Indonesia Criminal Code with Punishment for 2 to 5 Year in Prison

| No. | The Court | Year | Defendant’s Name | Defendant’s Religion | Indictment | Punishment |
| --- | --- | --- | --- | --- | --- | --- |
| 1 | District Court Central Jakarta | 1990 | Aswendo Atmowiloto | Muslim who published a survey the favorite leader in Indonesia and put Muhammad as the second rank | 156a CC | 5 years sentence |
| 2 | District Court Situbondo | 1996 | Muhammad Saleh | Islam | 156a CC | 5 years sentence |
| 3 | Kalabahi District Court | 2004 | Ir. Charisal Matsen, Agustinus Manu M.Sc. | Muslim who made a Book cover design of “Alor in numbers” | 156a CC | 2 years sentence |
| 4 | District Court Bale Endah | 2004 | Mangapin Sibuea | Christian who Apostle and Prophet of the world cottage | 156a CC | 2 years sentence |
| 5 | Probolinggo District Court | 2005 | Ardi Husain and 6 managements of YKNCA | Muslim who wrote and published a book “Penetrating the dark towards light 2” | 156a CC | 4 years and 6 months sentence |
| 6 | District Court Jakarta | 2006 | Lia Aminuddin | Lia Eden Community | 156a CC 157 paragraph (1), and 335 CC | 2 years sentence |
| 7 | District court Central Jakarta | 2006 | Abdul Rachman | A Salamullah follower | 156a CC | 3 years sentence |
| 8 | District Court Central Jakarta | 2007 | Ahmad Musadeq | A follower of Alqiyadah Al Islamiyah and the leader of Gafatar | 156a CC | 4 years sentence |
| 9 | Malang District Court | 2007 | Djoko Widodo SH and Nur imam Daniel or Daniel as part of 41 members of LPMI (2007) | Islam | 156a CC | 3 years and 6 months sentence |
| 10 | District Court Padang | 2007 | Dedi Priadi and Garry Lutfi Yudistira | Al-Qiyadah Al-Islamiyah | 156a CC | 3 years sentence |
| 11 | Jambi District Court | 2008 | Edi Ridwan, Amir, Sudibyo and Warsito | A leader of Islamic New Model | 156a CC | 5 years sentence |
| 12 | District Court of Tasikmalaya | 2008 | Ishak Suhendra | A writer of Religion and Reality Book | 156a CC | 5 years sentence |
| 13 | District Court Central Jakarta | 2009 | Lia Aminudin / Salamullah | Habib Abdurrahman Assegaf / Islam | 156a CC | 2 years and 6 months sentence |
| 14 | District Court Central Jakarta | 2009 | Wahyu Andito Putro Wibisono / Salamullah | Habib Abdurrahman Assegaf / Islam | 156a CC | 2 years sentence |
| 15 | District Court South Jakarta | 2009 | Agus Imam Solihin / Satriyo Piningit | - / Islam | 156a CC | 2 years and 6 months sentence |
| 16 | Ciamis District Court | 2011 | Ondon Juhana | Sri Asriyati and Victims / Islam | 156a CC and 378 CC | 4 years sentence |
| 17 | District Court of Tasikmalaya | 2011 | Oben Sarbeni | MUI / Islam | 156a CC | 4 years sentence |
| 18 | Temanggung District Court | 2011 | Antonius Richmond Bawengan / Distribution of 3 brochures and 2 books | Community members and administrators | 156a CC | 5 years sentence |
| 19 | District Court Sumber Cirebon | 2011 | Ahmad Tantowi / Heaven of Eden | Victim / Islam | 156a CC and article 289 CC | 10 years sentence |
| 20 | Klaten District Court | 2012 | Andreas Guntur Wisnu Sarsono, Mandate of Divine Greatness | FKAM / Islam | 156a CC | 4 years sentence |
| 21 | District Court Padang | 2012 | Alexander Aan / Account Atheis | / Islam | 156a CC | 2 years and 6 months sentence |
| 22 | Ciamis District Court | 2012 | Subastian Joe Bin Abdul Hadi / FB Allah Stingy and Arrogant | FPI, LPI and MUI / Islam | 156a CC | 4 years sentence |
| 23 | Ende District Court | 2013 | Herison Yohanes Riwu / Host Case | Church leadership / Catholic | 156a CC | 4 years and 6 months sentence |
| 24 | District Court Lubuk Pakam | 2013 | Khairuddin or Udin / Islam Kaffah sect | society / Islam | 156a CC | 4 years sentence |
| 25 | Pati District Court | 2013 | Muhamad Rokhisun bin Ruslan | victim / Islam | 156a CC, Art. 45 & Art. 28 ITE Law. | 4 years sentence |
| 26 | District Court Bale Bandung | 2013 | Rohmansyah / Qur'aniyah sect | Bandung / Islamic Organizational Society | 156a CC | 2 years and 6 months sentence |
| 27 | Sangatta District Court | 2014 | Syeh Muhammad (Teacher of Bantil) | ex-student / Islam | 156a CC & 378 CC | 3 years sentence |
| 28 | District Court North Jakarta and Supreme Court |  | Ahok |  | 156a CC & 27 (3) & 45 (1) | 2 years sentence a |
| Sources: Cited from Court Decision Directory at Indonesia Supreme Court and Categorized by Author. | | | | | | |

This research includes 62 blasphemy cases from 1965 to 2018. Figure 8 shows examples by sentence length. 14 offenders (22.5%) out of 62 were sentenced to 1 year in jail. 14 or 23% were sentenced between 1 and 4 years, 28 or 45% were sentenced above 4 years, and 14 or 20% were not brought before the court, including 1 case where the defendant was not found guilty. Not all IBL cases should be brought to court, as they are commonly utilized against minority religions or sects. Alternative conflict resolution, such as communication or mediation out of court, should be continued as the best feasible option.

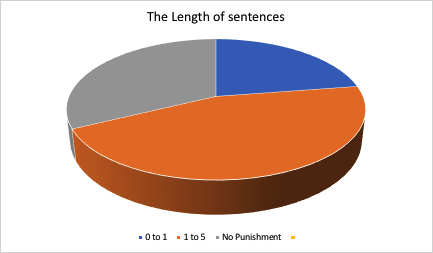


Figure 8. The Length of Sentence from 1965 to 2018

Source: The Supreme Court Directory analysed by the writer based on the data on Table provides on Appendix.

In figure 9, the public prosecutor based 58 of 62 indictments on Article 156a of the Indonesian Criminal Code. The IET Law is used in 4 cases (6%). The IBLs have been utilized largely to impede religious freedom, not free speech.

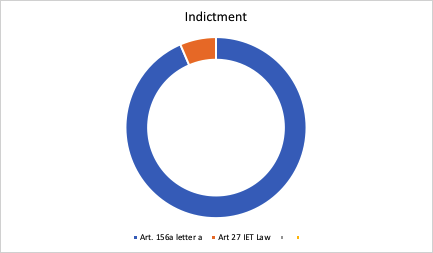


Figure 9. The indictment used by the Public Prosecutor from 1965 to 2018

Source: Writer analysed the Supreme Court Directory. The writer analysed the Supreme Court Directory using the Appendix Table.

Meanwhile, figure 10 shows that most blasphemy victims are Muslim (84%), Christian (5%), Catholic (2%), and Hindu (2%). Muslim community gains more from blasphemy law. The legislation protects the most popular religions. 7% of victims are unidentified.

### 5.3.1. Factors and Actors Influence the Enforcement of the ABL in various countries.

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.

Furthermore, 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).

## 5.3 Discussion and Analysis

### 5.3.1 Factors and actors influence the ABL’s enforcement in Indonesia.

#### **(i) State Monopoly Truth**

The increasing acts of intolerance in Indonesia, which are marked by vigilante justice against groups accused of blaspheming religion or having deviant sects, are rooted in the attitude of hard-liner religious adherents who claim to be the most correct in interpreting religion or the contents of religious scriptures. Hard-line religious groups tend to monopolize the truth; they impose their interpretations of the Holy Book on others and do not want to accept different interpretations. This rigid attitude of religious leaders is supported and followed by students, including their families.

Two great Indonesian scholars, Gus Mus (Nahdlatul Ulama) and Quraish Shihab (an expert in Qur'anic Exegesis), shared the view that the monopoly of religious truth from certain groups is the root of intolerance. Shihab, in a national program on television, stated that:

“God never asks what is five plus five because there will be only one answer. What God asks is, what makes 10? It can be seven plus three or eight plus two etc. Therefore, truth is diverse. Don't think that what you believe is the truth that one believed on others would trigger social friction, a situation with which Indonesia was currently struggling.”[[89]](#footnote-89)

Gus Mus (Ulama from NU) similarly said that:

“Imposing an interpretation of the Qur'an is really dangerous, especially by those who refer to themselves as ulama, or not as ordinary people.” [[90]](#footnote-90)

If referring to Hashim Kamali's view, “God reveals the truth in variety of ways, some explicit and others by allusion, the latter mainly through the modality of the “verse”, to provoke and engage the human intellect (Kamali, 2006).

So, the views of the two scholars should be understood, namely, that the Qur'an itself is aware that humans use their ears to hear, their brains to think, their eyes to hope to see, their mouths to ask questions, their knowledge to understand, and so on. Hashim Kamali also asserts that “approximately 750 verses, or nearly one-eight of the Qur'an, exhort the readers to study nature, history, the Qur'an itself, and humanity at large.” [[91]](#footnote-91) Thus, when *Meiliana* challenged the sound of the Adhan, which was too loud, and then said that *Meiliana* had tarnished religion, such an attitude was an example of the monopoly of truth that understands religion (Islam) without reason, conscience, or science. Likewise in the cases of *Ahmadiyya* and *Gafatar.* The attitude of the Indonesian Ulema Council, which issued a heretical fatwa against the *Ahmadiyya* and *Gafatar* groups based solely on a one-sided truth claim, did not give *Ahmadiyya* room for freedom to believe in their choice of belief or at least provided room for *Ahmadiyya* to be heard for their explanations. Then *Gafatar,* which admits that it is not a religious organization and never committed blasphemy as alleged in the MUI fatwa of heresy, The MUI truth claims are made with eyes, ears, and minds close to the real facts. Truth claims followed by false statements, bans, and disbandment of an organization are no longer just truth claims but have stimulated public anger in the form of vigilante justice.

The one-sided truth claim by the MUI was also corroborated by the Court. This can be seen in the sentencing decision handed down by the South Jakarta District Court and confirmed by the High Court decision in Jakarta, which stated that Mahful Muis and Ahmad Musaddeq were perpetrators of blasphemy who violated Article 165a of the Criminal Code. In an interview with the former Head of YLBHI, who is also the legal adviser to the two defendants, Asfinawati,[[92]](#footnote-92) she stated that:

“(1) [……] (2). The Appellant strongly agrees with the legal considerations of the East Jakarta District Court according to the facts that the trial has not proven at all the charges of the two public prosecutors and acquitted the defendants of the second indictment; (3) That the appellant strongly objected to this decision in which the defendants were declared legally and convincingly proven to have committed blasphemy and were sentenced to prison terms because there was not a single witness or piece of evidence that could corroborate or prove the public prosecutor's first charge.”[[93]](#footnote-93)

In the Ahmadiyya case, both the court of first instance and the high court shared the belief that a person who has religious teachings that are different from the religion adhered to in Indonesia is prohibited from being the perpetrator of religious blasphemy. The emphasis given by the court to Ahmadiyya adherents was “**intentionally committing an act publicly that is basically blasphemy against a religion adhered to in Indonesia**.”[[94]](#footnote-94) This means that Ahmadiyya followers can't preach their religion in Indonesia if it goes against the mainstream Islam, which is the main religion there.

Furthermore, the Ahmadiyya is not a new religious organization. It has existed for a long time, and the Ahmadiyya have long lived side by side with other Muslims. However, when public policies declare Ahmadiyya to be “perverted,” vigilantism occurs, and is even repeated. Likewise, with *Gafatar,* as an organization that has a license, *Gafatar* has various work programs and collaborates with various state institutions. Before there was a deviant fatwa, people did not consider this organization a deviant organization. Pressure on the Ahmadiyya adherents has occurred since 1980, when the MUI issued a Fatwa on Ahmadiyya Qadiyan (as a result of the second National Conference, held May 26–June 1, 1980) and recommended that the Indonesian government ban the dissemination of Ahmadiyya in Indonesia through the national working meeting. In total, there have been three decrees of the MUI on Ahmadiyya: two fatwas issued in 1980 and 2005, and one recommendation issued in 1984 that declared Ahmadiyya as heretical and not practicing Islamic teachings properly. Not only did MUI issue a deviant fatwa to *Ahmadiyya*, but also to *Gafatar* and *Meiliana.* Meiliana's actions against the call to prayer were also declared by MUI as blasphemy. All acts of persecution against *Ahmadiyya, Gafatar, and Meiliana* followers took place after the MUI Fatwa was issued.

### (ii) Continuing to strengthen the flawed ABL diminishing the rule of law

In the previous chapter, the legal framework of the ABL was examined, focusing on the ambiguity of the law. It was concluded that the ABL lacks clear definitions and boundaries regarding what constitutes "blasphemy", "defamation of religion", or "interpretation of religion that differs from the religion practiced in Indonesia". This lack of clarity has resulted in these terms being interpreted broadly and subjectively by law enforcement officials.

### (iii) The Government interference toward religion

Due to the lack of law enforcement to prevent vigilante justice, *Ahmadiyya* and *Gafatar* adherents, as well as *Meiliana*, were victims of vigilante justice, as described in the preceding subchapter. The expansion of vigilante organizations and the inability of law enforcement to prevent recurring vigilante justice violence are examples of the government's unwillingness to take decisive action against vigilante groups that flagrantly violate the law. Consequently, the vigilante groups believe they have the support of the government to continue their efforts.

“In a striking example of official reluctance to tackle vigilante justice, video footage taken in February showed the police in West Java standing by as a mob killed three Ahmadiyya members and mutilated their bodies. Rather than lead to crackdown on vigilante justices, the incident prompted provincial and local governments to issue decrees curtailing the rights of Ahmadis to worship.”

The Ahmadiyya experienced vigilantism in the form of persecution of Ahmadiyya followers, expulsions, burning of houses of worship, and other prohibitions.[[95]](#footnote-95) This act of vigilantism cannot be separated from the government's policy during the reign of Soesilo Bambang Yudhoyono, namely the issuance of a Joint Decree of the Three Ministers Year 2008 declaring Ahmadiyya to be a heretical religion (the 2008 Join Decree). The 2008 Join Degree essentially calls for Ahmadiyya to return to Islamic teachings and prohibits their adherents from carrying out religious activities that lead to the spread of Ahmadiyya. The 2008 Join Decree was then followed by various policies at the local level, namely the Regulations of the Governors of East Java and West Java which also prohibited Ahmadiyya from using the symbols of their organizations, prohibited the use of houses of worship and schools. While in various other provinces the prohibition of Ahmadiyya has been carried out in almost all provinces. The Joint Decree (SKB) of the Minister of Religion, the Attorney General and the Minister of Home Affairs concerning Warnings and Orders to Adherents, Members and/or Management of JAI and Community Members, is one of the causes of discrimination against Ahmadiyya.[[96]](#footnote-96)

Reinforcing the discussion of the previous chapter, political manipulation of the implementation of the Blasphemy Law also occurred in the Ahmadiyya case. The ban on Ahmadiyya cannot be separated from SBY's political interest in seeking the support of a Muslim majority in the 2019 election. Then the ban on Ahmadiyya also continued during the Jokowi administration, which advanced as a presidential candidate after SBY stepped down. The Jokowi administration continues its repressive measures against the Ahmadiyya. Throughout his campaign, Jokowi emphasized the importance of religious tolerance. But when Jokowi came to power in 2014, the Jokowi administration tended to allow the actions of MHS to be carried out by hard-line Islamist groups such as the FPI.

1. FPI keeps asking the local government to ban the Ahmadiyya group's religious activities. This has led to a number of local policies, such as:
2. Joint Decrees 3 and 199 of 2008 say that the Ahmadiyya Mosque will be shut down.
3. Governor's Regulation No. 12 of 2011 says that the Indonesian Ahmadiyya Congregation can't do anything in West Java.

Depok Regional Regulation Depok Regional Regulation Number 9 of 2004 concerning Civil Investigating Officers and Depok Mayor Regulation Number 9 of 2011 concerning the Prohibition of the Indonesian Ahmadiyya Congregation in Depok.[[97]](#footnote-97)

Like *Ahmadiyya*, *Gafatar* members experienced various forms of violence. In Gerakan Fajar Nusantara/GAFATAR (Nusantara Sunrise Movement), the defendants *(T. Abdullah Fattah, Fuadi Mardhathilla, Ridha Hidayat*, and *Althaf Mauliyul Islam*) are found guilty under Art. 156a of the Indonesian Criminal Code for mixing the teachings of Islam, Judaism, and Christianity. Government pressure on Gafatar continued. On January 14, Home Affairs Minister Tjahjo Kumolo instructed the local government to close all Gafatar offices. On March 24, Attorney General Muhammad Prasetyo announced a Joint Decree (SKB), signed together with Minister of Religion, Lukman Saifuddin, and Minister of Home Affairs, Tjahjo Kumolo, warning that “former members and administrators of Gafatar” get involved in “dissemination, interpretation, and activities that deviate from the main teachings of Islam, and the punishment for this violation is a maximum of five years in prison, based on the 1965 blasphemy crime article.”[[98]](#footnote-98) Human Rights Watch reported that 2,422 families, a total of 7,916 individuals including children, were expelled from West and East Kalimantan from January to the end of February. The Indonesian government detained more than 6,000 Gafatar members who were forcibly expelled from Kalimantan to six illegal detention centers in Jakarta, Yogyakarta, Bekasi, Boyolali and Surabaya.[[99]](#footnote-99) They were then evacuated at the supplies and transportation complex of the Tanjungpura Military Command XII in Pontianak, West Kalimantan. The former chairman of Gafatar, Mahful M Tumanurung stated that: “We, ex-Gafatar members, deeply regret and strongly condemn actions in the form of systematic forced evictions, destruction of fires and looting of assets on land that we legally own.”[[100]](#footnote-100)

Furthermore, in the instance of *Meiliana,* the court's conclusion that she had insulted religion (Islam) was not backed by adequate evidence and witnesses. But randomly, the court construed *Meiliana*'s criticism of the loudness of the mosque's loudspeaker, which was excessively loud, as blasphemy. Various defences, both in the form of Amicus Currie, a friend of the judiciary, and those put up by academics, NGOs in the field of human rights, and the National Commission for the Protection of Women, were not examined at all by the courts.[[101]](#footnote-101)

The facts above show that both Ahmadiyya and Gafatar followers continue to be persecuted and banned from exercising their freedom to worship or organize because of the government's failure to present a fair public policy. Instead of protecting their right to choose, exercise their right to religion, and worship, the government continues to issue regulations that seal their places of worship, prohibit their religious activities, freeze their organizations, and threaten the leaders of these groups with prison sentences. The state covertly supports MHS due to its inability to dissuade and prevent vigilante justice.

#### 5.3.2.1 Criminal Offense without strong evidence

#### 5.3.2.2 Questioning Judiciary Independency

#### 5.3.2.3 Unfair Trial Degrades Human Rights

#### Unproportionally Punishment Destroyed Social Justice

### (iii) Popularism of Religion and Independency of Judiciary.

With the advent of several MUI fatwas and court rulings that label organizations with religious teachings and views that differ from the dominant religion adhered to in Indonesia as deviant, violence against persons accused of blasphemy against religion is increasingly justified by certain groups. As it became apparent that the law enforcement procedure was not moving as expected, this fury grew. In the sociological heritage of Indonesian culture, amok refers to a violent social act prompted by extreme rage (Collins, 2002; Smith, 2006). Typically, lawlessness arises when criminals are caught red-handed or when fraud occurs. In blasphemy instances, governmental choices that favor the majority predominate. Therefore, amok's culture, as stated by Collins or Smith, is not too prominent in cases blasphemy because almost all accusations of blasphemy are always granted by the indictment and the perpetrators are punished. The vigilante justice by the FPI continue because the state allowed them to happen and was justified by various public policies declaring Ahmadiyah and Gafatar teachings heretical long before a court decision was made.

The vigilante justice phenomenon against religious followers accused of being heretics shows the strengthening of hard-line Islamic populism in Indonesia. Hard-line Islam views “deviant religion as a common enemy” and continues to influence society against it. Such extreme views are echoed by Islamic organizations such as FPI in various religious lectures or speeches. Hard-line Islamic views are continuously manufactured and have become the daily consumption of millennials. Hard-line Islamic groups continue to campaign for the view that the right to practice one's beliefs is not an absolute right if it offends other religious people. The Ahmadiyya group must choose whether they will defend their faith or follow the true teachings of Islam. If they choose to defend their religion, then don't promote that religion because it will hurt most Muslims.

Unfortunately, the violent actions of hard-line Islamic groups and their intolerance did not get firm action from law enforcement. In fact, the government either supports or ignores this. Hard-line Islamic groups that continue to push for the enforcement of the Anti-Defamation Law are also supported by the moderate Islam group that supports the populism of Islam and maintains the Blasphemy Law. Various efforts made by NGOs concerned with human rights and the right to freedom of religion to test the validity of the Blasphemy Law continue to stagnate because moderate Islamic groups such as NU or Muhammadiyah are on the same page with hard-line Islam and the government to defend the law.

The failure of democracy in Indonesia opens space for hard-line Islamic groups to continuously proffer and promote an Islamic State as an alternative solution. The idea of an Islamic state began to be discussed in various academic institutions and on social media. Various discussions regarding the idea of an Islamic state continue to roll along despite criticism from moderate Islamic groups. Capitalism is thought to be the root of the paralysis of the Indonesian economy. Low economic growth reduces people's purchasing power. When the economy is not growing, various companies do mass layoffs, so the unemployment rate rises sharply in Indonesia. The capitalist economy that workers and the lower economic class cannot feel makes the stunting rate in Indonesia very high. This is what causes hard-line Muslim communities supported by millennials to look for alternative economic systems that can build prosperity.

Islamic populism is increasing, and the division of society between *hard-line* Islam and moderate Islam continues to sharpen. Intolerance rose sharply, either in the form of hate speech or the criminalization of religious minorities by hard-line Islamic groups. Through the campaign that “blasphemy is a common enemy,” it encourages the public to continue to report parties deemed insulting to Islam. Religious minority groups seem to be allowed to grow and develop. But when they manifest their religion, they are accused of blasphemy. Various calls against religious minority groups have been made by hard-line Islamic leaders, stating that they should “embrace religion without promoting it.” The stigma of heresy continues to be pinned on minority groups if the religious teachings they believe to be the truth are considered contrary to the main religious teachings adopted in Indonesia.

This is the main reason for declaring *Ahmadiyya* and *Gafatar* as heretical religions. MUI is a semi-government agency. It is not a law-forming institution, nor is it an institution that sits in the executive ranks. However, the MUI was given the authority to act as regulator and as religious police. Although the term “heretical” is not found in the Criminal Code, if MUI says a religious teaching is heretical, this will be equated with the terminology contained in Article 156a of the Criminal Code, namely “crime against religion” or “blasphemy.” In this case, the authority granted by the MUI shows that the state is adopting a concept known in Islam, namely the concept of heresy. According to Assyaukanie, heresy is derived from theological terms. Ma'ruf Amin, a former MUI chairperson, said that a belief or religion is considered heretical if it covers one of the ten criteria of heresy, such as denying the principles of faith or believing or following a belief that is not in line with the argumentation from the Holy Qur'an and the Prophetic Traditions (dalil syar'i).[[102]](#footnote-102)

In the case of *Ahmadiyya* and *Gafatar*, minority religions have no representative in the MUI. They do not have a voice that can be heard or addressed. The last word is “religions professed to in Indonesia,” which means it only refers to the six official religions. Other religions or beliefs than those mentioned in the explanatory clause of Article 1 of the Law No. 1/PNPS/ 1965 are not protected by the Law No. 1/PNPS/ 1965. Article 1 of the Law contradicts Article 29 of the 1945 Indonesian Constitution, which recognizes the right to religious freedom but never mentions the sixth official religion. While Article 1 of the Law creates the new norm and discriminates against or excludes other religions or beliefs that have existed in Indonesia for a very long time, but there is no element concerning the permissible limitation to the rights of freedom of religion and freedom of expression as stated in Art. 18 (3) of the ICCPR.

### (iv) The state's acquiescence to vigilantism Flowering Intolerance Society

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

“(1) Whoever commits violence against persons or property together in public, shall be sentenced to a maximum imprisonment of five years and six months. (2) Guilty punished: 1e. by a maximum imprisonment of seven years, if he intentionally damages property or if the violence, he commits causes any injury; 2e. with imprisonment for nine years if the violence causes serious bodily harm; 3e. by a maximum imprisonment of twelve years if the violence causes the death of a person.” [Translated by the Author]

In addition to the provisions of Article 170 of the Criminal Code, Article 351 of the Criminal Code concerning the prohibition of committing persecution, and Article 406 concerning the prohibition of vandalism, are provisions that are often used by law enforcers in preventing and prosecuting perpetrators of vigilante justice. Article 170 of the Criminal Code expressly threatens a heavy penalty, namely between 5 and 12 years in prison, for acts of vigilante justice, namely violence carried out jointly in public, regardless of whether it causes property damage, minor injuries, serious injuries, or death. This criminal act of violence that is carried out vigilantly is a general crime, where the police as law enforcers can arrest or detain perpetrators to be held criminally responsible. This means that the police do not need to wait for the victim to report the violence. The police, as protectors of the community, also have a legal obligation to stop these acts of violence as soon as possible. However, the attitude of the police in various vigilante justice against *Ahmadiyya* or *Gafatar* followers has been passive or one of omission. The vigilante justice experienced by *Ahmadiyya* followers has continued since 2010 up to 2021, despite the criminal penalties imposed by their leaders. For example, as mentioned in table 5.1. of the first section, from various netizen videos circulating, the police tend to allow the demolition of houses of worship and buildings, causing Ahmadiyya as targets to be injured and die.[[103]](#footnote-103) The West Kalimantan Police Chief, Inspector General Remigius Sigid Tri Hardjanto, explained that:

“The soft approach in securing buildings and houses of worship aims to avoid greater losses, namely the occurrence of conflicts between the emotional masses who want to tear down the buildings and the officers who secure them. This of course has the potential to cause injuries, even fatalities,”[[104]](#footnote-104)

In the case of vigilante justice against Gafatar, there were 21 defendants in the destruction of the Miftahul Huda Mosque in Bale Harapan Village, Sintang Regency, West Kalimantan. In the verdict read on January 6, 2022, they were only sentenced to 4 months and 15 days by the Pontianak District Court Judge.

The Islamic Defenders Front, or FPI, is the hard-line Islamic community organization most frequently involved in the actions of MHS. At least in this study, FPI was recorded as being involved in the attack on *Ahmadiyah* residents, *Gafatar,* destroying *Meiliana*'s house, and mobilizing large numbers of people in the *Ahok* case (see the table below). Unfortunately, the various actions of MHS taken by FPI did not receive firm action from the government. FPI violence is allowed by the state, so that violence occurs repeatedly with the same motive. This act of omission is a form of state support for vigilante groups.

Table 8. FPI takes MHS's action against a group accused of religious defamation

| No | Date | The Forms of *MHS* |
| --- | --- | --- |
| 1 | February 10, 2011 | FPI's attack on the Ahmadiyya Congregation in Cikeusik, Banten |
| 2 | January 28, 2011 | FPI raided the Ahmadiyya An-Nushrat Mosque in Makassar, South Sulawesi, to attack and destroy the mosque's nameplate and furniture. |
| 3 | January 29, 2011 | FPI held a demonstration to force the Ahmadiyah congregation to leave Makassar |
| 4 | March 4, 2011 | The FPI mob caused trouble and set fire to the Ahmadiyya headquarters in Lubuk Pinang District, Muko-Muko Regency, Bengkulu. |
| 5 | March 4, 2011 | FPI mobs burn down a food stall belonging to members of the Ahmadiyya Congregation in Polewali City, Polewali Mandar Regency, West Sulawesi. |
| 6 | March 11, 2011 | Dozens of mobs from the FPI occupy the Al Ghofur Mosque belonging to the Indonesian Ahmadiyya Muslim Community (JAI) in Cianjur. |
| 7 | March 13, 2011 | The Ahmadiyya Mosque in Cisaar Village, Cipeuyeum Village, Haurwangi District, Cianjur Regency, was attacked by hundreds of FPI mobs. As a result, several parts of the building were damaged. The mob also burned Ahmadiyah books and books. A house belonging to an Ahmadiyah figure in Tolenjeng Village, Sukagalih Village, Sukaratu District, Tasikmalaya Regency, was damaged. |
| 8 | May 2, 2011 | FPI Jakarta demands the termination of the film Pocong Mandi Goyang Hip, starring Hollywood porn actress, Sasha Grey. |
| 9 | July 26, 2011 | FPI mobs vandalize a transgender meeting place in Purwokerto, Central Java. |
| 10 | August 8, 2011 | FPI members ransacked the Coto Makassar shop on Jl. AP Pettarani, Makassar for remaining open during the day during the fasting month. August 8 FPI mob destroys Rudi and Hajjah Adriani's food stall. |
| 11 | August 12, 2011 | FPI mobs destroy a food stall owned by Topaz Makassar Restaurant.[3] |
| 12 | August 13, 2011 | FPI mobs create trouble and burn the Ahmadiyya headquarters in Makassar. |
| 13 | August 14, 2011 | FPI mob destroys a mother's food stall in Ciamis.[3] |
| 14 | August 20, 2011 | FPI mobs sweep a food stall selling their wares during the day in the Puncak Bogor area, West Java. The action |
| 15 | January 22, 2015 | FPI demonstrates pressure on court when Ahok is in the Appeal court of East Jakarta. |
| 16 | March 24, 2015 | Reject Ahok, Jakarta Community Movement and FPI Front Siege DKI DPRD Office. |
| 17 | April 8, 2015 | FPI runs public pressure that GAFATAR Members Should Be Sentenced to Death. |
| 18 | June 12, 2015 | Residents to raid Ahmadiyya Congregation in Tebet. |

Source: collected by the author from various sources.

The constitutional guarantee of every citizen's right, as well as the government's primary obligation to respect, protect, and fulfil every citizen's religious freedom right, cannot be properly implemented. The 1945 Constitution guarantees protection for every citizen to choose and embrace their respective religion and/or beliefs (see Article 29 in conjunction with Article 28E). The two articles in the 1945 Constitution do not focus on certain religions or beliefs. Thus, if all religions or beliefs, including Ahmadiyya, are practiced in Indonesia, does the state have a constitutional obligation to protect every citizen's right to freedom of religion and belief?

However, Ahmadiyya followers cannot feel secure because they could become targets of violence at any time by the Vigilante group. This incident will continue to repeat itself if vigilante justices continue to get support from the government. It can be proven that after this study was completed, violence against the Ahmadiyya target group continued to occur. The violence against Ahmadiyya described above is a form of violation of human rights, especially the right to freedom of religion, the right to protection of privacy and a sense of security, the right to property protection, and the right to a place to live. Even the National Human Rights Commission has looked into it and said that the main evidence shows that forcing people to leave their homes and move is a crime against humanity that goes against Article 7 (1) letter d of the Rome Statute.

#### 5.3.4.1 Failure to Prevent Public Disorder

#### 5.3.4.2 Continuing Vigilante Justice

### 5.3.5 Law Enforcement of ABL Results Injustice Law

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

#### 5.3.5.2 … to be filled later….

## 5.4 Conclusion

# CHAPTER VI

# EXAMINATION OF STATE AND RELIGION RELATIONSHIP IN INDONESIA FOLLOWING

# THE ENFORCEMENT OF ABL

## 6.1 Introduction

Discussions on the enforcement of the anti-blasphemy act cannot be separated from a country's decision in establishing religious ties, or what is referred to in various literatures as the relationship between church and state. Although there are no such rules in International Law that compel nations to adopt a given pattern of relationships, the current trend seen by the international community in accordance with International Human Rights Law is a pattern of interactions in which the state is religiously neutral. In order to guarantee the protection of the right to religious freedom, a state must recognize and accommodate the needs of all religions. The actual structure of state-religious relations established by a state indicates the extent to which freedom of religion is guaranteed. According to Fox (2006), the structure of state-religion relationships throughout Europe, North America, Asia, and Africa is not uniform but rather diverse. There are nations in which the relationship between the state and religion is explicitly severed, such as the United States. There were other states with an established religion, such as Denmark and the Unified Kingdom, which were united with religion. The approach in France and Germany, meantime, removes religion from the sphere of the state and prohibits religious minorities via the Proselytism Law. In Austria and Belgium, only a few religions were recognized as official, while others were not.

Nonetheless, as a result of the establishment of democracy and the rule of law, the pattern of interactions that formerly positioned the state as the guardian of a particular religion has altered to one in which the state tends to be religiously neutral. Democracy and the rule of law need the protection of everyone's right to freedom of religion, with the state required to respect all religions equally (Nieuwenhuis, 2012). An-Na'im (2008), a Muslim scholar and specialist on human rights who analyses state and religious relations in Muslim countries such as Turkey, India, and Indonesia, supported Niuwenhuis's proposal. An-Na'im thoughts that Muslim countries should reconsider the close link between state and religion (Islam) in order to better preserve the right to religious freedom.

This chapter investigates in further detail how the Anti-Blasphemy Law gives an overview of the pattern of relations between religion and state in Indonesia, despite the fact that the Constitution of the Republic of Indonesia, the 1945 Constitution, has never expressly articulated it. Secularity cannot be met by inserting a constitutional provision stating that Indonesia is not a religious state but a rule-of-law state. To what degree the present laws forbid the state from intervening in the religious affairs of its inhabitants, or on the other hand, permit the passage of laws that allow the state/government to ban, limit, and even penalize particular religious groups, requires additional investigation. In addition, it is quick to conclude that the precepts of Pancasila “Belief in One Supreme God” provide foundation for non-secular thought, since it is a universal principle or abstract value. This chapter demonstrates that the interpretation and execution of the Indonesian Anti-Blasphemy Law by lawmakers/public policy and law enforcements, as well as the evolution of this law over time, have given rise to a true relationship between the Indonesian state and religion. How the current design of state-religious relations during the implementation of the anti-blasphemy legislation might contribute to the optimization of the right to freedom of religion, or perhaps constitute an impediment, must be investigated further.

The application of the anti-blasphemy law in the cases of *Ahok, Gafatar, Meiliana, and Ahmadiyya* provides a more comprehensive explanation of why pseudo-secularity between State and Religions under the regime of Indonesia Anti's Blasphemy Law is strengthening and endangering the right to freedom of religion.

The scholarship on the connection between the state and religion in Indonesia focuses mostly on normative historical research. Ota Atsushi, Oka-moto Masaaki, and Ahmad Suaedy (2010), for instance, highlight how Islam has hegemonized its relationship with Indonesia via the implementation of sharia norms, the establishment of a compilation of Islamic law as family law for Muslims in Indonesia. Consequently, this chapter does not explore contemporary trends in the connection between religion and the state, particularly after the reformation era. This chapter also does not cover Pancasila's perspective on the connection between Islam and the state, nor does it examine the perspectives of Islamic groups on the subject. As a result of the application of the anti-blasphemy law, however, it is essential to utilize this chapter as a study guide while documenting the evolution of interactions between the state and religion.

Second, Abdul Karim (2005) in his article entitled Religion and State Relations in Post Reformation Era. Briefly from the title, the Author seems to discuss in depth the relationship between religion and the state during the reformation period. But this article only discusses the historical aspect of the relationship between religion and the state in Indonesia, and very little mentions about how its relation during the reformation era. Karim briefly stated:

“In the reform era, the ambiguity of the “gender identity” of our constitution is getting worse. This indication began when the demands for amendments to the 1945 Constitution were failed to be carried out by law and policy makers”.

The normative historical perspective may be able to describe how the founding fathers envisioned the connection between religion and the state, but the wording of the constitution and the interpretations of the constitutionalists may not accurately reflect the actual situation. This section aims to explain accurately why judges are unable to completely actualize the principles of the link between state and religion in the interpretation of statesmen's constitutionalism when determining situations involving religion. Through an examination of blasphemy case decisions, this chapter will examine the connection between the state and religion, focusing on improving and implementing the legislation against blasphemy and its consequences for religious freedom in Indonesia. Therefore, the discussion of the relationship between state and religion as represented in numerous court decisions on blasphemy trials is deemed crucial in order to offer a clearer picture of whether the argument that Indonesia a religious state is not, but a religious state, is accurate or not.

This chapter is divided into …sections. The first section provides the description of the relationship between state and religion relationship and its various types. The second sections examine the state neutrality towards religions support fully protections of religious freedom. The third section then discuss further about what type of relationships of the state and religion that actually has been practiced in Indonesia following the current blasphemy law enforcement. The connection between the State and Religion under the regime of the Blasphemy Law will be evaluated using a variety of indicators, namely to what extent the established orthodox religions enjoy main governmental protection, how the government has controlled religious life and established rules about deviant faiths, how the ABL’s enforcement targets religious minorities and violates their rights, how the Court refers to the recommendation of religious organization in dealing with blasphemy cases. Finally, the fifth section provides a short conclusion.

## 6.2 State and Religion Relationship and its types

Diagram, engineering drawing

Description automatically generatedIn various literatures, the relationship between the state and religion has many facets, one of which is commonly known as the separation between state and religion. The notion of the state and religion relationship is also known as the relationship between church and the state in certain publications (An-Naim, 2008; Durham and Scharffs, 2019; Salim et al., 2003). Durham and Scharffs (2019) categorize the relationship between religion and the state into eleven types as follow: (1) theocratic states, (2) established religion states, (3) religious status system states, (4) endowed religion states, (5) states with a preferred set of religions, (6) cooperation between states and religion, (7) states accommodating religions, (8) separation between states and religions, (9) Laïcité (10) secular control regimes, and (11) abolitionist regimes.

Figure 7. Relationship between state and religion

### 6.3. Implication of Relationship towards Religious Freedom

Durham and Scharffs underline that the form of state-religion relations influences the degree of religious freedom in a country (p.123). The Authors argue that each type of the relationship gives a picture to the degree of the right to freedom of religion. As describe on the loop at Figure 7 bellow, some institutional types are less likely to encourage religious freedom than others, while some are completely incompatible with it (p. 121). The type of the relationship between religion and the state is defined using a loop, allowing for a more precise identification of its impact on the right to religious freedom.

People often believe that a high degree of religious freedom corresponds with a low degree of religion-state identity, or a low degree of religious freedom correlates with a high degree of religion-state identification (Durham and Scharffs, 2019). Durham and Scharffs claim that separation between state and religion does not necessarily lead to a high degree of FoRB and vice versa, because the type of religion-state interactions is elastic. The loop at Figure 7 illustrates the types of state-religion connection, the attitudes of the state toward religion, and the level of religious freedom in each type. The state can transition from one classification to another, such example from a theocratic state (positive identification) to a state with an established religion. Depending on the political and social climate of the nation, the transition might lead to either a total separation or an abolitionist regime (negative identification). Some nations, like as Norway, Finland, and the United Kingdom have total identification or religious institutions while preserving a high level of religious freedom. On the other hand, other countries such as the Soviet era of Russia and Albania have non-identification or non-establishment of religion or they has been practised a secularism. However, they have little religious freedom (p.122). Therefore, secularism is not the sole condition that ensures a high level of religious freedom. Other elements, such as social and political considerations and the interpretability of religious law by communities, must also be studied. To determine the relationship between religion and the state in Indonesia, it is necessary to examine in detail the extent to which anti-blasphemy law enforcement in Indonesia enable to fully protect the freedom for every religion or belief.

Abdullah An-Na'im (2008), one of the foremost Muslim intellectuals and specialists in Law and Human Rights, says that it is crucial for the Muslim community to apply secularism in the twenty-first century. An-Na'im argues that the coercive implementation of Sharia Law by the state in a majority Muslim community such as Indonesia, which also includes other religious groups, is contrary to a Qur'anic injunction emphasizing that the acceptance of Islam is voluntary and a person's free choice to obey his orders. This position validates an-rejection Na'im's of the notion of building an Islamic state, as the Qur'an itself states that “religious compulsion is forbidden.” Therefore, the word “secularism” in An-Na’im point of view should be understood as “secularity” as refers to the idea of Durham and Scharffs. The Authors emphasizes that that secularity, as an adjective, focuses on the nature of the state's relationship with religion, which neutralizes the state's position on religion or accommodates the interests of religious adherents without favouring one religion or forbidding others. On the other hand, the state should avoid secularism because the word “secularism” is defined as the state does not care or even cares about religious activity in the public domain, or even outlaws it. This perspective will jeopardize the status of religion itself since it can lead to an extreme form of secularism in which the state does not want to know about or even restricts or punishes its citizens who believe in or express their faith.

Durham and Scharffs recalled that secularism and secularity are distinct because, both theoretically and practically, they differ in terms of meaning, character, and degrees of freedom, as shown in Table 10.

Table 10. Distinction Between Secularity and Secularism

| Distinction | Secularity | Secularism |
| --- | --- | --- |
| Definition | “Secularity is an approach to religion-state relations that avoids identification of the state with any particular religion or ideology (including secularism itself) and endeavors to provide a neutral framework capable of accommodating a broad range of religions and beliefs” | “Secularism is a positive ideology that the state may be committed to promoting, an ideology that may manifest itself as opposition to religiously-based or religiously motivated reasons by political actors, hostility to religion in public life and an insistence that religious manifestations, reasons, or even beliefs be relegated to an ever-shrinking sphere of private life, or even in progressive proselytizing atheism, or what has been called “secular fundamentalism”. |
| State position | Secularity will be inclined towards negative liberty. States are avoiding to interference freedom of other people. | Secularism will be inclined towards positive liberty. States are willing to use their power, resources, or freedom to fulfil one’s potential who are willing to use coercive means to help us achieve what is food for us. |
| Upholding certain values | Secularity upholds multiple, plural, and ultimately incommensurable. | Secularism allows criminalization towards certain religions. |

Source: Cited from Durham & Brett Scharffs (2019).

## In conclusion, if a state intends to protect the full freedom of religion for all individuals, the relationship between the state and religion must be situated within the first type of relationship. The state must ensure that it does not establish a particular religion as the official religion or show hostility towards existing religions. Secondly, the state should be able to accommodate the interests of all religions without elevating the interests of one religion as the favored religion of the state. Thirdly, the state should refrain from interfering with the religious affairs of its citizens, meaning that the state should not position itself as the arbiter of truth, determining which religion is right or wrong. Fourthly, the state must be open to pluralism and the presence of new religions, and must not attempt to punish them.

## 6.4. Discussion and Analysis

### 6.4.1 Indonesia Practicing Various Types of Relationship Under ABL Regime.

Drawing on Durham and Scharffs theory, this study argues that during Joko Widodo's administration, the Blasphemy Law has been maintained, reinforced and used as a basis for prosecuting followers of minority religions. This study illustrates the type of relationship between state and religion during the implementation of the Blasphemy Law in Table 11 below.

|  |  |  |
| --- | --- | --- |
| No | Type | Arguments |
| 1 | The prefered set of religions |  |
| 2. | Abolosionist regime |  |
| 3. |  |  |
|  |  |  |

In normative perspective, according to Article 29 of the Indonesian Constitution explicitly states that Indonesia is not a religious state, but rather a state based on law. In this sense, according to the Durham and Schaarffs’s figure 7, Indonesia appears to be a secular state, meaning that the founding fathers was expecting to have a distinct connection between the state and religion. However, in practice, it is not really happening. During the Soeharto until Jowo Widodo’s administration, the government of Indonesia continue to endoresed certain religions. The state gives more attention to the six religions, particularly Islam to be more protected in Indonesia than to other religions or beliefs. In the case of state-determined religious holidays, for instance, only religious holidays of the six affiliated faiths are considered, whereas other religions outside of them are not provided.

Second, Indonesia also practises the type of abolosionist regime, meaning that the government is maintaning the law to criminalized certain type of religions. Although the Indonesia Constitution does not specify the names of faiths accepted in Indonesia, but through the enforcement of the ABL, the judicial has been criminalized the followers of various minorities.

### 6.4.2 Challenges to Fully Protect the Rights to FORB Under Indonesia's Blasphemy Law Regime

1. **The Government Interfere Religious Life of the People**

Culture is produced and evolved under the influence of different factors, such as values, beliefs, and actions that become the norm in social life. According to the definition of culture by McCormick, culture is “an institutionalized and systematic collection of ideas, values, attitudes, and activities.” Therefore, in certain nations, a community's beliefs or religion cannot be separated from governmental life. This differs with the perspective of secularism, which is founded on the notion that religion and the state must be kept apart. The separation of church and state enables the government to respect all religions equally, allowing for greater social order. However, it is also anticipated that secularism may lead to intercultural problems because various cultures revere different religions. Extreme secularism can potentially lead to the restriction of religion in society or even to the establishment of an antireligious state (Scharffs, 2017).

### 6.4.3 The Government Sponsoring Favor Religion

From its conception to its current implementation, the Indonesia’s Anti-Blasphemy Law (IABL) continues to help established religions receive official backing. Assistance in this situation is not limited to financial support to existing religious groups, but also in giving legal protection to its members in creating religious organizations and worshiping according to their faith and beliefs. Ironically, this study indicates that the Anti Blasphemy Law not only offers the big faiths more legal standing, but it is also utilized to punish religious members.

President Soekarno signed the IABL in 1965. [[105]](#footnote-105) It was designed to decrease social friction between conservative people and non-religious belief groups and atheists who were in opposition to Pancasila and posed a threat to the protected religion, national security, and national disintegration (Sihombing, 2008).[[106]](#footnote-106) The events of the communist revolution of 1965 became a terrible chapter in Indonesian history, and the people did not want a similar catastrophe to occur again (Arief, 2012). Following this dreadful occurrence, the House of Representatives issued the Provisional People's Consultative Assembly of the Republic of Indonesia No. XXV/MPRS/1966, which outlawed communism, Leninism, and Marxism. [[107]](#footnote-107) The 1965 revolution movement urged Soekarno to step down and provided Soeharto the mandate to succeed him. The administration legislation under President Soeharto during the so-called “New Order” period was altered at that time. [[108]](#footnote-108)

As stated previously, Soekarno signed the President Stipulation in 1965,[[109]](#footnote-109) because he wanted to protect the established religions and beliefs in order to prevent the people's religions or traditional religious systems throughout Indonesia whose teachings were deemed to be in conflict with the fundamental principles of recognized religions. The body of the Blasphemy Law has no mention of the six religions that are infamously “recognized” by the Indonesian government. These paragraphs can be found in the explication, or the notes that follow the major provisions of the legislation (Fenton, 2016). In accordance with the explanation of Article 1 of the President Stipulation of 1956, Indonesia recognizes Islam, Protestant Christianity, Catholicism, Hinduism, and Buddhism. [[110]](#footnote-110) However, this does not imply that the government prohibits Baha'i, Shinto, Jewish, and other religions. After the Reformation Period, under the presidency of Gus Dur, these five recognized faiths become six with the addition of Confucianism.

Furthermore, the IABL demonstrates that governmental protection for established faiths is preferred over protection for alternative religions. As the foundation for the establishment of the blasphemy legislation, Pancasila seeks to recognize their role and contribution to society throughout the independence struggle. Religions play a major role in Indonesian culture and have become an integral aspect of the country's philosophy (Nalle, 2017). As a majority-Muslim nation, it is indisputable that Indonesian Muslims and Islamic organizations played a key role in achieving independence and national unity. However, the quest to build an Islamic state has proven extremely difficult due to the necessity to satisfy the non-Muslim viewpoints of numerous Indonesian provinces. Most founding fathers of Muslim ancestry prioritized Indonesia's unity. Schwarz cited by Nalle explains that Islamic groups such as Sarekat Islam (Islamic Union) and Muhammadiyah (the followers of Muhammad) played a significant part in the Dutch colonial's suppression in 1929.[[111]](#footnote-111) Many Muslim leaders, like Mohammad Hatta, Sutan Sjahrir, and Mohammad Yamin, backed the National Indonesia Party created by Soekarno. They have successfully announced Indonesia's unity. Therefore, on 1 June 1945, Soekarno articulated Pancasila, which consists of the five principles, as a basic national standard. The five principles are: (1) the beliefs of God the Almighty; (2) fairness and civility among peoples; (3) the unity of Indonesia; and (5) socioeconomic justice for everyone (Sezgin and Künkler, 2014). Taking into account the aspirations of the Muslim population to form an Islamic state, Soekarno established the first principle as the foundation for all other principles. In the final text of Pancasila, the Belief in God with the commitment to implement the Shari'ah for Muslims, also known as the Jakarta Charter, has been removed. The judgment strikes a compromise between safeguarding the established faith and recognizing the majority Muslim community.

During the new order period, the IABL was maintained by the Soeharto Administration because President Soeharto wanted national stability, avoided horizontal conflicts that would affect the running of the government. Under President Soeharto administration, this law has been extended by the other law by adding Article 156a on the Indonesia Criminal Code. This Article used many times to eliminate the communism and atheism under the state ideology of Pancasila as well as to limit the right of non-recognized religions. There were at least three problems facing by Indonesia which could threaten the unity of Indonesia. The first was the spread of mystical beliefs that against Indonesian ideology, Pancasila. In the first principle of Pancasila is “Belief in One God the Almighty”. This principle has been understood that Indonesians are expected to hold a religion or believe in God. In that way, many beliefs of Indonesia who do not believe in God were expected to learn and get knowledge from other religions so that they can live as what they supposed to do according to the first principle of Pancasila.

Following the age of reform, the blasphemy legislation stood at a crossroads. On the one hand, the state desires to improve the protection of human rights, while on the other, national stability and security continue to be of paramount importance. As the highest court of justice in Indonesia, the Constitutional Court has determined that the blasphemy legislation must be revised since it is not consistent with the law now in effect. In the meanwhile, socio-political situations in Indonesia continue to need this law. Unfortunately, since the government approved Law No. 11 of 2008 about Electronic Information and Transactions (hereafter the Law of EIT), the IABL has become more restrictive of the right to freedom of expression.

### 6.4.4 The Government Monopolizes Religious Truth

Many groups believe that the Anti-Defamation Law in Indonesia exclusively protects six major religions. According to the data presented in the table above, the majority of community members who encounter violence or criminalization are members of religious minorities. However, the general population is unaware that the Anti-Defamation Law also poses a threat to followers of the six major faiths practiced in Indonesia. Ahok identifies himself a Christian. Christianity is one of Indonesia's six predominant faiths. However, as a result of animosity, the Anti-Defamation Law has been utilized as a political instrument to punish Ahok. Meiliana is also a Buddhist, which is one of the six major faiths practiced in Indonesia. Meiliana is likewise a target of blasphemy law enforcement, like Ahok. In the evolution of the case, the Anti-Defamation Law is utilized as a form of retaliation by individuals who denounce religious leaders for “insulting” their faith. As stated in Clause 156a letter a, the purpose of the blasphemy article is to safeguard the religions practiced in Indonesia, including Islam. The explanation for this restriction does not appear in the ICCPR, nor does it account for other limits under Indonesian blasphemy legislation. This differs from the goal of restricting the freedom of association, which is to defend the rights of others. The court ruled that the blasphemy of Islam violated the rights of Muslims; hence, safeguarding Islam entailed protecting Muslim rights.

Although the ICCPR has become a positive law in Indonesia on par with the IBLs, many legal officials lack the rudimentary skills necessary to execute the law. The 1945 Indonesian Constitution and the Human Rights Law provide freedom of religion and belief as well as freedom of expression. However, the government, court, and police utilized IBLs against defamation and blasphemy more frequently in order to curtail those freedoms. [[112]](#footnote-112) In a number of instances, the Court has understood that sect membership constitutes defamation of the state's recognized faiths, which is contrary to the goals of General Comment No. 34 of the ICCPR and the Ra-bat Action Plan.

In the instance of Gafatar, [[113]](#footnote-113) three leaders of the religious sect were detained in Jakarta on May 26 for blasphemy because, according to the Authorities, Gafatar's teachings blend Islam, Christianity, and Judaism in a manner that is incompatible with recognized faiths doctrines. In March, the Ministry of Religious Affairs, the Ministry of Home Affairs, and the Attorney General's Office announce a combined decree banning Gafatar and any connected groups. Since the Minister of Religious Affairs never granted it legal status, the Gafatar has no legal standing as a civil body. Before the court ruled that the Gafatar is guilty of violating the blasphemy statute, the government had previously classified them as an unlawful organization. In this regard, it was unclear what legal basis the government would employ to restrict the religious freedom of Gafatar members.

In the same month, the East Jakarta District Court sentenced the three top leaders of the outlawed Gafatar religious cult to between three and five years in prison for blasphemy. [[114]](#footnote-114) Gafatar is not protected by the IABLs since the government defines a religion as having a prophet, sacred book, and divinity, as well as being globally acknowledged. The court determined that, unlike the six recognized faiths mentioned in the IBL, Gafatar did not meet these standards. The Court restricts the Gafatar's freedom of expression in order to preserve the six recognized faiths, rather than for the other purposes listed in the ICCPR. The Gafatar's ruling breaches the ICCPR's guarantees of freedom of religion and speech.

Ustad Abdul Somad, a religious leader with thousands of followers in Indonesia, faced this situation. Due to the uncertainty of the criteria in the Blasphemy Law, Ustad Somad was also charged of blasphemy as a follower of the predominant faith of the majority [Islam].

**6.4.5 The Government Continue to Criminalized Minorities Groups of Religions**

Hardline Islamic groups supported by the MUI still insist that the blasphemy law be retained. This view received a breath of fresh air when the Constitutional Court declared that the blasphemy law was not unconstitutional. This study reveals that there are at least historical, and juridical-philosophical reasons put forward by this group. The first historical reason is that in 1965, Muslims in history had been the target of violence which caused deep trauma, so that maintaining this law would at least be able to prevent similar events from happening again in the future. This reason was also put forward by the former Chief Justice of the Constitutional Court, Mahfud MD, when he tested the anti-blasphemy law. Secondly, juridically, and philosophically, the idea of abolishing the blasphemy law is considered contrary to Pancasila and the 1945 Constitution. The idea is seen as turning Indonesia into a secular state that separates religion and the state. Such a model is seen as contrary to the first principle of “Belief in One God”. Hardline Islamists understand that the principle of Belief in One God allows the state to prohibit irreligious propaganda and teachings that are considered heretical. This view can at least be found in various MUI fatwas on heretical teachings.

Hardline Islamic groups have also stated that the idea of abolishing the blasphemy law is Islamophobia that must be countered**.** It is no doubt that the enforcement of the lower standard of BLs across the world are incompatible with the Art. 19 and 20 of the ICCPR. However, it would be difficult to push the predominant Muslim countries to repeal the BL since at the same time the law against hate speech is also applicable in many European countries and the application of its double standard still debateable (Joppke, 2018; Keck and Winkley, 2015; Kunelius et al., 2007). The idea of An-Na’im is not practicable in the country such as Pakistan, Saudi Arabia, Brunei, or Malaysia. They have a strong counterargument that proposed by several Muslim predominant countries, including Indonesia to defend the existing of BLs. Following the wave of Islamophobia in Western countries triggered by the film “Innocence of Muslim” as well as the earlier case of Danish cartoon, Pakistan on behalf of Islamic countries, the OIC’s Human Rights Commission proposed the requirements of “international code of conduct for media and social media to disallow the dissemination of incitement material”. The OIC principle that freedom of speech should not be used as an excuse to demean and embarrass other people's religious beliefs. Although this film cannot be categorized as racial discrimination under Art.4 of ICERD or a hate war, it can be categorized as a form of incitement of hatred that violates Art.20 of the ICCPR because it targets hatred towards Muslims as minority groups in Europe. It is similar to the case of Geert Wilders who found guilty by the Dutch Court of insulting and incitement to discrimination of his statements and his movie *Fitna* against Muslim Moroccans group (Vrielink, 2016).

Another Islamophobia was the case of the distribution of 12 cartoons of the Prophet Muhammad repeatedly in several countries of Europe from 2005 to 2006 cannot only be seen as a form of freedom of expression or criticism against radical Muslim that must be respected in a democratic climate. But the cartoons depicting the Prophet, which has long been understood by people of all religions in the world that Muslims have the belief not to depict the Prophet Muhammad, has hurt the feelings of Muslims in the world. The proof is very evident from the rapid reaction in the form of demonstrations in Denmark and Copenhagen (2005), London (2006) and condemnation from many Islamic countries and even encourage other brutal actions when the demands of apology or withdrawal to the authors and spreaders are not immediately carried out. However, the important point why many experts enter this case differently from other satirical cartoons is not without reason. Muhammad's portrayal of a terrorist is a form of spreading hatred targeting minority Muslims in Europe an invitation to the public to be anti-Islamic (Modood et al., 2006). Where hate speech against minority groups of religion or minority groups of racial is an act that has long been prohibited in domestic law in various countries in Europe such as Germany, Austria, France, and many others. This is as forbidden as the expression that the Holocaust never existed (see *David Irving v Penguin Books and Lipstadt*). Unfortunately the application of double standards also gets a space where anti-Sematic, homophobic, anti-Christianity can be punished as an hate speech based on Article 4 of the ICERD but Islamophobic is not considered as an expression of hatred under the Convention (Joppke, 2018; Keck and Winkley, 2015; Kunelius et al., 2007). The double standard of hate speech law application in Europe can be used to justify the enforcement of BL in predominant Muslim countries and strengthen the view that even in a secular state it still allows the state to favour the majority religion.

However, recent developments in various European and American countries have made significant changes in optimizing the protection of the right to freedom of religion. In addition, Muslim countries need to understand that the UN Resolution 16/18 on combating intolerance, negative stereotyping, and stigmatization of, and discrimination, incitement to violence and violence against persons based on religion or beliefs aimed to avoid the prejudice not only towards Muslims but also to other religions. The adoption of the Resolution 16/18 becomes a big challenge for the 57 OIC countries to amend their BL to be in line with the Resolution that focusing on abolishing intolerance, discrimination, incitement to violence against persons rather than targeting minority groups to protect Islam as the main religions in their country.

Historically, Law No.1/PNPS/1965 on Blasphemy (BL) was passed by Presidential Decree to avoid a repeat of the mass killings of Indonesians and Islamic leaders carried out by the Communist party in 1965 after the Communist coup in 1965 (Crouch, 2012). If the law is repealed, a legal vacuum is created. If a similar case were to occur, there would be no legal basis for criminal accountability. Mahfud MD, a coordinating minister for Law and Human Rights and former Chief Justice of the Constitutional Court in his 2010 decision stated that: “The repeal of the Blasphemy Law could jeopardize the unity of the nation, because if the APA Law is repealed, there will be a legal vacuum, so that if there is a conflict between religions there is no law that can prevent it, so it can trigger chaos in society.” This view is also reinforced by the Constitutional Court Judges in various decisions.

Secondly, there is no doubt that according to the Constitutional Court's Decision on the BL Judicial Review Petition on April 19, 2010, that the BL provisions are vague and multi-interpretive, so the Constitutional Court declared the BL unconstitutional. However, the Court did not repeal the law, but rather stated that the BL needs to be reformed and clarified (p. 212).

Third, after the Constitutional Court's decision in 2010, a draft law on religious protection was included in the 2019 National Legislation Program in which the draft law clarified the definition of religion, religious assemblies, Religious Harmony Forums, houses of worship, religious broadcasting, and others to guarantee the freedom of citizens to embrace their respective religions and worship in accordance with their religions and beliefs (DPR, 2019). Thus, the most recent political, legal, and social developments in Indonesia still require changes to the blasphemy law rather than abolishing it.

However, the empirical facts that occur in society contradict the above view. The enforcement of the blasphemy law tends to create horizontal conflict. This is as discussed in the previous chapter where conflicts between religious communities always accompany when the blasphemy law is applied. Conflicts occur because vigilante groups use the Blasphemy Law as a legitimate tool to attack other groups. Thus, the claim that maintaining the Blasphemy Law prevents religious intolerance does not get factual support in the sociological reality in society and therefore becomes irrelevant.

**6.4.6. The Government Continue to Justify Intolerant Acts**

The *Gafatar* group, which purports to be non-religious, has become a target of the Anti-Defamation of Religion Law and has been designated a “twisted” religious doctrine so it doesn't escape the crowd. AD, a *Gafatar* adherent, said

“Gafatar is not a religious organization, more precisely a social organization that focuses on social problems and helps prepare the nation to face various crises in the future, one of which is in the realm of unity (solidarity, tolerance, egalitarian) and Food Security and Independence (KKP) in the realm of unity, Gafatar held a blood donation campaign (symbolizing human values that do not see SARA differences), in addition to carrying out “Re-interpretation, re-internalization and re-actualization of Pancasila values”, We had established 1021 Pancasila villages throughout Indonesia (37 provinces). At the time of its establishment, Gafatar chose to become a legal mass organization, so it has a founding body (20 people) and a notarial deed of establishment, initially in 2011 there were 4 regional representative councils (DPD), DKI Jakarta, West Java, East Java, and Jogjakarta, each of which has its own SKT (Registered Certificate) Kesbangpol Province.”[[115]](#footnote-115)

The similar thing occurred in the case of Ahok. The court concluded in its legal analysis that Ahok's actions might disrupt interreligious peace. The court deemed Ahok less attentive to issues that may spark rage and disrupt unity. Ahok's defense stated that he did not want to offend Muslims, but trial evidence demonstrated that Ahok was aware that Al-Maidah was a section of the Qur'an that Muslims regarded to be authentic. The Muslim holy book has been denigrated and humiliated by Ahok's statement, *“Don't just trust what others say... (you) might be duped using Al-Maidah verse 51.”* However, according to the UN Special Rapporteur on Freedom of Religion and Belief for 2006, [[116]](#footnote-116) Ahok's criticism of verse 51 of Al-Maidah is grounded on common knowledge. Therefore, he should not be penalized, even though his comments may offend and harm the sentiments of Muslims, because his opinion did not directly violate their right to religious freedom. In addition, as required by General Comment No. 34 of the ICCPR, Ahok's speech did not provoke enmity or violence in society. If the protest of one hundred thousand Muslims is a significant indicator of impending violence, the Court should investigate this factor, and its conclusions should be substantiated by substantial evidence.

## Pseudo-secularity harvests an illusion of religious freedom

In comparison to the relationship between the state and religion before and after Indonesian independence, the Anti-Blasphemy Law has altered the relationship between the state and religion. This thesis finds that in the colonial and pre-independence eras, there was a divide between Islamic groups that desired the establishment of an Islamic state and nationalist groups that desired a separation of religion and the state. However, since the Anti-Defamation Law was enacted and implemented, there has been a shift, in which Islamic groups have the support of nationalists. Using the Anti-Defamation Law to prosecute groups deemed as straying from Islam demonstrates this point. The Anti-Defamation Law, which was upheld by both the Reformation Era Government and the Joko Widodo Administration, demonstrates the cohesion of nationalists and Muslims on the link between religion and the state they wish to construct.

The Constitution of 1945 does not classify Indonesia as a religious state, but it does require Indonesia to be founded on the one and only Godhead, as stated in the First Principle of Pancasila. Yudi Latif (2011) analyses and discusses each of the Pancasila principles from a philosophical standpoint, debating the viewpoints of the nation's founding fathers and comparing them to the constitutions of other nations (Latif, 2011). However, Latif (2011) does not explore the post-reformation relationship between religion and the state, Pancasila's perspective on the relationship, or how they deal with discontent or satisfaction resulting from the state-religious interaction. While As'ad Said Ali (2009) examines the idea of the Pancasila State, he does not address the link between religion and the state throughout the reform era (As’ad, 2009). According to Din Syamsudin, former Central Executive of the Moderate Islamic Organization Muhammadiyah, as cited by Moh Dahlan (2014), the first group to assert that religion and the state are inextricably linked is the Muslim Brotherhood. Thus, everything that pertains to religion also pertains to the state, and vice versa. So that there is no separation between religion and the state, and they become a single one. Al-Maududi is the figure backing this movement. Second, those who say that the connection between religion and the state is symbiotic and dynamic-dialectical, rather than direct, so that the two regions retain distance and respective control, so that religion and the state coexist. Religion requires state institutions to expedite its growth, and state institutions require religion to construct a just state in conformity with the spirit of divinity. Abdullahi Ahmed An-Na'im, Muhammad Syahrur, Nasr Hamid Abu Zaid, Abdurrahman Wahid, and Nurcholish Madjid are included in this group. Third, the group that believes religion and the state are separate spheres with no connection whatsoever. This organization distinguishes between religion and politics/state. Therefore, this group opposes the foundation of the state on religion and the incorporation of religious standards into public law. Ali Abd Raziq is one of the world's Muslim leaders who belongs to this group. R.R. Alford thinks that religion has no significant effect in the political views of its adherents; religious adherents typically have secular political views.

In Indonesia, the pseudo-secularity of state-religion relations creates an illusion of religious liberty. Using the Durham and Scharffs model, the figure below depicts the relationship between the state and religion in Indonesia under the Anti-Defamation Law system. In his work titled “Islam and the State in Indonesia from a Legal Perspective,” M. Ali Safa'at claims that the concept to replace the state's basis of Pancasila, which is the ideology of the Nationalist faction, with Islamic Law emerged in 2002. This reasoning at least supports this conclusion. The pseudo-secularity of state-religion relations produces dishonest religious freedom. The diagram below illustrates the connection between the state and religion in Indonesia under the Anti-Defamation Law regime, with reference to the Durham and Scharffs model. M.'s contribution at least bolsters this result. Ali Safa'at says in his work titled “Islam and the State in Indonesia from a Legal Perspective” that the concept to replace the Nationalist group's Pancasila with Islamic Law as the state's foundation emerged in 2002.

In the Reformation Era, the meaning of Pancasila, and especially the first principle of the “Belief in One Almighty God” has again been the subject of debate, resulting in debate on the relationship between state and religion. In 2002, the debate regarding the amendment of article 29 paragraph (1) and paragraph (2) of the 1945 Constitution without any fundamental change to Pancasila reflects a shift in the direction of Islamic politics away from efforts to make Islam the state's foundation towards efforts to implement Islamic law in the Constitution. The proposals were rejected by both houses of the Indonesian Parliament (MPR) (Safa’at, 2020)

Despite the fact that this proposal was shot down in writing by the Indonesian Parliament, the growth of legal politics both in the centre and in the regions gave support to the notion. In his normative approach, Safa’at also indicates that the strengthening of the application of Islamic Law can be found from the proliferation of Islamic Law adopted as Positive Law by both the Central Government and Regional Governments. Safa’at says this can be found by looking at the proliferation of Islamic Law adopted as Positive Law by both the Central Government and Regional Governments. Safa’at argue that many Islamic rules have been incorporated into positive law, beginning with the old system and continuing through the reform order. The Marriage Law, the Marriage Registration Law, the Compilation of Islamic Law, the Zakat Management Law, the Hajj Law, the Waqf Law, the Sharia Banking Law, and the Sharia State Securities Law are among examples. On the other hand, the state is the entity that chooses the objectives to be pursued through the creation of these numerous laws. Where, in addition to the Law, it seeks to (1) combine the laws that apply to Muslims; (2) maximize the economic potential of Muslims; and (3) safeguard and facilitate religious life in people's lives through the Law, where it is expected to be able to do so. Therefore, this legislation, which is founded on Islamic law, must nonetheless fulfil the aims set by the state as an entity that is considered to be secular.

In terms of concepts, it would appear that the concept of making Islam the cornerstone of the state is still being opposed by members of the Indonesian Parliament. In spite of this, the reality of life in society is that when community groups challenged the Anti-Defamation Law through a judicial review at the Constitutional Court, the Nationalist group represented by the government received support from Islamic groups represented by moderate and non-moderate Islamic organizations in Indonesia. This occurred when the Anti-Defamation Law was being reviewed by the Constitutional Court. The following is a list of the perspectives held by various Islamic organisations about the Blasphemy Law:

“The aquo law is still needed in Indonesia so that if it is repealed it can 1) cause instability in Indonesia; 2) disturbing religious harmony; 3) disadvantage especially for minorities and anarchism can occur. The logic is that when there are no rules, it doesn't turn out right, but people will make their own rules”[[117]](#footnote-117)

Other moderate Muslim personalities, such as Prof. Dr. Amin Suma, Rahmat Syafi'i, Prof. Nur Syam, and MUI figures such as Dr. Adian Husaini, Amien Djamaladdin, and Yamin Rahman, [[118]](#footnote-118) endorse Hasyim Muzadi's viewpoint. Dr. Adian Husaini, a member of the Indonesian Ulama's General Assembly, stated, “The status quo statute [the Blasphemy Law] should not be challenged initially. If required, a new legislation that provides faiths with greater protection will be drafted.” [[119]](#footnote-119)

In the meanwhile, Muhammadiyah, a moderate Islamic group, provides its perspective on the Blasphemy Law, which in principle cites QS Al-Baqarah verse 256 and QS AL-Kafi verse 29 that “there is no coercion in religion since it is evident which method is correct and which is incorrect. In QS Al Kafi, it is said, “The truth comes from God; whomever desires to believe, let him believe; whoever desires to doubt, let him disbelieve in God's commandments.” [[120]](#footnote-120) Muhammadiyah also highlighted that Islam protects religious liberty, religious diversity, and religious views or convictions. According to our view of Surah Al-Baqarah verse 147 and AL-Maidah verse 48, this is the case. [[121]](#footnote-121) Muhammadiyah further highlighted that “in practicing religion and belief, individuals do not combine religious teachings and do not disregard the religious views of others.”[[122]](#footnote-122) The actualization, expression, and practice of religion in the public domain are an integral component of social life, hence Muhammadiyah members adhere to the Islamic life principles established on February 5, 2001 by the Central Executive Muhammadiyah in Yogyakarta. There are four fundamental Islamic lives:

“[…]build brotherhood and guidance with others such as neighbours and other members of the community, both Muslim and non-Muslim; good for neighbours, neighbours with different religions, good and fair, showing positive attitudes. based on the principles of respecting human honour, fostering brotherhood and unity of humanity, [..] fostering a spirit of tolerance, respecting the freedom of others...[...]”[[123]](#footnote-123)

Meanwhile, other religions, such as the Indonesian Church Association (PGI) are of the view that

“for Law 1/PNPS/1965 to be criticized in terms of its function and content because it has multiple interpretations and tends to have multiple interpretations, it is feared that there will be too much state intervention in religious life. If things happen that violate or are considered blasphemous or deviant, it will not be done without an attitude or resolved with internal violence, without games and physical actions. And it has long been done among Christians so that those who are different or who also insult the teaching can return to the good of the group or people or church that will be left behind.”[[124]](#footnote-124)

From this perspective, there are still two divergent directions: NU and MUI want the Anti-Defamation Legislation to be maintained, while Muhammadiyah neither rejects nor accepts the offer of reform, preferring instead a state of religious freedom in which expression may be restricted by law. This indicates that Muhammadiyah viewed the Blasphemy Rule as a law that merely restricts the communication of ideas and not for those who select their faith. In the meanwhile, PGI desires a reform of the Blasphemy Law, which tends to be open to multiple interpretations and allows the state to meddle in an individual's religious matters. See also the views of the Bishops' Conference, which examines in depth the multiple interpretations of the articles in the Blasphemy Law and reaches the same conclusion as the PGI, namely that the Blasphemy Law violates the right to freedom of religion guaranteed by the 1945 Constitution, Indonesia is not a religious state, and the Blasphemy Law. irrelevant to the current era.[[125]](#footnote-125)

However, this time the ruling of the Constitutional Court differs from earlier decisions in that the Court no longer considers non-discrimination principles as key principles that should govern responses to the Blasphemy Law. In lieu of the freedom of articles in the Blasphemy Law that have multiple interpretations and are contrary to the 1945 Constitution, particularly regarding the right to religion, the Constitutional Court renders an ambiguous decision, on the one hand stating that the formulation of the Blasphemy Law has multiple interpretations and can lead to discriminatory actions against groups. On the other side, several faiths claim in their decisions that the Blasphemy Law is valid or does not violate the 1945 Constitution. The Court asserts, “whether or not the Blasphemy Law is abolished, there will be no disorder in society.” In the sake of societal safety and the anticipating of horizontal and vertical conflicts, blasphemy is extremely essential.”[[126]](#footnote-126)

The purpose of this Court's ruling is to demonstrate that the assertion that Indonesia is not a religious state that promotes secularism is, in reality, intended to demonstrate pseudo-secularism. The Constitutional Court still retains the Law on Blasphemy of Religion, which seeks to make the state the vehicle for punishing people based on their choice of religion, even though the consequences of this decision run counter to the central tenets of other religions. However, the choice of religion is an internal matter and an inviolable right, thus the state cannot restrict it in times of emergency or conflict. The Constitutional Court does not portray itself as a defender of human rights. The Court thinks that the Blasphemy Law, which obviously restricts freedom, is significant and must be justified for grounds that cannot be substantiated by factual evidence. Several clauses guaranteeing religious freedom in the 1945 Constitution were deemed unconstitutional by the Constitutional Court, which preferred to preserve the Blasphemy Law. Thus, the pseudo-secularity portrayed by the Blasphemy Law, which has been upheld by the Constitutional Court to far, produces a false sense of religious liberty.

In a democratic period in which the state is continually needed to guarantee and preserve the rights of every person to freely select and believe in their respective religions or beliefs, the state's secularity over religion is a must. The neutrality relationship between the state and religion must be expressly stated in the Constitution so that the ruling government cannot interpret the Constitution and all laws and regulations arbitrarily to support its own power interests, either by gaining the support of the majority by pretending to support religion or by targeting it. If the presence of religious opportunities is in opposition to the government or a danger to its authority, the government may prohibit their existence. A constitution that stresses the link between the state and religion will serve as a guide for lawmakers to assess the applicability of current laws to the degree that this might impede and threaten the preservation of the right to religious freedom. In addition to being able to act objectively, law enforcers are not readily able to use the law to prosecute adherents of certain religions or sects.

## 6.6 Conclusion

Previous studies on the state religion relationship concluded that separation between state and religion or secularity is an indication of a modern democratic country, where the state does not interfere religions and the society have a freedom to embrace, follow and practice their religion or faith according to their personal preference and believe (Durham and Scharffs, 2019). This research finds out that the Indonesia Constitution does not set definition about relation between state and religion, therefore from the date of Independence declaration until today there is a dynamic type of relation between state and religion following the prominent political ideology controlling the regime at the time. Referring to Durham and Scharffs’s theory of the relationship between state and religion, this study found that the Government of Indonesia has been practised at least three types of relationships, the preferred religious set, the abolitionist regime, and the ……..

Indonesia’s constitution adopted secularism principle in its articles, Indonesia is the State that uphold the rule of law and not the State that ruled by religion. The constitution acknowledges and guarantees the right for every person to accept, follow and practice religion according to individual preference and belief. However, the Government is continue to utilizing the IABL to repress followers of minority group of religion from enjoying their freedom of religion, behind a fake assumption that Indonesia is a secular state that acknowledged any kind of religion. With the notion of a pseudo-secular state, the government has a leeway to manipulate the type of relation between state and religion and translate it into government policy following their political agenda. This condition is degrading democracy and reducing human rights protection.

The pseudo-secularity of the state-religious relationship is not conducive to promoting and ensuring the freedom of religion and worship in Indonesia. The ambiguous relationship between the two places the state in an ambiguous position; on the one hand, the Constitution provides confirmation and guarantees for the right to freedom of religion for everyone to embrace their own religion and belief, but on the other hand, the Constitution cannot cancel the existence of law. laws, such as the Blasphemy Law, which uses 'legitimate' religion as a means to punish 'perverted' religions. In this regard, the Blasphemy Law is defended deliberately to serve as a tool of power and will be utilized if it benefits that power, either to attack the religion he adheres to or to attract sympathy from the religious group he adheres to by punishing adherents of a religion who are viewed as threatening the interests of the adhered religion.

The absence of explicit regulation of the connection between state and religion in the Indonesian Constitution leaves wide room for any administration in power to interpret and establish the nature of the relationship between state and religion in line with power-serving political processes. This is evidenced by the constantly fluctuating pattern of relationships between the state and religion in Indonesia. The blasphemy legislation, which was applied to many regimes, including the old order, the new order, and the reform order, continued to be used to prosecute religious minorities after the reform order came into existence. The reform order, which is equipped with human rights legal instruments and a complete guarantee of the right to freedom of religion, is unable to curb the repressive nature of the government, which interprets the Blasphemy Law as justification for limiting the right to freedom of religion by punishing adherents of religions.

Under the Anti-Defamation Law, the government has established a state that both supports particular faiths and punishes its members. These factors endanger not just the existence of religion but also religious concord. The Blasphemy Law has become a political instrument of power that is purposefully defended in order to consistently bribe and win the support of the majority Islamic population by demonstrating that the government cares about and supports Islam. On the other hand, the Blasphemy Law is also utilized to intimidate oppositional majority groups.

The execution of blasphemy laws reveals official support for religion (Islam) motivated solely by political and economic considerations. As a result of the fact that the Anti-Religious Blasphemy Law simultaneously threatens or targets adherents of Islam as the majority faith. Cases in which religious individuals are claimed to have degraded religion through their religious lectures illustrate this point. In Indonesia, the pseudo-secularity of the state towards religion simply produces pseudo-governmental support for religion (Islam). In conclusion, the pseudo-secularity of the relationship between the state and religion currently adopted by Indonesia is not conducive to attempts to enhance democracy, but rather undermines the fully protection of the right to religious freedom for its citizens and threatening human rights.

# CHAPTER VII

# CONCLUDING REMAKS: REFORM OR REPEAL INDONESIA'S ABL?

## 7.1 Introduction

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

## 7.2. Upholding the Rule of Law to Fully Protect the Right to FoRB

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

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

Secondly, incitement to religious hatred should apply to all existing and future religions and beliefs. The state's preference for certain religions or beliefs should be avoided so that all religions or beliefs receive equal treatment and protection.

Thirdly, the country's laws, including the Anti-Blasphemy Law, should not be based on recommendations from certain religious organizations. This is to prevent the monopoly of truth about that religion from becoming the basis for judges to punish other religious teachings. The clarity and certainty of the Anti-Blasphemy Law must be emphasized and reformulated so that the guarantee and protection of the freedom of religion can be optimally realized.

## 7.2 Rethinking the Constitutionality of the ABL by Constitutional Court

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

Although the Constitutional Court has repeatedly declared that the Anti-Blasphemy Law is not unconstitutional, this is not the final say. Citizens whose freedom of religion continues to be violated and criminalized under the enforcement of the Anti-Blasphemy Law may still have the opportunity to file a judicial review of the law in the future. The ambiguity of the Constitutional Court's decision should no longer occur. If the Constitutional Court believes that the Anti-Blasphemy Law is open to multiple interpretations and can be used to criminalize certain religions, then this understanding must be aligned with the Constitutional Court's final decision, which should declare the Anti-Blasphemy Law unconstitutional. This tradition has long been practiced by the Constitutional Court through various landmark decisions to restore and uphold the constitutional rights of citizens that have been violated by specific laws.

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

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

**4.2.3. Ratification of the New KUHP does not fixed the content of the law**

Responding to the polemic that occurred against the blasphemy law in 1965, the legislators did not learn from the polemic, and did not even follow up on the decision of the Constitutional Court which gave directions that it is important to revise the blasphemy law because its articles contain norms that are multi-interpretable. Instead of correcting the formulation of Article 4 in conjunction with 156a of the Criminal Code, the legislators ratified a Bill on Amendment to the Criminal Code into the New Criminal Code by adding a new chapter, namely “offences against religion” which had never existed before. The chapter contains 8 articles that regulate “blasphemy of religion” which previously was only regulated in 1 article which is Article 156a of the Criminal Code. Where in the chapter, offenses against religion are divided into two, namely (1) crimes against religion and (2) crimes against religious life.

The first type is regulated in 4 articles, namely Articles 341, 342, 343, and 344. The main objective is to “protect religions” from acts of humiliation. Acts that are categorized as insults to religion are (1) insulting the majesty of God, His Word, and His attributes; (2) mocking, desecrating, or demeaning religion, Apostles, Prophets, the Holy Scriptures, religious teachings, or religious worship.

In the author's view, the New Criminal Code strengthens the blasphemy law in Indonesia. First, the problem with Article 156a which basically only protects the religions professed in Indonesia, not protecting “religious adherents” will be continuing to happen. A formulation of article 156a opposes the right to freedom of religion because with the existence of Article 156a, the diversity of religions in Indonesia is threatened and their followers are vulnerable to be criminalized if their teachings are not in harmony with mainstream religions that are protected by the State. In fact, Indonesia is a country where there is a plurality of religions and beliefs. However, the addition of the chapter on “religious offenses” in the New Criminal Procedure Code shows that the core problems contained in Article 156a of the Criminal Code have not been corrected. The expansion of meaning that has been carried out by law enforcement in interpreting article 156a of the Criminal Code when punishing followers of minority religions who are considered deviant is formulated in the provisions of articles 341 to 344 of the Draft Law on Amendments to the Criminal Code.

Although the articles of new law no longer contain an explanatory article that mentions the name of 6 religions recognized in Indonesia, it does not mean that these articles on blasphemy do not threaten the existence of the religions themselves. What if the essence of the religious teachings is indeed different from one another, can these differences be interpreted as insults? This becomes problematic if the New Criminal Code criminalizes someone's beliefs that are different from mainstream beliefs held in Indonesia. The prohibition of “insulting” or “mocking” becomes very multi-interpretable if the meaning of the two words itself is very subjective in nature or only depends on the “feelings” of people who feel insulted or ridiculed so that the objectivity of the proof will be very difficult. If such a dispute is an inter-religious conflict, then should the state interfere in inter-religious affairs by punishing those who differ? Isn't the right to choose or believe in a religion the domain of every individual who adheres to a religion that the state should not interfere with, but instead must be protected by the state?

**7.3. To End Utilizing the ABL For Politization of Religions**

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

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

**7.4. The Middle Ground to Reform the ABL to Preserve Justice**

This study found that the direction of reform of the Anti-Blasphemy Law after the Constitutional Court's decision in 2010 stating that the law is not unconstitutional has caused a division of views in society. As described in Table 15., the moderate Islamic groups supported by human rights experts and civil society organizations concerned with the promotion of the right to freedom of religion continue to push for the abolition of the blasphemy law because the vagueness of legal norms in the law has caused the enforcement of this law to cause continuous violations of the right to freedom of religion in Indonesia. Case studies on the criminalization of *Ahok, Meiliana, Ahmadiyya* and *Gafatar* are just a few examples of violations of the right to freedom of religion that have occurred in Indonesia in the past decade. However, the hard-line Islamists supported by the MUI, claim that the blasphemy law needs to be maintained for various reasons. Meanwhile, the government of Indonesia tends to support the hard-line groups’ point of view, while continuing to maintain the ABL, the government believes that the abolition of the law leads to horizontal conflict.

Table 15. Matrix of reasons from religious group position and government

|  |  |  |  |
| --- | --- | --- | --- |
| Reasons | Hardline Islamic Groups supported by MUI | The Government of Indonesia | Moderate Islamic Groups Supported by HR NGO and other groups of religions |
| Main idea | Maintain the Blasphemy Law | Maintain the law until it is amended. | Abolish the Blasphemy Law |
| Historical reasons | The blasphemy law needs to be maintained so that the violence against Muslims that has occurred in the past is not repeated. | The abolition of the blasphemy law will create a legal vacuum and it is feared that if blasphemy occurs, it will cause greater horizontal conflict if this law is revoked even though the replacement for the blasphemy law does not yet exist. Law making is the domain of the legislature, not the Constitutional Court. | Blasphemy laws in the past were made only for emergencies, which no longer exist today. |
| Philosophical & legal reasons | Abolishment of Blasphemy Law is incompatible with the Godly Nationalism and promote Islamophobia. | The Blasphemy Law does not contradict the Constitution, particularly Article 28 J where the state can limit a person's right to religious expression. | The blasphemy law violates the right to freedom of religion guaranteed by the Constitution because both internal freedom and external freedom can be restricted, and the narrow interpretation of religions practiced in Indonesia is limited to only 6 religions, other than those 6 religions are vulnerable to criminalization. |
| Empirical Reasons | In Indonesia, new sects have sprung up whose teachings are contrary to the religions practiced in Indonesia so that they are not in line with the religion of Indonesia. | The enforcement of blasphemy law was successful to prevent the wider horizontal conflict among religious groups. | In most blasphemy cases encourages the act of *Main Hakim Sendiri* that cause recurrent conflicts among religious groups. |

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

## 7.5. Public Should Aware that Anti-Blasphemy Laws Actually Targeting Both Minority and Majority Groups of Religions

According to Indonesia’s law scholars, one of urgent reason for reforming the IABL that this law was only applicable to minority religious groups and this research found out that the law recently has moved direction politically to suppress majority Islamic groups that become opposition to government policies. It is no doubt that the IBL tends to discriminate minority groups (Forte, 1994) inside and, or outside of the court. Inside of the court, Judges have applied the law to punish blasphemous with disproportionate penalties (Biswas, 2020; Fagan, 2019). The judge decision on blasphemy cases is usually using heavy sentencing such as 5 years jail time which should not be the same as criminal charge. Outside of the court, the IBL has been used more frequently by the local government as legal basis to issuing other relevant policies against the adherents of the heretical sect in Indonesia (van der Kroef, 1953).

Furthermore, the hardline Islamist religious groups and the security forces have called the policies as justification for violent or attack minority religious groups (Howell, 2005). In the experts' notes, since the 2016 Ahok blasphemy case, the attitude of Muslim conservative intolerance has increased (Lindsey and Butt, 2016; Mietzner and Muhtadi, 2020). The study of Mietnzer is based on the findings of survey institutions such as the Indonesian Survey Institute shows that conservative Muslim groups tend to refuse to elect a President or a non-Muslim Governor, refuse to allow the establishment of non-Muslim places of worship in their neighbourhood, or refuse to accept non-Muslim teachers in Muslim schools (LSI 2016, p.17). Even Menchik (2014a) criticizes the largest Islamic organizations such as Muhammadiyah and Nahdlatul Ulama (NU) who are ambiguous, on the one hand they support democratic values ​​such as tolerance and plurality, but on the other hand, they also support authoritarianism through refusing the heterodox religious teachings. Issues involving *aqeedah* [[127]](#footnote-127) that are in conflict with orthodox schools, such as blasphemy, are strongly opposed by these two moderate Islamic organizations. If modern Islamic organizations still reject diversity in religion, it is difficult to change the views of conservative Islamic groups. Differences in belief should be separated from the issue of their position as citizens. Differences in beliefs should not prevent a person from getting legal protection and human rights. The role of parliaments in interfaith dialogue with various religious organizations is vital in guaranteeing the protection of religious freedom in Indonesia.

Unfortunately, these problems do not always come to the attention of legislators. The legislators rarely hold public hearings with or advocate to these largest moderate Islamic organizations in regarding blasphemy legal reform and the urgency of respecting the right to religious freedom.[[128]](#footnote-128) Various local regulations and executive legal products that threaten the right to freedom of religion appear to be left alone and free from oversight by legislators. The passive attitude of lawmakers is based on the understanding that supervision of regional legal products is the full authority of the central government, or through a judicial review mechanism adopted by citizens who feel their constitutional rights are impaired. Meanwhile, the process of amendment to the blasphemy law seems to stand in the way and tends to get weak political support.

After a decade, until recently, the bill of religious harmony is not discussed by Parliament or ratified yet, and public debates continue. Blasphemy's legal reform in Indonesia has been run in very slow because of the deadlocked in Indonesia Parliament[[129]](#footnote-129) and the fear of the spread of communism.[[130]](#footnote-130) The legislators are still hesitant to draft the legal concept of blasphemy, in order to make a balance between protecting majority of religious groups from being insulted, upholding a state ideology of Pancasila in believing “One God, the Only God”, and preventing religious minorities from being a target of criminalization. As consequences, the enforcement of the IBL continued and unsettled the community. Due to ambiguity of legal norms and strong social influence, the court tends to punish blasphemy defendants with severe punishment. Most blasphemy defendants are the adherents of minority religions such as Ahmadiyya, Shia, Gafatar. Slow progress on parliament to reform Indonesia blasphemy law will keep the door for future criminalizing to any actions that considered defamation toward recognized religions, symbols of recognized religions and any sacred aspects of religions including a new interpretation of religions that considered non-canon. Therefore, as long as the new IBL that compatible with IHRL does not available yet, coercion toward or discrimination against minority religions will continue to happen in the future.

**7.4. Shifting the concept from a combating defamation of religion approach to a combating hate speech approach**

Another idea of revising the ABL is shifting the concept from a combating defamation of religion approach to a combating hate speech approach. Most of the BLs use the former approach rather than the later one. What are the different between the two? Following the Rabat Plan of Action of 2012 (RPA of 2012) on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence, Jeroen Temperman, a Professor of Law from University of Erasmus and Human Rights expert, offers an idea for shifting from combating religious defamation approach that focus on protecting religions into combating hate speech approach that focus on protecting the right of individual (Temperman, 2015). In predominant Muslim countries who hesitate to repeal the law, it is possible to amend the law as long as the new law could reach fully realization of human rights protection of FoRB and FoE. This study is started from analysing the intersection between the concept of FoE, FoRB and BL, then examining why the idea to abolish the BL is not practical particularly in predominant Muslim countries and analysing why the idea of secular state proposed by An-Naim (2008) is unlikely accepted. Finally, using Temperman's ideas and the RPA of 2012 as starting point, this paper offers a middle ground of reforming the BL to shift its concept from protecting religions into protecting the right of individual including some other changes to eliminate the defects in the law and to amend it in accord to international human rights standard.

Temperman (2015) argues that the combating defamation of religion approach would not comply with the principle of human right since its focus on the protection of religious system or personal feelings on religion. There is no such provision in the IHRL aims to protect religious system or personal feelings. Although in some previous cases, the ECtHR protect religious feelings, but the decisions were criticized by scholars. In the case of *Otto Preminger v. Austria*, the ECtHR concluded that thestate is permissible to intervene the FoE if such expression is intended against the religious feelings of others (p.14). The court also concluded that it was legitimate aim to protect the right not to be insulted in their religious feelings by others (p.13). In this sense, the *Otto Preminger* case is considered incompatible with Art. 19 and the perpetrator should not be punished (Kuznetsov, 2015; Temperman, 2015).

While the combating hate speech approach is more relevant with the RPA of 2012 that suggest to all members of the ICCPR to consider six aspects namely the context, speaker, intent, content, extent, and likelihood of defining restriction of FoE, incitement to hatred (Shepherd, 2017). The later approach is also relevant with the RPA since its focus on the protection of the right of individual from the danger or extreme speech that attacks or discriminates or hates any person’s race, religion, ethnicity as articulated in Art. 20 (2).Unfortunately, in the case of Ahmadiyya in Indonesia, the BL protected the majority of religious system (Marshall, 2018; Crouch, 2012). But when the incitement of hatred and violation against Ahmadiyya happened, the State failed to protect Ahmadiyya’s followers equally (Djamin, 2014). In the case of *Norwood v UK (2004),* an extreme right-wing party of BNP member was displaying poster with words “Islam out of Britain – Protect the British People” was considered by ECtHR as anti-Muslim hate speech. This hate speech expression discriminates Muslim as minority groups of people in the U.K. to become a target of hatred. In the case *M'Bala M’Bala v France (2015),* the comedian for anti-Semitic insulted a certain race against Jews. This expression also discriminated Jews people in France. In this sense, the enforcement of BL that focus on protecting religious system violate Art. 19 (3) and Art. 20 (3) of the ICCPR.

The compromise way that can be done to fully realization of the protection of FoRB and FoE is to reduce the spectrum of culture relativism through expanding the spectrum of universality until the political and social context are ready to repeal the BL through referendum like what had recently happened in the Ireland in October 2018 (ICCL, 2018). As the state’s members of the ICCPR, the States have the obligation to undertakes such measure that all rights mentioned in the covenant are respected within their domestic territory (Art. 2). In this section, using the RPA of 2012, the blasphemy provisions in Austria and Pakistan are analysed comparatively in order to unpack the defects of the law. In general, the BL in Austria is in medium-level standard compared to in Pakistan. In Art. 188 of Austria Criminal Code (Austria Blasphemy Law - ABL) is articulated better than in Art. 295-C of Pakistan Penal Code (Pakistan Blasphemy Law – PBL). In Art. 188 of ABL states that:

**Whoever** publicly disparages or mocks a person or a thing, respectively, being an object of worship or a dogma, a legally permitted ride, or a legally permitted institution of a church or religious society in Austria, in a manner capable of giving rise to justified annoyance, is liable to imprisonment for a term not exceeding six month or a day-fine for a period of up to 360 days. (Stressing added).

While in Article 295-C of Pakistan Penal Code mentioned that

**Whoever** by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.” (Stressing added).

The ABL articulates the limitation clause more clearly than the Pakistan’s Blasphemy Law. Although both provisions explicitly using the word “[w]hoever”….” but the ABL emphasize the legal personality norm and adding the words “liable to imprisonment for a term..[..]”. In this sense the ABL only applicable for someone that liable to imprisonment such as to adults not to children. While in the PBL does not mention it. The RPA recommends that the speaker’s status or position in the society particularly when he or she speaks in public intentionally targeted certain groups should be considered. The intention means that an act requires a relationship between the object, the subject of speech and the audience that likelihood or imminence of incitement happened means that some degree of risk of harm must be identified (the RPA, 2012: p. 11).

Second, the “publicly” norm also mentioned explicitly in the ABL but not in PBL. It means that such action cannot be punishable if the expression done in private room. The RPA (2012) describes that the speech act should be considered as public nature, means that “the statemen circulated in a restricted environment or widely accessible to the general public”. Beside this, the context of the speech act should be prevalent with social and political conditions at the time the speech was delivered and shared (p.11).

Third is the legality norm. The ABL uses the word “[…] a legally permitted ride or legality permitted institution [..]”. The provisions show that the ABL is made by legislative body that have the authority to making the law. Unfortunately, the similar norm is hardly found at the PBL. The RPA does not specifically mention about it since its clearly stated at Art. 20.

Fourth is the proportionality norm. The ABL uses the words “[..] for a term not exceeding six month or a day-fine for a period of up to 360 days.” It means that the sanction is proportional with the severe of the wrongdoing. While in the PBL, the provision does not clearly mention the norm of criminal liability, the norm of publicly, the norm of legitimate aims. Moreover, the words “imputation, innuendo, or insinuation’ are considered as vague concept. The purpose of this law is merely to protect the religious system, which is only for Islamic religion, but not including other religions. In this sense, the law is targeted to only minority religions. Furthermore, the proportionality norm is problematic since the law threaten with death penalty of imprisonment for life. This norm is incompatible with the ICCPR Article 6 of the right to life.

However, in the ABL there is no specific purpose articulated why such expression is restricted. It uses the words “disparages or mocks a person or a thing, respectively, being an object of worship or dogma’ means that the law still protects to the thing not only individual as human beings. The words disparage or mocks have very broad meaning that could become a subject of subjective interpretation. For example, in the case of *E.S. v Austria*, the applicant, E.S., spoke at the seminar attended by 30 peoples made several statements about Islam and the Prophet Muhammad by called him as *paedophile* (Milanovic, 2018).The Court found that E.S. defamed Prophet married a child or had a sex with a child in order to show that he was not a worthy subject of worship. But E.S. called him a paedophile which would imply that he had primary sexual tendencies towards children more generally. She is disregarding the notion that the marriage had continued until his death (Milanovic, 2018). The court found the public nature of the seminars and that at least some of participants have disturbed by her speech (para.14). The manner in which religious views were attacked could invoke the State’s responsibility in order to guarantee the peaceful exercise of the rights under Art. 9. She found guilty based on the law prescribed at Art. 188 of the Austria Penal Code and fine for 480 Euro. The Court concluded that presenting objects of religious worship in a provocative way capable of hurting the feeling of the followers and violation the spirit of tolerance based on Article 10 subsection 2 of the ECHR. In this sense, although the sanction is very low, only USD 240, the court still focus on protecting “religious feelings’ rather than protecting the right of individual.

According to Article 19 (3), the States are permitted to limit of FoE if all requirements mentioned on Article 19 (3) are met. At least there are three legal scopes of limitation namely (1) legality test, (2) necessity test, and (3) proportionality test. This limitation is similar with Article 18 (3) and Article 20. However, violation of Art. 19 (3) or 18 (3) are not always criminally punishable. But violation of Art. 20 (3) could be considered as criminally punishable if the act matched with the three tests. First, the legality test means that the limitation should be lawful and based on the law to avoid arbitrary or unreasonable punishment. The word ‘law’ here is a regulation that made by legislative body. The law should be responsive, clear, precise, and predictable. If the law that used to limit the right is made by executive body lower than an act, then it would be problematic. If the law has repressive character or too vague in which the norms are not clear or ambiguous, then the implementation of such law may be problematic as well. Second, the necessity test means that the aims of limitation should corelate a “pressing social needs” (Gerards, 2013). The aims are in order to protect at least one of the reasons either (1) to protect the right and reputation of others (2) to protect national security, (3) to protect public order, (4) to protect public morality, (5) to protect public health. This aims of limitation are narrower than in Art. 9 of the European Convention of Human Rights (ECHR), but similar to other regions such as Asian Declaration of Human Rights (Art.8), American Declaration of Human Rights (Art. 13), African Charter of Human Rights (Art. 9), and Cairo Declaration of Human Rights (Art.32). The problem is the difficulty to find the common understanding of what the exact meaning of each aspect. Therefore, in most cases the translation of each aspect depends on the subjectivity of Judges. Third, the proportionality test means that “achieving a particular aim must be important enough to justify the damage which will be caused to individual rights” (Anđelković, 2017).

In order to develop the high-level standard of BL, the three-test mentioned above must be combined with some principles that mentioned in the GC No. 22 of FoRB, the Declaration of 1981, the CG No. 34 of FoE, the RPA that I have discussed earlier. The high level standard of Blasphemy law must contains at least seven considerations namely (1) legality norm meaning that prohibition is regulated by law with clear norms, (2) legal personality norm meaning that the person can be fully accountable for the wrongdoing he or she did, (3) intention norm meaning that the person has a specific intentions to attack certain individuals or groups based on race, ethnicity, religion (4) publicly norm meaning that the speech is delivered openly in public considered the context and the relation between the speech and the harm, (5) legitimate aims norm meaning that the purpose is valid to fulfil one of the objectives stated in Article 19 (3), (6) harmful test meaning that the speech likelihood causing hostility or violence against certain target groups of people, (7) proportionality norm meaning that the proportional punishment is adjusted to the level of danger from the impact caused.

## 7.4 Future Step to Reform the ABL

Meskipun negara-negara berbagai negara seperti……….telah berhasil menghapus UU ABL, namun jika melihat konteks sejarah, perkembangan, dan dinamika penegakan the ABL, termasuk trauma masa lalu sebagaimana diindikasikan oleh ………, The author believes that the term "abolishment" will face various sharp rejections, and in the end, will harm the essence of achieving optimal justice and respect for the freedom of religion of minority religious groups. In fact, the abolition of the Blasphemy Law has not been successful as a way to dampen phobias against religion or non-religion in European and Western countries. Therefore, shifting the direction, meaning, and purpose of the Blasphemy Law to prevent intolerance and advocacy of hate speech based on hatred against certain religions is considered a more appropriate step than abolishing it. This is especially true in today's world, where diversity and the merging of cultures and societal values can no longer be avoided as the world becomes increasingly borderless.

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

This change in strategy makes sense for several reasons. First, international human rights law essentially allows restrictions on religious expression with the aim of protecting public morals. However, as Nevelle Cox (2020) notes, what constitutes public morals needs to be agreed upon through dialogue and deliberation mechanisms to accommodate the diversity of moral standards in society. This can serve a positive function by promoting social cohesion and preventing discrimination based on religion. This is solely to prevent the abuse of the anti-blasphemy law to criminalize dissenting opinions or minority rights.

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

Although Neville Cox's view (2020) states that the existence of blasphemy law is not inherently contrary to international human rights law, the issue lies in how the law is formulated and enforced. This study argues that if the formulation and enforcement of a law deviate from or are not fully compatible with international human rights law norms, then the law is in conflict with international human rights law. Therefore, this study recommends that amendments to the Blasphemy Law need to be formulated carefully with high normative standards and in line with international human rights law. The normative formulation must be valid, with limitations only possible for necessary purposes, such as important considerations (such as protecting public morality and maintaining tolerance), and reasonable sanctions.

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

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

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

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

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1. Blasphemy means (1) anyone who denying the holy individuals of trinity as God; (2) asserting or maintain that there is no more Gods than one; (3) deny the truth of Christianity; and (4) denying the Old and New Testament scriptures as divine authority [↑](#footnote-ref-1)
2. See the First Laws of the State of South Carolina 159 (Michael Glazer, Inc. 1981) (cited hereinafter as "Act No. 202", supra note 3.) [↑](#footnote-ref-2)
3. *See* the case of *Asia Bibie vs. Pakistan*, the Supreme Court of Pakistan of CRIMINAL APPEAL NO.39-L OF 2015 (Against the judgment dated 16.10.2014 of the Lahore High Court, Lahore passed in Crl.A.No.2509/2010 and M.R.No.614/2010). [↑](#footnote-ref-3)
4. *See* also the case of *Moh-Ezra vs. Malaysia*, In Selangor, Moh Ezra was convicted blasphemy under Section 16 of Selangor State Syariah Law after his company ZI Publications Sdn Bhd publishing the book “Allah, Love and Liberty” written by a Canadian author Irshad Manji. The book is considered disseminating of any wrongful belief and teachings against the Islamic Law. *See also* *Pub. Prosecutor v. Amos Yee Pang Sang*, [2015] SGDC 215 ¶ 27 (Sing. [↑](#footnote-ref-4)
5. The BLs were initially introduced in 1860 under colonial rule incorporated in criminal law inherited from England. [↑](#footnote-ref-5)
6. 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-6)
7. 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-7)
8. See art. 11-14 Part II of the convention. [↑](#footnote-ref-8)
9. 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-9)
10. 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-10)
11. See GA res.No.36/55/1981 UN [↑](#footnote-ref-11)
12. See GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966) [↑](#footnote-ref-12)
13. Global Trends in NGO Law, *A quarterly review of NGO legal trends around the world*. See the UN General Assembly Resolution 59(1), December 14, 1946. See ICNL, *The Right to Freedom of Expressions: Restriction on Fundamental Rights*, Vol.6,1. Retrieved at http://www.icnl.org. [↑](#footnote-ref-13)
14. *See* the ICCPR was adopted by General Assembly resolution 2200A (XXI) of 16 December 16, 1966, entry into force 23 March 1976, and ratified by 165 countries. It is available at http://www.unhchr.ch/html/menu3/b/a\_ccpr.htm [hereinafter ICCPR]. [↑](#footnote-ref-14)
15. *See* the ICCPR was adopted by General Assembly resolution 2200A (XXI) of 16 December 16, 1966, entry into force 23 March 1976, and ratified by 165 countries. It is available at http://www.unhchr.ch/html/menu3/b/a\_ccpr.htm [hereinafter ICCPR]. [↑](#footnote-ref-15)
16. The UNGA reinforces it with the adoption of GC No. 34 concerning limiting the right to freedom of expression. [↑](#footnote-ref-16)
17. See Art. 19(1) of the UDHR states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Subsequently, in Article 19 of the ICCPR states (1) Everyone has the right to hold an opinion without any interference. (Stressing Added). [↑](#footnote-ref-17)
18. See Art 19(2) of the ICCPR. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of Art, or through any other media of his choice. (Stressing Added). [↑](#footnote-ref-18)
19. Article 19 (3) of the ICCPR provides FoE's limitation clause: “The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputation of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals.” (Stressing added) [↑](#footnote-ref-19)
20. According to Black Law Dictionary, blasphemy is defined as “Any oral or written reproach maliciously cast upon God, His name, attributes, or religion [….] It embraces the idea of detraction, when used towards the Supreme Being, as “calumny” usually carries the same idea when applied to an individual [….]” (155-56). [↑](#footnote-ref-20)
21. *See* UN Human Rights Committee, General Comment 22 (48), adopted by the UN. Human Rights Committee on 20 July 1993. U.N. Doc.CCPR/C/21/Rev.1/Add.4 (1993). [↑](#footnote-ref-21)
22. *See* UNGC No. 22 Para. 9. [↑](#footnote-ref-22)
23. To end discrimination against minority religions, in 2013, the UN of General Assembly adopted the Rabat Plan of Action (RPA) on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination hostility, or violence. (*See* United Nations General Assembly A/HRC/22/17/Add.4). [↑](#footnote-ref-23)
24. The RPA documents, p.11. [↑](#footnote-ref-24)
25. Ibid., 374 and the General Comment 22 (48), ibid. [↑](#footnote-ref-25)
26. *See* also Art. 9 (2) of the European Convention of Human Rights and Art. 8 Asian Declaration of Human Rights. Similarly, Article 8 of the Asian Declaration of Human Rights (ADHR) articulates that a state can only limit such rights if the limitation has been determined by the statute made by legislation to guarantee basic human rights and freedoms and respect the rights of others. The limitation must be considered as one of the conditions, namely (a) protecting national security; (b) taking care of public order; (c) protecting public health; (d) protecting public morals; (e) achieving community welfare. Compared with the limitation requirements contained in the ICCPR, the criteria of limitation in the AHRD seems more lenient because it adds another aspect of “achieving public welfare” as one of the considerations that can be used to make restrictions. Meanwhile, the AHRD does not provide a concrete definition. Thus, this loose limitation can be interpreted broadly by each country. Therefore, the extended limitation in ADHR by adding one aim to “achieving community welfare” is not in line with the Art. 19 (3) of the ICCPR. [↑](#footnote-ref-26)
27. During the period of “Guided Democracy” under President Soekarno, the President Stipulation No. 1/PNPS/1965 was established as a means of maintaining the functionality of the state. Soekarno's regime was characterized by a concentration of power in the executive branch, which allowed the President to issue Presidential Stipulations (Penetapan Presiden/PNPS) or Presidential Directives (Peraturan Presiden) through the exercise of executive power. Thus, Law No.1/PNPS/1965 was enacted through a Presidential Stipulation rather than an Act (Undang-Undang). However, in 1969, the Indonesian government upgraded the status of this law to that of national legislation by enacting Law No. 5/1969 (Ismail, 1994). [↑](#footnote-ref-27)
28. The Indonesian expert Edward Omar Sharif Hiariej explained that PNPS was issued by President Soekarno on January 20, 1965. Exactly two weeks after the massacre of Muslims in Madiun. here was a sadistic murder when the kiai (Ulama) and santri (Islamic students) were praying at dawn, the Koran was trampled upon, torn apart as a form of blasphemy. Retrieved at https://www.jawapos.com/nasional/hukum-kriminal/14/03/2017/begini-awal-mulanya-pasal-penodaan-agama. [↑](#footnote-ref-28)
29. See Keputusan Presiden Nomor 150 Year 1959 concerning Back to UUD 1945. Announced at Lembaran Negara Nomor 75 Year 1959. See also Mahfud M.D., 2001. Dasar dan Struktur Ketatanegaraan Indonesia, Jakarta: Rineka Cipta, p. 99. [↑](#footnote-ref-29)
30. Provisional People's Consultative Assembly of the Republic of Indonesia No. XXV/ MPRS / 1966 concerning the dissolution of the Indonesian communist party. Statement as a Prohibited organization throughout the territory of the Republic of Indonesia for the Indonesian Communist Party and prohibiting any activities to spread or develop communist / Marxist ideals or teachings. [↑](#footnote-ref-30)
31. See Tabel 1. Chapter I. According to its Constitution, both Malaysia and Pakistan are Islamic countries, while Indonesia is not, even though Indonesia is the biggest Muslim population in the world. [↑](#footnote-ref-31)
32. 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 President). 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-32)
33. At this conference it was also agreed to establish the Indonesian Islamic Army (TII), the Imamah Council (Council of Ministers), the Fatwa Council (Supreme Advisory Council), and the drafting of the Qanun Azizi (Basic Constitution). [↑](#footnote-ref-33)
34. Notes from the Ministry of Religions Affair in 1953 mentioned that there were 360 groups of believers that made the significant role for the General Election Year 1955. [↑](#footnote-ref-34)
35. On today’s value, equal to IDR 63,612,750,112 or USD 4,362,416 [↑](#footnote-ref-35)
36. See Consideration of PNPS No. 1 Year 1965. [↑](#footnote-ref-36)
37. See Article 2 Tap MPRS No. XIX/ MPRS/ 1966. [↑](#footnote-ref-37)
38. Pancasila consists of 5 Sila (Principles). The first Sila states: “Believe in God the Almaighty.” [↑](#footnote-ref-38)
39. The Indonesian expert Edward Omar Sharif Hiariej explained in the Ahok’s case that PNPS was issued by President Soekarno on January 20, 1965. Exactly two weeks after the massacre of Muslims in Madiun. here was a sadistic murder when the kiai and santri were praying at dawn, the Koran was trampled upon, torn apart as a form of blasphemy. Retrieved at https://www.jawapos.com/nasional/hukum-kriminal/14/03/2017/begini-awal-mulanya-pasal-penodaan-agama. [↑](#footnote-ref-39)
40. 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-40)
41. On 11 March 1966 President Sukarno was forced by the Army generals to sign a letter transferring power to General Suharto. In Indonesia, Sukarno’s letter was known as ‘Super Semar’, an abbreviation of ‘Surat Perintah Sebelas Maret’ (Letter of Order of the 11 March). However, from a Javanese Shadow puppet (wayang) story, Semar is a royal servant known for a powerful spirit and strength. [↑](#footnote-ref-41)
42. *See* Verdict No. 1537/Pid.B/2016/PN JKT. UTR and Verdict No. 11PK/Pid/2018. [↑](#footnote-ref-42)
43. *See* Verdict No. 784/PID/2018/ PT.MDN. [↑](#footnote-ref-43)
44. *See* Verdict No. 1107/PID.Sus/201/PN.Jkt.Tim. [↑](#footnote-ref-44)
45. *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-45)
46. *See* Verdict No. 1537/Pid.B/2016/PN JKT. UTR and Verdict No. 11PK/Pid/2018. [↑](#footnote-ref-46)
47. See BBC Indonesia. Pelaporan Ahok Atas tuduhan menghina agama dan pemilih. October 2016.Retrieved from bbc.com. [↑](#footnote-ref-47)
48. See Kompas.com. Ahok Dilaporkan Dua Organisasi ke Polda Metro Jaya. October 7th, 2016. 19:20 WIB. [↑](#footnote-ref-48)
49. *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-49)
50. Rohmatin Bonasir. Kenapa Ahmadiyya Dianggap Bukan Islam: Fakta dan Kontroversinya. BBC-19 Februari 2018. Retrieved from https://www.bbc.com/indonesia/indonesia-42642858 [↑](#footnote-ref-50)
51. Rohmatin Bonasir. Ibid. [↑](#footnote-ref-51)
52. Ibid. [↑](#footnote-ref-52)
53. See https://www.viva.co.id/berita/nasional/180745-pertikaan-ahmadiyah-di-cisalada. See also ELSAM, “Diskriminalisasi dan Kekerasan Terhadap Agama Minoritas,” 22 December 2014, accessed from http://referensi.elsam.or.id/2014/12/diskriminasi-dan-kekerasan-terhadap-agama-minoritas/ [↑](#footnote-ref-53)
54. Ibid. [↑](#footnote-ref-54)
55. See https://metro.tempo.co/read/1520885/mui-depok-ahmadiyah-sudah-berulang-kali-diajak-berdialog [↑](#footnote-ref-55)
56. See BBC.My 25th, 2016. Pengrusakan Masjid Ahmadiyah Kendal Karena Tidak Adad Niat Baik Pusat. https://www.bbc.com/indonesia/berita\_indonesia/2016/05/160525\_indonesia\_ahmadiyah\_kendal. See also Kompas. May 23rd, 2016. Peruakan Masjid Ahmadiyah di Kendal Dikecam. Retrieved from https://nasional.kompas.com/read/2016/05/23/16054031/perusakan.masjid.ahmadiyah.di.kendal.dikecam?page=all Accessed on June 25th, 2021. [↑](#footnote-ref-56)
57. See https://nasional.tempo.co/read/1090715/sekelompok-orang-serang-dan-usir-penganut-ahmadiyah-di-ntb [↑](#footnote-ref-57)
58. Kompas. Kronologi Massa Rusak dan Bakar Bangunan Milik Jemaah Ahmadiyah di Sintan. Retrieved from https://regional.kompas.com/read/2021/09/03/154505478/kronologi-massa-rusak-dan-bakar-bangunan-milik-jemaah-ahmadiyah-di-sintang. Accessed on June 20th, 2021. [↑](#footnote-ref-58)
59. https://www.republika.co.id/berita/qyyfvr320/masjid-ahmadiyah-dirusak-begini-tanggapan-ketua-mui [↑](#footnote-ref-59)
60. *See* Verdict No. 1107/PID.Sus/201/PN.Jkt.Tim. [↑](#footnote-ref-60)
61. Interview with a former member of Gafatar, Mr. AD. in August 2021. See also https://nasional.tempo.co/read/655980/diduga-sebar-ajaran-sesat-anggota-gafatar-terancam-penjara [↑](#footnote-ref-61)
62. Interview with AD, a former member of Gafatar in January 2022. [↑](#footnote-ref-62)
63. https://www.bbc.com/indonesia/berita\_indonesia/2016/01/160121\_indonesia\_gafatar\_pengungsi [↑](#footnote-ref-63)
64. *See* Verdict No. 784/PID/2018/ PT.MDN. [↑](#footnote-ref-64)
65. This statement was conveyed by Ranto Sibarani, Meiliana's attorney, when answering a Tempo reporter's question when asking about the chronology of Meiliana's blasphemy case. See Tempo.co. https://nasional.tempo.co/read/1119663/ini-kronologi-kasus-penistaan-agama-meiliana-di-tanjung-balai [↑](#footnote-ref-65)
66. See District Court Decision of Tanjung Balai No. 461/Pid.B/2016/PN Tjb; No. 457/Pid.B/2016/PN-Tjb; No. 462/Pid.B/2016/PN Tjb; No. 463/Pid.B/2016/PN Tjb, No. 451/Pid.B/2016/PN-Tjb; No. 458/Pid.B/2016/PN-Tjb; No. 460/Pid.B/2016/PN Tjb; No. 477/Pid.B/2016/PN Tjb. [↑](#footnote-ref-66)
67. 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-67)
68. See Banda Aceh District Court Decision Number 80 / Pid.B / 2015/PN Bna on behalf of defendant T. Abdul Fatah Bin T. Muhammad Tahib; Decision of the Jantho District Court number 03 / Pid.C / 2015 / Pn-Jth dated 6 February 2016) [↑](#footnote-ref-68)
69. To end discrimination against minority religions, in 2013, the UN of General Assembly adopted the Rabat Plan of Action (RPA) on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination hostility, or violence. (*See* United Nations General Assembly A/HRC/22/17/Add.4). [↑](#footnote-ref-69)
70. See the Decision Number 140/ PUU/2010, p.294. [↑](#footnote-ref-70)
71. Loc. Cit. [↑](#footnote-ref-71)
72. Ibid., 277-279; 288. [↑](#footnote-ref-72)
73. See the Decision Number 97/PUU-XIV/ 2016, 53. [↑](#footnote-ref-73)
74. In 2011, the United Nations Human Rights Council (UNHRC) adopted its landmark Resolution 16/18 to combat intolerance and discrimination based on religion or belief. UNHRC Resolution 16/18 was historic as it “corrected” the 1999 UNHRC Resolution on Defamation of Religion by putting the rights of individuals at the centre of the protection regime. [↑](#footnote-ref-74)
75. “Penetapan Presiden No. 1/1965 tentang Pentjegahan Penjalahgunaan Dan/Atau Penodaan Agama,” Suara Merdeka, 9 Mar. 1965: 1. Cite from Menchik, Ibid. p. 608. [↑](#footnote-ref-75)
76. See This is also confirmed by a Judge of Constitution Court when answer the question from the Author. [↑](#footnote-ref-76)
77. Many authors indicate that the IHRL is embedded in the provisions of the 1945 Constitution since Indonesia has ratified 9 out of 10 of the core international human rights instruments, such as the ICCPR, the ICESCR, the CERD, the CAT, the CEDAW, the CRC, the CPD, the CMW. See Jimly Asshiddiqie, “*Universalization of Democratic Constitutionalism and The Work of Constitutional Courts Today*,” Constitutional Review 1, no. 2 (March 28, 2016): 1, https://doi.org/10.31078/consrev121. [↑](#footnote-ref-77)
78. According to Article 18 (1) of the ICCPR, the right to freedom of religion or beliefs is divided into two dimensions. One dimension is related to the right to hold and change religion. This right is also known as the forum-internum, in which no one or no state can interfere with the liberty of any person to hold or choose the religions or beliefs. The second dimension is the right to manifest the religions or beliefs or known as forum-externum. For example, everyone has the right to practice, worship, teach, and observe the religions or beliefs, either alone or in society, either private or public and could be a subject of such limitation under Art. 18 (3). [↑](#footnote-ref-78)
79. Article 20 (2) states that: “(1) Any propaganda for war shall be prohibited by law. (2). Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” GC No. 22 and Syracuse Principles states, “No limitation referred to in the Covenant shall be applied for any purpose other than for which it has been prescribed.” In most Western countries, such as in Canada, according to the Canadian Charter of Rights and Freedom section 2(b), the violation of the right to FoE is usually submitted to the civil court rather than to the criminal court. See Also GC No. 22 and Syracuse principles and Article 4 of CERD. Article 4 of CERD states that “States shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.” (Stressing added) [↑](#footnote-ref-79)
80. ECtHR stands for European Court of Human Rights. [↑](#footnote-ref-80)
81. *Otto Preminger v. Austria*, 19 Eur. H. R. Rep. (ser. A) 34, at ¶ 56 (1994), available at http://www.echr.coe.int/echr/ application number 13470/8). [↑](#footnote-ref-81)
82. Article 19 (3) of the ICCPR provides FoE's limitation clause: “The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputation of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals.” (Stressing added) [↑](#footnote-ref-82)
83. *See* the UN Doc E/CN.4/1985/4, Annex 1985. [↑](#footnote-ref-83)
84. *See* UN Human Rights Committee, General Comment 22 (48), adopted by the UN. Human Rights Committee on 20 July 1993. U.N. Doc.CCPR/C/21/Rev.1/Add.4 (1993). [↑](#footnote-ref-84)
85. To end discrimination against minority religions, in 2013, the UN of General Assembly adopted the Rabat Plan of Action (RPA) on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination hostility, or violence. (*See* United Nations General Assembly A/HRC/22/17/Add.4). [↑](#footnote-ref-85)
86. See Banda Aceh District Court Decision Number 80 / Pid.B / 2015/PN Bna on behalf of defendant T. Abdul Fatah Bin T. Muhammad Tahib; Decision of the Jantho District Court number 03 / Pid.C / 2015 / Pn-Jth dated 6 February 2016) [↑](#footnote-ref-86)
87. See the Decision Number 97/PUU-XIV/ 2016, 53. [↑](#footnote-ref-87)
88. Ibid., 277-279; 288. [↑](#footnote-ref-88)
89. The Jakarta Post. May 13th, 2017. “Do Not Claim Monopoly religion truth”. Retrieved from https://www.thejakartapost.com/news/2017/05/13/do-not-claim-monopoly-on-religious-truth.html Accessed on July 17th, 2022. [↑](#footnote-ref-89)
90. Ibid. [↑](#footnote-ref-90)
91. Loc. Cit. [↑](#footnote-ref-91)
92. Asfinawati, the former lawyer for the defendant and former chief of legal aid at YLBHI, was interviewed by the author on March 2022. [↑](#footnote-ref-92)
93. See the Appeal Court of East Jakarta’s Decision Number 1107/Pid.Sus/2016/PN Jkt.Tim. See also the High Court Decision in Jakarta Number 105/Pid/2017/PT. Jkt. Page 26. [↑](#footnote-ref-93)
94. See the ruling of the High Court Decision in Jakarta Number 105/Pid/2017/PT. Jkt. Page 27. [↑](#footnote-ref-94)
95. See https://nasional.tempo.co/read/1090715/sekelompok-orang-serang-dan-usir-penganut-ahmadiyah-di-ntb [↑](#footnote-ref-95)
96. Kristian Erdianto. Kompas.com with the title “Destruction of the Ahmadiyya Mosque in Kendal Condemned”, Click to read: https://nasional.kompas.com/read/2016/05/23/16054031/perusakan.masjid.ahmadiyah.di. kendal.denounced?page=all. [↑](#footnote-ref-96)
97. See https://metro.tempo.co/read/1520885/mui-depok-ahmadiyah-sudah-berulang-kali-diajak-berdialog [↑](#footnote-ref-97)
98. Republika.co.id. Ajarkan Aliran Sesat, Aktivitas Gafatar Resmi Dilarang Pemerintah [Teaching heretical sects, Gafatar activities are officially banned by the government] https://khazanah.republika.co.id/berita/dunia-islam/islam-nusantara/16/03/24/o4jj6h377-ajarkan-aliran-sesat-pemerintah-resmi-larang-aktivitas-gafatar [↑](#footnote-ref-98)
99. https://www.hrw.org/id/news/2016/04/05/288202 [↑](#footnote-ref-99)
100. Mantan Ketua Gafatar meminta bantuan hukum kepada Lembaga Bantuan Hukum Jakarta. See https://www.merdeka.com/peristiwa/eks-ketum-kutuk-keras-tindakan-pembakaran-lahan-milik-gafatar.html [↑](#footnote-ref-100)
101. See (1) Letter from the Indonesian Judicial Monitoring Society (MaPPI), Faculty of Law, University of Indonesia (FHUI), Number 258/UN2.F5/MaPPI/BI/IX/2018, dated September 10, 2018, regarding submission of Amicus Curiae; (2) A letter from the Institute for Criminal Justice Reform regarding non-criminal complaints, published in September 2018; (3). Letter from the Indonesian Women's Coalition (KPI) (number 160/RKP/KPI\_SETNAS/IX/2018 dated September 29, 2018) regarding sending Amicus Curiae; (4). Letter from the Coalition of Civil Society Concerned with Tolerance, Human Rights Promotion, and Equitable Development, dated September 26, 2018, in response to the Cover Letter Amicus Curiae; (5). Letter from the Muslim Alliance (AUI) of Tanjung Balai City, Number: Istimewa/013/B/AUI-TB/IX/2018, dated September 17, 2018, regarding introduction; (6). Letter from the Commission for Disappearances and Victims of Violence (KontraS) dated October 12, 2018 concerning Submission of Amicus Curiae;  [↑](#footnote-ref-101)
102. See Anonym, Fatwa MUI untuk luruskan penyimpangan, cited from http://www.eramuslim.com/berita/nas/7b14122123-fatwa-mui-luruskan-penyimpangan.htm. accessed on April 2, 2022. [↑](#footnote-ref-102)
103. See DetikNews. Kapolda Kalbar Jelaskan Posisi Polisi Saat Masjid Ahmadiyya Dirusak. Cited from https://news.detik.com/berita/d-5713120/kapolda-kalbar-jelaskan-posisi-polisi-saat-masjid-ahmadiyah-dirusak Accessed on September 27, 2022. [↑](#footnote-ref-103)
104. Ibid [↑](#footnote-ref-104)
105. 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 President). 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-105)
106. The Indonesian expert Edward Omar Sharif Hiariej explained in the Ahok’s case that PNPS was issued by President Soekarno on January 20, 1965. Exactly two weeks after the massacre of Muslims in Madiun. here was a sadistic murder when the kiai and santri were praying at dawn, the Koran was trampled upon, torn apart as a form of blasphemy. Retrieved at 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-106)
107. 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-107)
108. On 11 March 1966 President Sukarno was forced by the Army generals to sign a letter transferring power to General Suharto. In Indonesia, Sukarno’s letter was known as ‘Super Semar’, an abbreviation of ‘Surat Perintah Sebelas Maret’ (Letter of Order of the 11 March). However, from a Javanese Shadow puppet (wayang) story, Semar is a royal servant known for a powerful spirit and strength. [↑](#footnote-ref-108)
109. During the Old Order, President had the power to release President Stipulation as one of the legal sources that must be obeyed by the people. But, in the New Order, the strong power of President was reduced by the Temporarily People Consultative Assembly (Majelis Permusyawaratan Rakyat Sementara/MPRS) as stated on the Resolution No. XX/MPRS/1966. According to the Resolution, President could not release the President Stipulation anymore. However, President still could release Presidential Decree which both had the same character, though. Therefore, the President Stipulation No. 1/PNPS/ 1965 has been changed into the Law No. 1/PNPS/1965, but the title and the content of the law were remaining the same. [↑](#footnote-ref-109)
110. The IBL, ibid. Article 1. [↑](#footnote-ref-110)
111. Ibid. P.7 [↑](#footnote-ref-111)
112. *See* Indonesia 2016 Human Rights Report. Retrieved at https://www.state.gov/documents/organization/265550pdf [↑](#footnote-ref-112)
113. *See* Tabel 1.1. on Appendix. [↑](#footnote-ref-113)
114. See Article 1 of the IBL. [↑](#footnote-ref-114)
115. Interview with AD, the Gafatar follower at 2:38 PM, on 4/18/2020]. [↑](#footnote-ref-115)
116. the UN Special Rapporteur on Freedom of Religion and Belief 2006 [↑](#footnote-ref-116)
117. KH Hasyim Muzadi, a Nahdatul Ulama figure, when giving a statement as an expert in the judicial review of the Anti-Defamation Law at the Constitutional Court. Quoted from the Constitutional Court Decision Number 14/PUU-/2009. Page 121. [↑](#footnote-ref-117)
118. See the Constitutional Court Decision Number Page 121-152. [↑](#footnote-ref-118)
119. Ibid. Page 151. [↑](#footnote-ref-119)
120. Ibid. Page 156. [↑](#footnote-ref-120)
121. Page. 157. [↑](#footnote-ref-121)
122. Ibid. Page 156. [↑](#footnote-ref-122)
123. Page 158-159. [↑](#footnote-ref-123)
124. Page 162. [↑](#footnote-ref-124)
125. Page 167-168 [↑](#footnote-ref-125)
126. Page 304. [↑](#footnote-ref-126)
127. *Aqeedah* is the belief and trust in Allah, the worth of worship and divinity, belief in angels, books, apostles, destiny, the last days, and everything that is authentic in religion. Including the belief that Muhammad peace be upon him, as the last Apostle. Therefore, Sunni Muslims rejects teachings that believe there is a last prophet besides Muhammad. [↑](#footnote-ref-127)
128. In an interview with a member of Parliament it was stated that a public hearing with a religious group was conducted by Parliament. However, with the discussion of the IBL replacement bill not yet being demonstrated, a better public consolidation for FORB has not yet been achieved. [↑](#footnote-ref-128)
129. The results of interviews with members of Parliament confirmed that the IBL replacement bill was included in the National Legislation Program, but so far it has not been discussed because there is still a deadlock. *See* Appendices 2, the interview transcript, p. 59-60. [↑](#footnote-ref-129)
130. Historically, Law No.1/PNPS/1965 against defamation of religions or Indonesia Blasphemy Law (hereinafter IBL) was endorsed by a Presidential Decree to avoid a repeat of the mass killings of the Indonesian people and Islamic leaders carried out by the Communist party in 1965 after a Communist coup in 1965. [↑](#footnote-ref-130)