

Analysis of the Judge's Decision Regarding the Blasphemy Case (Case of Decision 726/Pid.Sus/2023/PN Plg)

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Abstract

This research delves into the intricate and significant landscape of religious blasphemy cases, a phenomenon on the rise in Indonesia. Beyond causing societal disturbances, these cases pose substantial challenges within the legal and judicial framework. The escalating number of such cases reflects a noteworthy expansion in the diversity of opinions and expressions within society. However, the lack of clarity in the legal boundaries surrounding religious blasphemy often leads to uncertainty in establishing guilt and determining appropriate punishment, despite existing regulation in the Information and Electronic Transactions Law. The influence of media and social media exacerbates the complexity of religious blasphemy cases. Coverage and discussions on online platforms play a pivotal role in shaping public opinion and influencing the trajectory of the judicial process. This impact extends beyond the national level, potentially sparking global ramifications. Concurrently, judicial independence faces scrutiny, as external pressures from various entities can sway judges' decisions. Consequently, this research seeks to provide a thorough understanding of these multifaceted aspects. An analysis of the judge's decision in the religious blasphemy case, as exemplified by Lina Mukherjee on social media, becomes crucial for dissecting the legal and social dynamics at play. This examination not only aims to comprehend the intricacies involved but also serves as a foundation for proposing recommendations to enhance the justice system. The ultimate goal is to achieve a balance in justice and



safeguard human rights in the face of evolving challenges posed by religious blasphemy cases.

Keywords

Information and Electronic Transactions Law, Judge's Decision, Religious Blasphemy, Social Media

Introduction

Legal developments in Indonesia intricately intertwine with the intricate challenges surrounding religious sensitivity and freedom of speech. One phenomenon that sparks waves of debate and controversy is the persistent occurrence of religious blasphemy cases. These cases, marked by accusations of insulting religious teachings, bring forth profound questions concerning legal clarity, the delicate balance between freedom of expression and the safeguarding of religious sentiments, and the independence of the judiciary in Indonesia.

In recent years, the frequency of religious blasphemy cases has witnessed a significant surge, with one of the latest instances involving celebrity Lina Mukherjee through her social media. This scenario sets the stage for the judiciary to grapple with substantial challenges in interpreting and applying the law within an increasingly complex and dynamic context. The heightened prevalence of such cases underscores the pressing need for a nuanced approach to navigate the intricate intersection of legal principles and societal dynamics.

This research seeks to delve into and analyze the decisions made by judges in cases of religious blasphemy in Indonesia, with a primary emphasis on examining them through the lenses of legal clarity, the protection of human rights, and judicial independence. Within the diverse fabric of Indonesian society, known for its pluralism and tolerance, the discourse surrounding religious blasphemy cases has evolved into a complex narrative, necessitating a judicious legal approach. The escalating frequency of such cases underscores the pressing need to comprehend and evaluate the role of the justice system in addressing the mounting diversity and intensity of challenges. This study aims to contribute insights into how

the legal landscape navigates these intricate issues within the unique socio-cultural context of Indonesia.

Legal clarity is at the heart of the problems that arise in cases of religious blasphemy.¹ The challenge of determining what constitutes religious blasphemy and how the punishment imposed should be consistent with principles of justice, creates uncertainty that involves judges, advocates, and society as a whole. This research will discuss judges' efforts to explain and articulate their decisions, as well as how these legal considerations can reflect the values of justice and human rights.

The importance of protecting human rights in the context of religious blasphemy is particularly prominent, given that such cases often involve a balance between freedom of expression and the protection of groups or individuals from insults to their religious beliefs. Judges' decisions in these cases can have long-term impacts not only on the individuals involved, but also on society as a whole. Judicial independence is an important factor in assessing the integrity and fairness of judges' decisions. In the midst of social, political and even economic pressures, judges are faced with the difficult task of ensuring that the decisions they make are based on the law and not influenced by external factors. Thus, this research will also explore the extent to which judicial independence can be maintained in dealing with cases of religious blasphemy which often trigger controversy and public pressure.

Media analysis will also be an integral part of this research. Mass media and social media can provide a new dimension to religious blasphemy cases, magnify their impact, and influence public opinion and the public's perception of judicial decisions. An examination of the way media reports and responses on social media play a role in shaping the public's view of religious blasphemy cases, as well as their impact on the judicial process, will be an important part of this research.²

This research focuses on analyzing the judge's decision in the religious blasphemy case, specifically case No. 726/Pid.Sus/2023/PN Plg involving Lina Mukherjee. It aspires to make a substantial contribution to legal literature, offering a more nuanced and comprehensive perspective on the dynamics within the judiciary system of the country. By gaining a deeper insight into the challenges and intricacies inherent in handling religious

¹ Septiani, Rina. "Tindak Pidana Penistaan Agama Perspektif Hukum Islam dan Hukum Positif Indonesia." *Syariah: Jurnal Hukum dan Pemikiran* 17, no. 1 (2017): 17-31.

² Hariyanto, Hariyanto. "Praktik Courtroom Television dalam Membentuk Opini Publik dan Pengaruhnya Terhadap Putusan Pengadilan." *Jurnal Penelitian Agama* 17, no. 1 (2016): 131-143; Ahmad, Kamri. "Batasan Penerapan Asas Persidangan Terbuka untuk Umum dalam Siaran Persidangan Pidana oleh Media." *Jurnal Hukum Ius Qua Iustum* 24, no. 3 (2017): 488-505.

blasphemy cases, this research aims to serve as a foundation for enhancing and evolving a justice system that is not only more effective but also aligns with the fundamental principles of justice, freedom, and the protection of human rights.

Method

The research methodology employed in this study is normative, utilizing a case approach, and specifically centers on analyzing the judge's decision in the religious blasphemy case involving Lina Mukherjee on social media (Case Study: Palembang District Court No. 726/Pid.Sus/2023/PN Plg). This approach involves gathering secondary data from legal sources and relevant court decision documents. The study will conduct a normative analysis of laws, regulations, and legal precedents associated with religious blasphemy in Indonesia, establishing a theoretical and legal foundation crucial for comprehending the legal context surrounding these cases.

The case study will encompass the collection and analysis of the judge's decision document No. 726/Pid.Sus/2023/PN Plg, with a specific focus on examining the legal considerations, interpretation of the law, and the legal arguments underpinning the judge's decision. Additionally, it will scrutinize any divergences or consistencies in the approaches adopted by judges across similar cases, aiming to identify discernible patterns and trends in judicial decisions concerning religious blasphemy.³

Secondary data sources will include various legal documents, including court decisions, legal books, legal articles, and legal analyzes related to religious blasphemy cases.⁴ This normative analysis will also include a review of the views of legal experts and previously published legal opinions. By combining normative analysis and a case approach, this research is expected to provide a comprehensive understanding of the legal factors that influence judges' decisions in religious blasphemy cases in Indonesia.⁵

³ Langbroek, Philip M., et al. "Methodology of legal research: Challenges and opportunities." *Utrecht Law Review* 13, no. 3 (2017): 1-8.

⁴ Van Maanen, John. "Reclaiming qualitative methods for organizational research: A preface." *Administrative Science Quarterly* 24, no. 4 (1979): 520-526.

⁵ Rowe, Suzanne E. "Legal Research, Legal Analysis, and Legal Writing: Putting Law School into Practice." *SSRN ELibrary* 1193 (2000): 1-19.

Unraveling the Legal Landscape in the Blasphemy Case

The intricate balance between the cherished principle of freedom of expression and the imperative to safeguard religious beliefs and sentiments reflects a fundamental struggle within modern societies. Freedom of expression, an essential pillar of democratic societies, serves as a cornerstone of individual liberties.⁶ It embodies the right to voice opinions, thoughts, and ideologies without censorship or repression,⁷ fostering diverse viewpoints and promoting an open exchange of ideas.⁸ Conversely, the protection of religion encompasses the need to preserve the sanctity of religious beliefs, symbols, and practices against denigration, insult, or desecration.

This balance encounters challenges due to the subjective nature of what constitutes offensive or blasphemous expressions against religion.⁹ What one individual considers a valid exercise of free speech, another might perceive as a deliberate affront to deeply-held religious beliefs.¹⁰ Consequently, attempts to strike this balance involve navigating intricate cultural, social, and legal landscapes to accommodate varying interpretations and sensitivities concerning religious reverence and free expression.¹¹ The tension between these two fundamental rights becomes particularly pronounced in cases where expressions of opinion conflict with religious doctrines or practices.¹² Instances of perceived blasphemy or

⁶ Jazuli, Ahmad. "Penyelesaian Konflik Penodaan Agama dalam Perspektif Hukum Pidana di Indonesia." *Jurnal Penelitian Hukum De Jure* 17, no. 3 (2017): 329-350. See also Amanah, Arsifi. "Pancasila Democracy Between Concept and Practice: Is It Really Democracy?." *Indonesian Journal of Pancasila and Global Constitutionalism* 2, no. 2 (2023); Bukar, Abubakar Alhaji. "Beyond Freedom of Expression: Nigerian Press and National Interest in Boko Haram Terrorism Coverage." *Indonesian Journal of Counter Terrorism and National Security* 2, no. 2 (2023).

⁷ Maruapey, M. Husein. "Penegakan hukum dan Perlindungan negara." *Jurnal Ilmu Politik dan Komunikasi* 7, no. 1 (2017).

⁸ Yahya, M. M. "Kasus Penistaan Agama Pada Berbagai Era dan Media di Indonesia." *Jurnal Agama dan Sosial-Humaniora* 1, no. 3 (2022): 123-138.

⁹ Hatta, Muhammad, and Zulfan Husni. "Kejahatan Penistaan Agama dan Konsekuensi Hukumnya." *Al-Adl: Jurnal Hukum* 13, no. 2 (2021): 342-368.

¹⁰ Muin, Munir A. "Nurcholish Madjid's Idea of Inclusive Theology in Islam." *Islamika Indonesiana* 1, no. 1 (2014): 65-80.

¹¹ Arifin, Ridwan. "Democracy on Indonesian Legal Reform: How Can People Participate on Laws and Regulations Establishment Process." *Journal of Indonesian Legal Studies* 2, no. 2 (2017): 155-158; Utari, Indah Sri, and Ridwan Arifin. "Law Enforcement and Legal Reform in Indonesia and Global Context: How the Law Responds to Community Development?." *Journal of Law and Legal Reform* 1, no. 1 (2020): 1-4.

¹² Maruapey. "Penegakan Hukum dan Perlindungan Negara."

sacrilege can provoke strong emotional reactions and social unrest within communities.¹³ In response, some societies implement blasphemy laws or regulations to safeguard religious sentiments, with penalties ranging from legal sanctions to societal ostracization.

Legal systems grapple with the complexities inherent in adjudicating cases that involve this tension. Courts often face the formidable task of delineating the fine line between legitimate freedom of expression and speech that transgresses the boundaries of religious reverence. Decisions rendered in such cases become precedents that shape future legal approaches, setting parameters for the permissible bounds of expression and religious protection.¹⁴ The advent of the digital era and the proliferation of social media platforms have further complicated this delicate balance. These platforms serve as arenas for widespread dissemination of opinions and ideas, yet they also present challenges with respect to regulating content that might offend religious sensitivities. The instantaneous and global nature of these platforms amplifies the impact of contentious expressions, potentially sparking international incidents and exacerbating social tensions.

Achieving an equilibrium between freedom of expression and the protection of religion necessitates fostering an environment of mutual respect, tolerance, and understanding among diverse communities. Encouraging interfaith dialogue, promoting education on religious diversity and tolerance, and cultivating an ethos that values both the freedom to express opinions and the respect for religious beliefs are essential steps toward striking a harmonious balance. The quest for equilibrium between freedom of expression and the protection of religion is an ongoing and intricate societal endeavor. It involves navigating through multifaceted moral, legal, and cultural landscapes, advocating for both the preservation of individual liberties and the respectful coexistence of diverse religious beliefs within the fabric of a pluralistic society.¹⁵

Blasphemy encompasses actions that insult, humiliate, or denigrate religious teachings, beliefs, or values. This criminal offense involves the use of words, writings, images, or other expressions perceived as disrespectful or offensive to a particular religion. The consequences of blasphemy can be

¹³ Sirry, Mun'im. "Secularization in the Mind of Muslim Reformists: A Case Study of Nurcholish Madjid and Fouad Zakaria." *Journal of Indonesian Islam* 1, no. 2 (2007): 323-355.

¹⁴ Zainuddin, M. "Plurality of religion: Future challenges of religion and democracy in Indonesia." *Journal of Indonesian Islam* 9, no. 2 (2015): 151-166.

¹⁵ See also Hidayah, Syarifaatul. "State Responsibility in Protecting Human Rights: An International Legal Perspective." *International Law Discourse in Southeast Asia* 2.2 (2023).

profound, triggering emotional reactions, social unrest, or even violent conflicts within communities. However, the dilemma arises in finding a balance between curbing freedom of opinion to protect against blasphemy and preserving open dialogue, intellectual progress, and the exchange of diverse viewpoints. The complexity deepens when considering the varied interpretations and definitions of blasphemy across different cultures and belief systems. What one community deems blasphemous may be seen as a legitimate exercise of free speech by another. This subjectivity underscores the challenge of establishing universally applicable standards when addressing cases of blasphemy.¹⁶

Legal systems grapple with the intricate task of balancing these conflicting rights. Courts face the challenge of upholding freedom of expression while simultaneously respecting religious sensitivities. Decisions made in cases involving blasphemy often serve as precedents, shaping future legal approaches and societal norms regarding the boundaries of free speech and religious reverence. Moreover, the advent of the digital age and social media platforms has amplified the complexities of this issue. While these platforms provide unprecedented opportunities for expression and dialogue, they also serve as catalysts for the rapid dissemination of potentially blasphemous content, leading to widespread reactions and social tensions.

To navigate this tension effectively, fostering mutual respect, tolerance, and interfaith dialogue becomes imperative. Encouraging understanding and empathy among diverse communities, promoting educational initiatives, and cultivating an environment that values both freedom of expression and religious reverence are crucial steps towards achieving a harmonious balance. So, the tension between freedom of opinion and blasphemy embodies a nuanced and multifaceted dilemma. Resolving this conflict requires thoughtful consideration, dialogue, and a collective commitment to preserving both the right to free expression and the respect for religious sentiments within the fabric of a diverse and inclusive society.

The incident involving Lina Mukherjee consuming crispy pork and uttering "*bismillah*" was initially reported by a resident who suspected religious blasphemy. Lina, the owner of the TikTok account @lilumukerji, is accused of committing blasphemy against religion for knowingly, as a

¹⁶ See Jones, Peter. "Blasphemy, offensiveness and law." *British Journal of Political Science* 10, no. 2 (1980): 129-148; Hassner, Ron E. "Blasphemy and violence." *International Studies Quarterly* 55.1 (2011): 23-45; Crouch, Melissa A. "Law and religion in Indonesia: The constitutional court and the blasphemy law." *Asian Journal of Comparative Law* 7 (2011): 1-46.

Muslim, consuming pork, a forbidden culinary item for Muslims. The content in question features her repeatedly invoking the name of Allah. Following the report, the South Sumatra Regional Police initiated an investigation, summoning various expert witnesses, including language experts, Information and Electronic Transactions specialists, and representatives from the Indonesian Ulama Council. Subsequent examinations led the authorities to designate Lina as a suspect in a religious blasphemy case, formally initiating legal proceedings. Lina Mukherjee was officially detained on Monday, July 10, 2023, in connection with the religious blasphemy case related to the content of eating pork while saying "*bismillah*." Her detention, lasting for 20 days, commenced from July 10 to July 29, 2023, during which she was held at the Merdeka Women's Prison.¹⁷

Legal enlightenment in cases of religious blasphemy embodies a multifaceted exploration within legal systems worldwide. Blasphemy, often defined as acts or expressions deemed offensive or disrespectful towards religious beliefs or symbols, triggers a complex legal terrain. Judicial systems face the intricate task of navigating between safeguarding freedom of expression and upholding social harmony while respecting religious sensitivities. The legal enlightenment regarding religious blasphemy cases encapsulates the interpretative dance between the principles of freedom of expression enshrined in various international conventions and the laws protecting religious sentiments within national jurisdictions. Courts scrutinize these cases through the lens of constitutional freedoms, human rights provisions, and statutes addressing religious harmony.

Central to the legal discourse is the evaluation of what constitutes blasphemy within a specific cultural, social, and legal context. The subjective nature of religious beliefs renders the determination of blasphemy challenging, often leading to varying interpretations and legal precedents across different jurisdictions. Courts grapple with the delicate balance of protecting religious sanctities while avoiding undue curtailment of the right to free speech, inherently shaping legal understanding and enforcement. Furthermore, legal enlightenment entails a comprehensive review of case law, precedents, and legal principles derived from both

¹⁷ See Dewi, Ellina, Theodora Suhartanto, and Yuwono Prianto. "Kasus Penistaan Agama di Media Sosial yang Terjadi Pasca Pandemi di Indonesia." *Innovative: Journal of Social Science Research* 3, no. 6 (2023): 2032-2040; Said, Muhammad, and Siti Asiah. "Penggambaran Aib di Media Sosial Perspektif Qur'an: Kajian Double Movement Fazlur Rahman." *Al Irfani: Journal of Al Qur'anic and Tafsir* 4, no. 1 (2023): 16-32; Rahajaan, Jakobus Anakletus, and Sarifa Niapele. "Disparity of Conviction Cases Blasphemy in Indonesia." *PUBLIC POLICY: Jurnal Aplikasi Kebijakan Publik dan Bisnis* 3, no. 2 (2022): 141-158; Tyson, Adam. "Blasphemy and judicial legitimacy in Indonesia." *Politics and Religion* 14, no. 1 (2021): 182-205.

national and international legal frameworks. Courts rely on established legal doctrines, precedents, and interpretations to discern the boundaries of acceptable speech within the realm of religious sentiments. The evolution of legal enlightenment in this sphere is contingent on the jurisprudential exploration of these precedents and their contextual applicability in contemporary cases.

The legal enlightenment surrounding religious blasphemy also highlights the complexities arising from technological advancements. The digital era has amplified the dissemination of content, leading to increased instances of perceived blasphemy across global platforms. This necessitates a reassessment of legal frameworks to effectively address transnational implications while balancing jurisdictional boundaries. Moreover, legal enlightenment involves understanding the societal impact of legal determinations in religious blasphemy cases. Court decisions significantly influence public perceptions, shaping societal norms and contributing to the ongoing discourse on the boundaries of free expression and religious tolerance. The dissemination and interpretation of legal verdicts further underscore the evolving legal enlightenment within societies. Legal enlightenment concerning cases of religious blasphemy navigates a labyrinth of legal intricacies, cultural sensitivities, and international conventions. It rests on the delicate interplay between safeguarding freedom of expression and preserving religious sanctities while reflecting the evolving societal attitudes towards these fundamental rights and their interpretations within the rule of law.

Indonesia, the state of law that provides understanding that everything that is done must be in accordance with the law. And if someone violates or doing something that is not in accordance with the law, they will receive sanctions as regulated by law. In relation to someone who commits a criminal act, the sanctions can be seen in the Criminal Code (KUHP) or in the laws outside the Criminal Code (Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions) depending on the perpetrator's actions.¹⁸ However, in imposing criminal sanctions on someone who commits a criminal act, they do not necessarily have to be immediately punished, but it has to be proved how far the person is able to take responsibility for their actions by paying attention to the elements of criminal responsibility itself which include the

¹⁸ Antaguna, Nyoman Gede, and Anak Agung Sagung Laksmi Dewi. "Pembatasan Kebebasan Berpendapat dan Bereksprei di Sosial Media Berdasarkan Peraturan Perundang-Undangan Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (ITE)." *Kertha Wicaksana* 17, no. 2 (2023): 138-146.

ability to be responsible, mistakes, and there is no reason to forgive. The ability to be responsible is the main element in the criminal responsibility, this is because the ability to be responsible was seen from the psychological condition of the perpetrator.¹⁹

The judge's considerations are one of the most important aspects in determining the realization of the value of a judge's decision which contains justice (*ex aequo et bono*) and contains legal certainty, besides that it also contains benefits for the parties concerned so that the judge's considerations must be addressed carefully. Judges in examining a case also require evidence, where the results of that evidence will be used as material for consideration in deciding the case. Evidence is the most important stage in examination at trial. The judge cannot make a decision before it is clear to him that the event or fact actually occurred, that is, its truth is proven, so that it appears that there is a legal relationship between the parties.²⁰

In the judicial decision-making process, judges often employ various theories or approaches. The Balance Theory involves striking an equilibrium between the conditions defined by law and the interests of the parties connected to the case. Another approach is the Art and Intuition Approach Theory, granting judges discretionary authority to tailor decisions based on circumstances and prescribe reasonable sentences for each offender.

The Experiential Approach Theory highlights the value of a judge's accumulated experience, guiding their decisions as they navigate daily cases. In contrast, the Scientific Approach Theory advocates for a systematic and meticulous criminal imposition process, emphasizing the importance of consistency by considering previous decisions.

The Ratio Decidendi Theory, rooted in a fundamental philosophical framework, entails a thorough examination of all relevant aspects related to the dispute. Judges are expected to identify applicable laws and regulations, providing transparent reasons to uphold the law and ensure justice.

Lastly, the Theory of Wisdom emphasizes the collective role of government, society, family, and parents in guiding and nurturing individuals accused of wrongdoing. This theory aims to protect and teach those accused, with the ultimate goal of fostering their transformation into productive members of the family, society, and nation. Each theory offers

¹⁹ Pasaribu, Sanba Sheda Octora, and Muhamad Afri Fauzi. "Perbandingan Pengaturan Tindak Pidana Penodaan Agama Menurut Kuhp Indonesia dan Israel Penal Law 5737-1977." *Jurnal Litigasi (e-Journal)* 23, no. 1 (2022): 39-60.

²⁰ Fadhillah, Nisa, and Kamilatun Kamilatun. "Analisis Pertimbangan Hakim dalam Menjatuhkan Putusan Terhadap Pelaku Tindak Pidana Menghilangkan Nyawa Orang Lain (Studi Perkara Nomor 64/Pid. B/2018/PN. Kbu)." *Jurnal Hukum Legalita* 3, no. 2 (2021): 142-148.

judges a unique perspective, enabling a comprehensive and thoughtful approach to decision-making in the legal realm.

In accordance with Decision No. 726/Pid.Sus/2023/PN Plg, the legal stance of the case is as follows: The defendant, identified as LINA LUTFIAWATI *or* LILU *or* LINA MUKHERJEE BINTI ABDUL MUKHIT, is accused of intentionally disseminating information aimed at creating feelings of hatred or hostility towards certain individuals and/or groups of society based on ethnicity, religion, race, and inter-group. The incident allegedly took place on Tuesday, March 14, 2023, at 18:00 WIB or around March 2023, in various locations, including Jalan Inspector Marzuki, Siring Agung Village, Ilir Barat District I Palembang City, and on social media platforms such as TikTok (@lilumukerji) and YouTube.

The prosecution asserts that on Thursday, March 9, 2023, at approximately 15:00 WITA, the defendant, along with an assistant, verbally encouraged the consumption of pork and deliberately visited a restaurant known for serving pork in Bali. The defendant recorded a video of herself eating crispy pork (*kriuk babi*) and subsequently posted it on TikTok and YouTube. The video garnered millions of views and comments, with some netizens expressing dislike, hatred, and criticism towards the defendant for allegedly insulting Islam.

Following the video's circulation, various netizens, including witnesses, reportedly felt disturbed and believed that the defendant's actions were disrespectful to Islam. Witness Syarif Hidayat Bin Syamsudin, among others, sought the opinion of Ulama KH. Khobir Asyari, who opined that the video trivialized the religion of Allah, violating the first principle and prompting the reporting of the defendant's actions to the South Sumatra Regional Police.

The comments section of the video further escalated tensions, resulting in mutual attacks between netizens and feelings of hatred and hostility. Some netizens expressed concern that the defendant, as a Muslim woman, posted content contradicting Islamic teachings, and their comments were met with annoyance by the defendant. The prosecution argues that the defendant's actions may influence the younger generation of Muslims to emulate prohibited behaviors for the sake of gaining popularity on social media. The case emphasizes the potential impact of digital content on religious sensitivities and highlights the societal implications of individuals compromising their religious principles for online fame.

The public prosecutor's indictment is as follows: The public prosecutor asserts that the defendant, LINA LUTFIAWATI *or* LILU *or* LINA MUKHERJEE BINTI ABDUL MUKHIT, is guilty of intentionally and unlawfully disseminating information with the intent to incite hatred

towards certain individuals and societal groups based on religion. This act is regulated and punishable under Article 45A paragraph (2) Jo Article 28 Paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 regarding Electronic Information and Transactions.

The defendant, LINA LUTFIAWATI *or* LILU *or* LINA MUKHERJEE BINTI ABDUL MUKHIT, is sentenced to 2 (TWO) years in prison, with a reduction for the time served in temporary detention. The court orders that the defendant remains in detention and imposes a fine of Rp. 250,000,000,- (two hundred and fifty million rupiah), with the provision that failure to pay the fine will result in a 3 (three) months imprisonment. Additionally, the court orders the defendant to pay court costs amounting to Rp. 5,000,- (five thousand rupiah).

The judge's decision is summarized as that LINA LUTFIAWATI *or* LILU *or* LINA MUKHERJEE BINTI ABDUL MUKHIT has been found guilty of intentionally and unlawfully disseminating information with the intent to incite hatred towards certain individuals and societal groups based on religion, as outlined in the Public Prosecutor's Single Indictment. The court sentences the defendant to a 2 (two)-year imprisonment term and imposes a fine of IDR 250,000,000 (two hundred and fifty million rupiah), with the provision that failure to pay the fine will result in a 3 (three)-month imprisonment. The court further determines that the period of arrest and detention already served by the defendant shall be fully deducted from the imposed sentence.

Examining decision No. 726/Pid.Sus/2023/PN Plg, an analysis of the trial facts reveals that the defendant, Lina Mukherjee, is in good physical and mental health. During the trial, Lina Mukherjee explicitly affirmed that she is the individual featured in the video depicting the consumption of pork. In criminal law, the fundamental principle of "there is no crime without fault" or "geen straf zonder schuld" holds significance, emphasizing that punishment is only warranted when a culpable action has occurred. This principle, inherently tied to criminal liability, asserts that individuals cannot be penalized in the absence of wrongdoing.

Based on decision No.726/Pid.Sus/2023/PN Plg, that the defendant committed its religious blasphemy on a purpose. This is because the defendant Lina Mukherjee wanted the criminal act to occur, then the defendant Lina Mukherjee also knew that the actions she committed had consequences that she had to bear. It was proved by her statement, the defendant Lina Mukherjee in the video said that she had violated the pillars of faith in Islam. As previously explained, there is no crime without fault, so in this case the defendant Lina Mukherjee is guilty and fulfils the elements of the crime of religious blasphemy contained in article 45A paragraph (2)

jo. Article 28 paragraph (2) Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. Based on decision No.726/Pid.Sus/2023/PN Plg, there was no reason to forgive the defendant Lina Mukherjee, because in this case the defendant Lina Mukherjee could be asked for her criminally responsible because there was no indication of a mental disorder in the defendant. Then also the defendant was not in a condition of force that was beyond the limits, because the defendant purely admitted the crime because of the defendant's own will.

Based on the explanation outlined above, it can be concluded that the defendant Lina Mukherjee can be held criminally responsible for the crime she committed, namely committing the crime of religious blasphemy as formulated in article 45A paragraph (2) jo. Article 28 paragraph (2) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. As in this case, the defendant Line Mukherjee has fulfilled the elements of criminal responsibility which include the ability to take responsibility, the presence of fault, and the absence of fault. So that by fulfilling the elements of criminal responsibility, there is no longer any reason for the defendant Lina Mukherjee not to take responsibility for her actions.

Legal decisions pertaining to religious blasphemy cases hold substantial implications that resonate across multiple facets of society. These determinations wield a profound impact on the collective perception of justice within a community. The way in which courts interpret and apply laws regarding blasphemy sets precedents that define the parameters of permissible speech and establish the contours of legal culpability. The public's confidence in the fairness and impartiality of the legal system hinges significantly on how these cases are adjudicated, influencing the societal trust in the judiciary's ability to balance fundamental freedoms with the preservation of social harmony.²¹

Furthermore, these legal rulings possess direct ramifications for the realm of freedom of expression. Balancing the constitutional right to free speech with the imperative to protect religious sentiments navigates a precarious intersection. Legal decisions on blasphemy cases prompt debates about the boundaries of free expression, the legitimacy of criticism or satire, and the extent to which individuals may express opinions without encroaching upon religious beliefs. These determinations thus sculpt societal attitudes toward the scope and limits of free speech within diverse

²¹ Arief, Barda Nawawi. *Perbandingan Hukum Pidana*. (Jakarta: Rajawali Pers, 2011).

and pluralistic societies, fostering discourse about the fine line between freedom of expression and the respectful treatment of religious beliefs.

Moreover, the ripple effects extend to the oversight and governance of content disseminated across digital platforms. In the era of rapid information dissemination and global connectivity facilitated by online mediums, legal rulings on blasphemy intersect profoundly with the challenges of regulating content on digital platforms. These platforms serve as conduits for global communication and expression, yet they pose significant quandaries in moderating content that may be construed as blasphemous or offensive to religious convictions. Legal decisions function as guiding principles for these platforms, influencing their content moderation policies, practices, and ethical considerations, thereby spotlighting the equilibrium between safeguarding freedom of expression and responsibly supervising content in the digital realm.

Decisions in religious blasphemy cases reverberate through legal, social, and digital spheres, shaping public perceptions, influencing justice, and contributing to the ongoing discourse on freedom of expression and content governance. These rulings underscore the complex task of balancing constitutional rights, cultural sensitivities, and communal harmony within a rapidly evolving global context. A nuanced approach is imperative, one that respects the sanctity of religious beliefs while safeguarding free speech.²²²³

However, as evidenced in the Lina Mukherjee case, the judge's decision was notably influenced by significant public pressure arising from displeasure with the video's distribution, perceived as blasphemous. In religious blasphemy cases, where the masses are integral, their influence is considerable, often seen as representative of the truth. The masses play a pivotal role in shaping the judge's decision, with the judge facing the choice of following personal conscience or yielding to public demands—an inclination observed in this instance.

Given the swift technological advancements and the rapid evolution of social media, judges face a formidable challenge to resist the influence of

²² See Favret-Saada, Jeanne. "An anthropology of religious polemics: The case of blasphemy affairs." *HAU: Journal of Ethnographic Theory* 6, no. 1 (2016): 29-45; Huda, M. Syamsul. "The local construction of religious blasphemy in East Java." *Jiis-Journal of Indonesian Islam* 13, no. 1 (2019): 69-114; Temperman, Jeroen. "Blasphemy, defamation of religions and human rights law." *Netherlands Quarterly of Human Rights* 26, no. 4 (2008): 517-545.

²³ See also Akhmad, Muhammad Zaidan Syafiqy, and Ridwan Arifin. "Baiq Nuril Case and Discourse on Freedom of Expression." *Indonesia Media Law Review* 1, no. 2 (2022): 123-144; Puspaningrum, Febrianti Dwi, and Christopher Theovino Adhi. "A Comparative Study of Blasphemy Law in Indonesia and America: Religious and Legal Aspects." *Contemporary Issues on Interfaith Law and Society* 2, no. 1 (2023): 1-34.

public opinion. From a legal standpoint, mass influence is deemed normal, as societal alignment is paramount in legal matters; laws that do not resonate with society risk becoming obsolete. The influence of the masses becomes particularly challenging to counteract in the current digital landscape.²⁴ Moreover, the detailed provisions on religious blasphemy in the National Criminal Code aim to mitigate differing interpretations. This precaution is essential to prevent variations in understanding among legal experts. The clarity in the legal framework seeks to ensure uniformity in approach and understanding, acknowledging the significance of avoiding discrepancies that may arise among legal professionals.

Conclusion

In conclusion, the analysis of the judge's decision in the case of religious blasphemy on social media underscores the intricate and multifaceted nature of the legal landscape surrounding such incidents. The verdict reflects the challenging task of striking a balance between protecting freedom of expression and safeguarding religious sentiments, illustrating the inherent jurisprudential complexities in these proceedings. This decision stands as a pivotal precedent, shaping the permissible boundaries of expression on digital platforms concerning religious beliefs. Beyond its legal implications, the judge's ruling has far-reaching effects on societal attitudes and perceptions regarding free speech and the respectful treatment of religious beliefs in the digital age. It highlights the imperative for a nuanced and thoughtful approach, emphasizing the ongoing need for dialogue, legal clarity, and ethical considerations to navigate the intricacies of religious blasphemy cases on social media.

While the author aligns with the Panel of Judges' decision to impose a prison sentence and a fine on the defendant Lina Mukherjee, acknowledging the fulfillment of criminal elements, legal facts, and the severity of the actions, there exists a divergence of opinion regarding the leniency of the imposed penalty. The prison sentence of two years and a fine of Rp. 250,000,000.00, replaceable by a three-month imprisonment if the fine is unmet, is perceived as relatively light. This raises concerns about the potential recurrence of similar criminal acts in society, given the limited ability of Indonesian society to filter information in the digital realm. The

²⁴ See Hamdani, Fathul, Ana Fauzia, Rezka Mardhiyana, and Lalu Kusuma. "Media Vs. Law: Which Acts As a Tool of Social Engineering?". *Indonesia Media Law Review* 2, no. 2 (2023).

hope is that a more substantial prison sentence exceeding two years could serve as a deterrent, preventing the repetition of such actions.

It is acknowledged that the punishment meted out by the Panel of Judges is not solely retaliatory but is seen as a means of justification, education, prevention, and eradication. The judges, before delivering their decision, meticulously considered factors that aggravated and mitigated the defendant's circumstances, resulting in a decision that is deemed fair, beneficial, and legally binding.

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