
RELIGIOUS DIVERSITY AND ITS LEGAL PROBLEMS

Husni¹

Zulfan²

Teuku Yudi Afrizal³

Nurarafah⁴

Sumiadi^{5*}

^{1,2,3,4,5}Universitas Malikussaleh, Aceh, Indonesia

e-mail: husni@unimal.ac.id¹, zulfan@unimal.ac.id², teukuyudiafrizal@unimal.ac.id³,
nurarafah@unimal.ac.id⁴, sumiadi@unimal.ac.id^{5*}

*Correspondence: sumiadi@unimal.ac.id

Submitted: 24 March 2022,

Revised: 04 April 2022,

Accepted: 16 April 2022

Abstract. The basis for freedom of religion in Indonesia is regulated in Article 28E, Article 28I, Article 29 of the 1945 Constitution and Article 4, Article 22 of Law Number 39 of 1999 concerning Human Rights. However, this freedom is not absolute and must be limited to maintain religious harmony in Indonesia. This study aims to determine the actions that often trigger religious disputes with blasphemy or blasphemy of religion either directly or through various online media. This type of research is doctrinal or normative. In this study, all norms, legal principles, legal documents, court decisions, laws and regulations related to religious freedom in Indonesia will be studied. Based on the results of research to maintain religious harmony, the government issued Law Number 1 of 1946 concerning the Criminal Code, Law Number 1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy of Religion, Law Number 40 of 2008 concerning the Elimination of Race and Religious Blasphemy. Religion. Ethnic Discrimination, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Transaction Information. In addition to legal action against perpetrators of blasphemy, the government and the community must work together to maintain religious tolerance and prevent fanaticism towards their respective religious identities so that it has the potential to cause horizontal conflicts between religious adherents in Indonesia.

Keywords: diversity; religious; legal issues; Indonesia.

INTRODUCTION

In Indonesia, there are laws and regulations that explicitly guarantee and protect the freedom of religious diversity ([Chiodelli & Moroni, 2017](#)). Article 28 letter E of the 1945 Constitution of the Republic of Indonesia stipulates that everyone has the right to embrace religion and worship according to his religion, choose education and teaching, choose a job, choose citizenship, choose a place to live and leave and has the right to return to Indonesia. Freedom of religion is reaffirmed in Article 29 of the 1945 Constitution of the Republic of Indonesia which states that the Indonesian state is based on one God and the State guarantees the independence of each resident to embrace their own religion and worship according to their religion and beliefs ([Li, Cohen, Weeden, & Kenrick, 2010](#)).

Legalization in the Indonesian constitution would be enough to show that religion has a very important position in this country (Li et al., 2010). 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 religion ([Pietrzak et al., 2010](#)). This is very different from liberal countries which provide religious freedom for their citizens but also provide freedom for their citizens not to adhere to a certain religion (atheism). In Article 4 and Article 22 paragraph 1-2 of Law no. 39 of 1999 concerning Human Rights states 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 ([Willard & Norenzayan, 2013](#)); ([Willard & Norenzayan, 2013](#)).

Religious diversity in Indonesia is one part of the reflection of human rights that must not be eliminated and curbed under any circumstances ([Handayani, 2016](#)); ([Ying, Liu, Bao, & Zhou, 2017](#)); ([Chai, Koh, Tsai, & Tan, 2011](#)); ([Pratt et al., 2012](#)). However, unlimited freedom can lead to arrogance and look down on other religions so that this can endanger religious harmony. The very rapid development of information and communication technology has provided free opportunities for all religious adherents to broadcast ([Verma, Sinha, & Shukla, 2021](#)); ([McClure, Acquavita, Harding, & Stitzer, 2013](#)); ([Wu et al., 2012](#)), spread or preach their religion. However, the freedom of religious diversity is often misused so that it creates an attitude of intolerance, discrimination, prejudice, hatred, and violence.

To maintain religious harmony and tolerance in Indonesia, the government has issued several laws and regulations to regulate and discipline adherents of certain religions in carrying out their worship and beliefs so as not to disturb, insult and insult other religions. As a result of the many religions and beliefs in Indonesia, there are often frictions, conflicts and disputes between religious adherents which lead to anarchic actions by burning houses of worship, injuring and killing adherents of certain religions. Therefore, this article will

describe the regulation of religious diversity in Indonesia, the government's authority to manage and protect the religious interests of every adherent of a recognized religion in Indonesia and analyze several cases of blasphemy or blasphemy in Indonesia.

METHODS

This type of research is doctrinal or normative. In this study, all norms, legal principles, legal documents, court decisions, laws and regulations related to freedom of religious diversity in Indonesia will be studied. The approach used in this research is the law (statute approach). The legal approach aims to find, explain, study, analyze and systematically present facts, principles, concepts, theories, laws so as to find new knowledge and ideas to be suggested for a change or renewal.

RESULTS AND DISCUSSION

1. Regulation of Religious Diversity in Indonesia Indonesia's

Population consists of various religions and different beliefs. However, the largest number of adherents or adherents of religions in Indonesia are Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism (Confucius). In addition, the State also recognizes the existence of a belief or appreciation of local beliefs and religions that are embraced by a small part of the Indonesian people. Based on the decision of the Constitutional Court No. 97/PUU-XIV/2016 states that the flow of belief, appreciation of local

beliefs or religions is a human right that cannot be limited and must be protected. Every adherent or follower of a belief can be a person's religious identity.

Freedom to adhere to a certain religion in Indonesia is guaranteed and protected by the state. According to Mahfud MD, Indonesia is a godly and religious country that protects all adherents of a particular religion regardless of the size of the adherents of each religion. Therefore, the state has a constitutional obligation (*constitutional obligation/judicial review*) to maintain religious harmony in Indonesia.

Pancasila as the philosophical basis of the State of Indonesia expressly states that Indonesia is a divine state that recognizes the oneness of God through the diversity of religions in Indonesia. Religion as the most important part that cannot be separated from all aspects of the state, even the religious spirit in Indonesia has become a force in the struggle for the independence of the Indonesian State and defends that independence from all threats. However, Indonesia is not a country based on a particular religion but also cannot be called a secular state. Indonesia is a nationality that recognizes the existence of religion (*religious Nation State*). Indonesia is a religious nation state so that religion is used as a source of law, philosophy and morals in the life of the state.

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 no. 39 of 1999 concerning Human Rights (UU HAM). In the law there are two categories of religious diversity, *first*, protection of the freedom to embrace religion and *secondly*, protection of the freedom to carry out religious worship.

In the aspect of freedom to adhere to a certain religion, there are several provisions that can be used as a basis, such as:

- a. Article 28E paragraphs (1 and 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.
- b. 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.
- c. Article 29 paragraph (2) of the 1945 Constitution and Article 22 paragraph (2) of the Human Rights Law which stipulates that the state gives freedom to adhere to and practice a certain religion for every citizen and perform worship according to the teachings of their respective religions.

These provisions show that religion in Indonesia is very pluralistic or pluralistic. Everyone is obliged to adhere to a religion or belief system

that is believed to be true. Religion and beliefs have become the basic rights of every Indonesian citizen. No one can seize, reduce, abolish, impose certain religions on adherents of other religions. Even the State cannot intervene in certain religious adherents in carrying out worship according to their respective beliefs. The Indonesian state has placed the principle of "God" as the main principle, so that it does not provide the possibility of freedom to have no religion (atheism).

In the second category, the state guarantees protection in carrying out religious worship as regulated in Article 28D, Article 28 E, Article 28G, Article 28I and Article 28J of the 1945 Constitution. In these various instruments it can be concluded that:

1. All citizens have the right to freedom of thought, belief and religion. A person is free to choose a certain religion that is believed to be true without any intervention or coercion from any party. Every adherent of a certain religion is free to carry out religious worship rituals both in public and closed places.
 2. No one has the authority to force someone to embrace a certain religion or change from one religion to another.
 3. Religious freedom can only be limited by the state if there is a legal order or law P Restrictions on freedom of religion by law aim to protect security and order in freedom of religion.
-

In the Human Rights Law, there are many provisions that regulate the right to freedom of religion and belief, for example Article 22 paragraph (1) which stipulates that *"Everyone is free to follow their own religion. and to worship according to his religion and belief.*In paragraph (2) of the same article it stipulates *"The State guarantees the independence of every people embrace their religion and to worship according to religion and that belief".* This instrument explicitly stipulates that adherence to certain religions and beliefs is a person's right that must be protected and protected and respected by the state.

One of the basic rights in religion is that any person or party, even the state, is not allowed to be discriminatory in all aspects of religion. Article 3 paragraph (3) of the Human Rights Law stipulates that *everyone entitled to the protection of human rights and basic freedoms human beings, without discrimination".* This law emphasizes the principle of *non-derogable rights*, where human rights, including religious rights, cannot be abolished by anyone at any time. In Article 4 of the Human Rights Law it is further emphasized that *"The right to life, the right not to be tortured, the right to freedom". personality, thoughts and conscience, the right to religion, the right not to enslaved, the right to be recognized as a person and equality in the before the law, and the right not to be prosecuted on the basis of retroactively is a human right that cannot be reduced under any circumstances and by anyone."*

Freedom of religion in the Human Rights Law is further strengthened in Law no. 12 of 2005 concerning Civil and Political Rights. The protection of the right to freedom of religion and belief is stated in Article 18 paragraph 1 which stipulates that *"Everyone has the right to freedom of thought, belief and religious."* The right to religion includes the right to freedom to embrace a religion or belief, either individually or together with other people, as well as in public or private places, to practice one's religion or belief. In paragraph 2 of the same law it is determined that *"No one" can also be forced to interfere with his freedom to embrace a religion or belief according to by choice."*

The material contained in Law no. 12 of 2005 above explains that the right to adhere to a certain religion and belief is the right of every person, and the state is the party that must guarantee the protection, respect and supervision of religion and its adherents. The state has the authority to prohibit and take action against a certain person or religious group from carrying out discriminatory actions and all actions that encourage hatred, hostility, conflict and disputes in the name of religion.

Freedom of religion that is protected by law is not an absolute right (*absolute*) but is limited. Every believer must obey certain signs or conditions so that the exercise of the right to freedom of religion does not interfere with the rights of others, the security and order of society, the nation and the state. This limitation is

contained in Article 73 of the Human Rights Law which states that freedom is only to guarantee the recognition and respect for human rights and the freedom of others, morality, public order and the interests of the nation. In Article 18 paragraph (3) of Law no. 12 of 2005 stipulates that freedom to practice religion can only be limited by several things, namely to protect security, order, public morals or the fundamental rights of others.

The regulation of religious diversity is not a form of State intervention against adherents or religious adherents in carrying out their worship and beliefs. The law enacted by the government aims to maintain order and harmony among religious communities in Indonesia. The Joint Regulation of the Ministry of Religion and the Ministry of Home Affairs Number 8 & 9 of 2006 stipulates that every religious believer is obliged to maintain good relations between religious adherents based on the principle of tolerance in carrying out their religious teachings based on Pancasila and the 1945 Constitution. According to Sodikin, this regulation is not a form of intervention. the government towards the beliefs of the community, but the government's efforts to maintain public security and order from differences in understanding in religious life in Indonesia.

2. The Role of the Government in Maintaining Religious Diversity in Indonesia

Indonesia is one of the countries that separates religion from the state.

However, this separation is not absolute because some of the laws that have been enacted are based on Islam and the state provides opportunities for some regions to implement Islamic law in the administration of local government, such as in the province of Aceh, where the majority of the population is Muslim. However, Indonesia is not a religious country or a country that is anti-religious. Indonesia is a country based on Pancasila which is closer to a secularist state system that separates state or political affairs and religious affairs. Separation does not mean the state's hostility to religion, but its neutrality in religious matters.

The idea of secularization was once conveyed by Nurcholis Madjid , who separated the interests of religion and the state. He once stated that the state is a rational and collective aspect of the world. While religion is another aspect of life (*ukhrawi*) which is spiritual and personal. This idea immediately received criticism from various experts. One of his sharp criticisms is "Islam does not only have a spiritual and personal dimension, but also a worldly, socio-collective dimension". It is like faith that becomes the driving force for doing social work. Thus, basically, religion and the state have a relationship that by nature cannot separate themselves from each other.

According to Zainuddin, secularism is a model of the relationship between state and religion, which mediates between the "*religious state*" (theocratic) model and the "*anti-religious state*" (atheist) model.

Although the Indonesian population generally adheres to Islam, Indonesia is not an Islamic state. However, based on the concept of divinity contained in Pancasila, especially in the first precept which reads: "*Belief in One Supreme God*," has placed religion as the most important part in the administration of government and recognizes the six official religions in Indonesia.

Based on this, the State has the authority to regulate the freedom and diversity of religions in carrying out their respective teachings and beliefs. According to Hazairin, the duty of the state is to maintain harmony and harmony between religious communities in carrying out their worship. Meanwhile, regarding the validity of the worship of a religion, it is left to each religious institution that has the authority and competence which is considered to have the ability to regulate matters related to their respective religions.

Through the Ministry of Religion, the government is fully responsible for regulating, protecting and protecting all religions in Indonesia. In Law no. 39 of 2008 concerning the Ministry of State states that the Ministry of Religion has the main task and function in general is to provide guidance and guidance in development in the field of religion and religion, both concerning religious life and relating to religious and religious education. The main tasks and functions are described in the form of five main programs, namely improving the quality of religious harmony, increasing the quality of

religious education, improving the quality of the implementation of Hajj and Umrah, and improving governance.

The main tasks and functions mentioned above are all directed at guidance and guidance related to all religions, which include Islam, Christianity, Catholicism, Hinduism, Buddhism and even Confucianism. In carrying out its functions, roles and duties, the Ministry of Religion must coordinate with regional governments, both provincial and district/city as partners in maintaining the harmony of religious communities. Based on Law No. 9 of 2015 Jo. Law Number 23 of 2014 concerning Regional Government stipulates that every province and district/city government is given the mandate to maintain and maintain religious harmony in their area. The task and role of the Regional Government in maintaining religious diversity in Indonesia is further strengthened by Article 2 of the Joint Regulation of the Minister of Religion and the Minister of Home Affairs Numbers 8 and 9 of 2006 which states that the maintenance of religious harmony is the shared responsibility of religious communities, regional governments and the central government.

At the provincial level who is responsible for maintaining religious harmony is the Governor, while at the Regency/City level who has the role and responsibility to maintain freedom of religious diversity is the Regent/Mayor. Article 3 and Article 6 of the Joint Regulation of the Minister of Religion and the Minister of Home Affairs state

that the duties and obligations of governors, regents and mayors in maintaining freedom of religious diversity in Indonesia include:

- a. Maintaining public peace and order, including facilitating the realization of religious harmony.
- b. Coordinate the activities of vertical agencies in the province in maintaining religious harmony.
- c. Fostering harmony, mutual understanding, mutual respect, and mutual trust among religious communities.
- d. Fostering and coordinating the tasks of the Governor/Deputy Governor, Regent/Deputy Regent and Mayor/Deputy Mayor in the administration of regional government in the field of public peace and order in religious life.
- e. Fostering and coordinating the camat, lurah, or village head in the administration of regional government in the field of public peace and order in religious life.
- f. Issuing a permit for the construction of a house of worship.

Prosecution of the active role of regional leaders shows that the task of maintaining religious harmony in the regions is a task assigned to regional leaders based on Law Number 23 of 2014 concerning Regional Government. So, the task of maintaining harmony in the region is not a task related to doctrine or the service of religious affairs but is only limited to maintaining security and public order in carrying out religious rituals and beliefs that live and develop in the area.

Every local government must carry out dialogue with religious and community leaders, to accommodate the aspirations and carry out the demands of each religious community organization in the form of recommendations as input to the government in making policies for government leaders in the provinces, cities and districts, take a humanist approach in resolving disputes between religious leaders, effective and continuous socialization of every government policy on freedom of religious harmony.

3. Religious Diversity and Legal Problems

The changing era, from the manual era to the era of digitalization or "*internetization*" makes the rate of spreading news to the public faster ([Gelb & Longacre, 2012](#)); ([Rao, 2012](#)). News can be easily spread throughout Indonesia through various mass media, social media and other electronic media. News that contains elements of hatred, hostility and discrimination can provoke and ignite the emotions of citizens because it has disturbed the harmony of religious, ethnic, racial and inter-group (SARA) communities. The issue of SARA has always been a sensitive issue in a country as diverse as Indonesia. The diversity of religions, ethnicities and races on the one hand has a positive impact on the development of nation building ([Pedersen & Bazilian, 2014](#)); ([Koch, 2013](#)). However, this plurality has the potential as a source of 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 have shaken the legal world in Indonesia, for example the cases of Cikesik, Ambon, Kupang, Poso and other cases. The magnitude of the negative impact of the various cases above, the government must be serious in taking anticipatory steps. If the issue of intolerance is ignored, it will trigger widespread horizontal conflict and kill many innocent children.

Recently, we were surprised by a report from the Indonesian Christian Student Movement (GMKI) against the famous preacher Ustaz Abdul Somad (Ustaz UAS). Even the Christian religious community has been reporting UAS Ustaz through several community organizations such as GMKI and the Meo Brigade in East Nusa Tenggara. He was accused of insulting Christianity and damaging inter-religious relations in a recitation held in a closed mosque and the recitation was only for Muslims. Although this news is not necessarily true and his actions do not necessarily violate the law, this issue has spread rapidly among the public and has raised pros and cons between religious communities.

In addition, the case that once shocked the Indonesian people was the case of blasphemy or blasphemy of religion by the Governor of DKI Basuki Cahya Purnama (Governor Ahok). This case began during Ahok's working visit as the Governor of DKI Jakarta and at the same time as a Candidate for the

Regional Head Election for the Governor of DKI Jakarta for the 2018-2014 period. During the working visit, Ahok delivered a speech. The part of his speech was ". *so don't trust people, it's okay in your heart you can't vote for me, right, you were lied to using Al-Maidah 51, various kinds of things, that's the right of the father and mother, so if you are I feel like I can't be elected because I'm afraid I'll go to hell because I'm being fooled like that, okay, Dad, because this is your personal call, this program just goes on, so you don't have to feel bad, in your conscience you can't choose Ahok, you don't like Ahok, but if I accept the program, it's not good, so it's a debt of gratitude, don't worry, ladies and gentlemen, if you don't feel good, you'll die slowly from a stroke.*" Then, this statement was widely spread in cyberspace through the upload of Buni Yani's account on one of the social media with the title "Blame Against Religion?." As a result, Ahok was reported by the Indonesian Ulema Council (MUI) of South Sumatra and the Secretary General of the Islamic Defenders Front (FPI) on charges of violating Article 156 a of the Criminal Code in conjunction with article 28 paragraph (2) of Law no. 11 of 2008 concerning Electronic Transaction Information (ITE).

Reports or accusations of someone committing blasphemy or blasphemy have become a trend in Indonesia. Almost all reports relating to 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 is no special regulation that regulates the crime of blasphemy. However, practically in the law enforcement process there are several provisions that are used to ensnare perpetrators of blasphemy such as Article 156 letter a of the Criminal Code.

In addition, the article on blasphemy is applied to various forms of actions that are considered insulting or desecrating certain religions as formulated in Law no. 1/PNPS/1965 concerning Prevention of Abuse and/or Blasphemy of Religion. This law does not provide a clear definition or limitation regarding what constitutes "*blasphemy of a religion*." however, the limitations on what actions can and cannot be punished with this provision are only found in the explanation of Article 4 of Law no. 1/PNPS/1965, which states that "the offense referred to here, is solely intended to be hostile or insulting." The explanation does not describe actions that tarnish religion, but provides an understanding of the intent to desecrate religion. Furthermore, the explanation supports the interpretation of the intentions required as described above. It interprets "essentially" as "merely" and makes it clear that an action must be specifically aimed at insulting or engaging in hostility.

The law above emphasizes that legal protection must be given to followers of a religion whose religion has been tainted as contained in the following articles:

- a. Article 1: "Everyone is prohibited from intentionally telling public stories, recommending or seeking public support, to carry out interpretations. concerning a religion professed in Indonesia or carrying out religious activities that resemble the religious activities of that religion; which interpretations and activities deviate from the main points of the religious teachings.
 - b. Article 2, paragraph (1): "*Whoever violates the provisions in Article 1 is given an order and a stern warning to stop his actions in a joint decision of the Minister of Religion, the Minister/Prosecutor General and the Minister of Home Affairs.*" Article 2 paragraph (2) "*If the violation referred to in paragraph (1) is committed by an organization or a sect of belief, then the President of the Republic of Indonesia may dissolve the organization.*"
 - c. Article 3: If, after taking action by the Minister of Religion together with the Minister/Prosecutor General and the Minister of Home Affairs or the President of the Republic of Indonesia according to the provisions in Article 2 against a person, organization or sect of belief, they still continue to violate the provisions in Article 1 , then the person, adherent, member and/or member of the management of the organization concerned from that sect shall be sentenced to a maximum imprisonment of 5 years.
-

This law shows legal protection for religious adherents in Indonesia which is given to anyone who violates and commits good deeds individually or in groups so that the act is clear later if it fulfills the elements in the law, the activities and actions that have been carried out have not automatically become criminal. Blasphemy of religion, but if it is repeated after a strong warning and if it causes hostility, it is called a criminal act, so the elements contained in Article 3 and Article 4 of the law are fulfilled. Actually, Article 4 wants to punish those who express feelings (or do actions) in public that contain hostility, hatred and blasphemy against the religion adhered to by a person. Based on these provisions, a person can be criminalized on charges of blasphemy against a particular religion. This is because it can disturb the peace and harmony of religious communities and can endanger/disturb public order.

Since the blasphemy article was enacted, many individuals have been subject to this article, ranging from the 1968 case of HB Jassin, Arswendo Atmowilonto in 1990, Basuki Tjahaja Purnama, the leader of Gafatar Abdussalam alias Ahmad Musadeqto the case of the alleged burning of the Christian religious book (Bible) in Papua 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 the blasphemy or blasphemy is carried out through electronic media, law enforcers often use Article 28 paragraph (2) of Law no. 11 of 2008 concerning Electronic Transaction Information.

From 1965 to 2000, Article 156a of the Criminal Code was only used 10 times, but with the rapid atmosphere of freedom and democracy this provision was increasingly used after 1998. Amnesty International noted that since 2005 there have been 106 people charged and convicted using this article. The spread of blasphemy cases covers almost half of Indonesia's provinces. Crouch noted that between 1965 and 2011, cases charged with Article 156a of the Criminal Code covered 14 provinces, with the main concentration on the island of Java. Meanwhile, the Setara Institute Report shows that from 1965 to 2017 there were 97 cases of blasphemy with a very diverse context. Most accusations of blasphemy occurred in the context of differences in religious understanding and errors in the interpretation of the propositions in certain teachings. In addition, the report also states that the argument for blasphemy is used as a tool to build and maintain *the status quo* for religious groups who are the majority in the midst of religious communities.

There are many legal problems regarding maintaining the purity and sanctity of religion. On October 20, 2009, Law no. 1/PNPS/1965 was submitted to the Constitutional Court (MK) to be tested for constitutionality.

From the judicial review, the Constitutional Court through its Decision Number 140/PUU-VII/2009 stated that the norms of this law are not against the constitution. The Constitutional Court's decision explains that the law is correct and does not conflict with religious freedom which is protected by the 1945 Constitution. However, there is a view that the law is not so good in the sense that its formulation is not in accordance with the rules and systematics of the formation of legislation. Therefore, the Law on Religious Protection must be good and correct and reduce or even eliminate violence in the name of religion and blasphemy against religion. Although the Constitutional Court is considered very careful in making its decision, the Court still decides that the Blasphemy Law remains constitutional with various notes for improvement. In addition, the Constitutional Court also ordered the legislators, namely the government and the DPR to improve some of the norms contained in the law.

At first, all the legal schools adopted by countries around the world did not have a formula that could criminalize blasphemy or blasphemy. It should be noted that *the Dutch Wet Book van Straft Recht* (WvS) itself does not specifically formulate criminal acts regarding religion. but there is only the law regarding *Godslastering* 1932 which is better known as a religious offense (*Lex Donner*). This law was inspired by the German law known as *Strafgesetzbuch* which formulated religious offenses in Article 166. It seems

that the formulation of Article 166 of *Strafgesetzbuch* became a model and was adopted by WvS Netherlands, which previously did not have regulations regarding religious offenses. The statutory regulations stipulate that words, statements or actions that mock God, the Prophet and others are considered blasphemy against religion.

Likewise in Indonesia, at first there were no regulations regarding religious offenses in the Indonesian Criminal Code, but there were only provisions relating to religious life, such as the provisions in Article 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 events that tarnish, harass or insult certain religions, causing noise, riots and conflicts between religious adherents. 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.

According to Afriandi, even in Islamic law the criminalization of blasphemy is not actually found in either the Qur'an or Hadith. The offense only exists in the *ijtihad* instrument of the *ulama'* which is then internalized into the laws of several Islamic countries. In Islamic law, the formulation of punishment for perpetrators of blasphemy is very diverse, ranging from the lightest sanctions such as imprisonment, to the most severe sanctions, namely life imprisonment and the death penalty. The scholars' reference in formulating the offense of

blasphemy is based on a homogeneous society in religion. Humiliation or blasphemy in Islam can take the form of insulting or insulting God, the prophets, angels, and the Koran. Deliberate blasphemy against religion makes it an apostate (*riddah*), while the sanctions look at the consequences and impacts of the apostasy.

According to Muhammad Dahri, Ibn Taimiyah divided *riddah* (apostasy) into two, he said: "*Riddah*" is of two kinds; *riddah mujarradah* (pure) and *riddah mughalladzah* (heavy class) for which the death penalty is specifically prescribed. If it includes *riddah mughalladzah* then he is sentenced to death, if he does not repent if, his *riddah* is *mujarradah* because of ignorance and weak belief, then he is not sentenced to death but in *ta'zir* (jail). Then if the act of apostasy is carried out in groups/cults, with the intention of insulting and destroying religion, and then not wanting *convert* to Islam or repenting, the penalty is death. It's just that not all acts of blasphemy make him an apostate with the penalty of being sentenced to death, but one has to look at the impact, motives for apostasy and the perpetrators. So acts of blasphemy that are intentionally carried out with a motive of open hatred are considered *murtad mughallazhah*, or apostasy *harby* (against), while blasphemy that is unintentional and has no intention of blaspheming is a *murtad muraja'ah* or *jahily*.

Al-Qadhi 'Yadh is of the view that the consensus of the scholars and the fatwa expert priests, starting from the

generation of companions, is of the view that the majority agree, the sanction applied to perpetrators of insulting the Prophet SAW is the death penalty. This is the opinion of Imam Malik, Imam al-Laits, Imam Ahmad bin Hanbal, Imam Ishaq bin Rahawih and Imam as-Shafii. Kholil Ibn Ishaq al-Jundiy, explained that "whoever insults the Prophet, curses, ridicules, accuses, demeans, labels inappropriate things to him, denounces then the punishment is death."

Referring to the description above, the dynamics of religious diversity is always accompanied by problems, differences, and friction between religious adherents which leads to various legal actions such as blasphemy, blasphemy or insulting certain religions. In the legal aspect, both Indonesian law and Islamic law, blasphemy or insulting certain religious teachings is strictly prohibited and the punishment imposed on perpetrators of blasphemy is quite severe. This is done solely to maintain the harmony of religious communities that are so pluralistic in Indonesia. All elements of the nation must assume that religious diversity in Indonesia must be seen as a nation's asset that is not worth its price. Therefore, the community together with the government must actively participate in maintaining the integrity of religious diversity from all sides rather than religion itself.

CONCLUSIONS

The concept of freedom of religion in

Indonesia is contained in the formulation of Article 28E, Article 28I, and Article 29 of the 1945 Constitution. The concept of religious freedom when associated with Human Rights is contained in Article 4 and Article 22 paragraph (1) and paragraph (2) Law no. 39 of 1999 concerning Human Rights. In this provision, it is explained that the religious right that is owned by every Indonesian citizen is a human right that cannot be reduced under any circumstances and by anyone. Although the Indonesian constitution highly upholds religious freedom, this freedom is not absolute. Restrictions on freedom can only be carried out through laws with the aim of maintaining harmony and tolerance of religious communities in Indonesia.

In the aspect of freedom and religious diversity, these restrictions are regulated in various laws, namely the Criminal Code, Law no. 1/PNPS/1965 concerning Prevention of Abuse and/or Blasphemy of Religion and Law no. 11 of 2008 concerning Electronic Transaction Information (ITE). All norms regulated in the law provide protection for religious adherents to practice worship according to their beliefs but the law provides limitations on freedoms that damage, desecrate and insult certain religions. Even the regulation of restrictions and prohibitions on blasphemy or destroying the sanctity of certain religions is not only regulated in the context of dissemination through manual media such as leaflets, letters, pictures and others. even the prohibition of spreading news containing content of insulting, desecrating or destroying the sanctity of certain religions through online media is regulated in the ITE Law.

All of these arrangements aim to maintain the purity and sanctity of religions whose existence has been recognized in Indonesia and to maintain harmony between religious communities. The government only positions itself as the guardian of public order so that the human rights of religious people are not tainted by immoral behavior from various parties belonging to other religions. This restriction is not a form of human rights restraint but rather to control, guarantee and protect religious rights among religious adherents so that all religious adherents can carry out their worship and beliefs safely, comfortably without any pressure from certain parties or any group.

REFERENCES

- Chai, Ching Sing, Koh, Joyce Hwee Ling, Tsai, Chin Chung, & Tan, Lynde Lee Wee. (2011). Modeling primary school pre-service teachers' Technological Pedagogical Content Knowledge (TPACK) for meaningful learning with information and communication technology (ICT). *Computers & Education*, 5(7), 1184–1193. <https://doi.org/10.1016/j.compedu.2011.01.007>
- Chiodelli, Francesco, & Moroni, Stefano. (2017). Planning, pluralism and religious diversity: Critically reconsidering the spatial regulation of mosques in Italy starting from a much debated law in the Lombardy region. *Cities*, 6(2), 62–70. <https://doi.org/10.1016/j.cities.2016.12.004>
- Gelb, Betsy D., & Longacre, Teri Elkins. (2012). Acknowledging religious

-
- diversity: Opportunities and challenges. *Business Horizons*, 5(5), 509–518. <https://doi.org/10.1016/j.bushor.2012.06.001>
- Handayani, I. Gusti Ayu Rachmi. (2016). Pancasila as a Source of Value for Indonesian Religious Diversity. *Law Research Review Quarterly*, 2(10), 293–298. <https://doi.org/10.15294/snh.v2i01.21313>
- Koch, Natalie. (2013). Sport and soft authoritarian nation-building. *Political Geography*, 3(2), 42–51. <https://doi.org/10.1016/j.polgeo.2012.11.006>
- Li, Yexin Jessica, Cohen, Adam B., Weeden, Jason, & Kenrick, Douglas T. (2010). Mating competitors increase religious beliefs. *Journal of Experimental Social Psychology*, 4(2), 428–431. <https://doi.org/10.1016/j.jesp.2009.10.017>
- McClure, Erin A., Acquavita, Shauna P., Harding, Emily, & Stitzer, Maxine L. (2013). Utilization of communication technology by patients enrolled in substance abuse treatment. *Drug and Alcohol Dependence*, 2(2), 145–150. <https://doi.org/10.1016/j.drugalcdep.2012.10.003>
- Pedersen, Ascha, & Bazilian, Morgan. (2014). Considering the impact of oil politics on nation building in the Republic of South Sudan. *The Extractive Industries and Society*, 1(2), 163–175. <https://doi.org/10.1016/j.exis.2014.07.07>
- Pietrzak, Robert H., Goldstein, Marc B., Malley, James C., Rivers, Alison J., Johnson, Douglas C., Morgan III, Charles A., & Southwick, Steven M. (2010). Posttraumatic growth in veterans of operations enduring freedom and Iraqi freedom. *Journal of Affective Disorders*, 2(2), 230–235. <https://doi.org/10.1016/j.jad.2010.03.021>
- Pratt, Michael, Sarmiento, Olga L., Montes, Felipe, Ogilvie, David, Marcus, Bess H., Perez, Lilian G., Brownson, Ross C., & Group, Lancet Physical Activity Series Working. (2012). The implications of megatrends in information and communication technology and transportation for changes in global physical activity. *The Lancet*, 3(9), 282–293. [https://doi.org/10.1016/S0140-6736\(12\)60736-3](https://doi.org/10.1016/S0140-6736(12)60736-3)
- Rao, Asha. (2012). Managing diversity: Impact of religion in the Indian workplace. *Journal of World Business*, 4(2), 232–239. <https://doi.org/10.1016/j.jwb.2011.04.010>
- Verma, M. K., Sinha, M. K., & Shukla, R. (2021). Analysing Publishing Trends in Information and Communication Technology Literature Output Using Scopus Database: a scientometrics analysis. *World Digital Libraries-An International Journal*, 4(1), 1–21. [10.18329/09757597/2021/14101](https://doi.org/10.18329/09757597/2021/14101)
- Willard, Aiyana K., & Norenzayan, Ara. (2013). Cognitive biases explain religious belief, paranormal belief, and belief in life's purpose. *Cognition*, 2(2), 379–391. <https://doi.org/10.1016/j.cognition.2013.07.016>
- Wu, Robert C., Tran, Kim, Lo, Vivian, O'Leary, Kevin J., Morra, Dante, Quan, Sherman D., & Perrier, Laure. (2012). Effects of
-

clinical communication interventions in hospitals: a systematic review of information and communication technology adoptions for improved communication between clinicians. *International Journal of Medical Informatics*, 2(11), 723–732. <https://doi.org/10.1016/j.ijmedinf.2012.05.014>

Ying, Zheng, Liu, Shibao, Bao, Shuming, & Zhou, Jianbo. (2017). Religious diversity and regional development in China. *China Economic Review*, 4(6), 1–9. <https://doi.org/10.1016/j.chieco.2017.08.003>



© 2022 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<https://creativecommons.org/licenses/by-sa/4.0/>).
