

## Islamic Law and the Blasphemy Debate in Contemporary Indonesia

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### Abstract

Blasphemy is a sensitive and complex issue in Indonesia, the largest Muslim-majority country in the world. This article examines the regulation of blasphemy, which often clashes with Indonesia's social, cultural, and political dynamics. It evaluates the reconstruction of blasphemy laws through the lens of *maqāṣid al-'uqūbāt* in Islamic law. The study concludes that reconstructing the blasphemy law is necessary as part of legal reform that aligns with Indonesia's constitutional principles of the rule of law and democracy. This reconstruction should integrate Islamic legal principles based on *maqāṣid al-'uqūbāt* in several key areas, including defining the legal subjects of blasphemy, providing clarification as part of the resolution process by considering *shubhāt* and *al-dan ta'wīl*, and developing mechanisms for resolving blasphemy cases. The urgency for reform arises from several critical factors: the ambiguous formulation of blasphemy norms, which significantly impacts court decisions; the absence of consistent justice-based law enforcement mechanisms; disparate treatment toward certain groups; and the tendency to generalize blasphemy cases as criminal acts due to a lack of alternative measures. These issues reflect legal uncertainty and the potential misuse of blasphemy laws for political purposes.

### Abstrak

Penistaan agama merupakan isu yang sensitif dan kompleks di Indonesia, negara berpenduduk mayoritas Muslim terbesar di dunia. Artikel ini mengkaji pengaturan penodaan agama yang sering kali berbenturan dengan dinamika sosial, budaya, dan politik di Indonesia. Artikel ini mengevaluasi rekonstruksi hukum penodaan agama melalui lensa *maqāṣid al-'uqūbāt* dalam hukum Islam. Penelitian ini menyimpulkan bahwa rekonstruksi undang-undang penodaan agama diperlukan sebagai bagian dari reformasi hukum yang selaras dengan prinsip-prinsip konstitusional Indonesia tentang negara hukum dan demokrasi. Rekonstruksi ini harus mengintegrasikan prinsip-prinsip hukum Islam berdasarkan *maqāṣid al-'uqūbāt* di beberapa bidang utama, termasuk mendefinisikan subjek hukum penodaan agama, memberikan klarifikasi sebagai bagian dari proses penyelesaian dengan mempertimbangkan *syubhat* dan *al-ta'wīl*, dan mengembangkan mekanisme penyelesaian kasus penodaan agama. Urgensi reformasi muncul dari beberapa faktor kritis: rumusan norma penodaan agama yang ambigu, yang secara signifikan berdampak pada putusan pengadilan; ketiadaan mekanisme penegakan hukum yang berbasis keadilan yang konsisten; perlakuan yang tidak adil terhadap kelompok-kelompok tertentu; dan kecenderungan untuk menggeneralisasi kasus-kasus penodaan agama sebagai tindakan kriminal karena kurangnya upaya-upaya alternatif. Isu-isu ini mencerminkan ketidakpastian hukum dan potensi penyalahgunaan undang-undang penodaan agama untuk tujuan politik.

### Keywords:

*Blasphemy; Legal Reform; Integration of Islamic Law; National Law*

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## Introduction

Blasphemy is broadly defined as disrespecting God, questioning His authority, and disobeying His commands (Blasphemy, 1993). In Islamic law, blasphemy is referred to by several terms such as *sabb al-dīn*, *shatam al-dīn*, or *al-ṭa'n fī al-dīn* (Kuwait Ministry, 2007), as well as *jarā'im intihāk al-muqaddasāt al-dīniyyah*, meaning crimes that violate the sanctity of religion, or *al-sukhriyah min shu'ā'ir al-dīn*, meaning the mocking of religious practices (Zain-al-Ābidīn, 2013). As a concept, blasphemy is open to interpretation based on the sacred and profane distinctions of each religious tradition (Eliade, 1986).

For example, in Islam, the name of God, personified as Allah, is considered noble and sacred. For Muslims, who deeply believe in their religion's teachings, the sanctification of Allah is expressed through various phrases, such as *kalimah ṭayyibah* or the phrase *istirjā' Innā lillāhi wa Innā ilaihi rāji'ūn* as a form of expression of faith in times of calamity. This is in contrast to the Jewish tradition, which prohibits public worship through the mention of God's name as an expression of faith (Pauzian, 2023), believing that speaking God's name publicly diminishes its sacredness. In this belief, such an act is considered an offense and is viewed as blasphemy (Levy, 1986).

In Islamic law, blasphemy is considered a serious offense because it represents a denial of faith. QS. al-Taubah: 74, stating, "Indeed, they have uttered words of disbelief and have become disbelievers after Islam" (QS. al-Taubah:74), supports the view that blasphemy is a grave offense and is classified as an act of apostasy (*murtad*). This verse serves as a basis for the belief that blasphemy, whether done publicly or privately, is a profound act. If someone intentionally expresses blasphemy through speech, intention, or actions aimed at insulting or rejecting Islamic beliefs, teachings, or doctrines, or if they undermine or contradict established laws that are clearly defined in the Quran and Hadith, they are considered to have committed apostasy. According to a Hadith narrated by 'Alī ibn Abdillāh, the punishment for apostasy is the death penalty (al-Bukhārī).

According to The Royal Islamic Strategic Studies Center (RISSC), Indonesia is the largest Muslim-majority country in the world, with 231.06 million Muslims, accounting for 86.7% of its total population. This makes the Muslim population in Indonesia represent 11.92% of the total Muslim population worldwide (Kusnandar, 2021). This significant Muslim majority provides a strong moral foundation for the formation of social norms in Indonesia. However, Indonesia is also recognized as a democratic secular state (Hasani & Halili, 2022), which guarantees a broad range of constitutional rights for its citizens, including religious freedoms. Recently, Indonesia has carried out reforms of the constitutional system in the political system (Gani et al, 2024). Despite this, no state documents declare an official state religion or designate Indonesia as an Islamic state, even though Islam is the religion of the majority. One study by Freedom House also describes Indonesia as a secular country that embraces pluralistic values alongside moderate Islamic principles (House, 2010). Nevertheless, religion remains an integral and inseparable part of Indonesian society and its traditions.

In April 2024, *CEOWorld Magazine* lists the most religious countries in the world. Indonesia was declared one of the most religious countries among 148 surveyed nations (Iswenda, 2024), ranking 7th among the top 10 countries with the highest levels of religiosity, with a religiosity rate of 98.7%. This data demonstrates that, despite being considered a secular country by Freedom House, religion remains an inseparable part of the lives of the Indonesian people.

Since the enactment of Article 156a of the Criminal Code through Presidential Decree No. 1 of 1965 on the Prevention of Abuse and/or Blasphemy of Religion, Indonesia has regulated offenses related to blasphemy based on the theory of protecting religious feelings

(Gefühlsschutz-Theorie). The law aims to safeguard the religious sentiments of believers to prevent disruptions to public order (Senoadji, 1981). However, as Indonesia's democracy has evolved, the implementation of this law has faced criticism for its procedural flaws and ambiguous norms, which have contributed to horizontal conflicts within Indonesia's plural society (Meliala, 2018).

Based on an analysis of court decisions regarding blasphemy cases in Indonesia, it can be concluded that most perpetrators of blasphemy are adherents of the majority religion, Islam, and reports of blasphemy are often made by Muslims as well. At the same time, impartiality is a fundamental principle in the judiciary. Judges are required to be impartial, unbiased, and free from any external influences or pressures (Butarbutar, 2016). However, as Islam is the dominant religion in Indonesia and shapes the mainstream cultural context, it often influences the independence of judges in making decisions. This has led to judicial outcomes in blasphemy cases that sometimes reflect the views of the majority rather than an objective application of the law. Such cases include the conviction of Basuki Tjahja Purnama (Ahok) in 2016 (Bagir, 2017) and the case of Tajul Muluk, a Shi'a Muslim, in 2012, both of which were influenced by political and religious pressures.

Court decisions also demonstrate different treatment (Margiyono et al., 2010), offering protection against abuse and/or blasphemy primarily for six major religions while leaving minority religions or beliefs in a more vulnerable position. This was evident in the 2018 Meliana case, where Meliana was accused of blasphemy for complaining about the loudspeakers at a mosque. If we apply the logic of legislation, laws should be designed to protect vulnerable groups (in this case, minority groups), yet Presidential Decree No. 1 of 1965 is frequently used to defend dominant groups and, at times, sacrifices minority groups in the name of social harmony (Manchik, 2014). This is evident in blasphemy cases that have faced mass pressure, such as the 212 movement, as well as in the Tajul Muluk case related to the Sampang Shi'a dispute.

The evidentiary mechanism in the judiciary also seems to have a significant influence on the majority religion. Since Presidential Decree No. 1 of 1965 lacks clear normative definitions, the evidentiary process often relies on expert testimony from individuals who share the same religious background as the religion allegedly being blasphemed. As a result, court decisions regarding blasphemy cases in Indonesia are often viewed as inconsistent and subject to bias.

The various realities outlined above illustrate that Presidential Decree No. 1 of 1965 has not effectively resolved the issue of blasphemy in Indonesia. While Indonesia is recognized as a democratic secular state (Hasani & Halili, 2022), it is essential to examine the issue of blasphemy from a broader perspective. This is done by an in-depth analysis of legal norms surrounding blasphemy, particularly from the viewpoint of Islamic law, which is the dominant religion.

This study explores how Islamic law can be integrated with national law as part of a broader reform of blasphemy laws in Indonesia. It will consider the procedural similarities between Presidential Decree No. 1 of 1965 and Islamic law, particularly the concept of *istitābah* (asking for repentance), as well as the rules regarding *al-takwīl* (interpretation) of expressions that may indicate blasphemy. The goal is to avoid unjust punishment of individuals accused of apostasy.

This research aims to answer the following key questions: How does Islam influence blasphemy cases in Indonesia? How does Islamic law regulate blasphemy? And how can Islamic legal principles be integrated into the reform of blasphemy laws in Indonesia?

## Method

This research is a normative legal study (Marzuki, 2007) that employs various approaches, including the statute and case approaches (Soekanto & Mamudji, 2003). The primary legal sources for this research include the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 1965 concerning PNPS, Article 156a of the Criminal Code, international treaties, as well as the Quran, Hadith, and Ijtihad. This research also examines court decisions related to blasphemy cases.

In terms of Islamic legal resources, this study also includes various references on Islamic jurisprudence, such as *al-Fiqh 'Alā al-Madhāhib al-Arba'ah* by al-Jazīrī and *al-Mausu'ah al-Fiqhiyyah al-Kuwaitiyyah*. Some *fiqh al-maqāṣid* works by contemporary Islamic legal scholars include *Maqāṣid al-'Uqūbāt Fī al-Sharī'ah al-Islāmiyah* by Zayd Abdulkarim al-Zayd and *I'jāz al-Tashrī' al-Islāmī Fī al-Tajrīm Wa al-'Iqāb* by Muhammad Wafiq Zain-al-Ābidīn. For the analysis, the researcher uses a deductive reasoning method with a syllogism, where the major and minor premises are connected to the conclusion (Marzuki, 2007).

## Judicial Inconsistencies in Blasphemy Cases: A Study of Muslims in Indonesia

As a Muslim-majority country, the dynamics and complexity of Islamic politics within the context of national political development are heavily influenced by belief systems, expressions, ideological morality, and the broad spectrum of Islamic political thought. This spectrum ranges from prophetic politics, which are based on the fundamental values of Islamic teachings aimed at establishing a state grounded in Islamic principles, to the pursuit of justice and collective welfare, utilizing religious doctrines as tools to achieve secular goals (Hasan, 2020).

Political Islam in Indonesia is characterized by competition and bargaining over the interpretation and meaning of Islamic religious doctrines and symbols, as various actors seek to dominate religious political discourse in the public sphere. In this context, Islamism often involves religious leaders, groups, and individuals who act on ideological grounds, using doctrinal aspects of Islam intertwined with their interests. One of the key sources of Islamism's strength in Indonesia lies in the large Muslim majority, which plays a significant role in shaping the nation's political landscape.

The emergence of the blasphemy law is closely linked to the unresolved relationship between Islam and the state in the early years of Indonesia's independence, which led to ongoing tensions between religion and the state. Before the Reform era, the blasphemy law was rarely applied, with only nine blasphemy cases occurring between 1965 and 1998. This contrasts sharply with the post-Reform era, where the number of blasphemy cases has continued to rise (Institut, 2017).

Melissa Crouch observes that between 1965 and 2011, cases involving allegations under Article 156a (Arsil et al, 2018) of the Criminal Code were recorded in 14 provinces, with the highest concentration in Java (Crouch, 2012). These allegations encompassed various issues, including disputes over religious understanding, freedom of opinion and expression, new religious movements or sects, religious conflicts, personal conflicts, press freedom issues, political disputes, loudspeaker controversies, and allegations of religious politicization (Crouch, 2012). Notably, law enforcement in these cases is often influenced by mass pressure (Bagir, 2017). It acts as an intimidation factor that undermines the competence, independence, and impartiality of the judiciary in deciding blasphemy cases (Bagir, 2017). Additionally, the dominance of Islam as the majority religion plays a significant role in the reporting of blasphemy offenses in Indonesia. Based on a sampling of 59 court decisions from 1968 to 2024,

the following data were obtained. Islam is the religion most frequently reported as being desecrated, with a total of 48 court decisions involving blasphemy charges against Islam, followed by Christianity with nine decisions and Hinduism with three decisions. Additionally, based on a sampling of 99 court decisions from 1968 to 2024, the data reveals that Muslims are the most common perpetrators of blasphemy, with 63 cases. Christian perpetrators account for 26 cases, while perpetrators from Hinduism and Buddhism each have at least one case.

Presidential Decree No. 1 of 1965 and Article 156a of the Criminal Code are classified as offenses against religion aimed at protecting public order rather than specifically protecting religion itself. These laws are designed to safeguard religion from actions that may degrade or defame religious symbols, as such actions can profoundly affect the feelings of religious adherents, potentially leading to disruptions in public order (Senoadji, 1981). Given the high level of religiosity in Indonesian society, actions deemed insulting or blasphemous can trigger strong emotional reactions across different social groups. As a result, Presidential Decree No. 1 of 1965 and Article 156a serve to prevent the escalation of religious conflicts.

The law also aims to protect minority groups in Indonesia from religious discrimination, especially in a predominantly religious society. However, Presidential Decree No. 1 of 1965 has become a source of conflict due to its ambiguous provisions, which blur the boundaries between internal and external religious matters. It often imposes majority religious interpretations, punishes beliefs or interpretations within the realm of religious freedom, and fosters discriminatory behavior in the application of religious offenses. Furthermore, the law lacks adherence to the principle of legality, which includes the principles of *Lex Stricta* (laws must be written), *Lex Certa* (laws must be precise), and *Lex Scripta* (laws must not be interpreted by analogy) (Report, 2019), leading to inconsistent court decisions. Here is an overview of blasphemy cases in Indonesia based on the court decisions:

**Table 1. Court Decisions in Blasphemy Cases with Sentences of 3 Years or More in Prison**

No	Year	Defendant	Case	Sentence
1	1990	Arswendo Atmowloto (Blasphemy against Islam)	A survey of figures in the Tabloid Monitor lists Prophet Muhammad in 11th place as a figure to be admired	5 years in prison.
2	1996	Muhammad Saleh (Blasphemy against Islam)	Situbondo riots by stating that Allah is a regular being	5 years in prison
3	2005	Ardi Husain/6 YKNCA officials (Blasphemy against Islam)	Discourse on the legitimacy of sexual relations between men and women and that it is permissible as long as both consent.	4 years and 6 months in prison
4	2006	Iam Trikarso Hadi, and H. Abdul Wahab (Blasphemy against Islam)	Publication of a cartoon of the Prophet in the PETA tabloid / Blasphemy against Islam	No further tracking of the case
5	2006	Teguh Santosa (Blasphemy against Islam)	Broadcasted one of the twelve caricatures of Prophet Muhammad published in the Jyllands-Posten newspaper	5 years in prison
6	2007	Ahmad Musad eq- Alqiyadah Al Islamiyah (Blasphemy against Islam)	Believing in a new Shahada, believing in the existence of a new Prophet/ Messenger after Prophet Muhammad SAW	4 years in prison

7	2011	Ahmad Tantowi (Blasphemy against Islam)	Ahmad Tantowi was charged with multiple offenses for using religion as a tool to commit immoral acts, leading to two charges with cumulative sentences	10 years in prison
8	2011	Ondon Juhana (Blasphemy against Islam)	Instructing a patient by saying, "Admit that Ondon is the replacement for Prophet Muhammad SAW" (Fraud)	4 years in prison
9	2011	Oben Sarbeni (Blasphemy against Islam)	Interpreting the meaning of "ahli sunnah wal jamaah" as followers of the Ahmad Sulaeman sect	4 years in prison
10	2011	Antonius Richmond Bawelgan (Blasphemy against Islam & Christianity)	Spreading books and pamphlets containing insults against Catholic and Islamic religions	5 years in prison
11	2012	Andreas Guntur Wisnu Sarsono (Blasphemy against Islam)	Teaching doctrines that Andreas believed were revelations from Allah	4 years in prison
12	2014	Ciang Hin alias Anton (Blasphemy against Christianity)	Breaking the holy host in the defendant's right hand	4 years in prison. Case no. 101/Pid.B/2014/PN Atb
13	2020	Jhonerik Munthe alias Jhon Erik (Blasphemy against Islam)	Making a statement in the comment section of a video post about Prophet Muhammad using vulgar language	3 years in prison. Case no. 949/Pid.Sus/2020/PN Jkt.Utr
14	2024	Nauval Wira Hakim (Blasphemy against Islam)	Making a video or photo of nudity and committing acts of masturbation on top of the Quran for payment of IDR 50,000	3 years in prison. Case no. 5/Pid.B/2024/PN Bsk

The table above presents data on court decisions with sentences exceeding three years. Upon review, these decisions show a lack of consistent application of legal norms across cases. For example, in the case of Antonius Richmond Bawengan (2011), who was sentenced to 5 years in prison for distributing books and materials that contained blasphemy against Catholicism and Islam, the motives behind his offense differ significantly from the case of Arswendo Atmowiloto (1990), who was also sentenced to 5 years in prison for publishing a list in *Tabloid Monitor* that included the Prophet Muhammad as an admired figure. Additionally, when compared to the case of Ahmad Tantowi, who was sentenced to 10 years in prison for charges related to obscene acts and blasphemy, the variations in the nature of these offenses and the charges involved demonstrate inconsistencies in the judicial approach to blasphemy cases.

Based on the analysis of these varied decisions, the author concludes that the judges' decisions are influenced by several considerations, which are expanded upon in various aspects deemed aggravating by the judges. These considerations include the intent of the perpetrator (deliberate intent), the extent of the impact of the action, the use of media or technology, the profile of the perpetrator, and the involvement of the masses in exerting pressure. This results in a subjective judicial process, primarily due to the ambiguity of the norms in Presidential Decree No. 1 of 1965. As a result, judges tend to broaden the interpretation of the norms, applying them more expansively. The analysis of sentences exceeding 3 years differs significantly from those involving sentences of less than 3 years, as outlined below:

**Table 2. Court Decisions in Blasphemy Cases Resulting in Prison Sentences of 3 Years or Less**

No	Year	Defendant	Case	Decision
1	1968	HB Jassin (Blasphemy of Islam)	Short story "Langit Makin Mendung"	1-year imprisonment with a 2-year probation
2	2003	Mas'ud Simanungkalit, Islam Hanif (Blasphemy of Islam)	Misinterpretation of the Qur'an regarding Shahada	1-year imprisonment
3	2004	Ir. Charisal Matsen Agustinus Manu, Msi (Blasphemy of Islam)	Drawing of a man stepping on a book with "QS al-Taubah: 5."	2-years imprisonment (Supreme Court)
4	2004	Mangapin Sibuea/Pondok Nabi dan Rasul Dunia (Blasphemy of Protestantism)	Claiming that Christian pastors are false prophets	2-years imprisonment
5	2005	Sumardin Tappayya/Shalat Bersiul (Blasphemy of Islam)	Teaching salvation with different beliefs about Allah and denying Prophet Muhammad	1-year imprisonment
6	2005	Yusman Roy/Shalat Dwi Bahasa (Blasphemy of Islam)	Creating a pamphlet titled "How to Perform High-Quality Congregational Prayers"	2-years imprisonment
7	2006	Lia Aminuddin, aka Lia Eden (Blasphemy of Islam)	Introducing herself as the reincarnation of Jibril	2-years imprisonment
8	2006	Abdul Rachman (Blasphemy of Islam)	In the Eden community, Abdul Rahman was considered the reincarnation of Prophet Muhammad	3-years imprisonment
9	2007	Djoko Widodo, SH and Nur Imam Daniel aka Daniel (Blasphemy of Islam)	Stating that there are misleading teachings in the Qur'an leading millions of followers to hell	3 years 6 months imprisonment
10	2007	Dedi Priadi (44) and Gerry Luhtfi Yudistira (20) (Blasphemy of Islam)	Heretical teachings of Alqiyadah Al Islamiyah Siroj and Jaziroh Padang	3 years imprisonment each
11	2009	Lia Aminudin/Salamullah (Blasphemy of Islam)	Spreading revelations of Jibril, writing letters to remove all religions	2 years 6 months imprisonment
12	2009	Wahyu Andito Putro Wibisono (Blasphemy of Islam)	A follower of Salamullah, responsible for documenting revelations from Angel Jibril	2-years imprisonment
13	2009	Nimrot Lasbaun dkk/Sion Kota Allah (Blasphemy of Christianity)	Receiving guidance from God to avoid attending church services until 2011	6-months imprisonment

14	2009	Wilhelmina Holle (Blasphemy of Islam)	Insulting Islam and Prophet Muhammad in front of students	1-year imprisonment
15	2009	Agus Imam Solihin/Satrio Piningit (Blasphemy of Islam)	Declaring himself as "I am your God" and teaching the abandonment of Islamic obligations	2 years 6 months imprisonment
16	2011	Ahmad Tantowi/Surga Eden (Blasphemy of Islam)	The teaching of Eden Heaven and the sexual abuse of followers	10-years imprisonment
17	2012	Alexander Aan/Account Atheist (Blasphemy of Islam)	Posting writings and images of Prophet Muhammad is considered insulting	2 years 6 months imprisonment
18	2012	Tajul Muluk/Shia (Blasphemy of Islam)	Claiming that the circulating Qur'an is no longer authentic	2 years imprisonment (District Court), 4 years imprisonment (Appeals Court)
19	2012	Ronald Tambunan (Blasphemy of Islam)	During the Holy Thursday celebration, did not immediately place the Communion Host into his mouth	1-year imprisonment
20	2012	Charles Sitorus (Blasphemy of Islam)	Throwing a book titled Don't Fool Me, My Go" while degrading Islam	1 year 2 months imprisonment
21	2013	Rusgiani Alias Yohana (Blasphemy of Hinduism)	Stating, "God cannot come to this house because of canang, and canang is filthy and dirt."	1 year 2 months imprisonment
22	2016	Ir. Basuki Tjahaja Purnama aka Ahok (Blasphemy of Islam)	Giving a speech including a reference to Al-Maidah verse 51 during the Jakarta Governor election	2-years imprisonment
23	2016	Purwanto aka Pur (Blasphemy of Christianity)	The defendant was not deemed worthy to receive the Hostia but still accepted it	3-years imprisonment
24	2018	Ahmad Dhani (Blasphemy of Islam)	Posting on Twitter, "Anyone who supports the Religion Blasphemer is a scoundrel who needs to be spat in the face – AD."	1 year 6 months imprisonment
25	2018	Bilmar Lumban Gaol (Blasphemy of Islam)	Copying a Facebook post by Ahmad Fauzi stating, "Islam as an ideological movement can destroy and ruin cultural order."	1-year imprisonment
26	2020	Amrin Ridwan aka Amrin (Blasphemy of Christianity)	During the Communion (Hostia) reception, the	1 year 6 months imprisonment



			defendant, not being Catholic, received the Hostia	
27	2020	Ahmad Fadil aka Fadil (Blasphemy of Islam)	Intentionally dropping the Qur'an	1 year 2 months imprisonment
28	2019	Oskar Noho aka Undu (Blasphemy of Islam)	Taking the Qur'an from Imam Desa and throwing it to the floor	10-months imprisonment
29	2020	Eperianus Duha (Blasphemy of Islam)	Posting hate speech against Islam on a Facebook group "Dilan 199"	10-months imprisonment
30	2020	Paruru Dg Tau, aka Dg Tau (Blasphemy of Islam)	Claiming to have received guidance/Wahyu after meeting Allah SWT and teaching it	2 years 4 months imprisonment
31	2020	Soleman Lawalata aka Eman (Blasphemy of Islam)	The defendant has returned to Christianity because Islam is not true	1-year imprisonment
32	2021	Lars Cristensen (Blasphemy of Hinduism)	Kicking a place of worship (pelinggih) with his right foot causing it to fall	2-years imprisonment
33	2021	Anthon Kafiari (Blasphemy of Christianity)	Placing a red cross symbol above the door of his house	7-months imprisonment
34	2021	Paul Mauregar Lalong (Blasphemy of Islam)	Commenting on a Facebook post demeaning an ustadz	6-months imprisonment
35	2022	Tri Purwoko aka Cokro (Blasphemy of Islam)	Using the Maghrib Azan as the subject of a joke	2 years 6 months imprisonment
36	2022	Yakob Nome aka Yakob (Blasphemy of Christianity)	Receiving the Holy Communion and walking with others towards the altar despite belonging to a different religion	1 year 6 months imprisonment

In court decisions involving sentences of less than 3 years, there are more cases compared to those with sentences of more than 3 years. This is because all blasphemy cases are considered crimes that warrant a prison sentence. However, some of these cases bear similarities to those with sentences over 3 years in aspects such as the perpetrator's intent (deliberate intention), the scale of the action's impact, the use of media or technology, the influence of the blasphemer (the figure of the perpetrator), and the involvement of the masses in applying pressure. Despite these similarities, the norms in the blasphemy law are interpreted differently depending on the circumstances and specifics of each case.

**Table 3. Other Blasphemy Decisions**

No	Year	Defendant	Case	Sentence
1	2005	Rus'an	The article "Islam, the Religion that Faile"	The follow-up of the case cannot be traced.
2	2006	Editor of Gloria Magazine	Published a cartoon of Prophet Muhammad SAW in edition 288	The follow-up of the case cannot be traced
3	2008	Raji/ Sholat Koplo	Performed prayers after consuming dextron pills, also known as "koplo pill."	The follow-up of the case cannot be traced.
4	2009	FX Marjana	Stated in his speech that Islam is a religion that promotes hostility	The follow-up of the case cannot be traced
5	2009	Pastor Moses Alegesen/ Translation of Paper	Allegation of blasphemy against Hinduism due to the discussion of caste issues in the paper	Acquitted
6	2009	Ahmad Naf'an (Gus Aan) / Ilmu Kalam Santriloka	Stated that fasting in Ramadan, praying, and Hajj are not obligatory, calling them a deception of the Arab people	Detained, the follow-up of the case cannot be traced.
7	2012	Pastor Hadas Sah J Werner/ Bethel Church	Heretical teaching states that "the biological mother is only the birth mother, so the spiritual mother holds a stronger position."	Acquitted
8	2012	Sensen Komara/ NII	Raised the NII flag and changed the Qibla to the east	One year of treatment in a psychiatric hospital
9	2012	Sumarna	Tijaniyah Mutlet Cimahi sect prays only four times a day and does not observe Friday prayers.	Under investigation
10	2019	Suzhet e Margaret	Wore footwear inside the mosque and placed a dog inside the mosque	Mental disorder, no punishment imposed
11	2019	Suzhete Margaret	Wore footwear inside the mosque and placed a dog inside the mosque	Mental disorder, no punishment imposed

Based on the table above, it can be observed that judges' decisions in blasphemy cases predominantly result in prison sentences. Although Article 2 of Presidential Decree No. 1 of 1965 outlines a staged mechanism for resolving blasphemy cases, this process is not reflected in the judicial decisions. Additionally, there is an issue of unconstitutionality regarding the application of Article 3 of Presidential Decree No. 1 of 1965, as judges have never invoked it. Instead, judges have directly applied Article 4, which pertains to offenses under Article 156a of the Criminal Code. This shift has contributed to a significant increase in blasphemy cases following the reform period.

The number of cases with sentences of less than three years reflects the inconsistency in the application of norms under Presidential Decree No. 1 of 1965. One possible reason is that judges may not fully understand the formulation of norms in Presidential Decree No. 1 of 1965 or Article 156a of the Criminal Code, leading to uncertainty in their decisions. Judges, as legal decision-makers, are expected to provide clarity and certainty in their rulings. Another reason is the lack of adequate tools and mechanisms for resolving blasphemy cases, leaving the courts with no option but to rely on district courts. At the same time, they are often under pressure from the dominant Islamic religious groups, which exert significant influence on judicial outcomes.

Examples of cases influenced by mass pressure include the 1990 case of Arswendo Atmowiloto, where a poll about the most admired figures was linked to the Prophet Muhammad (Febrian & Team, 2020), the 1968 case of HBJassin's short story "Langit Makin Mendung" which was seen as insulting Islam (Sihombing et al, 2012), the 2003 case of Tajul Muluk, who was accused of heresy for claiming that the Qur'an in circulation was not original and for questioning the completeness of the Shahada (Supreme Court, 2012), and the highly publicized 2014 case involving Basuki Tjahaja Purnama (Ahok) and the Jakarta governor election (Burhani, 2016). This case led to massive mass protests by Muslims, including Islamic Action 1, Islamic Action 411, Islamic Defense Action 212, and Islamic Defense Action 303.

Religious sentiment in the Ahok case is evident in the provocative and hateful speeches, as well as the death threats made if Ahok was not imprisoned (Tempo, 2016). There were also threats to occupy the Merdeka Palace if he was not prosecuted (Gatra, 2016).

The bias in the norms of Presidential Decree No. 1 of 1965 has contributed to the expansion of judicial power in deciding cases related to the *forum internum*. In this area, the state should not intervene, especially since Indonesia is not an Islamic state. This is evident in cases such as the Ahmadiyah belief, the Lia Eden case, the Pondok Nabi sect (Salim, 2019), and the Panji Gumilang case. The broadening of judicial authority in this domain has led to court decisions on heresy before the trial process and inconsistent prison sentences. For example, in the 2020 case of Paruru Dg Tau alias Dg Tau (Rachmawati, 2020), who was considered to have committed blasphemy for "claiming to have received guidance/revelation after meeting Allah SWT" the judge sentenced him to 2 years and 4 months. This is in contrast to the 2007 case of Ahmad Musad (Al Qiyadah Al Islamiyah), who was sentenced to 4 years in prison for "believing in a new *Shahada* and a new Prophet/Messenger after Prophet Muhammad."

In one study conducted by Freedom House, it is stated that Indonesia is a secular state that upholds pluralism and moderate Islamic values (Blasphemy, 1993). However, referring to the data on blasphemy convictions presented in the table above. Cases originating from various religions protected in Indonesia illustrate that Indonesia places religious values, particularly Islam as the majority religion, within the public sphere while adhering to the principles of the rule of law. This approach serves as a balance between religious diversity and national harmony, which is in line with the Pancasila ideology. In this context, Indonesia is neither a secular state nor an Islamic state but rather a country that adopts a religious neutrality approach (a theistic state).

On this basis, although the preamble of Presidential Decree No. 1 of 1965 states that the law aims to maintain public order, blasphemy convictions are not classified as minor offenses. This is because the punishment for blasphemy aligns with the principle of *protecting religious feelings* (*Gefühlschutz-theorie*), which posits that the legal object to be protected is the religious sentiments of individuals adhering to a particular faith, as argued by Oemar Seno Adji (1981).

In a comparative study on blasphemy laws worldwide, Turkey shares similarities with Indonesia as both are countries with a Muslim-majority population. Religion also plays a complex role in state affairs in Turkey, similar to the experience of Indonesia. However, despite Turkey's constitutional amendment in 1924 declaring it a secular state, the Turkish government actively protects religious sentiments, particularly Islam, from criticism (United States Commission, 2017), which is penalized under Article 216 of the Turkish Penal Code. In contrast, in Indonesia, blasphemy cases often involve pressure from adherents of Islam, leading to instances of *trial by mob*. This societal pressure significantly influences sentencing decisions and impacts the impartiality of judges in ruling on such cases.

The instrumentalization of the blasphemy law, which opens the door for human rights violations through misuse and discrimination and fosters the engineering of hatred, leads to massive mobilization that results in unjust law enforcement by judges. This issue needs to be examined in the context of the rising wave of Islamization of political dissent (House, 2010), where religious morality becomes dominant. Perpetrators of blasphemy, who are seen as violating the law by expressing beliefs that offend certain religions (United States Commission, 2017)—particularly Islam, the majority religion in Indonesia—are subjected to both state and non-state laws. Therefore, the blasphemy law in Indonesia requires alternative norms to improve the legal framework. In this context, there is an opportunity to integrate Islamic law into national legislation, addressing key issues in the private realm, with Islam as the majority religion in Indonesia.

### **Integrating Islamic Law into Indonesia's Blasphemy Framework: A Path for Legal Reform**

In the context of blasphemy, there is a shared spirit between Islamic law and national law, particularly in their prohibition against insulting or mocking religious teachings that can disrupt public order. Given the fact that Islam is the majority religion in Indonesia and that both the victims and perpetrators of blasphemy are often Muslim, integrating Islamic law into the national legal framework could serve as an alternative approach to clarifying and reforming blasphemy law in Indonesia. This integration could help harmonize legal principles and provide more explicit guidelines for addressing blasphemy in the country.

Islamic law generally distinguishes between sharia and *fiqh*. Sharia refers to the clear and firm rules derived directly from divine sources and does not require in-depth reasoning (*ijtihad*). In contrast, *fiqh* is a product of legal reasoning that emerges through the process of *ijtihad*. Since *ijtihad* allows for differing interpretations, it is common to find varying legal rulings on the same issue within *fiqh* (al-Zuhayli, n.d), including on matters such as blasphemy. By adopting the concept of *al-takhayyur* (Sabreen, 2021), which involves selecting from different *fiqh* opinions, the diverse products of *ijtihad* can be used as alternative choices to shape relevant legal norms integrated into national law (Husaini et al., 2023). Based on this approach, the author proposes the integration of specific Islamic legal norms, identified through various *fiqh* studies, into the national legal framework. In terms of the contribution of Islamic law to the reform of Indonesia's criminal law, it basically requires an understanding to see Islamic law in depth (Asa'ari et al., 2023).

In Islamic jurisprudence literature (*fiqh*), the concept of blasphemy is typically discussed under the theme of apostasy (*murtad*) within the chapter on *jinayah* (Islamic criminal law). This is because blasphemy has legal implications that indicate a person's departure from Islam (*riddah*). In other words, one of the reasons a person may be considered to have left Islam is through actions or statements that demean the religion or its sacred elements. This act of leaving Islam, in classical *fiqh* literature, is categorized under *hudud* (Kuwait Ministry, 2007)

punishments, which include the death penalty. However, some contemporary *fiqh* scholars argue that this punishment falls under the category of *siyāsah syar'iyah* (political policy) (Abdulmaujud, 2011). The act of *riddah* must meet two essential elements: a departure from Islam and a violation of the law (Irfan, 2023).

The classical *fuqahā'* from various *madhhabs* universally agree that denouncing religion or engaging in religious propaganda against Islam is a forbidden act, and they also concur that the punishment for apostasy is the death penalty (Ibn Qudāmah al-Maqdisī, 1968). This view is rooted in the understanding that the punishment for apostasy is not intended to punish an individual simply for no longer being Muslim, or to restrict freedom of belief. Instead, it stems from the fact that apostasy represents a break in the individual's commitment to both the social and legal order, which can potentially threaten the stability of the community (al-Zayd, 2018). Therefore, the central issue in blasphemy cases is not the blasphemous act itself, but the departure from Islam, as it undermines the individual's previous commitment to the faith after freely choosing to embrace it.

According to the Shāfi'ī Madhhab, to formulate the elements of blasphemy, the legal subject must meet several criteria: 1) having reached adulthood, 2) acting with full consciousness (not under the influence of alcohol, duress, etc.), and 3) being mentally sound (not insane or mentally disturbed) (al-Bughā et al., 1992). Determining these elements is a complex process, requiring, for instance, psychological and sanity assessments of the alleged blasphemer. Additionally, another crucial element that must be fulfilled is the concept of *istitābah* (inviting the perpetrator to repent), which is recognized by the *fuqahā'* as an essential procedural step. However, opinions vary on whether it is obligatory or merely recommended (*mustahabb*) (Ibn 'Ābidīn, 1966). Beyond these elements, several legal principles in criminal law are relevant in blasphemy cases.

The first is the principle of nullifying *hudūd* sanctions due to *shubhat* (ambiguities). In Islamic criminal law, there is a principle that generally applies to *hudūd* sanctions (including apostasy due to religious defamation), which states: "*al-hudūd tusqaṭ bi al-shubuhāt*" – meaning that *hudūd* sanctions are nullified (Kāzīm al-Jabūrī, 2021), when there is any form of *shubhat* (ambiguity). *Shubhat* here refers to any aspect, no matter how small, that might justify the act. In the case of religious defamation, if there is an aspect of *shubhat* that could be interpreted in a way that excuses the act, the person is freed from criminal liability and may face no penalty or, at most, only a discretionary sanction (*ta'zīr*), which serves as a corrective measure (*al-ta'dīb*) (al-Zayd).

The second principle, in Islamic law, feelings—including religious sentiments—are not the primary basis for determining legal rulings. The law applies only to acts and actions that can be measured and proven and is not bound by feelings (Khallāf, 2010). In this context, the feelings of someone who feels their religion is insulted are not the legal benchmark. What matters is whether the actions or words of the accused constitute religious defamation. To determine whether the accused's actions were genuinely defaming or not, scholars stress the importance of *al-takwīl* (interpretation) and delaying the punishment to avoid wrongly labeling the person an apostate. This is supported by the text of Ibn 'Ābidīn, which states: "It is not deemed apostasy merely for insulting the religion of a Muslim; it does not result in kufr because it can be interpreted (*al-takwīl*) that the intention was criticizing their poor character, not the essence of Islam."

The third principle is addressing the problem, and not imposing punishment. The purpose of legal sanctions for apostasy in Islam is generally aimed at solving the issue, not simply punishing the individual. Based on this principle, law enforcement must consider other

factors about the suspected defamer to resolve the matter without resorting to harsh punishment. Al-Jazīrī states:

“If a Muslim commits apostasy (such as defaming religion), Islam must be offered to him again. If there is any doubt or confusion in his belief, it must be cleared, as he may have been misled. The best solution between the two choices—execution or returning to Islam—is to offer him Islam again, which is highly recommended” (al-Jazīrī, 2003).

This highlights that the objective of Sharia law regarding religious defamation and apostasy is not to impose harsh penalties but to address the underlying issue. Al-Zayd, in *Maqāṣid al-‘Uqūbāt*, elaborates that the punishment for apostasy (especially in cases of religious defamation) is not meant to punish someone for leaving Islam, nor to infringe on personal religious freedom, but because they have broken their commitment to the legal and social order, which poses a danger to the community (Abdulkarim, 2018).

These three principles illustrate that there is a significant opportunity for the accused to be freed from harsh penalties under the category of *ḥudūd* (fixed punishments) and, at worst, only face a discretionary sanction (*ta‘zīr*). This approach aligns with human rights protections. Although there are differing opinions in classical fiqh literature regarding the nature of *ta‘zīr* punishment, one view holds that *ta‘zīr* can extend to the death penalty if the offense is committed repeatedly (Djalaluddin et al., 2023).

Based on this analysis of religious defamation in Islamic law, the legal issues surrounding blasphemy in Indonesia, particularly the ambiguity of the law and its enforcement, can be addressed by constructing a legal framework that integrates Islamic legal principles. This includes: 1) defining the legal subject of defamation in terms of maturity (*bāligh*), sanity (*‘āqil*), and free will (not under duress); 2) setting clear procedures that align with the principles of religious defamation law, as described above: nullifying *ḥudūd* sanctions due to *shubhat*, considering the subjectivity of the accused, and focusing on resolving the issue rather than solely imposing punishment.

In developing the legal framework for religious defamation, since it is an evolving concept, it should be interpreted by individuals or groups based on the sacred criteria of each religious tradition. Thus, cases of religious defamation should be divided into Muslim and non-Muslim groups, with decisions made according to the interpretations of each faith. The process should be based on testimony from religious experts in formulating the legal ruling on religious defamation. In this context, religious courts may have their jurisdiction expanded to handle defamation cases involving Muslims. However, religious defamation between different religions should not be treated as a blasphemy case, given the differing interpretations of what constitutes defamation. Instead, it can be classified as hate speech (under Law No. 40/2008, Article 4 regarding discriminatory actions). The District Court should handle cases of defamation between non-Muslim individuals, still referencing Presidential Decree No. 1 of 1965 and Article 156a of the Criminal Code.

Overall, applying this principle requires a step-by-step approach, involving religious institutions for guidance, psychologists to assess the mental state of the accused, and other relevant bodies, including the Religious Courts. This process strengthens the legal provisions of Article 2 and Presidential Decree No. 1 of 1965, which already outlines a phased mechanism for resolving religious defamation.

The elements of religious defamation in Islamic law and the principles behind its procedural application provide space for reinforcing human rights and justice, ensuring that the accused’s actions are carefully considered in light of intent, ignorance, or misunderstandings.

This reflects a commitment to protecting human rights, particularly freedom of religion and expression, while ensuring justice and equality for all citizens as mandated by the Constitution.

## Conclusion

Based on the discussion above, the ambiguity in the legal norms regarding blasphemy in Indonesia has a significant impact on court rulings in blasphemy cases. This leads to multiple interpretations, resulting in inconsistent court decisions and differential treatment towards certain groups. The ambiguity in the formulation of blasphemy law causes each case related to blasphemy to end in a criminal sentence, as there are no alternative options for its application. This inevitably creates legal uncertainty and has the potential to be misused for political purposes. The enforcement of laws in blasphemy cases often legitimizes the majority group while discriminating against minorities. Therefore, the current blasphemy law does not guarantee the protection of human rights or legal certainty.

In light of these arguments, a reconstruction of the blasphemy law is necessary as part of a legal reform aligned with Indonesia's constitutional principles of the rule of law and democracy. This reconstruction should include the integration of Islamic law in terms of the elements of legal subjects, clarification of the stages of resolution, and the development of mechanisms for resolving blasphemy cases. Several key factors underpin the urgency of reforming the law, including the ambiguous formulation of blasphemy norms, the lack of a justice-based law enforcement mechanism, and the tendency to generalize blasphemy cases as criminal offenses.

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