

The Origin of the Blasphemy Law and its Implication towards Religious Freedom in Indonesia

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Abstract

This article examines the history and impact of the Indonesian blasphemy law, known as Undang-Undang Penistaan Agama, which is included in the Indonesian Criminal Code (KUHP). The law aims to protect religious elements such as holy books, rituals, and saints from offenses. However, in post-authoritarian Indonesia, it has been used to target individuals and minority groups by religious groups, state apparatus, and politicians. This has sparked controversy and debate in society, with many intellectuals and human rights activists arguing that the law contravenes the Indonesian Constitution (UUD 45) and calling for its removal or revision through the Constitutional Court of Indonesia (MK). The article aims to understand the historical context of the law and its effect on religious freedom in Indonesia, using library research and ethnographic data. The results suggest that the government has struggled to clearly define religious freedom and has been inconsistent in resolving disputes related to the blasphemy law, often siding with the more powerful voice in public.

Keywords: blasphemy, criminal code, religious freedom, Indonesia.

Abstrak

Artikel ini mengkaji sejarah dan dampak hukum penodaan agama Indonesia, yang dikenal sebagai Undang-Undang Penistaan Agama, yang termasuk dalam Kitab Undang-Undang Hukum Pidana (KUHP). Undang-Undang (UU) tersebut bertujuan melindungi unsur-unsur keagamaan seperti kitab suci, ritual, dan orang suci dari penistaan. Namun, di Indonesia Pasca-Orde Baru, UU tersebut telah digunakan untuk menargetkan individu dan kelompok minoritas oleh kelompok agama, aparatur negara, dan politisi. Hal ini memicu kontroversi dan perdebatan di masyarakat, dengan banyak intelektual dan aktivis hak asasi manusia berpendapat bahwa UU tersebut bertentangan dengan Konstitusi Republik Indonesia (UUD 45) dan menyerukan penghapusan atau revisinya melalui Mahkamah Konstitusi (MK). Artikel ini bertujuan untuk memahami konteks historis UU tersebut dan pengaruhnya terhadap kebebasan beragama di Indonesia, dengan

menggunakan data yang dikumpulkan melalui studi kepustakaan dan etnografi. Artikel ini memperlihatkan bahwa pemerintah kesulitan mendefinisikan secara jelas apa itu kebebasan beragama dan tidak konsisten dalam menyelesaikan sengketa terkait dengan Undang-Undang Penistaan Agama, yang seringkali pemerintah berpihak pada suara yang lebih kuat di masyarakat.

Kata Kunci: penistaan, KUHP, kebebasan beragama, Indonesia.

Introduction

The word blasphemy originated in Greek which means “speaking evil”. It also means “treason against God” or “all acts of verbal offences against sacred values”. Hassan defines blasphemy as “an intolerable affront to the sacred, the priestly class, the deeply held beliefs of the believers and the basic values a community shares”. He further states that “blasphemy exists to prevent challenge to the notions of the sacred in organised religion. Its existence is a litmus test of the standards a society feels it must enforce to preserve its religious beliefs and morality and to prevent mockery of its gods. In Judeo-Christian-Islamic traditions its commission is punishable by death.”¹ In the last sentence of Hassan’s statement, however, the punishment of blasphemy varies (not always by death). It depends to socio-cultural context and regulation of a country where the offences are conducted.

Some sociological and anthropological works on blasphemy in Indonesia have been undertaken, most of which conclude that modernity is the main factor which stimulates the discussion of blasphemy in modern society. Hassan argues that the modernization of the society plays an important role to intensify the debates on blasphemy which emphasizes secularization of the state and privatization of religion. This situation challenges and forces religion to redefine its position in the society.² In addition, Daniels concludes that these debates reflect “the ongoing processes of radicalization, liberalization, and cultural and politico-jural Islamization.”³ These two contradictory opinions reflect the Indonesia’s struggle to locate religion in the state and the division of the society between those who support for secularization and islamization.

In Indonesia, blasphemy has been considered as an important aspect of socio-cultural and political spectra. The diversity of beliefs in the country demands a regulation to protect and avoid offences against religions known as *Delik Penistaan Agama* (‘Blasphemy Law’). This regulation is written in the article 156a of the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana*, later mentioned as KUHP).

¹ Hassan, “Riaz ‘Expressions of Religiosity and Blasphemy in Modern Societies,’” *Asian Journal of Social Science* 35 (2007): 111–25.

² Hassan; Harry G. Aveling, “Religion and Blasphemy in Modern Indonesian Literature,” in *Twentieth Century*, 1970, 217–24.

³ Timothy P. Daniels, “Liberals, Moderates and Jihadists: Protesting Danish Cartoons in Indonesia,” in *Count Islam*, vol. 1, 2007, 231–146.

The blasphemy law was fiercely debated in the aftermath of reformation era, a political change which was marked by the fall of Suharto's regimes. The debate was caused by the banning of Ahmadiyah and other religious sects, which were considered to violate the law. Some human rights activists and organizations urged the government for its removal or amendment through the Indonesian Constitutional Court (*Mahkamah Konstitusi*, later mentioned as MK). This reaction was challenged by Islamic organizations, which supported the government its implement against heretical religious sects. In response, MK held a judicial review of the blasphemy law in the end of 2009.

This article examines chronology of the issuance of the blasphemy law and its role in defining religious freedom in Indonesia. It attempts to answer how it was inserted to KUHP and how it was implemented in the New Order era to understand the limitation of religious freedom at that time and its implication towards it in the post-reformation. The study was based on library research by collecting data from books, articles of newspapers, and biographies etc., and ethnography (observation and interviews). Ethnographic fieldwork was conducted in Malang consisting of participatory observation and interviews targetting student activists of organizations such as *Himpunan Mahasiswa Indonesia* ('Indonesian Students Association,' later mentioned as HMI) and *Pergerakan Mahasiswa Islam Indonesia* ('Indonesian Muslim Students Movement,' later mentioned as PMII).

The 1965 Presidential Decree of Blasphemy

The decree 1965 concerning blasphemy was issued by the first president of Indonesia, Sukarno, in January 27th, 1965. The creation of the decree was initiated by Oemar Seno Aji, one of the speakers in the First National Conference of Law in 1963. One of the agendas was to discuss a specific regulation concerning offense against religion. He assures that "the first principle of *Pancasila*,⁴ declaring "belief in the one and only God" and the article 29 of the UUD 1945, which denotes the official admission of the State to the existence of religion in Indonesia, should become the foundation of religious life in Indonesia. It means that every religion in Indonesia is equal and its followers should respect to each other. To protect religion from blasphemy and to avoid religious conflict, it is, therefore, necessary to have regulation in KUHP in regard with offense of religion."⁵

The decree consists of four parts, which include the considerations, legal basis of issuance, content and clarification. In the consideration, it is stated that the decree was issued to create security for the state and society, and to achieve the idea of *Pembangunan*

⁴ Pancasila was derived from Sanskrit words, which mean five principles. It is the official philosophical foundation of the Indonesian state which consists of (1) belief in the one and only God; (2) just and civilized humanity; (3) the unity of Indonesia; (4) democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives, and (5) social justice for the all of the people of Indonesia.

⁵ Tedi Kholiludin, *Kuasa Negara Atas Agama: Politik Pengakuan, Diskursus Agama Resmi dan Diskriminasi Hak Sipil* (Semarang: RaSAIL Media Group, 2009).

Bangsa ('nation building') and revolution based on justice and welfare. In the legal basis of issuance, it is stated that the decree was formulated in accordance with the article 29 of the UUD 1945, the law number 4 about the amendment of the UUD 1945, and the first paragraph of the article number 2 of the decision of *Majelis Permusyawaratan Rakyat Sementara* ('the Temporarily Indonesian People Assembly' later mentioned as MPRS) number II/MPRS/1960. The content explains that:

Article 1

Every person is forbidden to intentionally tell, suggest or ask for supports in public to interpret the teachings of the religions, which exist in Indonesia or to perform religious practices similar to those religions, which deviate the mainstream teachings and practices of the religions.

Article 2

(1) Whoever violates the content of the article number 1 is ordered and warned to stop his activities by the Joint Decree (SKB) issued by the Minister of Religious Affairs, the Minister of Home Affairs, and the Attorney General. (2) If the violation of the law in the first paragraph is conducted by an organization or a cult (*aliran kepercayaan*), the president has authority to ban the organization based on considerations of the Minister of Religious Affairs, the Minister of Home Affairs, and the Attorney General.

Article 3

If the organization or the cult does not obey the Joint Decree of the three ministers and the decision of the president as mentioned in the second paragraph of the article number 2, the members of this organization would be sentenced to five years in prison at maximum.⁶

According to the clarification of this decree, the background of the issuance of the decree is caused by the emergence of cults or organizations of mysticism (*aliran kebatinan/kepercayaan*) all over Indonesia whose doctrines were considered to contradict with the fundamental principles of religions in Indonesia. Further, it is stated that the activities of some cults and organizations of mysticism could be categorized blasphemy. Furthermore, it is mentioned that the Presidential Decree 1965 constitutes a realization of the 1959 Presidential Decree regarding *Demokrasi Terpimpin* ('Guided Democracy'). It was considered a solution to regulate the relation between state and religion. The aim of the creation of the decree was to prevent deviations of religions. It also aimed to protect religious harmony, which could be destroyed with blasphemous attitudes and atheism, which opposed the first principle of *Pancasila*. The clarification also explains that the Presidential Decree 1965 was intended to protect religions from desecration which might

⁶ This is my own translation of the content of the 1965 President's Decree. For the original text of the content of the decree, see Imam Syaukani, *Kompilasi Kebijakan dan Peraturan Perundang-Undangan Kerukunan Umat Beragama* (Jakarta: Puslitbang Kehidupan Keagamaan, 2008).

be committed by a follower of a religion to his own religion or *vice versa*.⁷

In addition, the clarification contains explanations of each article of the decree 1965. It is mentioned that the meaning of the word “in public” in the first article of the decree is in line with its definition in KUHP,⁸ whereas the phrase “religions which exist in Indonesia” refers to Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucius.⁹ It further explains that “the admission of these six religions can be proven by the history of religions in Indonesia because they are followed by most of the citizens throughout Indonesian archipelago. Therefore, the decree 1965 is applicable for these religions. However, it does not mean that the other religions, such as Judaism, Shinto, and Taoism are not allowed to exist in Indonesia. They are also protected and guaranteed by the state based on the second paragraph of the article 29 of the UUD 1945.” As for mysticism groups or cults, it is stated in the clarification of the decree 1965 that the government attempts to guide them to the right way in order to convert to one of the religions, which believe in the one and the only God stated in *Pancasila*. The phrase “religious practices” in the first article of the decree 1965 means every religious activity (declaring a cult as religion or performing rituals using terminologies similar to those six religions). The criteria of a religion can be determined by *Departemen Agama* (‘the Department of Religious Affairs’), which has rights and methods to investigate it.¹⁰

The explanation of the article number 2 of the decree 1965 asserts that to a person or an adherent of a religion or a follower of a cult who violates the first article of the decree, he would be given advices. However, if the violation of the law is committed by an organization, which has serious impact towards religious communities, the president is allowed to ban a particular organization or cult in Indonesia.¹¹

In the explanation of the article number 3 of the 1965 decree, it is said that as for a cult, which usually does not have an organization or an association, only has its followers, who continue to violate the article number 2, will be punished, whereas for the followers, who stop their deviations, they will not be sentenced. It is obvious in the clarification of the decree 1965 that the decree was addressed to mysticism followers.

Mysticism as the Starting Point of the Implementation of the Blasphemy Law

According to Webster’s Third New International Dictionary, mysticism is “(1) the experience of mystical union or direct communion with ultimate reality reported by

⁷ Syaukani, 181-82.

⁸ It is the article 156 of the KUHP which deals with the public disturbance. This article conveys that “whoever expresses feelings of hostility, hatred or humiliation in public to a group or many groups of Indonesian people, is punished 4 years in prison or fined four thousands and five hundreds rupiahs in maximum. The definite explanation of a group in this article and the coming ones refers to each element of Indonesian society, which is different from another or other element in the society because of race, region, religion, nationality or position in accordance with the law of the state”.

⁹ The explanation of the 1965 decree regarding the six religions was arguably considered by some of Indonesians as the admission to ‘official’ religions in Indonesia.

¹⁰ Syaukani, *Kompilasi Kebijakan dan Peraturan Perundang-Undangan Kerukunan Umat Beragama*, 183.

¹¹ Syaukani, 184.

mystics or (2) a theory of mystical knowledge: the doctrine or belief that direct knowledge of God, of spiritual truth, of ultimate reality, or comparable matters is attainable through immediate intuition, insight or illumination, in a way differing from ordinary sense perception or ratiocination.”¹² Murthy defines mysticism as an effort to develop the value of human soul, which leads to the highest refinement.¹³

Mysticism in Indonesia refers to *aliran kepercayaan*, *kebatinan*, and *Kejawen* (Javanese religions). These beliefs, according to Stange, are a united form of syncretism in Java. “Javanism (*Kejawen*) refers at once to the geographical zone centering on the courts of Yogyakarta and Surakarta and the cultural style of those within it who emphasize their ethnic traditions.”¹⁴ These cults appeared as a result of the assimilation between animism and religions, which came to the archipelago. Robertson asserts that animism¹⁵ had dominated beliefs of the Malay communities before religions, such as Hinduism, Buddhism, Islam, Catholicism and Christianity came in the archipelago.¹⁶ As a result, when converting to a particular religion, they continued to practice their cultural traditional rituals of animism.¹⁷ This syncretistic belief was, therefore, considered to put purity of religion in danger.

Most religions tolerate the syncretistic beliefs unless they contradict with the teachings of a religion. For example in Christianity, Sastrosupono states that syncretism is not opposed by most Christian preachers as long as it is not against the fundamental teachings of Christianity. They realized that the syncretistic belief occurred due to an encounter between the local traditions and Christianity. However, there are some syncretistic followers who declare themselves as an angel or God or act to humiliate the teachings of Christianity. This kind of belief and action of course, cannot be accepted by Christianity and this belief can be categorized as blasphemy as stated in the 1965 decree.¹⁸

Likewise, Islam has close relation to mysticism in the sense that Islam was spread in Indonesia through cultural assimilation. Hurgronje stated “Islam in Indonesia is not like Islam in the Arab world, since it has been adapted and assimilated to local tradition and culture, which are practiced by the people in Indonesia before Islam, such as

¹² Philip Babcock Gove, *Webster's Third New International Dictionary of the English Language Unabridged* (Springfield: Merriam-Webster Inc, eds), 1497.

¹³ Murthy, “Ary ‘Kebatinan,’” in *Enciklopedi Nasional Indonesia*, vol. 8 (Jakarta: PT. Cipta Adi Pustaka, 1990), 258.

¹⁴ Paul Stange, “Javanism as Text or Praxis,” in *Anthropological Forum*, vol. 6 (Taylor & Francis, 1990), 256.

¹⁵ Animism is “the belief that all natural things, such as plants, animals, rocks, thunder and earthquakes, have spirits and can influence human events”. Gove, *Webster's Third New International Dictionary of the English Language Unabridged*, 25.

¹⁶ Roland Robertson as quoted by Nurdjana, *Hukum dan Aliran Kepercayaan Menyimpang di Indonesia* (Yogyakarta: Pustaka Pelajar, 2009).

¹⁷ On the detailed discussion about the development of deviated mysticism towards and its legal standing in Indonesia see Nurdjana.

¹⁸ M. Sastrosupono, “Supriyadi ‘Sinkretisme dan Orang Kristen Jawa,’” *Peninjau* 8, no. 1 (1981): 72.

animism, Hinduism, and Buddhism.”¹⁹ It is because Islam came to Java through Sufism, which could easily be accepted and adopted by the syncretistic society.²⁰ This method has accelerated the dissemination of Islam in Java, but it raised a new problem of the purity of Islam. The discussion has concentrated on whether it is permissible for a person to practice traditional rituals of animism when at the same time becoming a Muslim.

Shihab asserts that in the history of Islam in Indonesia, there were some sufism cults which were considered to deviate from the teachings of Islam. These cults were known as *kejawen* or *tasawuf Jawa* (Javanese mysticism) which integrated between Islam and cultural traditional beliefs.²¹ The story of nine Islamic clerics (*Wali Songo*) reflects the confrontation between the nine clerics and Syaikh Lemah Abang or Syaikh Siti Jenar. Syaikh Siti Jenar and his followers were regarded to be heretical and to desecrate Islam. Syaikh Siti Jenar admits himself as God with his teaching of *manunggaling kawula gusti* (being united with God). Due to this teaching, he believes that Muslims are not obligated to perform prayers and fasting if they have united with God. As a result, the nine clerics of Islam opposed Syaikh Siti Jenar and declared him and his followers as apostates because they misled the teachings of Islam. It is strongly believed by most of Muslims in Indonesia that he was prosecuted of blasphemy and murdered by the nine clerics. There are, however, a number of versions of the story of Syaikh Siti Jenar. Syaikh Siti Jenar's doctrines were regarded as the origin of Javanism (*Kejawen*) in Islam regardless of the controversy of the story.²²

According to van Bruinessen, mysticism in relation to Islam refers to “syncretistic beliefs of Islam and various other rituals, most of which are in the form of a *slametan*, an offering to the spirits and communal meal. These beliefs and rituals were associated with the life world of the peasantry, the hazards of the agricultural cycle, and local or ancestral spirits.”²³ These practices were conducted by the majority of Muslims in Java. Referring to Geertz's categorization of Muslims in Java, van Bruinessen explains that syncretism was performed by most of the *abangan* and the “rural” *santri*. The *abangan* are muslims who maintain their previous traditional practices, such as *slametan*, believing in spirits of big trees and stones. “There were also urban and elite varieties of this syncretistic culture (for which Geertz used the term *priyayi*)”. The term *santri* has two different meanings. The *santri* may mean “the more or less *shari'a*-obeying stricter Muslims, who prayed regularly, fasted during Ramadan, and hoped to save enough money to perform the *hajj* at least

¹⁹ Snouck Hurgronje as quoted by Alwi Shihab, *Antara Tasawuf Sunni dan Tasawuf Falsafi: Akar Tasawuf di Indonesia* (Depok: Pustaka IIMaN, 2009), 72.

²⁰ Niels Mulder, *Mysticism and Everyday Life in Contemporary Java* (Singapore: Singapore University Press, 1983), 1.

²¹ Shihab, *Antara Tasawuf Sunni dan Tasawuf Falsafi: Akar Tasawuf di Indonesia*, 73–76.

²² M.B.Rahimsyah AR., *Siti Jenar: Cikal Bakal Faham Kejawen Pergumulan Tasawuf versi Jawa* (Surabaya: Pustaka Agung Harapan, 2006), 153–62.

²³ Bruinessen, “Martin van ‘Saints, Politicians, and Sufi Bureacrats: Mysticism and Politics in Indonesia's New Order,” in *Sufism and the 'Modern' Islam*, ed. Martin Bruinessen and Julia Day Howell (London: I.B. Tauris, 2007), 93.

once in their lives or students of the *pesantren* (Islamic boarding schools) and most of these *santri* had rural backgrounds.”²⁴ The “rural” *santri*’s “religious training consisted mostly of the study of Arabic *fiqh* books and inculcating respect for *ulama* of the past as well as canonical obligations, common *santri* religious practices included grave visiting (*ziyara*) and recitation of sacred texts to ward off danger or call for supernatural support. Urban pious Muslims tended to be influenced by modernist or reformist thought and to reject many of the traditional practices of the rural *santri* and the *abangan*.”²⁵

The moderate and reformist Muslims were influenced by the ‘Muslim reformism of Muhammad Abduh in Egypt’ with its slogan to return to the Qur’an and the *Sunna*. Those who opposed syncretism were affiliated with the Muhammadiyah which was founded in 1912.²⁶ The ‘rural’ *santri* were affiliated with the NU which was founded in 1926 and which adopted cultural traditional beliefs as long as it does not contradict the fundamental teachings of Islam.²⁷

There were heated debates between these two groups regarding syncretistic beliefs in Muslim communities.²⁸ The core of the debate was to what extent Islam can adopt cultural traditional practices of animism in the syncretistic Javanese society. The NU and the Muhammadiyah have different measurement for the adoption of these beliefs. As for the blasphemy as stated in the 1965 decree, the syncretism is forbidden if it offends religious communities or desecrates the mainstream teachings of a religion.

As a matter of fact, syncretistic groups flourished after the independence of Indonesia. The Department of Religious Affairs (Depag-Departemen Agama) reported that there were more or less 360 *kepercayaan* and *kebatinan* groups all over Java in 1953.²⁹ The 1965 decree as mentioned above is, therefore, to prevent desecration of religions which might trigger conflict in the country. In addition, according to the Depag the abolishment

²⁴ Bruinessen, 92–93.

²⁵ Bruinessen, 93.

²⁶ On Muhammadiyah see James L. Peacock, *Purifying the Faith: The Muhammadiyah Movement in Indonesian Islam* (California: Benjamin-Cummings Publishing Company, 1978); Alfian, “Islamic Modernism in Indonesian Politics: The Muhammadiyah Movement during the Dutch Colonial Period (1912-1942)” (PhD Thesis, Madison, The University of Wisconsin Madison, 1969); Muhammad As’ad, “The Muhammadiyah Criticism against Mawlid Tradition over Centuries,” *Journal of Indonesian Islam* 13, no. 2 (2019): 350–72.

²⁷ Mulder, *Mysticism and Everyday Life in Contemporary Java*, 1–2. On Nahdlatul Ulama see among others A. Farichin Chumaidy, “The Jam’iyyah Nahdlatul Ulama: Its Rise and Early Development, 1926-1945” (MA Thesis, McGill, McGill University, 1976); Choirul Anam, *Pertumbuhan Dan Perkembangan NU* (Solo: Jatayu, 1985); Suaidi Asyari, “The Role of Muslim Groups in Contemporary Indonesian Nationalism: A Study of the Nahdlatul Ulama Under the New Order, 1980s-1990s” (MA Thesis, McGill, McGill University, 1999); Ismail Fajrie Alatas, Muhammad As’ad, and Fathurrochman Karyadi, “Sejarah Hubungan Habaib Dan Nahdlatul Ulama (NU),” *Tebuireng: Journal of Islamic Studies and Society* 2, no. 2 (2022): 87–101, <https://doi.org/10.33752/tjiss.v2i2.2388>.

²⁸ Bruinessen, “Martin van ‘Saints, Politicians, and Sufi Bureacrats: Mysticism and Politics in Indonesia’s New Order,” 94.

²⁹ Kholiludin, *Kuasa Negara Atas Agama: Politik Pengakuan, Diskursus Agama Resmi dan Diskriminasi Hak Sipil*, 153.

of syncretistic groups should be based on evidences that they are proven to endanger religious harmony and tolerance, or that their activities or practices violated a regulation, or that they became organizations which protected members of the Communist Party of Indonesia³⁰ (PKI-*Partai Komunis Indonesia*) or protected people who attempt to fail government programs.³¹

From the 1965 Presidential Decree to the Criminal Code

The idea of the inclusion of blasphemy into the KUHP was stated in the final clarification of the 1965 decree. It is stated that “deviations of religion which can be categorized as crime are not necessary to mention in the 1965 decree because it should have been mentioned in the KUHP.”³² There was, however, no specific article of the KUHP which discussed about blasphemy. It was Oemar Seno Adji who proposed the insertion of a particular article into the KUHP to endorse the final clarification of the 1965 decree. After conducting some conferences of law, which discussed the eligibility of the idea of the inclusion of the presidential decree into the KUHP, the government approved his proposal in 1969. Not only did the government insert a specific article regarding blasphemy in the KUHP, but at the same time the government also promoted the 1965 Presidential Decree to be a law number 1/PNPS/1965 regarding offense of religion based on the decision of the MPR.³³

It is therefore vitally important to mention the article 156a of the KUHP regarding blasphemy is an additional article, inserted into the article 156 of the KUHP. The connection between the decree and KUHP is found in article 4 of the 1965 Presidential Decree which states:

In the KUHP, it is necessary to add a new article declaring as follows (the article 156a): whoever intentionally expresses feelings or conducts actions in public: a. which in principle is a call for hostility, abuse, or disrespect of religions followed in Indonesia; b. or a call for not to convert to a religion which is based on the first principle of *Pancasila* “a belief in the one and only God”, is sentenced 5 years at maximum.³⁴

Although article 156a links only to the fourth article of the law number 1/PNPS/1965,

³⁰ The Communist Party of Indonesia is the largest non-ruling communist party in the world which was crushed 1965 and banned in the following years because they rebelled the government. For more information and discussion about the rebellion, see Cribb, “Robert ‘the Indonesian Massacres,’” in *Century of Genocide: Critical Essays and Eyewitness Accounts*, ed. Samuel Totten and William S. Parsons (New York: Routledge, 2009), 253–62.

³¹ Syaukani, *Kompilasi Kebijakan dan Peraturan Perundang-Undangan Kerukunan Umat Beragama*, 80–90; For the development and the role of mysticism groups in post-Independent Java see Mulder, *Mysticism and Everyday Life in Contemporary Java*.

³² Syaukani, *Kompilasi Kebijakan dan Peraturan Perundang-Undangan Kerukunan Umat Beragama*, 182.

³³ Syaukani, *Kompilasi Kebijakan dan Peraturan Perundang-Undangan Kerukunan Umat Beragama*.

³⁴ Syaukani, 180.

the way how it was implemented must be understood as a whole. There are two kinds of blasphemy in the article 156a: offense of religious deviation and offense of anti-religion. The offense of religious deviation covers attitudes or interpretations which can be considered to deviate the fundamental teachings of given religions in Indonesia, such as using the same name of a religion, but believing that God is a creature or that the Prophet Muhammad is not the last prophet. The offense of anti-religion consists of blasphemy and of having no religion.³⁵

Indeed, there are several articles in the KUHP dealing with acts considered to be disrespectful of religions. For example, the article 175 prohibits the complication of religious meetings or ceremonies, the article 177 prohibits the harassment and insult towards religious staff conducting religious duties and religious goods used for worship, and the article 503 prohibits noise-making in the proximity of houses of worship.³⁶ Therefore, before the inclusion of the article 4 of the law number 1/PNPS/1965 into the KUHP, the definition of behavior, which can be categorized as defamation of religion, seems to be more specific and clearer than the definition of feelings of hatred and hostility towards religions. However, there was no specific section about prohibition to interpret religious teachings in public even in the content of the article 156a of the KUHP. What is mentioned is the prohibition of expressing feelings and attitudes which can be classified as humiliations of religion.

Article 156, which is related to article 156a of the KUHP, does not, moreover, contain particular points concerning offense of religion. Instead, it discusses the expression of hostility, hatred, and humiliation of religion. The article 156 of the KUHP states:

Whoever expresses feelings of hostility, hatred or humiliation to a group or some groups of Indonesian people in public, is punished 4 years in prison or fined four thousand and five hundred rupiahs at maximum. The definite explanation of a group in this article and the coming one refers to each element of Indonesian society, which is different from another or other element in the society in terms of region, religion, nationality or position in accordance with the law of the state.³⁷

It is assumed that article 156a of the KUHP strives to specify the definition of blasphemy regarding interpretations of the teachings of religion. Rumadi asserts that the article 156a of the KUHP did not originate in *Wetboek van Strafrecht* (Dutch Criminal Code), rather than the 1965 Presidential Decree. Conversely, article 156 was derived from the Dutch

³⁵ Kholiludin, *Kuasa Negara Atas Agama: Politik Pengakuan, Diskursus Agama Resmi dan Diskriminasi Hak Sipil*, 166.

³⁶ Barda Nawawi Arief, *Delik Agama dan Penghinaan Tuhan di Indonesia dan Perbandingan Berbagai Negara* (Semarang: Badan Penerbit Universitas Diponegoro, 2010).

³⁷ Rumadi, *Delik Penodaan Agama dan Kehidupan Beragama dalam RUU KUHP* (Jakarta: the Wahid Institute and Yayasan Tifa, 2007), 12.

Criminal Code.³⁸

Accordingly, the regulations, which specifically discuss blasphemy, are placed in two different regulations. Law number 1/PNPS/1965 deals with the desecration of religions which is conducted by an organization or a cult in which the sanction is that the government is allowed to ban an organization or a cult that is proven to disgrace a particular religion. According to the content of this law, there are three steps to cope with the case of blasphemy which is committed by an organization. Firstly, the government advises the leader of the organization to stop his activities through an SKB issued by the Minister of Religious Affairs, the Minister of Home Affairs, and the Attorney General. In this case, the leader and his organization would not be punished if they obey the SKB. Secondly, if he does not obey the SKB, the president has an authority to ban and declare a particular organization is not allowed to operate in Indonesia. Lastly, if he violates the decision of the president, he and his members would be sent to five years in prison as based on the third article of the law. In addition, the article 156a of the KUHP was inserted into the article 156 of the KUHP as a link to the law number 1/PNPS/1965 to deal with blasphemy which is conducted by an individual or some members of an organization. The additional section of blasphemy in the KUHP is arguably to reinforce the position of the law number 1/PNPS/1965.³⁹

Blasphemous Attitudes in New Order Indonesia

The implementation of the laws concerning blasphemy was not obvious until the demise of the Old Order regime. The fall of Sukarno was marked by the rebellion of the PKI who murdered senior officers of the Indonesian army. Suharto has a prominent role in the struggle to fight the PKI and convinced the Indonesian society that the PKI was the main actor behind the killings of some generals of the armed forces. Subsequently, he was appointed as a president in 1967 and resigned in 1998. His periods of presidency were well-known as the New Order to differentiate it from the Old Order regime.⁴⁰

During the New Order, there were at least three cases of blasphemy in Suharto's period, which were concerned with the teachings of Islam. The first case is Hans Brague (H.B.) Yassin's *Sastra* (literature) magazine, publishing a short story under the title "*Langit Makin Mendung*" written by Ki Pandji Kusmin. H.B. Yassin is a famous Indonesian man of letters (*sastrawan*). He was prosecuted for blasphemy and sentenced to 1 year in prison with 2 years on trial. *Sastra* magazine, which was led by H.B. Yassin, published the short story in August 8th, 1968 in Medan. Since no one knew who Ki Pandji Kusmin was, the Supreme Court decided to blame H.B. Yassin as he hid the identity of the author of the story. The publication of this short story angered Indonesians especially Muslims because the content of the story was considered to desecrate Islam.

³⁸ Rumadi, *Delik Penodaan Agama dan Kehidupan Beragama dalam RUU KUHP*.

³⁹ Arief, *Delik Agama dan Penghinaan Tuhan di Indonesia dan Perbandingan Berbagai Negara*, 6.

⁴⁰ M.C. Ricklefs, *History of Modern Indonesia since c. 1200* (New York: Palgrave Macmillan, 2008), 280.

In the story, Ki Pandji Kusmin wrote the return of the Prophet Muhammad to the earth after convincing God that he had a duty to save his people from Hell. Prophet Adam delivered a farewell speech for Muhammad and *Jibril*⁴¹ in the airport of the paradise. On the way to the earth, the plane of the Prophet Muhammad and *Jibril* crashed the Russian's Sputnik. The Prophet and *Jibril* were flung towards the national monument (Monas-Monumen Nasional) in the center of Lapangan Merdeka in Jakarta. The imagination of the return of the Prophet Muhammad to the earth as written by Ki Pandji Kusmin was considered to disgrace the teaching of Islam.⁴² It is strongly believed by Muslims that the Prophet Muhammad would not return to the earth after his death. Muslims only believe the Prophet Isa who would come to the earth to save mankind before the hereafter.

Due to the hostile Muslims' reactions, the North Sumatera Supreme Court decided to abolish the circulation of the magazine. As a result, hundreds of copies of the magazine were confiscated from book stores in Medan.⁴³ Although the Supreme Court had forbidden the circulation of the magazine, Muslims still marched down the streets and protested in front of the office of *Sastra Magazine*. They believed that the staffs were the PKI's supporters, whose ideology is atheism. Therefore, they have no respect for religion.⁴⁴ The Communist syndrome appeared among Muslims because the content of the story seemed to have no respect for Islam. The other famous men of letters in Indonesia like Sori Siregar, Taufiq Ismail, Zakaria M. Pasa and Umar Kayam also protested the publication of the story. The Depag blamed H.B. Yassin for insulting of God, the Prophet, the teachings of Islam, the angels, the religious teachers (*kyais*), the *Pancasila* and the 1945 Constitution.⁴⁵

In the court, H.B. Yassin insisted on hiding the real name of the writer. Many speculated that Ki Pandji Kusmin is H.B. Yassin himself because he seemed to make up the story in the court by stating that the writer is a sailor, who always moved from one city to another.⁴⁶ His statement is viewed by Muslims as his effort to obscure the writer's identity.

The second case discusses the imprisonment of the editor of the *Monitor Tabloid*, Arswendo Atmowiloto. The *Monitor* tabloid belongs to the *Kompas Gramedia* Group. The Muslims' reactions started when Arswendo conducted a survey regarding the most idolized figures of the readers in October 1990. The result surprisingly showed that the Prophet Muhammad ranked eleventh after the editor himself, who ranked tenth in the

⁴¹ In Islam, *Jibril* (called as Gabriel in Christianity) is an angel whose duty is to deliver revelation to the prophets and accompany them while they are spreading the teachings of God to humankind (*umma*)

⁴² J.E. Siahaan and H.B., "Yassin 'Imadjinasi di Depan Pengadilan,'" *Horison* 8 (1970): 228-35.

⁴³ Rumadi, *Delik Penodaan Agama dan Kehidupan Beragama dalam RUU KUHP*, 22.

⁴⁴ Rumadi, 21.

⁴⁵ Siahaan and H.B., "Yassin 'Imadjinasi di Depan Pengadilan,'" 228-35.

⁴⁶ Rumadi, *Delik Penodaan Agama dan Kehidupan Beragama dalam RUU KUHP*, 22.

survey.⁴⁷

Consequently, lots of Muslims protested the result of the survey and prosecuted the *Monitor* tabloid for humiliating the Prophet Muhammad. Islamic organizations such as Muhammadiyah, the MUI,⁴⁸ and the Muslim Student Association (HMI-Himpunan Mahasiswa Islam) issued official letters asking the government to ban the *Monitor* tabloid.

Shortly after the huge protests, the Minister of Information, Harmoko, cancelled the permit for Arswendo to run the *Monitor* tabloid in October 23rd, 1990 as response to the protests against the tabloid. In addition, the *Kompas* Gramedia group announced that they fired Arswendo from their company and excluded him from the members of the United Indonesian Journalists (PWI-Persatuan Wartawan Indonesia).⁴⁹

Arswendo was then accused of disrupting the teaching of Islam. He was prosecuted for his carelessness to have conducted survey in which he did not make clear the criteria for selecting favourite figures that the readers of the *Monitor* tabloid could vote for. Finally, he was imprisoned for five years.

The last case occurred in Situbondo, small regency in East Java. It was Saleh, a young boy, who was charged of blasphemy in 1996. Saleh was a gardener whose job was to clean one of the mosques in Situbondo and to plant vegetables and flowers surrounding the mosque yard. The poor young boy was reported by his neighbour, K.H. Achmad Zaini to have desecrated Islam after he told Zaini that God was an ordinary creature like human beings. He further asserted that K.H. As'ad Syamsul Arifin, the founder of the *Pesantren* "Salafiyah Syafi'iyah" and one of the leading NU ulamas in Situbondo, passed away in a weird condition.⁵⁰

According to Romly, vice president of the NU branch in Situbondo, the case attracted much attention from the people in the regency after his uncle, KH. Zaini Abdul Aziz announced what Saleh said in *pengajians*⁵¹ and spread letters regarding the

⁴⁷ Rumadi, 23.

⁴⁸ On Majelis Ulama Indonesia (MUI), see Mohammad Atho Mudzar, *Fatwa-Fatwa Majelis Ulama Indonesia: Sebuah Studi Tentang Pemikiran Hukum Islam Di Indonesia, 1975-1988* (Jakarta: INIS, 1993); Nur Ichwan, "Ulama, State and Politics: MUI after Suharto," *Islamic Law and Society* 12, no. 1 (2005): 45-72; Nur Ichwan, "Toward A Puritanical Moderate Islam: The Majelis Ulama Indonesia and the Politics of Religious Orthodoxy," in *Contemporary Developments in Indonesian Islam: Explaining the "Conservative Turn,"* ed. Martin Van Bruinessen (Singapore: Institute of Southeast Asian Studies, 2013), 60-104; Nadirsyah Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975-1998)," *Journal of Islamic Studies* 15, no. 2 (2004): 147-79; Syafiq Hasyim, "Majelis Ulama Indonesia and Pluralism in Indonesia," *Philosophy & Social Criticism* 41, no. 4-5 (2015): 487-95; Muhammad As'ad, "Ulama in Indonesian Politics: Analysis on the Attitudes of The Majelis Ulama Indonesia (MUI) on the General Elections," *Akademika* 16, no. 1 (June 2022): 75-90, <https://10.30736/adk.v16i1.764>.

⁴⁹ Rumadi, *Delik Penodaan Agama dan Kehidupan Beragama dalam RUU KUHP*, 24.

⁵⁰ Rumadi, 25. There is no further explanation of the strange condition of the kyai's death in the source. It is assumed that Saleh's statement angered Muslims in Situbondo because the kyai is very honoured by Muslims in the regency.

⁵¹ *Pengajian* is a learning group, which is usually attended by many Muslims to study the teachings of Islam from a religious teacher. The process of learning is generally listening to what the teacher says and

defamation of Islam which was committed by Saleh. Muslims in the region soon started to argue regarding Saleh's statements. The local NU's religious scholars held a meeting in response to the public unrest to end the disputes within Muslim community. They concluded that the conflict was solely between Saleh and KH. Zaini Abdul Aziz. Therefore, the local NU's ulamas suggest K.H. Zaini Abdul Aziz to solve the case with a dialogue between him and Saleh without prosecuting Saleh for blasphemy in the local criminal court.⁵²

K.H. Zaini Abdul Aziz insisted to prosecute Saleh. As a result, the criminal court in Situbondo organized a session to decide Saleh's case. Thousands of Muslims attended this session and they expected him to be sentenced to death because of blasphemy. The judges of the criminal code decided that Saleh was guilty of desecration of Islam and sentenced to five years in prison.

However, the decision of the court did not satisfy the mass who attended the session. After the court announced that Saleh was guilty, the mass of Muslims violently stoned the police and court officers including judges as they left the court. They even stoned Saleh and some police officers who brought inside the jail. Saleh and some of the police officers were hurt. The mass still demanded to murder Saleh. Fortunately, the police officers helped Saleh to escape from the back door of the prison.⁵³

In this chaotic situation, various people served to further provoke the mass. An anonymous person said that Saleh was brought to the *Bukit Sion* church and he further asserted that one of the judges who decided in Saleh's case was a Christian, and therefore he was sentenced only five years in prison. In fact, all three judges, who prosecuted Saleh were Muslims.⁵⁴ The angry mass directly headed to and burned down the *Bukit Sion* church. They also destroyed some Christian and Catholic schools. There were at least 24 churches and some schools, which were burned and destroyed after Saleh's session in the criminal court.⁵⁵

These three cases show us the evindence of the implementation of the article 156a of the KUHP regarding blasphemy. Most of the cases were started by public prosecution and reaction of Muslims towards the suspects of the cases. Besides, these cases also show the fragility of religious harmony when it deals with the interrelationships between and among religious followers. Muslims' reactions were intense when their mainstream teachings of Islam were desecrated by their fellow Muslims or other followers of other religions.

teaches. The number of the people depends on how famous the teacher is. The more famous the teacher, the more people will come.

⁵² Rumadi, *Delik Penodaan Agama dan Kehidupan Beragama dalam RUU KUHP*, 26-29.

⁵³ Rumadi, 30.

⁵⁴ Rumadi, 30.

⁵⁵ Rumadi, 31-32.

Concluding Remarks

The existence of blasphemy law in Indonesian legal system has strongly implied the interpretation of religious freedom written in UUD 45. And this interpretation depends much on how the people's and government's perception of religious freedom within the context of democratic nation-state. It is considered significant to have such a regulation, which regulates religious life (communication and interaction) between the people, in a multicultural society like in Indonesia. Even such countries as in Europe and Asia have a similar kind of regulations for their people.

The fact that Indonesia has diverse religions and beliefs of which the number has increased for decades has strongly influenced the decision of the insertion of blasphemy law to KUHP. The transformation of the blasphemy law from presidential decree to be a part of criminal code shows how important it is to regulate religions and beliefs including their followers. The status of the law is legally firm in Indonesian legal system after it is inserted to KUHP. Moreover, it is common that the diversity is found within a religions. For example, Islam in Indonesia has several groups such as NU, Muhammadiyah, Syiah and Ahmadiyah. Not to mention mysticism and syncretism which have long existed before the country declared its independence. In this diversity, friction among religions and believers is unavoidable to happen range from opposite teachings and offences by believers against religions and beliefs.

Such cases which occurred in New Order era mentioned above has shown that offences against religions or beliefs might cause public disturbance and violence in society. The core of the debate is whether such an attitude is considered blasphemous or not. This often ends in violence. The debate of blasphemy shows us the ambiguity of the definition of blasphemy itself. People have different perception of utterances and attitudes which can be categorized blasphemous. As a result, the definition of blasphemy is frequently in the government elites' hands. In most cases, the government usually support the majority of the public to seek for political support from the people in return.

The debate of religious freedom in Indonesia will remain significant in the future. Given the fact that Indonesia is a multicultural country with diverse cultures and traditions, dispute to define and understand religious freedom appears to surface as a demand of the society when they encounter offences against their tradition or beliefs. In this case, government should have firm position in defining what is religious freedom that the country hold to guarantee that all its people are free to believe and practice their religions and beliefs.

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