

REDEFINING INDONESIA'S BLASPHEMY LAW IN THE DIGITAL AGE: A HUMAN RIGHTS PERSPECTIVE

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Abstract

This paper aims to examine the cascading impact of current conditions on the freedoms of expression and religious belief within Indonesia's online sphere, particularly amidst a rising trend of religious blasphemy cases. The dynamic nature of social interactions and discussions in cyberspace has fostered diverse interpretations influenced by subjective understandings of religion, often resulting in disputes of religious blasphemy. Employing a qualitative research method, the study analyses pertinent literary sources to provide insights into the practice of blasphemy laws and their detrimental effects on the freedoms of religion and expression. Indonesia, as a signatory of ICCPR and the Rabat Plan of Action, upholds constitutional guarantees of these freedoms. However, the current application of blasphemy regulations needs reform to better safeguard the rights of its citizens. By targeting laws that prohibit incitement to religious hatred, the legal framework can more effectively fulfill its primary objective of protecting people from discrimination and ensuring their dignity. This research underscores the urgency for Indonesia to recalibrate its approach to blasphemy laws, aligning them with international human rights standards. So that Indonesia can enhance its commitment to protecting freedom of expression and religious belief, fostering a more inclusive and rights-respecting environment for its diverse population.

Keywords: *Cyberspace; Religious Blasphemy; Freedom of Expression; Freedom of Religion*

1. Introduction

What used to be a tool to stifle freedom of religion or belief had also become a silencer over the freedom of expression and opinion, especially regarding religious discourse. The case of Arswendo Atmowiloto mirrored the dilemma perfectly, in the early 1990's Atmowiloto as the Chief Editor of Monitor Tabloid, made a polling on the topic "Who is the figure you admire and what is your reason for choosing the figure?"¹ The result of the polling placed Prophet Muhammad on the 11th rank below other public figures, he was then charged with the Article 156a KUHP, the criminal charge for blasphemy under Presidential Decree No. 1/PNPS/1965 on the Prevention of Religious Abuse and/or Defamation, and sentenced to prison for four years. Nowadays, such polling could be done easily online through various platforms of digital technology, one of which is social media. Datareportal reported that Indonesia was ranked at the fourth place with the most active users on social media platforms, such as Facebook and Twitter.

In such platforms where information is flooding in with various topics and discussion etched to them, people are supposed to be able to exchange conversations, give their opinion, and express

¹ Kerrie Henderson, "Blasphemy in a Pluralistic Society," *Communications Law Bulletin* 11, no. 4 (1992): 24.

their thoughts freely, but that is not the case when the debate has changed its lane towards religious and belief discourse. Opinion, expression, as well as criticism of religion, either directly or indirectly, are restricted out of fear for criticism, threats, and accusation of being blasphemous. The emergence of Law No. 11 of 2008 on Electronic Information and Transaction (ITE law) and the establishment of the Cyber Police Team are responses from the government in its efforts to create surveillance and restrictions on digital space in Indonesia. These trends and practices highlight the relationship between the ITE Law and the practice of digital democracy, making it difficult to form interfaith discussion spaces that should exist in order to foster a healthy and safe culture on information dissemination in society. The blasphemy case that befell Alexander Aan in connection with his upload on Facebook showcasing his belief as an atheist, is one of the many cases that exhibit how the digital era has brought new practices hence, pushing the urgency to evaluate the current blasphemy regulations. Many still fell short in searching for the relation between freedom of religion and freedom of expression, but the recent blasphemy case has highlighted the importance to understand the significance conflict caused by the current blasphemy law and ITE law especially within the human rights frameworks. Using the normative legal research, this article is focusing on the past cases, regulations, and legal framework related to the practice of religious freedom as well as freedom of expression.

This paper seeks to explore the interrelation between religious blasphemy and the rapid growth of social media usage in the digital era within Indonesia through human rights lenses. The first part of the paper would be focused on the dynamic of religious or belief discourse happening within cyberspace under the watchful eyes of the blasphemy law. The second part would then delved into the said regulations under several human rights instruments that Indonesia has committed and points to some central aspects of the blasphemy law to examine the possibility of reconstructing it.

2. Method

This paper aims at providing legal resources for academics, law enforcement, legal practitioners, and other experts to use when dealing with blasphemy and other related issues. This is a non doctrinal research to understand the relevant law at practical levels in order to answer the question posed by the research problems. Data and information were gathered and analyzed qualitatively by combining literature sources with field data gathered through in-depth interviews. The literature review serve to identify the main blasphemy issues, analyze the law, and reveal the

opinions of judges in response to legal issues found in blasphemy cases. Bibliographic sources come from national laws, national and international human rights instruments, court decisions, academic articles, and publications.

3. Results and Discussion

3.1. Blasphemy Law and Digital Democracy

Over the years, democracy has shown many avenues for people to deliver their aspirations or thoughts. Information technology inevitably played a huge part in creating a new space in this digital era. Often referred to as digital democracy, its actors are using social media platforms to create discourse on various topics in which the quality of such democracy is dependable over their actions within that cyberspace.² In earlier years, Hacker and van Dijk³ described digital democracy as a collection of attempts to practice democracy without any limitations in terms of time, space, and other physical factor, using technology as an alternative. Online public spheres could serve as an early warning alarm to corruption, poor governance as well as human rights violations, those information are indispensable to all democratic public spheres. The problems that would hinder the public participations as such range from social exclusion due to poor technologies, bad connectivity, governmental surveillance, and poverty. These conditions further enhances the claim that 'the new media' did not necessarily erase 'the old media' but only modify and complement them.

The existence of the internet and social media have given the people a collective power to observe, keep track of, respond, or even go as far as to invade one's privacy. The result of information and communication technology has created a new concept in regard to social interaction, becoming borderless and limitless.⁴ Those interactions are to be distinguished from the usual physical direct interaction because of two factors: the variety of opinions within a discussion and the local cultural context in which the interaction takes place, which also describes the character and civilization of the actors.⁵ The quality of an online discussion heavily relied on

² Matthew Fraser and Soumitra Dutta, *Throwing Sheep in the Boardroom: How Online Social Networking Will Transform Your Life, Work and World* (John Wiley & Sons, 2010).

³ Kenneth L Hacker and Jan van Dijk, *Digital Democracy: Issues of Theory and Practice* (Sage, 2000).

⁴ Fazlur Rahman, "Religious Blasphemy in Indonesian Digital Public Sphere: The Intersection between Civility, Authority, and Ideology," in *Religion, State, and Society: Exploration of Southeast Asia*, ed. Suyatno Ladiqi, Ismail Suardi Wekke, and Cahyo Seftyono (Semarang: Political Science Program Department of Politics and Civics Education Universitas Negeri Semarang, 2017).

⁵ Hamideh Molaei, "The Prospect of Civility in Indonesians' Online Polarized Political Discussions," *Asian Journal of Communication* 24, no. 5 (September 3, 2014): 490–504, <https://doi.org/10.1080/01292986.2014.917116>.

those two particular factors where civility and people's character are involved. Although, Bräuchler's study on cyber identities suggests that certain topics of discussion would diminish the level of civility and politeness, especially on the subject of religion.⁶ Rude comments and harsh language are often used, depicting the high level of incivility and the lack of quality of the said discussion, but still, having regulations that constricting online social interaction could not be the suitable answer.

The internet has become an alternative playground for religious discourse to happen. People are exercising their religious expression through opinion, discussion, and critique, exemplifying the interrelatedness between online platforms, e.g., social media and religious expression. The teachings of religion or belief have progressed fervently, not without the help of the internet that functioned as a tool to disseminate religious teachings, building a new community, practicing virtual religious rituals, and fostering a budding religious perception.⁷ Through its algorithms, it also means that social media can construct one's religious view differently compared to what they had experienced outside the internet. Various discussions on religion or belief within cyberspace would be prone to a significant subjectivity as people would interpret the content of those interactions based on their basic understanding, often called the process of vernacular religiosity. Ammerman defined vernacular religiosity as an "everyday religion," which translates to the religious experience of people who has no religious expertise or those who do not make a living being religious or thinking and writing about religious ideas.⁸ In this sense, the initial purpose of building social interaction on the internet is to have a safe space to converse, consume, and interact regarding religion or belief without any surveillance or filtering to uphold digital democracy. The preliminary assumption of digital democracy was a progress of total revolution in terms of politics and as an observer towards the governmental system. This perspective also acknowledged that internet itself is democratic, but this is not always the case in understanding the role of digital democracy in the context of human rights.

The case of Alexander Aan has proven quite the reality of it, with him being charged under both blasphemy law and the ITE law concerning his Facebook post on atheism. The content was deemed to be a dissemination of information that aimed to inflict hatred or dissension, goading people to embrace atheism. The judge believed it to be an act of religious blasphemy that infringed

⁶ Birgit Bräuchler, "Cyberidentities at War: Religion, Identity, and the Internet in the Moluccan Conflict," *Indonesia*, no. 75 (2003): 123–51.

⁷ Lorne L. Dawson and Douglas E. Cowan, *Religion Online: Finding Faith on the Internet* (Routledge, 2004).

⁸ Nancy T. Ammerman, ed., *Everyday Religion: Observing Modern Religious Lives* (Oxford University Press, 2007), <https://doi.org/10.1093/acprof:oso/9780195305418.001.0001>.

Article 28 (2) of the ITE Law and Law No.1/1965 on Religious Blasphemy. He was then sentenced to two and a half years in prison. Indonesia's blasphemy law marks the separation line between the 'good' religious citizen and those who embrace illicit religiosity. Historically, the emergence of Indonesia's Blasphemy Law was a form of settlement over the dispute of state's ideology between the Islamic political parties and the founding fathers. The respect and acknowledgement of religion affirms the importance of religion in the process of nation-building and Indonesia's social and political life without turning the country into a religious state. Looking back into the political agenda of different parties in the early years, this notion also served as the common ground between the religious parties that wanted to make Indonesia as a *Sharia* state and others who were leaning towards secularism.⁹

Blasphemy itself is defined as a gesture to insult or showing contempt to a deity, holy person or sacred things. In Indonesia, the notion of blasphemy is similar to *penistaan*, an act to vilify and offend religions. The law's main aim during its emergence back in 1965 was to combat the atheist ideology and deviant belief since those two ideas were being perceived as a threat to the country's unity and stability. It ensured religious leaders could protect the status and interpretation of the six religions from criticism through the legal system, and that religious practice could be monitored and controlled by the State. Generally, the law covers two acts that could be considered a violation under the decree. Those are deviation (*penyimpangan*) from the six officially recognized religions and defamation (*penodaan*) of these religions. At one glance, the meaning behind the establishment of Indonesia's Blasphemy Law and article 156a of the Criminal Code is to protect the 'correct' understanding of religion. The current blasphemy law in Indonesia is not focusing on the protection of individuals, but rather, it restricts the expression and exercise of religions that "deviate from the tenets of [an approved religion]". This means that it places more importance on protecting religious ideas than on protecting religious adherents.¹⁰ The law's emphasis and intent is to protect the religion from any perceived attack, not to protect the general religious freedom of all. In turns, many of the victims under this law are the adherents of religious or belief minorities.

Aan's ludicrous blasphemy case was only the tip of an iceberg among other cases that showcasing a new trend in religious blasphemy which happened within cyberspace. A similar fate was experienced by Basuki Tjahja Purnama (Ahok), Sukmawati Soekarnoputri, and Otto Rajasa,

⁹ Bernhard Dahm, *Sukarno and the Struggle for Indonesian Independence* (Cornell University Press, 1969).

¹⁰ Rumadi Rumadi, "Antara Kebebasan Dan Penodaan Agama: Menimbang Proyek 'Jalan Tengah' Mahkamah Konstitusi RI Tentang UU Penodaan Agama," *Jurnal Indo-Islamika* 2, no. 2 (2012): 245–71, <https://doi.org/10.15408/idi.v2i2.1177>.

illustrating the distorted relationship between technology advancement and religious discourse over the years. The above-mentioned cases also reflect the problematic aspect of the implementation of Indonesia's blasphemy law over the years. What used to be a tool to suppress the existence of diverse religious or beliefs community other than the six official religions, turned into a menacing instrument that also violates the rights of people to exercise their freedom of speech and expression. Furthermore, prosecuting individuals for their peaceful expression of beliefs that are considered blasphemous is likely contributing to an atmosphere of religious intolerance in the country. As per cases of religious blasphemy in general, the most vehement rejection of expressions or opinions labeled as blasphemy usually comes from devout religious people, so freedom of religion is frequently positioned as a conflict with freedom of opinion. This assumption, however, is incorrect because, like all human rights norms, freedom of religion or belief and freedom of opinion and expression are interdependent.¹¹ Countries that do not see a conflict between the suppression of free expression and the practice of religion tend to discriminate against the practice of both.

Looking into the current situation, the discourses on religion or belief within Indonesian cyberspace ran on two different sides, with the heightened political identity becoming one of the prominent factors.¹² The conservatives would be quick to use the term blasphemy, immoral, or heresy while pointing fingers at those who they deemed to be committing the blasphemous act. On the other side of the room, the secular heterogenic group came from different religions or beliefs that repulsed at the idea of shallow religious teachings and interpretations. The increasing activity on social media by both groups has resulted in an intense confrontation or conflict. At first, the ITE Law was a beacon of hope for the people, expecting that the regulation would be able to protect the state, the people, and private sectors from cybercrimes threats. The regulation includes three articles on defamation, religious blasphemy, and other online threats from high-tech crimes. Unfortunately, several years after its implementation SAFENET/Southeast Asia Freedom of Expression Network recorded that there are more than 215 reports to the police on the basis of defamation, blasphemy, and online threats under the ITE Law. In-depth data examination by

¹¹ Asma Jahangir, "Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, and the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, Further to Human Rights Council Decision 1/107 on Incitement to Racial and Religious Hatred and the Promotion of Tolerance" (A/HRC/2/3 (United Nations Human Rights Council, 2006), para. 37, 2006), <https://www.refworld.org/reference/themreport/unhrc/2006/en/23862>.

¹² John Postill and Leonard Chrysostomos Epafra, "Indonesian Religion as a Hybrid Media Space: Social Dramas in a Contested Realm," *Asiascape: Digital Asia* 5, no. 1–2 (February 14, 2018): 100–123, <https://doi.org/10.1163/22142312-12340086>.

Remotivi revealed that 50% of those reports were made by state apparatus, confirming the forced limitations of people's freedom of expression.¹³ Originally the regulation was meant to capture cyber criminals but now it has steered away from the initial purpose and shifted into a tool to criminalize citizens participating in a digital democracy, to convey their complaints, opinions, thoughts, and critics toward their leaders.

According to several NGOs, including SAFEnet and YLBHI, freedom of expression on the internet has uncovered many challenges, with one that is the upsurge of religious blasphemy accusation.¹⁴ Asfinawati, from YLBHI, has stated that blasphemy accusations are still rampant despite the current situation, with most alleged cases involving social media usage. The present state of affairs portrayed the sense of urgency in reforming the current regulations in regard to the religious blaspheme. The inherent sensitivity surrounding the issue of religion often resulting in a complex societal issues, including in Indonesia. Cases depicting social conflicts as a result of the violation of the right to religious freedom in the form of violence, persecution, hate propaganda, acts of intolerance, and discrimination are increasing, illustrating the failure of state in respecting, protecting, and fulfilling the rights to freedom of religion or belief. Public pressure often being the prominent factor in prosecuting Blasphemy cases, when news of a 'blasphemous' act was spreading, the public will be quick to judge, sending angry responses and demands for punishment, regardless of the legal merits of the case and giving no option for the law enforcement but to capture the suspect in order to avoid 'chaos'.

The practice of Indonesia's Blasphemy Law and ITE Law were supposedly an attempt from the government to control and 'lock-in' the underlying subjectivity in interpreting religion or belief or orchestrate the correct religious practice through its authorized religious bodies. This mechanism has been defined as 'religion making from above'.¹⁵ The current blasphemy regulations do not meet the standards in promoting religious harmony and interfaith dialogue. Rather it creates a complex religious polarization now more vital than ever. The existence of blasphemy law in many countries itself could pose as a tool either to protect individuals from hatred and discriminated speech or to protect religion itself.¹⁶ The existence of laws and regulations

¹³ Damar Juniarto, "Menyoal Demokrasi Digital Di Indonesia," *Jurnal Dialog Kebijakan Publik* 22 (2016): 28–35.

¹⁴ Asfinawati and Aditia Bagus Santoso, "Laporan YLBHI Tentang Penodaan Agama Januari-Mei 2020" (Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, 2020), <https://ylbhi.or.id/bibliografi/laporan/laporan-ylbhi-tentang-penodaan-agama-januari-mei-2020/>.

¹⁵ Kari Telle, "Faith on Trial: Blasphemy and 'Lawfare' in Indonesia," *Ethnos* 83, no. 2 (March 15, 2018): 371–91, <https://doi.org/10.1080/00141844.2017.1282973>.

¹⁶ Caleb Holzaepfel, "Can I Say That?: How an International Blasphemy Law Pits the Freedom of Religion Against the Freedom of Speech," *Emory International Law Review* 28, no. 1 (2014): 597–648.

that are not in accordance with the elements of human rights instruments has an impact on the state's performance in protecting and guaranteeing its citizens' rights, in this case freedom of religion. Regulations that are inadequate and do not uphold human rights values can be used as a legitimate justification by state or non-state actors to target religious groups or minority beliefs. It is to be questioned whether the present legal instruments would strike a balance between freedom of religion or belief and freedom of expression as Indonesia is a member of several international frameworks that guaranteed the protection of both. The second part of the paper will try to discern Indonesia's blasphemy law through human rights lenses and probe the idea of reconstructing the law in question.

3.2. Challenging the Blasphemy Law through Human Rights Perspective

Indonesia often prided themselves on being a nation of democracy that protects the rights of its people in expressing their thoughts and aspirations including their religious or spiritual life. Religious freedom has been guaranteed by the state in Article 28E (1) and Article 28I (1) of the 1945 Constitution by extension, the state has a negative obligation not to interfere with someone's religion or belief. The state also guaranteed people's freedom of opinion, speech and expression through Article 28 and Article 28E (3) of the Constitution. The same protection was also given through the Indonesia Human Rights Bill 39/1999. It re-affirms that everyone has the right and freedom to choose his religion and to worship according to the teachings of his religion and belief. Both legal instruments also put some limitations when exercising the freedom of religion and freedom of expression, including the need to respect the rights and freedoms of others, morality, religious values, security and public order. In retrospect, the Article 4 of the Blasphemy law that warrants criminal offence should be annulled as because it constitutes unwarranted intervention by the state into the convictions or belief of a religious group and individuals.¹⁷

Back in 2010, coalition of lawyers, civil society and academics filed a petition to the Constitutional Court of Indonesia to review Law 1/1965 on Religious Blasphemy, the applicants were led by Abdurrahman Wahid, popularly known as Gus Dur, who happened to be, the now deceased, former leader of Indonesia's largest Islamic organisation *Nadlathul Ulama* (NU) and former president of Indonesia. The applicants argued that the main problematic issue on the blasphemy law itself is the vague wording of the provisions and the lack of clarity on how to define

¹⁷ Melissa A Crouch, "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law," *Asian Journal of Comparative Law* 7 (2011): 1–46, <https://doi.org/10.1017/S2194607800000582>.

'deviant religious practices' or 'deviant beliefs'. The expansive interpretation of the notion of 'deviant' would result in an excess of criminalization towards religious or beliefs minorities. In its decision, the Constitutional Court firmly decided that the Blasphemy Law is still constitutional as a whole and upheld the existence and implementation of the law, however, it did notice and acknowledge that the law would need a reform in order to avoid cases that lead to misinterpretations of the law and arbitrary convictions. The one and only dissenting opinion came from Justice Maria Farida, who also stated that while the Law in question was a product of the past, it was valid but contain several weaknesses as it was in conflict with the human rights amendment of the 1945 Constitution.

Freedom of religion within the international human rights framework is being recognized more as an individual rights that consist of two spheres.¹⁸ The first one is the 'internal' sphere which often being referred to 'forum internum', an absolute right for a person to have the freedom of thought, conscience, and religion. The second one is the right to manifest or express those religion or belief or 'forum externum' in public and privately. The right of manifestations often being met with harsh retaliation if a religion or belief are being considered deviant. The interplay on the protection between the freedom of religion and freedom of speech within the international framework is so to speak focusing on the individual and not on the religion per se since it is difficult to see or perceive religion or belief itself as an autonomous holder of rights. While the International Covenant on Civil and Political Rights (ICCPR) guarantees the exercise of freedom of speech under Article 19, it also allows for certain limitations. The Covenant defines this right as the "freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice." This freedom carries "special duties and responsibilities." Additionally, the ICCPR outlines grounds for limitations, which include protecting the rights or reputations of others, national security, public order, public health, and morals. Even with those laid out restrictions, such limitations must be legitimately prescribed by law in compliance with the human rights framework and demonstrably necessary, that is proportionate to the stipulated purpose, and do not put in jeopardy the right itself. The provision encompassed within Article 18 on freedom of religion or belief should also not to be interpreted expansively as it includes the concept of protection of religion. In sum, the ICCPR protects the rights of individual persons and, in some instances, of

¹⁸ Scott Sheeran, Nigel S Rodley, and Scott Sheeran, *Routledge Handbook of International Human Rights Law* (Routledge London, 2013).

groups of persons, but does not protect abstract entities such as religion, belief, idea or symbol. The key articles of the ICCPR concerning religious freedom explicitly safeguard the expression of thought, conscience, and religion, irrespective of the content of such expressions. It is crucial to recognize that the ICCPR does not guarantee the protection of specific ideas from being distorted or challenged in public discourse. Instead, it ensures the protection of individuals who express these beliefs, especially those holding minority or unpopular views. In today's interconnected world, suppressing ideas and opinions is becoming increasingly ineffective.¹⁹

Interactions and conflicts between freedom of religion and freedom of speech appear to be at the core of international legal debate about human rights. One of the most controversial issues is when a speech constitutes incitement to hatred and when it does not. Within the UN institutions, there has been a heated debate on blasphemy law compatibility with human rights framework. In the beginning of 1999 until 2010, the Organization of Islamic Cooperation (OIC) has aggressively pushed the agenda for the UN Commission of Human Rights and its successor, the Human Rights Council, to adopt a resolution on 'Combating Defamation of Religion'. The resolution was met with harsh opposition from western states and civil societies. Among one of the prominent arguments was that the focus of human rights is not to give protection to religion as such, it is the rights and freedoms that people are entitled to that become the primary concern of human rights issues.²⁰ The OIC has then changed its stance with proposing the resolution to 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief' (Resolution 16/18). This resolution was subsequently adopted by members of the Human Rights Council on the basis of consensus (i.e. without a vote).

In regard to blasphemy and social media, the ITE law is unable to keep up with the progressive digital society and was deemed to be a tool to restrain freedom of expression and opinion. The incomplete substance of the regulation makes this legal instrument vulnerable to multiple interpretations and abuse in its implementation.²¹ The transformation of Indonesia's ITE law should use human rights value on its pedestal in order to create a safe and healthy space for the people to exercise their freedom. Effort made to protect and guarantee freedom of expression

¹⁹ Ben Clarke, "Freedom of Speech and Criticism of Religion: What Are the Limits?," *eLaw Journal* 14, no. 2 (2007): 94–121.

²⁰ Jeroen Temperman, "Blasphemy, Defamation of Religions and Human Rights Law," *Netherlands Quarterly of Human Rights* 26, no. 4 (December 1, 2008): 517–45, <https://doi.org/10.1177/016934410802600403>.

²¹ Wahyudi Djafar and Justitia Avila Veda, *Internet Untuk Semua: Mengintegrasikan Prinsip Hak Asasi Manusia Dalam Pengaturan Internet Di Indonesia* (Lembaga Studi dan Advokasi Masyarakat, 2014).

on the internet should be followed by net neutrality principle, as the social interaction within the digital field have a difference compare to the conventional reality, it needs a flexible regulation serving the role of a facilitator in the interactive environment. Regarding the current practice, it cannot be denied that digital technology companies have a significant dominant role in the public sphere.²² However, transparency and respect for human rights are urgently needed in the framework of social media platform policies to create a safe space for social interaction.

For speech to be categorized as harmful or offensive in relation to religion, it must meet specific standards. According to the Human Rights Committee, such speech must advocate religious hatred as defined under Article 20(2) of the ICCPR, specifically incitement to discrimination, hostility, or violence, which is strictly prohibited under international human rights law. The Camden Principles on Freedom of Expression and Equality define hatred as "intense emotions of opprobrium, enmity, and detestation towards a target individual or group." In addition to the legally binding ICCPR, the Rabat Plan of Action (RPA) provides another set of criteria as part of the ongoing efforts to protect freedom of expression concerning religious issues. The RPA's framework for action by state and non-state actors derives its legitimacy and credibility from both the process that led to its creation (the "input") and its substantive content (the "output"). The RPA has been highly praised because of its coverage of the tense relationship between freedom of speech and religious equality, as well as religious feelings. The RPA primarily addresses issues not of incitement to hatred, but rather the responses and recommendations for addressing these issues, specifically focusing on the blasphemy law itself. The RPA has introduced a six-part threshold test to determine when speech constitutes criminal incitement. This test considers context, speaker, intent, content and form, extent of the speech act, and the potential risk of harm. It is crucial that the RPA emphasizes the discriminatory nature of blasphemy laws, both in the protection they afford to different religions and in their enforcement. These laws are counterproductive as they often lead to the de facto censorship of all inter-religious or intra-religious dialogue, debate, and criticism.²³ The RPA also takes a rather strong stance on the context of blasphemy law by proclaiming, "States which have blasphemy laws should repeal them, as such laws have a stifling impact on the enjoyment of freedom of religion or belief, and healthy dialogue and debate about religion."

²² Martin Moore, *Tech Giants and Civic Power Centre for the Study of Media* (The Policy Institute, King's College London, 2016), <https://apo.org.au/node/64837>.

²³ Sejal Parmar, "The Rabat Plan of Action," in *Free Speech and Censorship around the Globe* (Central European University Press, n.d.), 211–31, <https://www.ceeol.com/search/chapter-detail?id=429548>.

The primary objective of adapting the concept of 'combating intolerance' is that, unlike the 'Blasphemy' Law, it does not aim to decide what beliefs or teachings are accepted and protected, but would shift its attention to those who incite hate speech or violence toward religious and belief groups that differ from the mainstream. In other words, it would change the underlying perspective of the current blasphemy law from protection of religion to protection of individuals. The stakes are too high to keep implementing the law that puts the value of pluralism and democracy in an immense danger. The Government must be able to design a blasphemy law that not only accommodates the interests of several religions but also the interests of the nation and all its components. The human rights approach on religious blasphemy provides broad and relevant normative principles relevant to all kind of societies. George laid out four aspects to the approach that can be used as a guide.²⁴ First, the relevant legal instruments should include a firm commitment to protect and respect freedom of opinion and expression. Second, this approach needs to prioritize people's rights to freedom from discrimination and hatred, so that the state can defend these rights, including limiting those expression itself. Third, this instrument provides a legal framework for balancing these rights, emphasizing that restrictions on opinions, especially in the context of religion or belief, must meet strict requirements. The fourth aspect is the need for this approach to bridge the gap between freedom of opinion and freedom of religion, which means treating them as complementary rights rather than as opposing entities.

The Indonesian Constitutional Court has expressed concern that the public dissemination of divergent religious views could provoke reactions from the populace, potentially leading to social unrest. This concern arises from the fear that the associated religious community may feel blasphemed and insulted by what they perceive as deviant interpretations. The state controls the 'correct' and 'official' way of religious life, whether private or public, through each religion's monitoring board, which operates preemptively under Indonesia's Blasphemy Law. Proponents of blasphemy laws argue that human rights protections should encompass both beliefs and individuals, especially as these beliefs often represent minority voices in certain contexts, making the use of human rights language appealing.²⁵ However, in practice, the implementation of these laws frequently results in a rigid and suppressive environment. The stifling issues are especially visible in the case of the Ahmadiyah community in Indonesia, where the government went so far

²⁴ Cherian George, *Hate Spin: The Manufacture of Religious Offense and Its Threat to Democracy* (MIT Press, 2016).

²⁵ Asma T. Uddin, "The Indonesian Blasphemy Act: A Legal and Social Analysis," in *Sacrilegious Expression in a Multicultural Age*, ed. Christopher S. Grenda (University of California Press, 2014), 223–48, <https://doi.org/10.1525/9780520958227-011>.

as to release a decree dissolving and prohibiting the establishment of such a group. This not only affects people's freedom of religion, but also their freedom to express themselves freely in public, as happened in the case of Ahok, the ex-governor of Jakarta. The Blasphemy Law in Indonesia was drafted in such a way that it aimed to protect and sanctify religious ideas, acting as a shield against deviant thoughts, teachings, and criticisms.

In a society grounded in morality and democracy, the transition to a new, inclusive social order must be based on interactive approaches. These approaches should involve all citizens in healthy dialogues within both political and cultural spheres. The implementation of the current Blasphemy Law may jeopardize the value of democracy embedded within Indonesia system. Rather than instilling trust in an impartial justice system, this pattern may erode the already flimsy trust in the courts. If there is no possibility in the time being to revoke the blasphemy law then, a strong political will from the government is needed in order to ensure that the law is not applied in a discriminatory manner and violates other fundamental rights. It is essential that state put an effort to create a safe space in which participation in initiatives related to interreligious dialogue should not be limited to leaders of religious or belief communities, but be as inclusive as possible. Religious flourishing is significant for both majority and minority religions in Indonesia, as well as for theological and other discourses. The Blasphemy Law has created a restricted space for individuals of all faiths to engage in contemporary debates within their religious traditions. Fear of challenging the status quo, especially government-endorsed interpretations, and the threat of criminal prosecution for blasphemy stifles open dialogue. In a deeply religious nation, this has a clearly detrimental effect. The practice often tempers and hinders the expression of social justice components of faith. Individuals within a community intertwine religious matters with questions of national security and public order, rather than being a remaining freely made decisions for themselves to choose religion or belief to adhere or even not to. Given the great diversity within Indonesia, it is crucial to embrace differences in religion, belief, or idea by creating a safe space for a healthy dialogue. Due to the long and complicated history of religious practices and the lives of Indonesian citizens, it is currently impossible to completely abolish the Blasphemy law. The international human rights framework's rules, norms, and guidelines can serve as a potential foundation for its progress in transforming the said regulation.

4. Conclusion

As a result of the development of technology and information, the digital era has opened up new spaces for people to voice their opinions and aspirations. But at the same time, digital space also opens up access to recent blasphemy trends. The dynamics of different social interactions have resulted in the emergence of various interpretations and subjectivities closely related to religion and belief. Many unwanted victims have been swallowed by Indonesia's draconian blasphemy law, which has been in place for nearly four decades. What was once a tool to suffocate the existence of religious and belief minorities has evolved into what is known as an attack on the exercise of free speech. The practice of the ITE Law and the Blasphemy Law tends to function to arbitrarily limit discussions in the digital space, especially on religion and belief. This regulation has not succeeded in balancing the two pillars of Indonesian democracy, namely freedom of expression and opinion and freedom of religion.

National and international human rights instruments have guided proportional restrictions on freedom of expression and freedom of religion. Both frameworks have taken an unequivocal stance opposing the existence of Blasphemy Laws in many states, including Indonesia. Their opposition to the Blasphemy Law is not without reason, as many existing laws are aimed at protecting religion rather than individuals or communal rights. This viewpoint differs from the goals of the human rights movement, which are to guarantee and protect people. The blasphemy regulations in Indonesia that do not prioritize human values and do not comply with the principle of non-discrimination require reconstruction that reforms of these regulations are urgently needed to balance freedom of opinion and religion. Shifting the focus of blasphemy regulations to regulations that protect religious groups or minority beliefs from discriminatory acts and hate speech can be the first step in establishing a legal framework based on human rights.

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