




The Crime of Blasphemy in Indonesia: A Comparative Study

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Abstract

Introduction: Religion Blasphemy has occasionally been committed in numerous media. Blasphemy instances that started out in print media have since proliferated in the virtual world thanks to numerous features and platforms. Because freedom of religion is guaranteed and protected by the Indonesian Constitution, anyone who blasphemes against a particular faith may face severe legal consequences.

Purposes of the Research: This study aims at analyzing the offense of blasphemy against religion in the perspective of Islamic law and Indonesian law.

Methods of the Research: This type of research is legalistic, doctrinal or normative. The approach used in normative or legalistic research include a concept approach, a statute approach, historical approach, case approach, and comparative approach. However, this study only uses comparative approach since it analyzes of regarding blasphemous crimes in perspective Indonesian and Islamic criminal laws.

Results of the Research: The government enacted various laws and rules to maintain religious harmony. However, in terms of law enforcement, are the provisions most frequently used to charge those who commit religious blasphemy. Whereas from the standpoint of Islamic law, blasphemy can take the form of defiling (*tadnis*), insulting (*istihza*), ridiculing (*syatama*), insulting (*saba*), cursing (*taq*), and challenging Islamic principles as well as engaging in actions that diverge from Islamic teachings (*bid'ah*). The Qur'an and the Hadith contain prohibitions against blasphemous acts, but the means of punishment are found in the nomenclature of *Ijtihad* of the Ulama, which was later incorporated into the laws of many Islamic nations. As a result, the formulation of punishments for blasphemers varies greatly.

1. INTRODUCTION

Freedom to practice one's religion freely is a Human Right (HAM) that cannot be taken away by anyone or in any situation.¹ The state respects and ensures that all followers of religions in Indonesia are free to follow and put into practice the teachings of their individual faiths. Article 22 paragraph (2) of Law No. 39 of 1999 concerning Human Rights and Article 29 paragraph (2) of the 1945 Constitution both state that the state guarantees each citizen the freedom to follow and practice any religion they choose, as well as to

¹ Al Makin, "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. DOI: <https://doi.org/10.1080/13639811.2017.1380279>.

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conduct their worship in accordance with their respective religious teachings. This clause defends the idea of non-derogable rights, according to which no one, at any time, can restrict someone's ability to practice their religion.²

Every nation adopts laws to protect religious freedom and impose limitations on how people can practice their religion.³ If it is not regulated in such a way, freedom of religion for a particular person or group can eliminate the freedom of others in religion.⁴ The state is required under Indonesian law to maintain religious peace because the country is both atheist and religious, protecting all followers of a specific religion equally and without regard to the number of followers.⁵

The fact that religion is legalized in the Indonesian constitution alone demonstrates the significance of religion in this nation. The Law No. 39 of 1999 Concerning Human Rights declares in Article 4 and Article 22 paragraph 1-2 that religion is a right that cannot be abolished or removed under any circumstances and by any party. Yet, the state does not have the power to dictate or compel people to follow a specific religion or set of beliefs; rather, it grants them the right to do so.⁶

Religious blasphemy still happens often in Indonesia, despite the country's numerous laws and regulations guaranteeing freedom of religion. Even religious blasphemy has been committed in the past in a variety of ways.⁷ Blasphemy was frequently committed by the Indonesian Communist Party (PKI) during the reign of the Old Order government through a number of its affiliated groups, including the People's Youth and the People's Art Institute (Lekra), in the form of diverse folk art performances.⁸ In 1968, the Literary Magazine published a short piece titled "The Sky is Becoming Cloudy" during the New Order administration.⁹ Then there were the blasphemy cases by HB Jassin in 1968 and Arswendo Atmowilonto in 1990.¹⁰ Following the implementation of the rolling reforms, blasphemous crimes continued to be committed, as seen in the Lia Aminudin or Lia Eden cases from 2006, the Tajul Muluk case from 2012, the Fajar Nusantara Movement (Gafatar) case, and other cases.¹¹

Religious blasphemy is actively practiced in great numbers in the virtual world in Indonesia, in addition to being committed manually through writing or lectures. Several features and platforms on social media and in the mass media publish content in the form

² Barda Nawawi Arief, *Delik Agama Dan Penghinaan Tuhan (Blasphemy) Di Indonesia Dan Perbandingan Berbagai Negara* (Semarang: Penerbit UNDIP, 2007).

³ Andrew B. Van Winkle, "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): 363-70.

⁴ Bani Syarif Maula, "Religious Freedom In Indonesia Between Upholding Constitutional Provisions and Complying with Social Considerations," *Journal Of Indonesian Islam* 7, no. 2 (2013): 383-403. DOI: 10.15642/JIIS.2013.7.2.383-403.

⁵ Moh. Mahfud MD, "Politik Hukum Dalam Sistem Hukum Nasional," *Varia Peradilan XXV* (2010): 2.

⁶ Heiner Bielefeldt, "Freedom of Religion or Belief: A Human Right under Pressure," *Oxford Journal of Law and Religion* 1, no. 1 (2012): 15-35.

⁷ Deliar Noer, *Gerakan Modern Islam Di Indonesia 1900-1942* (Jakarta: LP3ES, 1980).

⁸ Abdul Muin, *Benturan NU-PKI 1948-1965* (Jakarta: PB.NU Press, 2014).

⁹ Muktiomo, "Mengkaji Politik Hukum Kebebasan Beragama Dan Berkeyakinan Di Indonesia," *Jurnal Dinamika Hukum* 12, no. 2 (2012): 344-57. DOI: <http://dx.doi.org/10.20884/1.jdh.2012.12.2.59>.

¹⁰ Pultoni, *Panduan Pemantauan Tindak Pidana Penodaan Agama Dan Ujaran Kebencian Atas Nama Agama* (Jakarta: The Indonesian Legal Resource Center, 2012).

¹¹ Didi Hilman, "Tindak Pidana Agama Menurut Perspektif Hukum Islam, Hukum Positif Dan Hak Asasi Manusia," *MIZAN: Journal of Islamic Law* 4, no. 1 (2020): 31-46.

of writing, videos, photographs, and other media that contains elements of hatred, defamation, and insult to particular religions. Religious blasphemy typically takes place in Indonesia during political events, such as the presidential election in 2004 or the DKI gubernatorial election in 2016.¹² According to Marzena Romanowska, certain groups or nations have historically utilized religious concerns as a political instrument to further their own objectives.¹³

The case of former DKI Jakarta Governor Basuki Tjahaja Purnama is one of the cases that has drawn a lot of attention from the general public (Ahok). Ahok insulted Islam while on a working trip to Pramuka Island in the Thousand Islands by clumsily reading and interpreting Surah Al Maidah Verse 51 of the Qur'an.¹⁴ The Buni Yani account posted Ahok's speech to the Facebook social network on October 16, 2016, and it was shared there.¹⁵ In addition, a comparable incident happened in Bali when Donald Ignatius Soeyanto Baria purposefully disparaged Kyai and Ulama on social media.¹⁶ With equal fervor, M. Kace spread dozens of films through his TikTok and YouTube accounts that were deemed to include elements of hatred, insult, or blasphemy against Islam. This was done through the TikTok and YouTube platforms.¹⁷ Then, the case of comics Tretan Muslim and Coki Pardede who are members of the Indonesian Funny Assembly or MLI (Majelis Lucu Indonesia) group. The two comics committed acts of blasphemy in a vlog entitled "Cooking Pork Dates."¹⁸

Every year, more instances of religious blasphemy are reported.¹⁹ There were 19 blasphemy cases between 2004 and 2008, with the biggest number (7 cases) happening in that year. Blasphemy cases climbed once more in 2010. At that time, at least ten cases were reported. Blasphemy cases climbed by 10 cases in 2012 as well. The year 2016 saw the most number of blasphemy cases during Jokowi's rule. In this time, 14 cases happened. In Indonesia, there were 38 incidents of blasphemy against religion in 2020, according to the general chairman of the Legal Aid Foundation (YLBHI). Asfina notes a recent development: Due to their usage of the social media platform TikTok, which is situated in the United States, the majority of those who commit acts of religious blasphemy are young people under the age of 18.²⁰

¹² Irwan Akbar, "Dinamika Kasus Penistaan Agama Di Indonesia (Polemik Pemaknaan Ayat-Ayat Penistaan Dan Undang-Undang Penodaan Agama)," *QOF: Jurnal Studi Al-Qur'an Dan Tafsir* 3, no. 1 (2019): 89-105.

¹³ Sylvia Tamale, "Exploring The Contours Of African Sexualities: Religion, Law And Power," *African Human Rights Law Journal* 14, no. 1 (2012): 150-77.

¹⁴ Muhammad Hatta, "Kejahatan Penistaan Agama Dan Konsekuensi Hukumnya," *Al' Adl: Jurnal Hukum* 13, no. 2 (2021): 342-68.

¹⁵ Ronald, "Ahok: Pidato Saya Baru Jadi Masalah Setelah Diposting Buni Yani," www.detik.com, 2023, <https://news.detik.com/berita/d-3482873/ahok-pidato-saya-baru-jadi-masalah-setelah-diposting-buni-yani>.

¹⁶ Kresna Adi Prasetyo, "Analisis Hukum Pidana Mengenai Tindak Pidana Penistaan Agama Di Indonesia," *Gorontalo Law Review* 2, no. 1 (2019): 3.

¹⁷ Mei Rahmawati, "Membedah Kasus Penistaan Agama Oleh Sang Murtad Kace, Vol 9, No 1 (2022), 24-36," *Ar-Raniry: International Journal of Islamic Studies* 9, no. 1 (2022): 24-36.

¹⁸ Redaksi BBC News Indonesia, "Vlog Masak Babi Kurma: Mencari Batas Antara Lelucon Dan Penistaan Agama," www.bbc.com, 2018, <https://www.bbc.com/indonesia/trensosial-46040537>.

¹⁹ Akbar, "Dinamika Kasus Penistaan Agama Di Indonesia (Polemik Pemaknaan Ayat-Ayat Penistaan Dan Undang-Undang Penodaan Agama),"

²⁰ Yulida Medistiara, "YLBHI Catat 38 Kasus Penodaan Agama Hingga Mei, Ada Yang Jerat ABG," www.detik.com, 2020, <https://news.detik.com/berita/d-5141781/yldbhi-catat-38-kasus-penodaan-agama-hingga-mei-ada-yang-jerat-abg>.

In order to preserve religious harmony and tolerance in Indonesia, the government has issued a number of laws and regulations to control and discipline followers of specific religions in carrying out their worship and beliefs in order to prevent friction between religions that could result in anarchist actions by destroying places of worship, hurting, or killing followers. As a result, both Indonesian law and Islamic law will be used to describe the regulation on the prohibition of religious blasphemy in this article.

2. METHOD

This research is normative, doctrinal, or juridical. Normative research, according to Yaqin, strives to locate, clarify, evaluate, analyze, and present facts, principles, concepts, theories, and specific laws in a systematic fashion in order to discover new knowledge and ideas that can be offered as a change or renewal.²¹ In this study, blasphemy from the perspectives of Islamic criminal law and Indonesian criminal law, all documents, references, facts, theories, doctrines, and laws will be explored. Comparative law is the method employed in this study. According to Watson, a comparative approach is a research done to determine how a country's legal systems relate to one another or to compare other legal systems.²² In order to compare Indonesian law and Islamic law regarding the punishment of blasphemy crimes, a comparative law approach is used.

3. RESULTS AND DISCUSSION

3.1 Definition and Forms of Blasphemous Deeds

Blasphemy is derived etymologically from the word insult, which implies base or contemptible. When the word insult is used in relation to religion, it can be taken to signify an act of insulting, belittling, and tarnishing religion, deeming something low and beginning with hatred in one's heart towards a particular religion.²³ Blasphemy, humiliation, and harassment are all concepts that have similar connotations in Arabic but are represented by many distinct words such as degrading (اهانة), hurting (ايناء), ridiculing (استخفاف) or denouncing (استهزاء), and humiliating (سب).²⁴ Hence, from the perspective of Islamic law, blasphemy is defined as an act that desecrates (*tadnis*), insults (*istihza*), mocks (*syatama*), insults (*saba*), curses (*taq*), and attacks the Islamic creed as well as deviates from the requirements of Islamic teachings (*bid'ah*).²⁵

Denouncing or insulting the Qur'an and the Prophet's hadith, rejecting or ignoring what is written in them, and disobeying the regulations written in the Koran and hadith are all considered blasphemy against the Islamic religion.²⁶ In Islam, insulting or desecrating God, the prophets, the angels, or the Koran can be considered humbling or desecrating. He becomes an apostate (*riddah*) if he intentionally defames religion, and the sanctions consider the repercussions and impact of this apostasy.²⁷

²¹ A. Yaqin, 'Legal Research and Writting', *Malayan Law Journal SDN BHD*, 1 (2018), 10.

²² I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Prenanda Media Group, 2017).

²³ Rahmawati, "Membedah Kasus Penistaan Agama Oleh Sang Murtad Kace, Vol 9, No 1 (2022), 24-36."

²⁴ Hatta, "Kejahatan Penistaan Agama Dan Konsekuensi Hukumnya."

²⁵ Hilman, "Tindak Pidana Agama Menurut Perspektif Hukum Islam, Hukum Positif Dan Hak Asasi Manusia."

²⁶ Medistiara, "YLBHI Catat 38 Kasus Penodaan Agama Hingga Mei, Ada Yang Jerat ABG."

²⁷ Afriandi MS, "Criminal Law Analysis of Religious Blasphemy Violation in Aceh," *Dejure: Jurnal Penelitian Hukum* 17, no. 1 (2017): 1-12.

Blasphemy of religion in the Qur'an can be seen in the Word of Allah SWT which means: "And if they break their oaths after their treaty and defame your religion, then fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease." (QS. At Taubah, ayat 12). The dignitaries of the polytheists who breached their commitments are Abi Sufyan Bin Harb, Haris bin Hisham, Sahil Bin Amr, and Ikrimah bin Abi Jahal, and they are discussed in this passage.²⁸ In this verse it is explained that non-Muslims have asked for protection in the sense of mu'ahad infidels, so they are the same as Muslims. In Islamic law they will get protection and will live peacefully in an Islamic country, their security guaranteed by the Islamic government. Muslims are not allowed to harm let alone fight non-Muslims who have been protected. However, when they break their promise, then insult the religion of Islam, then it is permissible to kill them, because at that time the agreement will be lost, and they will no longer get protection, and they will become a disease in the body of Islam. The conclusion from this verse is that insulting Islam is a very big thing and gets the maximum punishment.

The act of disparaging, humiliating, harassing, mentioning, or practicing particular religious doctrines that are not in line with the principles of that religion is known as blasphemy of religion or godslastering in the form of injuring, damaging, defaming the reputation / good name of God²⁹. A matter or conduct that disrupts sacred teachings in one religion is insulting religious doctrine. Religious blasphemy not only affects devotees of a particular religion but also has a significant social impact on all religions in a nation.³⁰

There are various forms of blasphemy, including^{31:32} 1) Verbal Blasphemy: This type of verbal blasphemy is often found in print, electronic and social media. This type of blasphemy can take the form of making fun of, satirizing, accusing, ridiculing, insulting, and inappropriate jokes. One example of verbal blasphemy occurred on social media in 2016. A 23-year-old young man, a resident of Benelan Lor, Kabat District, Banyuwangi Regency wrote a status on social media that was considered insulting Islam and the Prophet Muhammad. The reason the perpetrator wrote this status was because he felt hurt when he saw the news of the raid on traders conducted by the Satpol PP in the Serang Banten area. This status sparked criticism from the community and Islamic organizations in Banyuwangi. The perpetrator was secured by the Banyuwangi Police by being charged with Article 45 in conjunction with Article 27, as well as Article 28 of Law No. 11 of 2008 concerning information and electronic transactions. 2) Non-verbal Blasphemy: Religious blasphemy that is committed without using either spoken or written words is one example of this. This kind of blasphemy involves behaviors, conduct, or opinions, such as openly burning holy books, flushing holy texts down the toilet, and other blasphemous deeds. Moreover, this kind of blasphemy can be expressed through body language, especially when it mocks or denies certain religious doctrines or symbols. Social media is one place where nonverbal blasphemy happens. In Pulau Garam, in the Banyuwangi District of the Sampang Regency of Madura, a number of young people from one of the well-known motorcycle gangs are said to have participated in some mocking prayer gestures and indecent acts.

²⁸ Subhi As-Shalih, *Membahas Ilmu-Ilmu Al-Qur'an* (Jakarta: Pustaka Firdaus, 1999).

²⁹ Melissa A. Crouch, "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law," *Asian Journal of Comparative Law* 7, no. 1 (2012): 1-45.

³⁰ Jalaluddin, *Phisicology Agama* (Jakarta: Siantar Press, 2000).

³¹ Arief, *Delik Agama Dan Penghinaan Tuhan (Blasphemy) Di Indonesia Dan Perbandingan Berbagai Negara*.

³² Amir Syarifuddin, *Ushul Fiqh*, 2nd ed. (Jakarta: Kencana Prenada Media Group, 2008).

The four categories of this crime of insulting religion are as follows: (1) insulting a specific religion practiced in Indonesia (Article 156a); (2) insulting religious officials performing their duties (Article 177 point 1); (3) insults regarding objects used for religious purposes (Article 177 point 2); and (4) making noise near places of worship that are being used for worship (Article 503). Yet, Article 156a of the Penal Code is the section that has frequently been referred to as the blasphemy article. It should be noted that Presidential Decree No. 1 of 1965 concerning Prevention of Misuse and/or Blasphemy of Religion (Presidential Decree No. 1/1965) was the actual source of Article 156a of the Criminal Code, not the *Wetboek van Strafrecht* (WvS) of the Netherlands. In Article 4 of Presidential Decree No. 1/1965, it is stated that "whoever deliberately expresses feelings or commits an act in public that: (a) is primarily hostile to, abuses, or desecrates a religion practiced in Indonesia; or (b) with the intention that people do not adhere to any religion, which is based on the belief in the One and Only God, shall be punished by imprisonment for a maximum of five years."

Anyone who publicly shows feelings of enmity, hatred, or contempt towards one or more groups of the Indonesian people is subject to a maximum penalty of four years in prison or a maximum fine of 4,500 rupiahs, according to the Circular of the Chief of Police SE/X/06/2015. In this article and the ones that follow, the words "group" refer to every segment of the Indonesian population that differs from one or more other segments due to race, nation of origin, religion, location, ancestry, nationality, or position as defined by constitutional law. These practices and interpretations depart from that religion.

According to the various viewpoints discussed above, blasphemy or blasphemy of religion is an act that includes elements of humiliation, reproach, or defamation of a religion and, in essence, expresses hatred or dislike verbally or graphically on purpose in a public place by alluding to various aspects. With the advancement of information and communication technology, blasphemous acts can now be committed online, and those responsible will face legal repercussions under Law No. 11 of 2008 Concerning Electronic Transaction Information.

3.2 Blasphemy Actions from a Legal Perspective in Indonesia

The velocity at which news is disseminated to the public has accelerated due to the shift from the manual to the digital or "internetized" eras. Via a variety of mass media, social media, and other electronic media, news can quickly spread throughout Indonesia. Because it has damaged religious concord, news that contains elements of hatred, antagonism, and prejudice can arouse and ignite the emotions of citizens. In a pluralistic nation like Indonesia, this topic has always been contentious. On the one hand, the diversity of religions, nationalities, and races benefits the advancement of a country's growth. The pluralism, meanwhile, has the potential to lead to horizontal conflict.

One of the sensitive issues that causes horizontal conflict is religious diversity. there are various cases related to the issue of religious non-tolerance that has rocked the world of Indonesian law, for example the cases of Cikesik, Ambon, Kupang, Poso and other cases³³. Given the severity of the harm caused by the aforementioned examples, the government must take proactive measures seriously. If intolerance is not addressed, it will lead to numerous horizontal confrontations and result in the deaths of several helpless children.

³³ Tim, *Pengkajian Hukum Tentang Perlindungan Hukum Bagi Upaya Menjamin Kerukunan Umat Beragama* (Jakarta: Kementerian Hukum Dan Hak Asasi Manusia Badan Pembinaan Hukum Nasional, 2011).

Recently, a report from the Indonesian Christian Student Movement (GMKI) accusing renowned professor Ustaz Abdul Somad of misconduct caught us off guard (Ustaz UAS). Via a number of social organizations, like GMKI and the Meo Brigade in East Nusa Tenggara, even the Christian religious community has been active in reporting Ustaz UAS.³⁴ In a Muslim-only recitation that was held in a closed mosque, he was accused of demeaning Christianity and harming relations between religious groups. Even if this information may not be accurate and his acts may not necessarily be illegal, the controversy has immediately gained attention from the general public and generated debate among religious groups over its merits.

In addition, the case involving DKI Governor Basuki Cahya Purnama's blasphemy once startled the Indonesian populace (Governor Ahok). This case started during Ahok's official visit while serving as the Governor of DKI Jakarta and a candidate for the Regional Head Election to fill the position for the years 2018 to 2014. Ahok gave a speech when they were there on business. The passage from his remarks is "*...So, you wouldn't trust people, would you? You know you can't vote for me in your small heart, don't you? You were misled using Al-Maidah 51 and a variety of other tactics; it's your right to feel that way. However, since this is your personal decision and this program is currently airing, you don't have to feel bad if you feel that you can't vote for Ahok because you dislike him but can't because you feel that way in your heart. If you're not feeling well, you owe everyone a debt of gratitude because if you do, you'll die slowly or suffer a stroke.*" (Judge's decision number: 1537/Pid.B/2016/PN.JKT.UTRP North Jakarta District Court).

Then, this claim was widely disseminated online thanks to Buni Yani's upload on one of the social media sites under the heading "Blasphemy Against Religion?" Ahok was subsequently reported by the Indonesian Ulema Council (MUI) of South Sumatra and the Secretary General of the Islamic Defenders Front (FPI) for allegedly breaking Law No. 11 of 2008 about Electronic Transaction Information, Article 28 Paragraph 2, and Article 156a of the Penal Code.³⁵

Reports or accusations of someone committing blasphemy or blasphemy have become a trend in Indonesia. Almost all reports regarding the issue of religious diversity are associated with blasphemy or blasphemy against religion. Legally, there is no definite definition of what constitutes "blasphemy of a religion" in court decisions. In fact, in Indonesian criminal law there are no special provisions governing criminal acts of blasphemy.³⁶ However, practically speaking, there are a number of laws that are applied to catch blasphemy offenders, such as Criminal Code Article 156 letter a.

Also, the blasphemy article applies to a variety of behaviors that are prohibited by Law No. 1/PNPS/1965 Concerning the Prevention of Misuse and/or Blasphemy of Religion as acts that are deemed to be demeaning or disrespectful to particular religions. The limitations on what behaviors can and cannot be punished under this provision are only found in the clarification of Article 4 of Law No. 1/PNPS/1965, which states that "the offense referred to here is solely aimed at the intention to antagonize or insult." This law does not provide a clear definition or definition regarding what actions can be called "blasphemy of a religion." This justification explains the intention behind blaspheming religion rather than the actual

³⁴ Redaksi, "Ustaz Abdul Somad Dilaporkan Ke Polda NTT," www.cnnindonesia.com, 2019.

³⁵ Isyana Artharini, "Pelaporan Ahok Atas Tuduhan Menghina Agama Dan Pemilihan," www.bbc.com, 2016.

³⁶ Rina Septiani, "Tindak Pidana Penistaan Agama Perspektif Hukum Islam Dan Hukum Positif Indonesia," *Syariah: Jurnal Ilmu Hukum Dan Pemikiran* 17, no. 1 (2017): 28.

acts of doing so. The understanding of the necessary aim as stated above is further supported by this explanation. As "in essence" is now understood to mean "merely," it is evident that an act must be specifically intended to offend or incite enmity.

The statute above emphasizes that believers in religions that have been tarnished must get legal protection, as stated in numerous of the articles below:

a. Article 1: "Everyone is prohibited from knowingly publicly telling, advocating or seeking public support, to interpret a religion adhered to in Indonesia or carry out religious activities that resemble those activities, which interpretations and activities deviate from the principal teachings of that religion."

b. Article 2 (paragraph 1): "Anyone who breaches the provisions referred to in Article 1 is given a harsh order and warning to discontinue his acts in a joint decision between the Minister of Religion, the Minister/ Attorney General, and the Minister of Home Affairs,". Article 2 clause (2) "The President of the Republic of Indonesia may dissolve the organization if the violation referred to in paragraph (1) is committed by an organization or a belief system."

c. Article 3: "If, after the action taken by the Minister of Religion together with the Minister/ Attorney General and the Minister of Home Affairs or the President of the Republic of Indonesia pursuant to the provisions in Article 2 against a person, organization, or belief system, they still continue to violate the provisions in Article 1, then the person, adherent, member and/or management member of the organization concerned from that sect shall be punished with imprisonment for a period of maximum 5 years.

This law demonstrates that anyone who breaches and performs good works either individually or in groups is afforded legal protection for religious believers in Indonesia so that the act will be clear later on if it satisfies the requirements of the law. Although though the acts were not necessarily blasphemous of religion, they were considered criminal acts if they were repeated after a severe warning and if they incited enmity, fulfilling the requirements of Articles 3 and 4 of the statute. Essentially, Article 4 seeks to punish people who publicly express hostile, hating, or disparaging sentiments (or act in such a manner) toward others. A person may be charged with blasphemy against a particular religion based on these principles. This is due to the fact that it may endanger/ disturb public order as well as the peace and harmony of the religious community.

The preservation of the sanctity and purity of religion raises numerous legal concerns, so on October 20, 2009, Law No. 1/PNPS/1965 was sent to the Constitutional Court (MK) for review. The Constitutional Court determined from the Judicial Review that the rules of this statute are not unconstitutional in Decision Number 140/PUU-VII/2009. The 19145 Constitution's protection of the right to freedom of religion is not violated by the statute, according to the Constitutional Court's ruling. One argument against the law is that it was not created in accordance with the procedures and guidelines for creating statutory regulations. In order to diminish or even completely eradicate violence committed in the name of religion and blasphemy against religion, the Law on the Protection of Religion must be good and right. The Constitutional Court concluded that the Blasphemy Statute remained constitutional with a number of improvements even though it was thought to

have made a very thorough judgement. In addition, the Constitutional Court mandated that the government and the DPR amend a number of the current legal standards.³⁷

In the beginning, there were no formulations that could criminalize defamation or blasphemy of religion in all the schools of law adopted by countries around the world. It should be noted that the Dutch Wet Book van Straft Recht (WvS) itself does not specifically formulate criminal acts concerning religion. However, there is only the 1932 Gods-Lastering law, which is better known as religious offenses (Lex Donner). This law was inspired by a German law known as Strafgesetzbuch which formulated religious offenses in Article 166. It seems that the formulation of Article 166 Strafgesetzbuch became a model and was adopted by WvS Netherlands, which previously had no rules regarding religious offenses.³⁸ The laws and regulations stipulate that words, statements or actions that ridicule God, the Prophet and others are considered to blaspheme religion.

Likewise in Indonesia, at first arrangements regarding religious offenses did not exist in the Indonesian Criminal Code, but only provisions related to religious life, such as provisions in articles 175 of the Criminal Code, 176 of the Criminal Code and 177 of the Criminal Code. However, in the development of law in Indonesia, there are many legal incidents that tarnish, harass or defame certain religions, causing uproar, riots and clashes between adherents of religions. Finally, the crime of blasphemy or blasphemy against religion is regulated in Article 156 of the Criminal Code and Article 156 letter (a) of the Criminal Code.

3.3 Religious Blasphemy from the Islamic Law Perspective

According to Islamic law, it is highly forbidden to harass other religions' symbols, doctrines, or figures in order to disparage them. This is based on the provisions of Allah SWT's word, which state: "And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge. Thus We have made pleasing to every community their deeds. Then to their Lord is their return, and He will inform them about what they used to do." (Q.S. al-An'am (6):108). According to Al-Razi, that verse serves as both a warning and an invitation not to engage in foolish acts of teaching by disparaging other religions.³⁹ Zuhaili believes that because it causes more harm, the Quran of Allah SWT truly forbids harassing those who practice other religions.⁴⁰ Basically, it's against the law to offend someone's religion because it can spark a riot.

Basically, it's against the law to offend someone's religion because it can spark a riot. Khalid Saifullah Khan asserts that the prohibitions against blasphemy in the Qur'an do not pertain to punishment but rather to Allah SWT's attitude of support for the Prophet Muhammad SAW against his detractors.⁴¹ Afriandi expressed a similar viewpoint, claiming that even under Islamic law, blasphemy is not criminalized because it is not stated in the Koran or the Hadith. Only the scholars' *Ijtihad* instruments which are later absorbed into the laws of numerous Islamic nations contain this sin. The formulation of punishments for those who commit defamation is quite varied in Islamic law, ranging from the least severe

³⁷ Zahratul Idami, "Law Protection By A State For Religion Believers In Indonesia And Its Comparison With Islamic Laws," *Kanun: Jurnal Ilmu Hukum* 18, no. 1 (2016): 69-92.

³⁸ Ismuhadi, *Analisa Pidana Hukum Dan Kriminologi Terhadap Tindak Pidana Di Indonesia* (Medan: www.repository.usu.ac.id/bitstream/123456789/12134/1/09E02103.pdf, 2019).

³⁹ Fakhr Al-Razi, *Mafatih Al-Ghaib*, ed. Dar Al-Fikr, 7th ed. (Beirut, 1994).

⁴⁰ Wahbah Zuhaili, *Al-Tafsir Al-Munir Li Al-Zuhaili*, 7th ed. (Damaskus: Dar al-Fikr al-Mu'asir, 1418).

⁴¹ Naeem Shakir, "Islamic Shariah and Blasphemy Laws in Pakistan," *Journal Of Islamic Law* 4, no. 1 (2015): 307-17.

punishments, such as imprisonment, to the most severe punishments, such as life in prison and the death sentence.⁴²

The reference of the scholars' in formulating the offense of blasphemy is motivated by a society that is homogeneous in religion.⁴³ Make reference to a person by the name of Maulana Ahmad Saeed Kazmi who contends that the death penalty is the only appropriate response to acts of blasphemy against the Prophet Muhammad.⁴⁴ In support of his claim that punishing Islamic blasphemers is legitimate, he also cites Q.S. at-Taubah (9): 65–66, Q.S. at-Taubah (9): 65–66, Q.S. al-Ahzab (33): 57, and Q.S. al-Mujadilah (58): 22, 8. Abir Usman pointed out that the passage Q.S. al-Maidah (5): 73, 19 is frequently cited as a justification for blasphemy, followed by Q.S. al-Maidah (5): 86, 20, which is cited as justification for persecuting the Ahmadiyya sect.⁴⁵

Any criticism of Islam, in Imam ibn Kathir's opinion, constitutes blasphemy.⁴⁶ Al-Qurthubi, meantime, asserted that the majority of Ulama concur that any party with any belief who uses offensive phrases (blasphemes, insults) on the persona of Muhammad SAW. shall be hanged based on the verse.⁴⁷ According to al-Baghawi, the verse is loudly interpreted as the death penalty as an official retribution for those who offend Islam.⁴⁸ According to Ibn Taimiyah, this is an example of Islamic steadfastness to uphold the religion's authority and the stability of the Medina Charter agreement that was reached at the time with Jews and Christians.⁴⁹

Ibn Taimiyah, who categorized *riddah* (apostasy) into two categories, according to Muhammad Dahri, said: "*Riddah*" is of two kinds: *riddah mujarradah* (pure), and *riddah mughalladzah* (heavy class), which expressly calls for the death punishment. Because of his foolishness and lack of faith, if his *riddah* is *mujarradah*, he is condemned to death. But, if he does not repent, he is instead placed in *ta'zir* rather than being executed. The punishment is death if the apostasy is done within a group or sect with the goal to deride and destroy religion, and if the offender does not convert to Islam or repent. However, not all blasphemous acts render the offender an apostate subject to the death penalty; instead, you must consider the offense's consequences, the offender(s), and the reason(s) for the apostasy. Hence, blasphemy that is unintentional and not intended to tarnish is classified as apostasy *muraja'ah* or *jahily*, whereas an act of defamation of religion that is purposely committed with the intent to express open hostility is included in apostasy *mughallazhah*, or apostasy *harby* (against).⁵⁰

Al-Qadhi 'iyadh holds the opinion that the majority of scholars and fatwa-expert priests, going back to the generation of friends, agree that those who insult the Prophet SAW

⁴² Hatta, "Kejahatan Penistaan Agama Dan Konsekuensi Hukumnya."

⁴³ Michael Bohlander, "There Is No Compulsion in Religion: Freedom of Religion, Responsibility to Protect (R2P) and Crimes Against Humanity at the Example of the Islamic Blasphemy Laws of Pakistan," *J. Islamic St. Prac. Int'ernational Law* 8 (2012): 36–40.

⁴⁴ Muhammad Ismail Qureshy, *Muhammad-The Messenger of God and the Law of Blasphemy in Islam and the West* (Lahore: Nuqoosh, 2008).

⁴⁵ Abir Usman, "Pakistan's Blasphemy Laws as a Totem," *Journal of Islamic Law* 5, no. 68 (2022): 72–73.

⁴⁶ Isma'il bin 'Umar Katir, *Tafsir Qur'an Al-'Azim*, 4th ed. (Madinah: Dar at-Taybah, 1999).

⁴⁷ Abu Abdullah bin Ahmad Al-Qurthubi, *Imam Al-Jam'i Li Ahkam Al-Qur'an* (Islamabad: International Islamic University, 2004).

⁴⁸ Imam Abu Muhammad al-Husain ibn Mas'ud Al-Baghawi, *Tafsir Ma'alim at-Tanzil*, 4th ed. (Multan: Idarah Talifat Ashrafiyyah, n.d.).

⁴⁹ Imam Taqi al-Din Ahmad Ibn Taimiyah, *Al-Sarim Al-Maslul 'ala Syatim Al-Rasul* (Lahore: Nuriyah Rizwiyah Publications, 2010).

⁵⁰ Ibn Taimiyah, *As-Sharim Al-Maslul 'ala Syatimi Ar-Rasul*, Juz I (Kaherah: Daar Ibn al-Jawaziy, 2016).

should be subject to the death penalty. Imam Malik, Imam al-Laits, Imam Ahmad bin Hanbal, Imam Ishaq bin Rahawih, and Imam as-Shafii all hold this viewpoint.⁵¹ "Anyone curses, ridicules, accuses, denigrates, labels with features that are not his nature, attaches things that are unsuitable to him, denounces him, the punishment is death," Kholil Ibn Ishaq al-Jundi said.⁵²"

Clerics in Indonesia hold a variety of opinions in reaction to the numerous instances of blasphemy against Islam in their country. Based on Q.S. at-Taubah: 9 and Q.S. at-Taubah: 66, scholars including Adi Hidayat, Khalid Basalamah, Oemar Mita, Zulkifli, Riziq Shihab, Syafiq Riza, Hanan Attaki, Abdul Shomad, and several other Ustadz believe that the punishment for those who mock Islam cannot be pardoned and may even result in death. These Indonesian intellectuals also drew inspiration from a number of traditional Islamic thinkers who shared the belief that the Koran set the standards for blasphemy punishment, including Ibn Taimiyyah, Ibn Kathir, al-Baghawi, and al-Qurtuby.⁵³

In light of the description above, it should be noted that the dynamics of religious diversity are always accompanied by issues, disagreements, and friction between followers of various religions, which can result in legal proceedings such as defamation or the humiliation of particular religions. Denigration or humiliation of specific religious doctrines is strictly forbidden under Indonesian law and Islamic law, and those who commit acts of religious blasphemy face harsh punishments. The sole purpose of doing this is to preserve religious harmony in Indonesia, which is highly pluralistic. All facets of the country must adopt the viewpoint that Indonesia's religious diversity is an unappreciable national asset. Hence, rather than religion itself, the community and the government must take an active role in preserving the integrity of religious plurality from all angles.

4. CONCLUSION

All the legal requirements preserve religious believers' right to practice their faith in accordance with their convictions, yet the law also places restrictions on freedom that harm, profane, and offend some religions. It is not only restricted in the framework of distribution through manual media like leaflets, letters, photos, and others, but also in the provisions for limits and bans against defamation or destruction of the sanctity of specific religions. The ITE Law regulates everything from the ban on disseminating news that contains material that disparages, mocks, or undermines the sacredness of particular religions through virtual media. The crime of blasphemy is defined by Islamic law as an act that desecrates (*tadnis*), insults (*istihza*), mocks (*syatama*), insults (*saba*), curses (*taq*), and denigrates (*saba*) Allah and His Messenger, the Holy Qur'an, as well as attacking Islamic beliefs and acting in a manner that departs from Islamic teachings (*bid'ah*). While the Qur'an and al-Hadith contain prohibitions against blasphemous acts, the means of punishment are found in the *ijtihad* of the ulama, which is then incorporated into the legal systems of many Islamic nations, resulting in a wide range of punishments for those who commit blasphemy. The formulation of punishments for those who commit defamation is quite varied in Islamic law, ranging from the least severe punishments, such as imprisonment, to the most severe punishments, such as life in prison or even the death penalty. All of these agreements are

⁵¹ Mustafa Dib Al-Bugha, *Fikih Islam Lengkap* (Jakarta: Media Dzikir, 2006).

⁵² Muhammad Dahri, "Tindak Pidana Penodaan Agama Di Indonesia: Tinjauan Pengaturan Perundang-Undangan Dan Konsep Hukum Islam," *At-Tafahum: Journal of Islamic Law* 1, no. 2 (2017): 57-71.

⁵³ Akbar, "Dinamika Kasus Penistaan Agama Di Indonesia (Polemik Pemaknaan Ayat-Ayat Penistaan Dan Undang-Undang Penodaan Agama), ."

made with the intention of upholding the sanctity and holiness of religion as well as promoting peace among religious groups. In order to prevent the human rights of the religious community from being tainted by the immoral actions of the followers of other religions, the government is merely establishing itself as the protector of public order. The goal of this restriction is to ensure that all religious adherents can practice their religion freely and without interference from outside parties or groups while also controlling, ensuring, and preserving each individual's right to practice their religion.

REFERENCES

Journal Article

- Akbar, Irwan. "Dinamika Kasus Penistaan Agama Di Indonesia (Polemik Pemaknaan Ayat-Ayat Penistaan Dan Undang-Undang Penodaan Agama)," *QOF: Jurnal Studi Al-Qur'an Dan Tafsir* 3, no. 1 (2019): 89-105.
- Bielefeldt, Heiner. "Freedom of Religion or Belief: A Human Right under Pressure." *Oxford Journal of Law and Religion* 1, no. 1 (2012): 15-35.
- Bohlander, Michael. "There Is No Compulsion in Religion: Freedom of Religion, Responsibility to Protect (R2P) and Crimes Against Humanity at the Example of the Islamic Blasphemy Laws of Pakistan." *J. Islamic St. Prac. Int'ernational Law* 8 (2012): 36-40.
- Crouch, Melissa A. "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law." *Asian Journal of Comparative Law* 7, no. 1 (2012): 1-45.
- Dahri, Muhammad. "Tindak Pidana Penodaan Agama Di Indonesia: Tinjauan Pengaturan Perundang-Undangan Dan Konsep Hukum Islam." *At-Tafahum: Journal of Islamic Law* 1, no. 2 (2017): 57-71.
- Hatta, Muhammad. "Kejahatan Penistaan Agama Dan Konsekuensi Hukumnya." *Al' Adl : Jurnal Hukum* 13, no. 2 (2021): 342-68.
- Hilman, Didi. "Tindak Pidana Agama Menurut Perspektif Hukum Islam, Hukum Positif Dan Hak Asasi Manusia." *MIZAN: Journal of Islamic Law* 4, no. 1 (2020): 31-46.
- Idami, Zahratul. "Law Protection By A State For Religion Believers In Indonesia And Its Comparison With Islamic Laws." *Kanun: Jurnal Ilmu Hukum* 18, no. 1 (2016): 69-92.
- Ismuhadi. *Analisa Pidana Hukum Dan Kriminologi Terhadap Tindak Pidana Di Indonesia*. Medan: www.repository.usu.ac.id/bitstream/123456789/12134/1/09E02103.pdf, 2019.
- 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.
- Maula, Bani Syarif. "Religious Freedom In Indonesia Between Upholding Constitutional Provisions and Complying with Social Considerations." *Journal Of Indonesian Islam* 7, no. 2 (2013): 383-403.
- MD, Moh. Mahfud. "Politik Hukum Dalam Sistem Hukum Nasional." *Varia Peradilan XXV* (2010): 2.
- MS, Afriandi. "Criminal Law Analysis of Religious Blasphemy Violation in Aceh." *Dejure: Jurnal Penelitian Hukum* 17, no. 1 (2017): 1-12.
- Medistiara, Yulida. "YLBHI Catat 38 Kasus Penodaan Agama Hingga Mei, Ada Yang Jerat

ABG." [www.detik.com](https://news.detik.com/berita/d-5141781/ylbhi-catat-38-kasus-penodaan-agama-hingga-mei-ada-yangjerat-abg), 2020. <https://news.detik.com/berita/d-5141781/ylbhi-catat-38-kasus-penodaan-agama-hingga-mei-ada-yangjerat-abg>.

Muktiomo. "Mengkaji Politik Hukum Kebebasan Beragama Dan Berkeyakinan Di Indonesia." *Jurnal Dinamika Hukum* 12, no. 2 (2012): 344–57.

Prasetyo, Kresna Adi. "Analisis Hukum Pidana Mengenai Tindak Pidana Penistaan Agama Di Indonesia." *Gorontalo Law Review* 2, no. 1 (2019): 3.

Rahmawati, Mei. "Membedah Kasus Penistaan Agama Oleh Sang Murtad Kace, Vol 9, No 1 (2022), 24-36." *Ar-Raniry: International Journal of Islamic Studies* 9, no. 1 (2022): 24–36.

Redaksi BBC News Indonesia. "Vlog Masak Babi Kurma: Mencari Batas Antara Lelucon Dan Penistaan Agama." [www.bbc.com](https://www.bbc.com/indonesia/trensosial-46040537), 2018. <https://www.bbc.com/indonesia/trensosial-46040537>.

Redaksi. "Ustaz Abdul Somad Dilaporkan Ke Polda NTT." www.cnnindonesia.com, 2019.

Ronald. "Ahok: Pidato Saya Baru Jadi Masalah Setelah Diposting Buni Yani." [www.detik.com](https://news.detik.com/berita/d-3482873/ahok-pidato-saya-baru-jadi-masalah-setelah-diposting-buni-yani), 2023. <https://news.detik.com/berita/d-3482873/ahok-pidato-saya-baru-jadi-masalah-setelah-diposting-buni-yani>.

Septiani, Rina. "Tindak Pidana Penistaan Agama Perspektif Hukum Islam Dan Hukum Positif Indonesia." *Syariah: Jurnal Ilmu Hukum Dan Pemikiran* 17, no. 1 (2017): 28.

Shakir, Naeem. "Islamic Shariah and Blasphemy Laws in Pakistan." *Journal Of Islamic Law* 4, no. 1 (2015): 307–17.

Tamale, Sylvia. "Exploring The Contours Of African Sexualities: Religion, Law And Power." *African Human Rights Law Journal* 14, no. 1 (2012): 150–77.

Usman, Abir. "Pakistan's Blasphemy Laws as a Totem." *Journal of Islamic Law* 5, no. 68 (2022): 72–73.

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): 363–70.

Yaqin, A. "Legal Research and Writting." *Malayan Law Journal SDN BHD* 1 (2007): 10.

Book

Al-Baghawi, Imam Abu Muhammad al-Husain ibn Mas'ud. *Tafsir Ma'alim at-Tanzil*. 4th ed. Multan: Idarah Talifat Ashrafiyyah, n.d.

Al-Bugha, Mustafa Dib. *Fikih Islam Lengkap*. Jakarta: Media Dzikir, 2006.

Al-Qurthubi, Abu Abdullah bin Ahmad. *Imam Al-Jam'i Li Ahkam Al-Qur'an*. Islamabad: International Islamic University, 2004.

Al-Razi, Fakhr. *Mafatih Al-Ghaib*. Edited by Dar Al-Fikr. 7th ed. Beirut, 1994.

Arief, Barda Nawawi. *Delik Agama Dan Penghinaan Tuhan (Blasphemy) Di Indonesia Dan Perbandingan Berbagai Negara*. Semarang: Penerbit UNDIP, 2007.

Artharini, Isyana. "Pelaporan Ahok Atas Tuduhan Menghina Agama Dan Pemilih." www.bbc.com, 2016.

As-Shalih, Subhi. *Membahas Ilmu-Ilmu Al-Qur'an*. Jakarta: Pustaka Firdaus, 1999.

- Diantha, I Made Pasek. *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. Jakarta: Prenanda Media Group, 2017.
- Jalaluddin. *Phiscology Agama*. Jakarta: Siantar Press, 2000.
- Katir, Isma'il bin 'Umar. *Tafsir Qur'an Al-'Azim*. 4th ed. Madinah: Dar at-Taybah, 1999.
- Muin, Abdul. *Benturan NU-PKI 1948-1965*. Jakarta: PB.NU Press, 2014.
- Noer, Deliar. *Gerakan Modern Islam Di Indonesia 1900-1942*. Jakarta: LP3ES, 1980.
- Pultoni. *Panduan Pemantauan Tindak Pidana Penodaan Agama Dan Ujaran Kebencian Atas Nama Agama*. Jakarta: The Indonesian Legal Resouce Center, 2012.
- Qureshy, Muhammad Ismail. *Muhammad-The Messenger of God and the Law of Blasphemy in Islam and the West*. Lahore: Nuqoosh, 2008.
- Syarifuddin, Amir. *Ushul Fiqh*. 2nd ed. Jakarta: Kencana Prenada Media Group, 2008.
- Taimiyah, Ibn. *As-Sharim Al-Maslul 'ala Syatimi Ar-Rasul*. Juz I. Kaherah: Daar Ibn al-Jawaziy, 2016.
- Taimiyyah, Imam Taqi al-Din Ahmad Ibn. *Al-Sarim Al-Maslul 'ala Syatim Al-Rasul*. Lahore: Nuriyah Rizwiyah Publications, 2010.
- Tim. *Pengkajian Hukum Tentang Perlindungan Hukum Bagi Upaya Menjamin Kerukunan Umat Beragama*. Jakarta: Kementerian Hukum Dan Hak Asasi Manusia Badan Pembinaan Hukum Nasional, 2011.
- Zuhaili, Wahbah. *Al-Tafsir Al-Munir Li Al-Zuhaili*. 7th ed. Damaskus: Dar al-Fikr al-Mu'asir, 1418.