

A Comparative Study of Blasphemy Law in Indonesia and America: Religious and Legal Aspects

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Abstract

Blasphemy laws serve as contentious intersections of religious belief and legal governance, reflecting the complex relationship between state authority and individual freedoms. This comparative study explores the dynamics of blasphemy laws in two diverse contexts: Indonesia and the United States. Indonesia, as the world's most populous Muslim-majority nation, exemplifies a predominantly Islamic legal framework, while the United States, renowned for its constitutional protections of free speech, offers a contrasting perspective rooted in secular principles. Drawing upon religious, cultural, and legal dimensions, this research scrutinizes the origins, evolution, and enforcement of blasphemy laws in both countries. It examines the socio-political contexts that shape interpretations of blasphemy, exploring the role of religion in public discourse and legal jurisprudence. Furthermore, it delves into case studies and landmark legal rulings to discern the practical implications of blasphemy laws on religious



minorities, freedom of expression, and societal cohesion. By juxtaposing these two distinct legal landscapes, this study aims to illuminate the complexities inherent in navigating religious sensitivities within legal frameworks, as well as the broader implications for human rights and democratic governance. Through an interdisciplinary approach, it seeks to foster a nuanced understanding of the multifaceted interactions between religion, law, and society, thereby contributing to scholarly discourse and policy dialogue on issues of religious freedom and legal pluralism in an increasingly interconnected world.

KEYWORDS, *Anti-Blasphemy Law, Law and Policy, Religious Aspect, Legal Aspect*

Introduction

Religion maintains a symbiotic relationship with society, influencing and being influenced by its constituents. It serves as a repository of universal values and moral principles, offering guidance to individuals in navigating life's challenges and shaping their behaviors and attitudes. Indeed, the essence of humanity finds expression through the prism of religious beliefs and practices. Functionally, religion serves as a constructive force, fostering personal growth and introspection when integrated into daily conduct. In practical terms, religion transcends mere doctrinal adherence, permeating human behavior and societal norms.¹

Indonesia, as a pluralistic nation, epitomizes diversity, with pluralism stemming from the Latin root "*plus, pluris*," signifying multiplicity. Pluralism, in essence, denotes the coexistence of multiple realities and perspectives, reflecting the richness of human experience. Within this pluralistic framework, religion assumes a central role, serving as a unifying force despite the diversity of beliefs. Thus, etymologically speaking,

¹ Catur Moko, "Pluralisme Agama Menurut Nurcholis Madjid (1939-2005) dalam Konteks Keindonesiaan." *Medina-Te: Jurnal Studi Islam* 13, No. 1 (2017).

pluralism encompasses the recognition and acceptance of manifold truths, contributing to a nuanced understanding of reality.²

Blasphemy in Indonesian language can be interpreted as “*penistaan agama*” which comes from two words, namely “*penistaan*” and “*agama*”. Based on the Kamus Besar Bahasa Indonesia (KBBI) blasphemy can be defined as the process, method, act of defaming. Meanwhile, “*Penistaan*” in Bahasa comes from the root word “*nista*”, according to the KBBI, “*nista*” can be interpreted as contempt; low³. In English nomenclature, according to Merriam webster dictionary Blasphemy, in a religious sense, refers to great disrespect shown to God or to something holy, or to something said or done that shows this kind of disrespect; heresy refers a belief or opinion that does not agree with the official belief or opinion of a particular religion. Both words are also sometimes used in general, not necessarily religious, contexts.⁴

According to Pultoni, blasphemy is defined as opposing things that are considered sacred or which should not be attacked (taboo), namely religious symbols, religious leaders or religious scriptures. Forms of blasphemy in general are words or writings that oppose the divinity of established religions.⁵

Furthermore, blasphemy laws represent a complex intersection of religious doctrine and legal governance, embodying the delicate balance between freedom of expression and the protection of religious sentiments. Rooted in historical and cultural contexts, these laws often reflect societal attitudes towards blasphemy, shaping legal frameworks and judicial interpretations. The comparative analysis of blasphemy laws in different countries provides a unique vantage point to examine the interplay between religious beliefs and legal systems. In this paper, we embark on a comparative study of blasphemy laws in two contrasting nations: Indonesia and the United States.

² Fathur Rohman, and Ahmad Ali Munir. “Membangun Kerukunan Umat Beragama Dengan Nilai-Nilai Pluralisme Gus Dur.” *An-Nuha* 5, No. 2 (2018).

³ Anon. n.d. *Kamus Besar Bahasa Indonesia*. Edisi Keli. Balai Pustaka.

⁴ Dictionary, Merriam-Webster. co. n.d. “Blasphemy.”

⁵ Siti Aminah Pultoni, and Uli Parulian Sihombing. *Panduan Pemantauan Tindak Pidana Penodaan Agama Dan Ujaran Kebencian*. (Jakarta: The Indonesian Legal Resource Center, 2012).

Indonesia, the world's largest Muslim-majority nation, holds a significant position in the discourse surrounding blasphemy laws within an Islamic legal framework. The nation's socio-political landscape, characterized by religious diversity and pluralism, offers fertile ground for exploring the intricate dynamics between religion and law. Conversely, the United States, renowned for its constitutional protections of free speech and separation of church and state, presents a contrasting perspective on blasphemy regulation within a secular legal framework.

Freedom of religion is a human right, and human rights are among the most important human interests in society. This freedom of religion must be followed by a sense of responsibility by its adherents to obey the rules that have been set in their respective religions, including not adding or subtracting the rules of belief that exist in their religion. Arranging that one's freedom of religion does not interfere with the religious freedom of others is not an easy matter. At this point the legal signs should be clarified as clearly as possible. The law must be a mediator between the freedom of one individual or group with another individual or group.⁶

Furthermore, in the same context concerning to human rights, throughout the history of life, humans have always been rumored by changes, wanting to be different and better than their previous lives by holding on and comparing between past, present and people's lives that are better in terms of reality and material. Everyone wants to appear more advanced and modern, even though the measurements and values used and the comparisons are often blurred, but because the issue being

⁶ Prasetyani, Rurin Sisilia, and Shally Saniyya Novina. "The Interpretation of Freedom of Religion and Believe: How Do University Understand This to Society?." *The Indonesian Journal of International Clinical Legal Education* 2, No. 1 (2020): 15-28; Prasetyo, Kresna Adi, and Ridwan Arifin. "Analisis Hukum Pidana Mengenai Tindak Pidana Penistaan Agama di Indonesia." *Gorontalo Law Review* 2, No. 1 (2019): 1-12; Sari, Desika Arum. "The Doctrine of Belief as a Vulnerable Group: How do the Human Rights Laws Accommodate this Group?." *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 5, No. 2 (2019); Huda, M. Syamsul. "The local construction of religious blasphemy in East Java." *JIIIS-Journal of Indonesian Islam* 13, No. 1 (2019): 69-114.

developed is wanting to be better and advanced, even modern, it is something to be proud of.

These conditions encourage them to make various efforts so that they become advanced and modern people, they break social and cultural values that have been standardized and exist in society, they dare to criticize and break down anything that is considered to be able to hinder them, including religion. They even openly criticize the existence of religion, religion is considered a barrier to progress and freedom, they assume that all activities carried out by humans are only determined and regulated by humans themselves, not based on the influence of religion, so that later a discourse called secularism emerged, namely separation between world affairs (State) and religion.

In Webster's Dictionary secularism is defined as, "*A system of doctrines and practices that rejects any form of religious faith and worship*"⁷. Meanwhile, in the Big Indonesian Dictionary it is stated that secularism is "*a philosophical understanding or view that holds that morality does not need to be based on religious teachings.*" In other words, secularism is a worldly and material understanding that rejects religion altogether.

Yusuf al-Qardhawi, added that secularism, in Arabic is not "*al-'Ilmaniyyah*" but "*al-Ladiniyyah*" or "*al-La'qidah*", but the use of "*al-'Ilmaniyyah*" is to deceive Muslims, because if translated to "*al-Ladiniyyah*" or "*al-La'qidah*", Muslims will definitely reject it, therefore, it is really evil secular translation of the term "*al-'Ilmaniyyah*"⁸

Muhammad Tahir Azhary, in his dissertation at the Faculty of Law, University of Indonesia entitled State of Law defines Secularism as an ideology that wants to separate or neutralize all areas of life such as politics and statehood, economics, law, socio-culture and science and technology from the influence of religion or other things. the unseen. Meanwhile, secularization, according to him, is an effort or process that leads to a secular state or a process of neutralization from any influence of Religion and supernatural things. Seculars are characteristics that point to a

⁷ Dictionary, Merriam-Webster. co. n.d. "Secularism."

⁸ Al-Qardhawi, Yusuf. n.d. *Islam dan Sekularisme Diterjemahkan Dari Buku: Al-Islam Wal Ilma'niyah Wajhan Lil Wajhin*. Bandung: Pustaka Setia.

situation that has separated worldly life from the influence of Religion or other things⁹.

In addition, it is highlighted that secularism is an understanding that separates the life of the world from the hereafter in all aspects of life, both in terms of religion, economy, education, politics, social and so on. In addition, secularism also fights for the right to be free from various rules from religious teachings, while also providing unlimited tolerance, including between religions. In other words, secularism refers to the belief that all activities and decisions are entirely located and made by humans, there should be no role and intervention of religion in it.

This comparative study seeks to unravel the religious and legal aspects of blasphemy laws in Indonesia and America, delving into their historical evolution, legislative frameworks, and practical implications. By examining landmark legal cases, societal attitudes, and the enforcement of blasphemy laws, we aim to elucidate the divergent approaches and underlying principles guiding blasphemy regulation in these two nations. Furthermore, this comparative analysis will shed light on the broader implications for religious freedom, human rights, and democratic governance in an increasingly interconnected global landscape.

Through an interdisciplinary lens encompassing religious studies, legal theory, and socio-political analysis, this study endeavors to contribute to scholarly discourse and policy dialogue on the complexities of blasphemy regulation. By fostering a deeper understanding of the religious and legal dynamics at play, we hope to stimulate critical reflection and facilitate informed decision-making regarding blasphemy laws in diverse cultural contexts.

The study conducts a detailed examination of the blasphemy laws in Indonesia and the United States. Blasphemy laws, which pertain to the prohibition of speech or actions considered offensive to religious beliefs, serve as the focal point of analysis. Employing a comparative approach, the research juxtaposes the provisions and implementations of blasphemy laws in these two countries. By comparing and contrasting the legal frameworks, historical backgrounds, and practical applications of

⁹ Husaini, Adian. *Wajah Peradaban Barat, Dari Hegemoni Kristen Ke Dominasi Sekular-Liberal*. (Jakarta: Gema Insani Press, 2005).

blasphemy laws in Indonesia and America, this study aims to elucidate the similarities, differences, and underlying principles guiding blasphemy regulation in diverse cultural and legal contexts.

The Relationship Between State & Religion: Pancasila, Religion & State

In today's practice of state life, the relationship between religion and the state can be classified into three forms, namely integrated (union between religion and state), intersectional (intersection between religion and state), and secularistic (separation between religion and state).

Furthermore, regarding the classification of the relationship between religion and the state, first, the state based on religion, in this country there is a union of state and religious authorities (*waliyul amri kalifatullah sayyidin panatagama, caesaro papism*). The State and State Authorities are run based on certain religions. In this state model, there are two possibilities, namely that citizens are required to embrace the state's official religion and the other possibility is that citizens are given the freedom to embrace religion according to their beliefs. Second, religion as the spirit of the state, in this model the state does not formally adhere to a particular religion, but religious values become the spirit of the organizers and administration of the state, and there is a guarantee from the state for citizens to embrace a certain religion and worship based on their religious beliefs. Third, the secular state, in this model state there is a separation of state and religious authority, or in the extreme state the state does not take care of religion and religion is not related to the state¹⁰.

The Indonesian nation is a pluralistic nation as emphasized by¹¹ that Pancasila has been present in the relationship between religion and the State and always brings comfort to the nation and state, which can be understood in the first precept which reads *God is one and only God*. Therefore, the relationship between religion and the state in Indonesia has been clarified in several articles. in the Constitution, namely: Article 28E

¹⁰ Asy'ari, Hasyim. "Relasi Negara dan Agama Di Indonesia." *Materials Science and Engineering* 37, No. 1 (2014): 60–67.

¹¹ Zainuddin, Muhammad. *Pluralisme Agama: Pergulatan Dialogis Islam-Kriten d Indonesia*. (Malang: UIN Maliki Press, 2010).

of the Constitution that: "*Everyone is free to embrace religion and worship according to his religion*" and Article 29 paragraph (1) of the Constitution that "*The State is based on the One Godhead*" and Article 29 paragraph (2) of the Constitution that "*The State guarantees the freedom of each resident to embrace his own religion and to worship according to his religion and beliefs.*" Based on Article 29 of the 1945 Constitution and its interpretation, the government is obliged to regulate religious life in Indonesia. As the implementation of Article 29 (2) of the 1945 Constitution, the government issued Law no. 1/PNPS/1965 concerning the prevention of abuse and/or blasphemy of religion which was confirmed by Law No.5 of 1969 concerning the declaration of various presidential decrees as laws. The form of government involvement in religious matters is the recognition of several religions in Indonesia. This recognition appears in the form of the Circular Letter of the Minister of Home Affairs No. 477/74054/1978 which include religions recognized by the government, namely Islam, Christianity and Protestantism, Hinduism, Buddhism, and Confucianism¹².

In Indonesia, in the context of preparing for the independence of a sovereign country free from foreign occupation, in 1945, the figures of the national movement also prepared a constitutional text which we later referred to as the 1945 Constitution¹³. The 1945 Constitution does not separate the relationship between religion and the State, and this can be seen in the first precepts of Pancasila and Chapter XI of the 1945 Constitution which is entitled religion. The relationship between state and religion as described above often becomes "complicated". Religion is often used to contradict the government, or the government is often used as a force to suppress religion. In political discourse and state administration as well as intertwined religion, it is still debated and studied both in the West (country) and in the East (country).

In order for the relationship between religion and the state to remain harmonious in the midst of the dynamics of political, economic, and

¹² Budiyo Budiyo. "Hubungan Negara dan Agama Dalam Negara Pancasila." *Fiat Justicia Jurnal Ilmu Hukum* 8, No. 3 (2014).

¹³ Asshiddiqie, Jimly. "Kedudukan dan Peranan Hukum Tata Negara dalam Pembangunan." *Jurnal Hukum & Pembangunan* 25, No. 2 (1995): 135.

cultural life, we need to discuss it continuously, so that we come to an understanding that religion and the state are like two sides of a coin, where they are different, but cannot be separated. each other because they both need each other.¹⁴

The tension in the relationship between religion and the state occurs when there is no symbiotic-mutualistic relationship between the two (checks and balances). In such a relationship, for example, when the state does not give freedom to its citizens to worship according to their respective religions, or vice versa religion considers the state to be closed to religious values so that the state order runs contrary to religious values. In such a situation, there is an opportunity for religion to tend to try to influence state instruments without paying attention to democratic principles or the state to repress its citizens without paying attention to religious teachings related to justice and equality before God.

Basically, the State has provided a middle way in the formation of national law today so that there is no need for religious conflicts that can disrupt national integrity, this can be seen from the State itself providing a middle way in determining the existing law in Indonesia. We can see from the provinces that apply Islamic law widely, Aceh, Gorontalo, Tangerang and so on. If you look at the existing local regulations, they do not conflict with the constitution and have a private legal area. Perda, against norms in society only strengthens the Criminal Code in essence and is not part of the actual sharia.

Secularism in United States

Etymologically secularism comes from Latin, *saeculum* which means a certain time or a certain place. Or rather pointing to the time now and here in this world. So, it is correct if *saeculum* is synonymous with the word worldly in English. So, secularism in language can be interpreted as an understanding that only looks at life today and in this world. Without

¹⁴ Saifuddin, Lukman H. "Indonesia Adalah Negara Agamis: Merumuskan Relasi Agama dan Negara dalam Perspektif Pancasila". In *Kongres Pancasila*, held by Universitas Gadjah Mada (UGM) Yogyakarta and Mahkamah Konstitusi Republik Indonesia, 2019.

any attention at all to matters of a spiritual nature such as the existence of life after death which incidentally is the essence of religious teachings¹⁵.

Alwi Shihab, a former Indonesian foreign minister, noted that European immigrants, who are puritanical Christians, in America regard the continent as the promised land of hope, just as the Jews believe in the land of hope that God promised, Palestine. "Unlike European nations, Americans find the concept of "God is dead" strange and shocking. As the Middle East is attached to Islam, he said, America is also tied to Protestant Christianity.

Therefore, in a book, Diana L Eck called America a Christian country. Thus, the arrival of Islam in America was a struggle in Christian lands. With the complexity of the Islam-Christian relationship which has been filled with tensions since centuries ago, the da'wah of Islam has become so difficult.

Deep into the 20th century, more than nine in 10 Americans said they believed in God and belonged to an organized religion, with the great majority of them calling themselves Christian.¹⁶ As a belief, it certainly indicates the power of inspiration and implementation in behavior and actions, both as individuals, families, as well as in society and the state.

See also the expression of the US's oath of allegiance (The Pledge of Allegiance) etched in the sentence: "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all." ("I pledge allegiance to the Flag of the United States of America, and to the Republic in which it is founded, one Nation under God, indivisible, with freedom and justice for all).

The word "under God" was added on February 12, 1948, which was first suggested by Louis Albert Bowman, an attorney from Illinois on the grounds of conforming to the spirit of Gettysburg Lincoln. The addition of the word had caused prolonged controversy in the US but was ultimately won by groups who supported the involvement of God in the

¹⁵ Nirenberg, Sarah. "The Resurgence of Secularism: Hostility Towards Religion in The United States and France." *Washington University Jurisprudence Review* 5, No. 1 (2012).

¹⁶ Thompson, Derek. "Three Decades Ago, America Lost Its Religion, Why?", 2019.

state in the US. This means that the initiators of US secularism have not succeeded, and the word of God is eternal in the oath of allegiance. In God We Trust, meaning that we must believe in God in various aspects of life.

Provision Concerning Religion in Two Countries: How we learn from the facts?

A. Provisions concerning Religion in Indonesia

Article 29 of the 1945 Constitution states that the state is based on the One Godhead and the state guarantees the independence of each resident to embrace their own religion and to worship according to their religion and beliefs. The provisions of Article 29 of the 1945 Constitution which states that the state is based on God Almighty, implies that the state is obliged to make laws and regulations or carry out policies for the implementation of a sense of faith in God Almighty. In addition, the state is obliged to make laws and regulations that prohibit anyone from harassing religious teachings.

According to the President of the World Conference of Religions for Peace (WCRP), the concessions that have emerged since the reforms began have also contributed to the rise of deviant sects. The data shows that from 2001 to 2007, there were at least 250 deviant sects that developed in Indonesia, 50 of which thrived in West Java.

In principle, the state cannot intervene as long as it concerns the beliefs, thoughts or understandings of individuals regarding a religious belief. However, if the belief or understanding clearly deviates from the main teachings of the religion itself with definite parameters, is taught or disseminated to others so as to cause unrest in the community and disturb the peace of religious life, the state in order to protect the public interest can act according to the law that apply. The interests of individuals and groups of people everywhere cannot defeat the benefit of society and the wider community¹⁷.

¹⁷ Ahyar, Muzayyin and Alfitri. "Aksi Bela Islam: Islamic Clicktivism and the New Authority of Religious Propaganda in the Millennial Age Indonesia." *Indonesian Journal of Islam and Muslim Societies* 9, No. 1 (2019): 1–29; Crouch, Melissa A.

Legal action by the State against a religious belief or religious sect that is declared heretical does not conflict with the law, the Constitution or Human Rights. The state has the right to act according to applicable law. The absence of a sufficiently firm law regarding sects that deviate from religious teachings has made the authorities lose their grip.

B. Provisions concerning Religion in America

As a multiethnic and multicultural immigrant nation, the United States is a place where different faiths and religions meet. The United States is also the country with the largest Protestant Christian population in the world and the largest number of adherents of Christian denominations in the world. Even though it is a country that adheres to liberalism, most of the population of the United States considers religion to play an important role in their daily lives. The United States is a secular country, so the government does not recognize any particular religion as an official religion. Although classified as a secular country, the United States government guarantees religious freedom for every citizen. The legal basis for religious freedom in the United States is contained in the First Amendment to the United States Constitution. According to a 2020 report, most of the United States population is Christian with a percentage of 65%.

The United States guarantees the freedom of worship and practice of religion for every citizen. This is stated in the first amendment to the United States Constitution which reads, "Congress does not make laws regarding the formation of a religion or prohibit freedom of religion; or restrict freedom of speech, or freedom of the press, or the right to peaceful assembly, and the right to petition for demanded compensation and lodged a complaint with the government."

"Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law." *Asian Journal of Comparative Law* 7, No. 1 (2012): 1–53; Marshall, Paul. "The Ambiguities of Religious Freedom in Indonesia." *Review of Faith and International Affairs* 16, No. 1 (2012): 85–96; Tsakyrakis, Stavros. "Proportionality: An Assault on Human Rights?" *International Journal of Constitutional Law* 7, No. 3 (2009): 468–493.

In 1979 the United States Human Rights Commission confirmed the meaning of the phrase religious discrimination¹⁸. The right to freedom of religion is included in the human rights guaranteed by the government whose legal basis is stated in the state constitution. The United States Commission on Human Rights describes religious freedom as the right to or not to embrace a religion or belief. Religious discrimination occurs when someone refuses "equal protection under the law, equal status under the law, equal treatment in court administration, and equal opportunity and access to employment, education, housing, public services, and public facilities, and public accommodation for reasons of others." In 1878, the United States Supreme Court issued a rule against refusing a person to perform religious duties as a reason to avoid criminal charges.

US House of Representatives Passes Bill to Ban Religious Discrimination in Immigration. The United States House of Representatives passed a bill restricting the American president from imposing a travel ban on religious grounds. The move was welcomed by civil rights advocates as a major step forward. The law, informally known as the No Ban Act, came in response to former president Donald Trump's 'No Muslim' policy of banning travel from several Muslim-majority countries. The bill, which must also pass in the US Senate to become law, was approved by a 218-208 vote in the House on Wednesday.

Earlier, President Joe Biden had overturned Trump's travel ban by executive order on January 20, his first day in office. Trump's ban shortly after taking office in 2017 drew widespread protests and condemnation. The ban initially applied to most people trying to travel to the US from Syria, Iran, Yemen, Somalia, and Libya, as well as from North Korea and Venezuela. In 2020, Trump is expanding to Myanmar, Eritrea, Kyrgyzstan, Nigeria, Sudan and Tanzania. Criticized as discriminatory and punitive, it has immediate and far-reaching consequences for American Muslims and their families, refugees and others stranded in third countries.

¹⁸ U. S. Commission on Civil Rights. "Religious Discrimination. A Neglected Issue. A Consultation Sponsored by the United States Commission on Civil Rights." Washington D.C, 1979.

The No Ban Act would revise US immigration laws to prohibit discrimination on the basis of religion and would limit the president's ability to issue executive orders imposing future travel restrictions. Even though Trump was defeated in the 2020 presidential election and Biden lifted the travel ban, US legislators said it was important to take legislative action.

Legal Instruments of Blasphemy: Some Contemporary and Controversial Issues

A. Legal Instruments of Blasphemy in Indonesia

Religious freedom in Indonesia is not absolute in that its adherents can practice their worship and beliefs as they please, without paying attention to and respecting adherents of other religions who have existed for a long time and have lived side by side for generations. To discipline religious adherents in carrying out their worship and beliefs, the government issues legislation with the aim of maintaining religious harmony. According to Winkle, every country in the world enforces a rule to guarantee freedom of religion and makes various limits to maintain religious harmony¹⁹. If it is not regulated in such a way, the religious freedom of a certain person or group can interfere with the freedom of others in carrying out their religious teachings.

Legalization in the Indonesian constitution would be enough to show that religion has a very important position in this country. Freedom of religion is freedom to worship according to one's religion and beliefs. In Indonesia, every citizen is required to adhere to a religion or belief system that has been ratified by the state, however, this freedom does not mean freedom not to have a religion²⁰. This is very different from liberal countries which provide religious freedom for their citizens but also

¹⁹ Winkle, Andrew B. Van. "Separation Of Religion And State In Japan: A Pragmatic Interpretation of Articles 20 And 89 of The Japanese Constitution." *Pacific Rim Law & Policy Journal Association* 21, No. 2 (2012).

²⁰ Makin, Al. "Not A Religious State; A Study of Three Indonesian Religious Leaders on The Relation of State And Religion." *Journal Indonesia and the Malay Word* 45 (2017): 1–22.

provide freedom for their citizens not to adhere to a certain religion (atheism).

However, this is not the case in the State of Indonesia, in Article 4 and Article 22 Paragraph (1) and Paragraph (2) of Law Number 39 of 1999 concerning Human Rights stipulates that religion is a right that cannot be abolished or eliminated under any circumstances and by any party. However, the state gives freedom to the people to follow the religion they believe in, but cannot determine or force a person to choose or not to choose a particular religion and belief.

The state gives respect and guarantees to all religions in Indonesia based on the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia (UUD 1945) and Law Number 39 of 1999 concerning Human Rights (Human Rights Law). In the aspect of freedom to adhere to a certain religion, there are several provisions that can be used as a basis, such as:

1. Article 28E Paragraph (1) and Paragraph (2) of the 1945 Constitution in conjunction with Article 22 Paragraph (1) of the Human Rights Law, which regulates the freedom to adhere to certain religions and beliefs;
2. Article 28I Paragraph (1) of the 1945 Constitution in conjunction with Article 4 of the Human Rights Law concerning the right to religion as one of the human rights that cannot be abolished under any circumstances and by any party;
3. Article 29 Paragraph (2) of the 1945 Constitution
4. Article 22 Paragraph (2) of the Human Rights Law stipulate that the state gives freedom to adhere to and practice a certain religion for each of its citizens and perform worship according to the teachings of their respective religions.

To maintain harmony and religious tolerance in Indonesia, the government has issued several laws and regulations to regulate and regulate and maintain inter-religious harmony from interference from various parties, including virtual world users who are so easy to create and upload images, videos, writings that defame religion.²¹ However, law enforcement

²¹ Ishak, Nurfaika. "Religious Tolerance in the Constitution and Guarantees for the Protection of Human Rights." *Jurnal Scientia Indonesia* 8, No. 1 (2022): 53-70;

against perpetrators of blasphemy, law enforcement generally uses Law Number 1 of 1946 concerning Criminal Law Regulations and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Transaction Information.

One form of action that destroys religious freedom and harmony is the act of blasphemy. Blasphemy of religion is an act that demeans, insults, harasses, mentions or commits a certain religious teaching that is not in accordance with the teachings of that religion. One form of blasphemy offense is insulting God (blasphemy or godslastering) in the form of injuring, damaging, tarnishing reputation/ good name of God.

Juridically, blasphemy is part of a religious offense which has been regulated in the Indonesian Criminal Code (KUHP). The general conditions for criminal acts according to the Indonesian Criminal Code are against the law (*wederrechtelijkheid*), error (*schuld*) and the ability to be responsible according to criminal law (*toerekenings-vatbaarheid*).²² emphasized that error is the existence of a certain psychological state in the person who commits a criminal act and the relationship between this condition and the act carried out in such a way that the person can be reproached for committing the act²³.

This arrangement is intended to ensure that the multi-religious, multi-ethnic, and multi-racial Indonesian state can avoid divisive matters, one of which is conflicts between religious communities. In the Criminal Code, there is actually no special chapter that regulates religious offenses. However, there are some offenses that can actually be categorized as religious offenses. The term religious offense itself contains several meanings including:

1. offense according to religion
2. offense against religion;
3. offenses related to religion.

Abdullah, Zaitun, and Endra Wijaya. "Efektifitas Pengaturan Masalah Kerukunan Umat Beragama dalam Peraturan Perundang-Undangan di Indonesia." *Pandecta Research Law Journal* 11, No. 2 (2016): 113-123.

²² Remmelink, Jan. *Hukum Pidana Komentor Atas Pasal Terpenting Dari KUHP Belanda dan Padanannya Dalam KUHP Indonesia*. (Jakarta: Gramedia, 2003).

²³ Moeljatno. *Asas-Asas Hukum Pidana*. (Jakarta: Rineka Cipta, 2002).

The crimes of humiliation related to this religion can be distinguished into 4 (four) types, namely:

1. Contempt for certain religions that exist in Indonesia (Article 156 letter a);
2. Insulting religious officials who carry out their duties (Article 177 number 1);
3. Insults regarding objects for worship purposes (Article 177 number 2);
4. Causing noise near places of worship that are being used for worship (Article 503).

However, the article which is often referred to as the article on blasphemy is Article 156 letter a of the Criminal Code. It should be noted that actually Article 156 letter a of the Criminal Code does not originate from the *Wetboek van Strafrecht* (WvS) of the Netherlands, but comes from Presidential Decree No. 1/1965 on the Prevention of Abuse and/or Blasphemy of Religion (Penpres No.1/1965).

Since the blasphemy article was enacted, many individuals have been subject to the article, ranging from the HB Jassin case in 1968, Arswendo Atmowilonto in 1990, Basuki Tjahaja Purnama, the leader of Gafatar Abdussalam alias Ahmad Musadeq, to the case of the alleged burning of the Christian Bible (Bible) in Papua was committed by a member of the Indonesian National Army who was tried at the Jayapura Military Court, Papua in 2017. All of them were charged with insulting and blaspheming religion and were charged with using several provisions such as Article 156 of the Criminal Code, Article 156 letter a of the Criminal Code and Article 157 of the Criminal Code. However, if blasphemy or blasphemy is carried out through electronic media, law enforcers often use Article 28 Paragraph (2) of Law Number 11 of 2008 concerning Electronic Transaction Information.

B. Legal Instruments of Blasphemy in America

Federally, the United States does not regulate blasphemy. Several US states still have blasphemy laws from their inception.

1) Massachusetts

For example, Chapter 272 of the Massachusetts General Laws—a provision based on a similar colonial-era Massachusetts Bay statute enacted in 1697 which states:

Section 36.

Whoever intentionally blasphemes God's holy name by denying, cursing or continually reproaching God, His creation, the world's final government or judgment, or by cursing or reproaching Jesus Christ or the Holy Spirit, or by cursing or reproaching or exposing to insults and ridicule, the holy word of God contained in the holy book is punishable by a maximum imprisonment of one year or a maximum fine of three hundred dollars, and can also be tied to good behavior.

2) Maryland

Maryland's history of blasphemy laws shows that even into the 1930s, the First Amendment was not recognized as preventing the state from passing the law. A codification of the Maryland statute of 1879 outlawed blasphemy:

If anyone, by writing or speaking, blasphemes or curses God, or writes or speaks obscenities about and about our Savior, Jesus Christ, or about and about the Trinity, or any of its persons, he shall, on punishment, be fined not more of one hundred dollars, or imprisonment for not more than six months, or both fined and imprisoned as stated above, at the discretion of the court.

According to marginalia, this law was adopted in 1819, and a similar law was initiated in 1723. In 1904, the law was still listed in Art. 27(20), not changed in the text. As late as 1939, this law was still the law of Maryland. But in 1972, in *Maryland v. Irving K. West*, Maryland Court of Appeals (the state's highest court) held the blasphemy law unconstitutional. This law is still in effect until at least 2003.

3) Maine

Maine's law reads as follows:

Blasphemy can be done either by using language that is obscene and insulting to God, or by continuously criticizing Him, His creation, His government, the final judgment of the world, Jesus Christ, the Holy Spirit, or the Holy Scriptures as contained in the canonical books of Old and New Testaments, or by exposing any of these mentioned Creatures or Scriptures to scorn and scorn, and there is no need for the state to prove their deeds all.

4) Michigan

Michigan law reads as follows: "Anyone who willfully blasphemes against the holy name of God, by cursing or reproaching God, shall be guilty of a misdemeanor." Second, there is an "anti-profanity" law, which contains elements of "blasphemy", and reads as follows. "Cursing and cursing—Everyone who has reached the age of wisdom, who indecently curses or curses or swears by the name of God, Jesus Christ or the Holy Spirit, will be guilty of a misdemeanor. Such prosecution cannot be sustained unless it is initiated within five days of the commission of the offence."

Blasphemy Cases: Examples from Two Countries

A. Example Cases of Blasphemy in Indonesia

In the example of the blasphemy case in Indonesia, the author takes the case of blasphemy by Basuki Tjahaja Purnama, which began when the former Golkar and Gerindra politician made a working visit to the Thousand Islands, Jakarta, on 27 September 2016. There, he held a dialogue with the local community, as well as spread 4,000 fish seeds.

Basuki Tjahaja Purnama is considered to have caused a commotion that disrupted public order, namely the offense of Muslims. This is

evidenced by reports of alleged blasphemy by Basuki Tjahaja Purnama to the police from 6 October to 21 October 2016. The first police report was reported by Habib Novel Chaidir Hasan and Gus Joy Setiawan on 6 October 2016. on behalf of Muhammad Burhanuddin, Habib Muchsin Alatas, Willyuddin Abdul Rasyid Dhani, Syamsu Hilal, and Pedri Kasman who made a police report on 7 October. Subsequently, the police report on October 9, 2016 was made on behalf of the reporter, Iman Sudirman. Then, there were reporters on behalf of Nandi Naksabandi and Muchsin Alhabsy on October 10. On October 12, there was a police report on behalf of the complainant Ibnu Baskoro and on October 20 on behalf of the reporter Aswar. Finally, on October 21, 2016 on behalf of the complainants Irena Handono and Muhammad Asroi Saputra. Reports against Ahok are in several Polda up to 11 reports. Bareskrim then withdrew all handling of the case to the National Police Headquarters.

Looking at the Indonesian constitution, the 1945 Constitution is very clear about the guarantee of the independence of Indonesian citizens to embrace their respective religions and to worship according to their religion and beliefs. Therefore, Basuki Tjahaja Purnama's remarks as the Governor of DKI Jakarta must receive strict sanctions from the state.

After the report, the complainants requested the Fatwa of the Indonesian Ulama Council, on October 11, 2016 MUI issued the opinion and religious stance of the Indonesian Ulama Council stating that Basuki Tjahaja Purnama's statement was categorized as: (1) insulting the Koran and or (2) insulting the ulama which had consequences. law. Because declaring a lie to the ulama who conveyed the argument of Surah Al-Maidah verse 51 regarding the prohibition of making non-Muslims as leaders is an insult to scholars and Muslims. One of the recommendations of the MUI is that law enforcement officers are obliged to take firm action against anyone who desecrates and blasphemes the Koran and Islamic teachings as well as insults scholars and Muslims in accordance with applicable laws and regulations.

The reaction to Basuki Tjahaja Purnama's words was greeted by a large demonstration by Muslims on October 14, 2016. A larger demonstration attended by approximately one million Muslims then took place again on November 4, 2016. The Criminal Investigation Unit of the POLRI held a limited open court case on 15 November 2016 by inviting

the Reporting Party, the Reported Party, Witnesses and Experts. The next day, on November 16, 2016 at 10.00 am, the Criminal Investigation Department announced the determination of the suspect candidate for governor of DKI, Basuki Tjahaja Purnama, as a suspect for blasphemy. A larger demonstration then took place again on Friday, December 2, 2016 with the demands of the police to arrest the suspect for blasphemy against the candidate for governor of DKI, Basuki Tjahaja Purnama. Currently, the North Jakarta District Court has sentenced the former governor of DKI Jakarta 2

years in prison. Basuki Tjahaja Purnama was found guilty of blasphemy against his statement regarding Surah Al-Maidah 51 during a visit to Pramuka Island, the Thousand Islands. Not satisfied with the decision, on February 2, 2018, Basuki Tjahaja Purnama submitted a PK to the Supreme Court through his lawyer. On March 26, 2018 the Supreme Court (MA) rejected the judicial review proposed by Basuki Tjahaja Purnama. The reconsideration consideration was rejected because all the reasons were unjustified.

The blasphemy case carried out by Basuki Tjahaja Purnama received great attention from the Indonesian people and international news. The case of blasphemy is a very sensitive matter for the Indonesian people. This means that any blasphemy issue must have an accountability mechanism.

To be able to punish someone while at the same time fulfilling the demands of justice and humanity, there must be an act that is against the law, and which can be blamed on the perpetrator. In addition to these conditions, the perpetrator in question must be someone who can be held accountable (*toerekeningsvatbaar*) or *schuldfig*. The general conditions for criminal acts are against the law (*wederrechtelijkheid*), error (*schuld*) and the ability to be responsible according to criminal law (*toerekeningsvatbaarheid*).

In addition, according to Andi Hamzah in the case expert's statement above, he stated that: The formulation of the offense of blasphemy must comply with the principle of legality, *nullum delictum nulla poena sine praevia lege poenali*, there must be provisions of laws and regulations before a criminal act is committed. A person can only be sentenced if there is a law that prohibits the criminal act first, general offenses in all countries. This means that the offense is neutral, for example theft, but there are

offenses that are not neutral, namely: religious offenses and moral offenses, for example regarding religious blasphemy and pornography. In China people are free to blaspheme religion. The new Dutch Criminal Code also regulates religious blasphemy and ideological offenses, because they are in the mind.

The Constitutional Court in its decision page 287 section [3.51] states that the Law on Prevention of Blasphemy of Religion does not prohibit a person from interpreting a religious teaching or carrying out religious activities that resemble a religion adhered to in Indonesia individually. What is prohibited is deliberately publicly telling, recommending or seeking public support, to interpret a religion adhered to in Indonesia or carry out religious activities that resemble religious activities of that religion, which interpretations and activities deviate from the main teachings of that religion. .

The words of Basuki Tjahaja Purnama alias Ahok as Governor of DKI Jakarta during his working visit to the Thousand Islands have caused uproar and unrest for Muslims in Indonesia which disturbs public order, namely the offence of Muslims, especially the Ulama who teach the Qur'an to Muslims. Can this statement be held criminally responsible?²⁴ The indictment made by the public prosecutor is an alternative charge. In this case, each of these charges excludes the other. Ahok's remarks as Governor of DKI Jakarta during his working visit to the Thousand Islands fulfilled the formulation of the offense in Article 156a of the Criminal Code based on Decision Number 1537/Pid.B/2016/PN.Jkt Utr to be accounted for.

Basuki Tjahaja Purnama's words were a form of feeling that became controversial regarding the mention of Al Maidah 51 when he visited the Thousand Islands in the socialization of fishery development programs by residents. These feelings are conveyed intentionally in public. The feelings expressed by Ahok are considered insults or blasphemy against Islam, namely against the Qur'an and Ulama according to the religious opinions and attitudes of the Indonesian Ulema Council on October 11, 2016. The panel of judges in the trial asked the Indonesian Ulema Council for information. The Panel of Judges in their deliberations agrees with the

²⁴ Hamzah, Andi. *Hukum Acara Pidana*. (Jakarta: Sinar Grafika, 2004).

religious opinion and attitude of the Indonesian Ulema Council. The expression of these feelings got a sentence of 2 years in prison. Ahok was found guilty of blasphemy because of a statement regarding Surat Al-Maidah 51 during a visit to Pramuka Island, the Thousand Islands.

The panel of judges in their consideration stated that religious blasphemy with the mention of Surat Al-Maidah in Basuki Tjahaja Purnama's remarks when meeting with residents at the Fish Auction Place (TPI) Pramuka Island, Thousand Islands. Basuki Tjahaja Purnama's sentence that was declared to be blasphemy was: "So don't believe in people, it's possible that you can't vote for me in your heart, can you? being lied to using Surah Al-Maidah 51, all kinds of things. That's your right, ladies and gentlemen. So if you feel like you can't vote, because I'm afraid I'll go to hell because I've been fooled like that, that's okay."

The defendant has considered Surah Al-Maidah as a tool to deceive the people or society or Surah Al-Maidah 51 as a source of lies and with this assumption, according to the court, the defendant has demeaned and insulted Surah Al-Maidah verse 51. The panel of judges said Ahok intentionally included sentences related to the gubernatorial election. This has a negative meaning according to the judge in his decision.

The panel of judges stated that the mistake made by Ahok was to express his opinion about the Al-Qur'an Surah Al-Maidah verse 51 in public which was considered an insult or blasphemy against Islam, namely against the Qur'an and Ulama. The expression of this opinion is considered against the law because the act is prohibited by Article 156a of the Criminal Code. With reference to the ability to take responsibility expressed by Jan Remmelink that the determination of whether or not a person is able to be held accountable will greatly depend on the existing social situation and conditions including the nature and context of the criminal act that was concretely committed. The social situation and conditions that occurred after Basuki Tjahaja Purnama expressed his opinion about the Al-Qur'an Surah Al-Maidah verse 51 were turmoil that caused chaos and unrest for Muslims in Indonesia which disrupted public order, namely the offence of wabil Muslims, especially the Ulama who teach the Qur'an to Muslims. Judges' Decision No. 1537/Pid.B/2016/PN. Jkt Utr is in accordance with the Constitutional Court Decision No. 140/PUU-VII/2009 that in order to prove that there

is *actus reus* and *mens rea* in a criminal act that refers to Article 1 of Law Number 1/PNPS/1965, the judge must request information from a religious expert from the ulama and/or the Ministry of Religion who has tendencies of certain religious groups.²⁵

B. Example cases of Blasphemy in America

Commonwealth of Massachusetts v. Abner Kneeland is an 1838 Massachusetts state court case, notable for being the last time a court in the United States has imprisoned a defendant for blasphemy.

The defendant, Abner Kneeland, was a vivacious preacher who had become a Universalist, but has since turned to a form of pantheism. He published letters in which he outlined his recently embraced pantheist philosophy, denying a God other than Nature and the unique special divinity of Jesus Christ. Already a controversial figure, Kneeland wrote a rationalist journal called the *Boston Investigator*. He was brought to trial after he admitted to having written the provocative statement in the December 20, 1833 issue. His legal charges were for "*willfully blaspheming the holy name of God*" and for his public denial of Christ. Although the report was written in 1833, Kneeland ended up trying four times due to delays and annulments which failed to deliver a verdict. The first trial was held in January 1834 and Kneeland was found guilty, but he immediately appealed; the second case ended in annulment; third trial November 1835 and Kneeland found guilty; and the last appeal case was heard in 1838.²⁶

At the trial, Kneeland was represented by Mr. Dunlap in the first two trials and represented himself in the last two trials. They raised three defenses for his actions: Kneeland claims he never denied the existence of God, only the existence of "one" God. Therefore, he is not an atheist, but

²⁵ Haris, Munawir. "Warisan Paradigmatik Kebijakan Politik Kerukunan Antaragama Kolonial Pada Masa Reformasi." *Tasamuh: Jurnal Studi Islam* 9, No. 1 (2017): 157–208; Hutabarat, Binsar Antoni. "Evaluasi Terhadap Peraturan Bersama Menteri Tahun 2006 Tentang Pendirian Rumah Ibadah." *Societas Dei: Jurnal Agama Dan Masyarakat* 4, No. 1 (2017): 8; Muktiono, Muktiono. "Mengkaji Politik Hukum Kebebasan Beragama dan Berkeyakinan di Indonesia." *Jurnal Dinamika Hukum* 12, No. 2 (2012).

²⁶ Commager, Henry Steele. "Penghujatan Abner Kneeland." *Triwulanan New England* 8, No. 1 (1935).

a pantheist. The law itself is invalid and should be overturned, as it violates the Massachusetts Constitution's guarantee of religious freedom. The law also violates the guarantee of press freedom.

The court was unconvinced by Kneeland's claim. It was decided that despite his beliefs, he had slandered God's name with malicious intent, making Kneeland's first point moot. As for the second, the court examined the colonial charters of other countries and pointed out that they too had reconciled blasphemy laws with guarantees of religious freedom, and that the laws were "*passed immediately after the adoption of the constitution, and undoubtedly, many members of the convention, who framed the constitution, were the legislators who passed this law.*" Therefore, they should not be in conflict. Justice Shaw had also appeared at the Massachusetts Constitutional Convention of 1820–1821 and found no conflict between the current constitution and the Blasphemy Act of 1782. The court rejected the third claim, saying that if unrestricted press freedom was permitted, the article would be a license. common to scandals, slander and lies against individuals, institutions and governments, in the form of publications but all incitement to treason, murder and all other crimes however heinous, if conveyed in printed language, will be punished.

Kneeland was sentenced to sixty days in prison. Judge Morton did issue a dissent; in it, he argues that simply denying God is not blasphemy, and that punishable blasphemy only attacks religion out of malice or intent to harm, a standard not met in this case. In support of Kneeland, a petition was filed for his pardon on the grounds of free speech by William Ellery Channing, which was signed by various dignitaries including Ralph Waldo Emerson and William Lloyd Garrison. However, the counter petition was signed with more signatures; Kneeland stayed in prison and served his entire sentence.

Conclusion

This study concluded and highlighted that in Indonesia, the right to freedom of religion is regulated in Article 29 of the 1945 Constitution which states that the state is based on one God and the State guarantees the independence of each resident to embrace their own religion and to worship according to their religion and beliefs. Juridically, blasphemy is

part of a religious offense which has been regulated in the Indonesian Criminal Code (KUHP). This arrangement is intended to ensure that the multi-religious, multi-ethnic, and multi-racial Indonesian state can avoid divisive matters, one of which is conflicts between religious communities. Meanwhile in the United States of America, religious freedom is included in human rights guaranteed by the government whose legal basis is stated in the country's constitution. The United States Commission on Human Rights describes religious freedom as the right to or not to embrace a religion or belief. In principle, the state cannot intervene as long as it concerns the beliefs, thoughts or understandings of individuals regarding a religious belief. Legal action by the State against a religious belief or religious sect that is declared heretical does not conflict with the law, the Constitution or Human Rights. The state has the right to act according to applicable law.

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