

**Ambiguity in Blasphemy Law Norms: Challenges to Religious and Expressive Rights in the Digital Age****Mufidah**

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**Abstract**

Law No. 1/1965/PNPS on Blasphemy has become a highly sensitive legal framework aimed at safeguarding the harmony of religious freedom in Indonesia. However, in the context of technological advancements and the digital world, this law has undergone significant polarization, particularly in addressing actions deemed as blasphemy on social media. This polarization has consequently restricted the space for religious freedom and freedom of expression. This article analyzes the blasphemy law, which was initially designed to protect religious freedom but has evolved into a controversial regulation characterized by normative ambiguities. Employing statutory, philosophical, and sociological approaches, this study explores the legal objectives linked to the norms within the blasphemy law. Furthermore, it examines the interplay between Indonesia's religious culture and the phenomena of the digital era. Cases involving blasphemy on social media highlight critical issues, including the escalation of controversies, trial by media, selective criminalization, and pressure on freedom of expression. The article concludes that the normative ambiguity of Indonesia's blasphemy law presents significant challenges in upholding guarantees for religious freedom and freedom of expression. These challenges not only create legal uncertainty but also open avenues for political misuse. Therefore, legal reform is urgently required to establish clearer and more robust protections for human rights, particularly the rights to religious freedom and freedom of expression, while ensuring justice and equality for all citizens as mandated by the Constitution.

**Keywords:** Blasphemy, Ambiguity of Legal Norms, Freedom of Religion, Challenges to Freedom of Religion, Blasphemy Cases in the Digital Age.

**Background**

The blasphemy law in Indonesia has long been a controversial legal instrument. Enshrined in Law No. 1/PNPS/1965 and Article 156a of the Penal Code, this norm aims to preserve religious harmony by protecting the beliefs of the majority from acts of defamation. However, the law is often criticized for its ambiguity due to the lack of clear definitions regarding actions that constitute

blasphemy, particularly as they intersect with the rights to freedom of religion and freedom of expression. This ambiguity triggers subjective interpretations that are not only confusing but also prone to misuse in various political contexts. Moreover, Law No. 1/PNPS/1965 is increasingly perceived as outdated and irrelevant to current social conditions. For these reasons, the law is argued to be no longer justifiable<sup>1</sup> for retention, as it has become a source of horizontal conflict within Indonesia's pluralistic society.<sup>2</sup>

Viewed from a formal standpoint, the origins of Law No. 1/PNPS/1965 reveal characteristics of veiled authoritarianism, heavily shaped by the political dynamics of Indonesia's Old Order regime. As a result, the law's provisions are often criticized for their interpretative flexibility<sup>3</sup>, which limits both religious freedom and the right to free expression. The advent of the digital age has further complicated its enforcement. Social media, with its ability to rapidly disseminate information on a large scale, has emerged as a space where content may be interpreted as blasphemous. Viral posts frequently trigger strong emotional responses from the public, even when such content is intended merely as humor or a form of personal expression.

In many cases, the influence of public sentiment, amplified through social media, has extended beyond the formal judicial process. This dynamic is evident in notable incidents involving figures such as Meiliana (Tanjung Balai, 2016), Basuki Tjahaja Purnama (Ahok, 2017), Ahmad Dhani (2017), Lina Mukherjee (2023), and Arnoldy Bahari (2017). These examples demonstrate how modern technology magnifies the societal repercussions of issues that should ideally be addressed within the legal framework of blasphemy law to promote social harmony.

The 1945 Constitution of Indonesia, which serves as the fundamental source of legitimacy for all subordinate legislation, explicitly guarantees key rights in Article 28E. Paragraph (1) states that:

*"Every person has the right to profess a religion and to worship according to their religion, to choose education and teaching, to choose employment, to choose citizenship, to choose a place of residence within the territory of the country, to leave it, and to return."*

Paragraph (2) further asserts:

*"Every person has the right to the freedom of belief, to express their thoughts and attitudes, in accordance with their conscience."*<sup>4</sup>

This study aims to analyze the ambiguity of blasphemy law norms and their implications for freedom of expression in Indonesia's digital era. Grounded in the principles and norms of Indonesian

<sup>1</sup> Report of the Evaluation Analysis Team of Law Number 1/PNPS of 1965 concerning the Prevention of Abuse and/or Blasphemy of Religion, Ministry of Law and Human Rights of the Republic of Indonesia, 2011, p. 30

<sup>2</sup> Nefa Claudia Meliala, *The Unclear Criteria for Blasphemy in Article 156 Letter a of the Criminal Code: Quo Vadis Lex Certa*, <https://www.hukumonline.com/berita/a/ketidakjelasan-kriteria-penodaan-agama-dalam-pasal-156-huruf-a-kuhp-quo-vadis-lex-certa-lt5b90b2ec6e2bf/?page=1>

<sup>3</sup> Margiyono, et al. "Not a Middle Way" *Public Examination of the Constitutional Court Decision Regarding the Judicial Review of Law Number 1/PNPS/Year 1965 concerning Abuse and/or Blasphemy of Religion*, The Indonesia Legal Resource Center (ILRC), Jakarta, 2010, p. 76

<sup>4</sup> The 1945 Constitution of the Republic of Indonesia

undertaken to resolve the ambiguities and challenges posed by blasphemy laws in the digital era? Through this analysis, the study aspires to contribute to the development of a clearer and more just legal framework.

## Research Methods

This research adopts a normative legal approach to examine legal rules, principles, and doctrines relevant to the issues being studied.<sup>5</sup> The methods applied include the statutory approach, analytical approach, philosophical approach, and case approach.<sup>6</sup> Primary legal sources used in the study comprise the 1945 Constitution of Indonesia, Law No. 1/PNPS/1965, and Article 156a of the Penal Code. Meanwhile, secondary legal sources encompass international conventions, legal doctrines, and expert perspectives. Additional secondary data, such as books, research findings, academic journals, scientific bulletins, and other scholarly publications, support the study through a library research methodology. For analysis, the research employs a deductive syllogism framework, linking a major premise with a minor premise to produce logical conclusions.<sup>7</sup>

## Outcomes and Discussions

### 1. The Urgency of Legal Regulation of Blasphemy in Indonesia

The fundamental position of religion, particularly as a principle capable of shaping social interactions and influencing societal behavior, establishes religion and its associated regulations as a driving force for fostering optimism and realizing ideas or ideologies aligned with religious teachings. In this context, the ideology in question is **Pancasila**, which serves both as the foundation of the state and the source of all legal norms in Indonesia. The noble values embodied within Pancasila are derived from the nation's cultural heritage, reflecting universal foundational principles that remain constant over time and are not subject to change.<sup>8</sup>

Religious life in Indonesia is grounded in strong legal foundations, as articulated in the country's foundational principles and the 1945 Constitution of the Republic of Indonesia. Article 29 (1) states: "*The state is based upon the belief in the One and Only God,*" affirming the legitimacy of the principle of divinity. This is further reinforced by Article 29 (2), which guarantees freedom of religion: "*The state guarantees the freedom of every citizen to embrace their religion and to worship according to their respective religions and beliefs.*" These constitutional provisions legitimize Indonesia's pluralistic religious context, encompassing the protection of six recognized religions: Islam, Catholicism, Christianity, Hinduism, Buddhism, and Confucianism. Additionally, these articles

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<sup>5</sup> Peter Mahmud Marzuki, *Legal Research*, Jakarta, Kencana Prenada Group, 2007. p. 35

<sup>6</sup> Soerjono Soekanto & Sri Mamudji, *Normative Legal Research: A Brief Review*, Raja Grafindo Persada, Jakarta, 2003, pp.13-14. See also Soerjono Soekanto and Sri Mamudji, *The Role and Use of Libraries in Legal Research*, Legal Documentation Center, Faculty of Law, University of Indonesia, Jakarta, 1979, p. 15

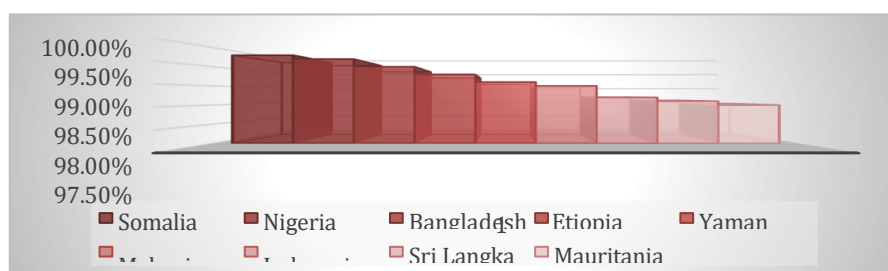
<sup>7</sup> Peter Mahmud Marzuki, *Legal Research Revised Edition*, 13th ed., Jakarta, Kencana Prenada, Media Group, 2017, pp. 89-90

<sup>8</sup> Yusuf Eko Nahuddin, Angga Prastyo, *The Relationship between Religion and Pancasila in the Perspective of the Constitution*, *Journal of Legal Horizons*, ISSN Online 2598-6538. p.285

emphasize that Indonesia is inherently a religious nation,<sup>9</sup> as further reflected in the first principle of **Pancasila**, which serves as the ultimate source of all foundational principles.

The state, founded on the principle of belief in the One and Only God, does not separate religion from the state. Instead, religion receives philosophical, legal, and political legitimacy within the framework of the state. Philosophically, the principle of belief in the One and Only God is embodied in the first principle of **Pancasila**, which serves as the philosophical foundation of the Indonesian state. Thus, this principle functions as the philosophical basis for national and state life, particularly in the relationship between the state and religion.<sup>10</sup> Philosophically, the foundational principle of the state based on belief in the One and Only God implies that every citizen is free to adhere to and practice a religion according to their faith and belief. This freedom signifies that decisions regarding religion and worship are positioned within the private domain, at the individual level. In this context, religion is regarded as an individual matter rather than a state concern. The state's role is to provide legal guarantees and facilitate conditions that allow citizens to practice their religion and worship in a secure, peaceful, and harmonious environment. Nevertheless, regulations concerning religious practice remain necessary to ensure the protection of citizens, safeguard public safety, maintain public order, uphold societal ethics and morals, ensure public health, and protect the fundamental rights and freedoms of others.<sup>11</sup>

Indonesia is viewed as a secular democratic<sup>12</sup> country that guarantees 31 constitutional rights for its citizens, including religious freedoms, despite the absence of any state declaration of an official religion. A study conducted by Freedom House even classifies Indonesia as a secular nation with a pluralistic value system and moderate Islamic values.<sup>13</sup> However, in reality, religion is an integral part of Indonesian society's traditions. As a result, according to the April 2024 release by *CeoWorld* magazine on the list of the most religious countries in the world, Indonesia is ranked as one of the most religious countries among 148 countries surveyed.<sup>14</sup>



<sup>9</sup> Ni'matul Huda, *Indonesian Constitutional Law. Revised Edition, Eleventh Printing*. Rajawali Pers. Jakarta, 2016. p. 32

<sup>10</sup> *Ibid*, Yusuf Eko Nahuddin, Angga Prastyo, *The Relationship between Religion and Pancasila in the Perspective of the Constitution*, Jurnal Cakrawala Hukum, ISSN Online 2598-6538. p.285

<sup>11</sup> Budiyo, *The Relationship between Religion and State in the Pancasila State*, Fiat Justisia Jurnal Ilmu Hukum, Volume 8 No.3, July-September 2014, ISSN 1978-5186. p. 417

<sup>12</sup> Ismail Hasani and Halili, *Trial By The MOB: Indonesia's Blasphemy Law Enforcement 1965-2020*, UIN Syarif Hidayatullah, Jakarta, 2022, p. 2

<sup>13</sup> *Freedom House*, *Policing Belief: The Impact of Blasphemy Laws on Human Rights – Indonesia*, October 2010, p. 43

<sup>14</sup> Brilliant Ayang Iswenda, *10 Most Religious Countries, Indonesia is One of Them*, <https://goodstats.id/article/10-negara-paling-religius-di-dunia-indonesia-salah-satu-ODZm5>, accessed on 13 September 2024

The regulation on blasphemy in Indonesia is not found in a specific chapter concerning religious offenses in the Penal Code, but rather falls under the category of public order crimes, as outlined in Book II, Chapter V, titled "Crimes Against Public Order." This indicates that the objective of blasphemy regulations is to maintain religious harmony and preserve public order. Unfortunately, violations of these legal provisions often lead to legal uncertainty due to the absence of alternative legal mechanisms that regulate such offenses. According to the theory proposed by Oelmar Selno Adjil regarding religious offenses, the theoretical basis for criminalizing religious offenses consists of:

- a. Theoretical Protection of Religion (Religionschutz-Theorie): This theory posits that religion is considered an object requiring legal protection, where the state, through its regulations, aims to safeguard what is viewed as essential and in need of protection.
- b. Theoretical Protection of Religious Feelings (Gefühlschutz-Theorie): This theory suggests that the legal protection should focus on safeguarding the emotional feelings of religious individuals.
- c. Theoretical Protection of Religious Peace or Harmony (Freidenlsschutz-Theorie): According to this theory, the legal protection focuses on maintaining religious peace and stability, particularly in a multi-faith society, and ensuring public order is preserved.<sup>15</sup>

Based on these theoretical perspectives, it can be concluded that the aim of the implementation of blasphemy law in Indonesia is related to the theoretical protection of religious feelings, where the primary goal is to safeguard the religious sentiments of followers of various faiths. This view aligns with that of other countries that implement blasphemy laws, distinguishing two types of blasphemy offenses: first, blasphemy focused on actions that insult God or sacred elements of religion; and second, blasphemy that not only addresses the act but also considers the impact on the religious feelings of adherents or followers of particular faiths. The second concept is also known as religious insult, which includes offenses based on insults to the beliefs or emotional reactions of religious followers.<sup>16</sup>

Thus, blasphemy offenses in Indonesia must be regulated with the aim of protecting the emotional impact of such actions on the religious followers and their beliefs. Law No. 1/PNPS/1965 and Article 156a of the Penal Code are categorized as offenses against religion with the assumption that their primary purpose is to maintain public order rather than religious protection. Religion must be protected from actions that degrade or desecrate religious symbols, such as those of God, Prophets, Sacred Books, and others, as these actions deeply affect the feelings of religious followers and can disrupt public order.<sup>17</sup> Acts considered to insult or desecrate religion can provoke emotional responses within Indonesian society, given the high level of religiosity. Therefore, Law No. 1/PNPS/1965 and Article 156a of the Penal Code serve to prevent religious conflict escalation, offering legal protection to minorities from the potential harm caused by religious differences within Indonesia's majority religious groups.

## 2. Ambiguity of Legal Norms in Law No. 1 of 1965 on PNPS

The background to the establishment of Law No. 1/PNPS/1965 cannot be separated from the political and legal climate that occurred between 1950 and 1966. This period marked the construction of national law, offering two policy options: maintaining pluralistic religious realism (a policy inherited from the colonial era) or shifting toward a unified approach to post-independence law after Indonesia proclaimed its independence.<sup>18</sup> The failure of the effort to return to the 1945 Constitution through the Constituent Assembly, combined with political events during the era of liberal democracy, reached its

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<sup>15</sup> Oemar Senoadji, *Criminal Law (Procedure) in Prospection*, Jakarta, Erlangga, 1981, p. 20.

<sup>16</sup> Venice Commission, *Blasphemy, Insult, and Hatred: Finding Answers in a Democratic Society*, Council of Europe Publishing, 2010, p. 19.

<sup>17</sup> Oemar Seno Adji, *Criminal Law (Procedure) in Prospection*, Jakarta, Erlangga, 1981, pp. 79-80.

<sup>18</sup> Soetandyo Wignjosebroto, *From Colonial Law to National Law: Socio-Political Dynamics in the Development of Law in Indonesia*, Jakarta, RajawaliGrafindo, 1994. Page 200

climax in June 1959. President Sukarno concluded that the nation was in a chaotic state that endangered its survival, leading to the announcement of the Presidential Decree dissolving the Constituent Assembly and the reimplementation of the 1945 Constitution.<sup>19</sup> The dominant authoritarian regime during the Old Order was closely associated with the implementation of a system of Liberal Democracy, which was pursued by President Sukarno following the issuance of Presidential Decree No. 150 of 1959 on July 5, 1959.<sup>20</sup>

The enactment of Law No. 1/PNPS/1965 is connected to the political situation and the national stability under the Presidential Decree of July 5, 1959, which sought to maintain political support and safeguard the nation.<sup>21</sup> In the explanation of Presidential Regulation (Perpres) No. 1/PNPS/1965, two fundamental arguments are presented: first, it was a response to the growing number of religious sects and organizations deemed contrary to religious teachings and laws; second, the emergence of these groups and organizations was seen as a violation of law, causing national disunity, the misuse or abuse of religion, and blasphemy, which could harm existing religions.<sup>22</sup>

The constitutional debate surrounding Law No. 1/PNPS/1965 is not only related to its problematic historical origins due to procedural issues but also presents an obstacle to guaranteeing the freedom of religion or belief. This is because of the law's restrictive recognition of religions and its inconsistent application, which leads to the mixing of religious affairs with state governance. A key issue concerns the imposition of a majority interpretation of religion, punishing beliefs or interpretations under the guise of religious freedom, and discriminatory practices associated with the use of religious offenses in Law No. 1/PNPS/1965 and Article 156a of the Penal Code, which do not adhere to the principle of legality. This principle, based on *lex stricta* (the law must be written), *lex certa* (the law must be clear), and *lex scripta* (the law must not be interpreted analogically), is not upheld in these laws.<sup>23</sup> Law No. 1/PNPS/1965 consists of five articles, with the core norm outlined in Article 1. Articles 2 and 3 regulate the legal consequences of violating Article 1,<sup>24</sup> with the following elements:

- a. The element of “every person”
- b. The element of “intentionally”
- c. The element of “in public”
- d. The element of “expressing, inciting, or seeking public support”
- e. The element of “defamation of a religion followed in Indonesia”
- f. The element of “engaging in religious activities that diverge from the fundamental teachings of the religion”

The ambiguity in legal certainty lies in the element of “intentionally,” which is considered elastic. This contrasts with the criminal provisions for general offenses in the Penal Code, where crimes are prohibited by social norms. Religious blasphemy, however, involves two different perceptions: one that

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<sup>19</sup> Danang Risdiarto, *Legality of the Presidential Decree of July 5, 1959 and Its Influence on the Development of Democracy in Indonesia*, Indonesian Legislation Journal, Vol. 15, No. 01 March, 2018, p. 60

<sup>20</sup> *Ibid*, Soetandyo Wignjosoebroto, 1994, p. 200

<sup>21</sup> Hwian Christiano, *The Importance of Law No. 1/ PNPS/ 1965 for Freedom of Religion*, Study of Constitutional Court Decision Number 140/PUU-VII/2009, Judicial Journal, Vol. 6 No. 1 April 2013, p. 3

<sup>22</sup> Explanation of the Decree of the President of the Republic of Indonesia Number 1/PNPS of 1965 concerning the Prevention of Abuse and/or Blasphemy of Religion, General Provisions Number 2.

<sup>23</sup> Research Report, “*The Authority of the Constitutional Court in Conducting Judicial Review of Criminal Laws that Result in Changes in Norms in Material Criminal Law Reviewed by the Principle of Legality*”, Jakarta, Center for Case Study Research, and Library Management, Registrar's Office and Secretariat General of the Constitutional Court, 2019. pp. 2-5

<sup>24</sup> See Law No. 1 of 1965 concerning PNPS, <https://peraturan.go.id/files/uu1pnps-1965.pdf>

is regulated under the Penal Code, and another where the state simultaneously guarantees its practice as a form of religious freedom.

In the explanation of the Dutch Penal Code (Memory Van Toelichting), “intention” or “dolus” is defined as “to want” and “to know” (willen en wetens),<sup>25</sup> meaning that the perpetrator is aware of their actions and intends to carry them out. In the case of blasphemy, this requires a clear formulation of the limits and criteria for intent, particularly in relation to maintaining public order. Ambiguous formulations could subject individuals to subjective legal interpretations, leading to uncertainty about the law's application.

The element of “in public” is interpreted differently depending on the legal provision in question.<sup>26</sup> In Law No. 1/PNPS/1965, this refers to actions carried out in public spaces where others may observe them (in het openbaar). R. Soesilo interprets “public” as any place where the public can see<sup>27</sup> the actions, excluding hidden spaces. This interpretation aligns with the aim of maintaining public order. Unfortunately, the application of blasphemy laws often extends into private spheres, such as personal beliefs and worship practices, which are not relevant to the scope of the regulation.

Furthermore, the element of “in public” is interpreted differently within criminal law, depending on the article governing the act itself. In Law No. 1/PNPS/1965, the element of “in public” requires that an act be performed in a public space where others can witness it (in het openbaar). R. Soesilo defines “public space” as any place where the public can observe the act, meaning that the act must not take place in a hidden location. This interpretation aligns with the aim of maintaining public order. Unfortunately, the application of the blasphemy law often extends into personal spaces, such as one's beliefs and religious practices, which are irrelevant to the regulation's scope.

The elements of “expressing views on a religion” and “engaging in religious activities that deviate from the fundamental teachings of that religion” create ambiguity in the position of Law No. 1/PNPS/1965, as it effectively functions as the authoritative determinant of the existence and recognition of a religion or belief system. This has led to the emergence of the concepts of “official” and “unofficial” religions,<sup>28</sup> or religions not recognized in Indonesia,<sup>29</sup> when, in fact, the authority to interpret such matters should lie with officially recognized religious organizations, including the resolution of internal disputes. The impact of this clause is akin to nullifying the right to practice one's faith, as differences in interpretation are not acknowledged.

Article 2 focuses on legal measures to be taken if there is a violation of Article 1. It imposes administrative sanctions, such as orders and stern warnings, to cease the violation, through a joint decision between the Minister of Religious Affairs, the Attorney General, and the Minister of Home Affairs. If the violation is carried out by an organization, the President has the option (not an obligation) to dissolve it and declare it an illegal organization, taking into account the considerations of these three bodies.<sup>30</sup>

<sup>25</sup> Leden Marpaung, *Principles of Criminal Law Practice Theory*, Sinar Grafika, Jakarta, 2005, page 44

<sup>26</sup> Wirjono Prodjodikoro, 2009, *Principles of Criminal Law in Indonesia*, PT. Eresco, Jakarta, 2005, p.113

<sup>27</sup> R. Soesilo, *Criminal Code (KUHP): Complete Article by Article Commentaries*, Politea, Bogor, 1995, 278

<sup>28</sup> See Presidential Decree of the Republic of Indonesia No. 40 of 2004 concerning the National Action Plan for Human Rights 2004-2009, III, also the Indonesian RANHAM Activity Plan 2004-2009, E. Application of Human Rights Instrument Norms and Standards, 3 (1)

<sup>29</sup> See Article 8 (2), 61 (4) and 64 (2) of Law No. 23 of 2006 concerning Population Administration

<sup>30</sup> NRI Law No. 1 of 1965 concerning Prevention of Abuse and/or Blasphemy of Religion, Article 2 and Article 3

Article 3 serves as the final instrument (*ultimum remedium*) in addressing cases of religious blasphemy if violations persist.<sup>31</sup> However, in practice, the judicial handling of blasphemy cases tends to result in punishment from the outset. In some cases, individuals have been convicted without due judicial process, such as in the cases of the Pondok Nabi Sect (2003), Lia Eden (2005), and the Ahmadiyya Community (2005), among others.

Article 4, which incorporates Article 156a of the Penal Code, introduces a different element than that found in Article 1, creating complications in the regulation of religious blasphemy in Indonesia. The elements of Article 156a, as presented in Article 4, appear to negate the elements and sanctions in Article 1 of Law No. 1/PNPS/1965. However, Article 156a is inseparable from the law itself, as it was enacted following Law No. 1/PNPS/1965.

Article 156a of the Penal Code is a later addition, inserted after the codification of the Penal Code as an official part of positive law after Indonesia's independence, meaning it was not a product of the Dutch colonial era.<sup>32</sup> In terms of norms, this ambiguity arises from the relationship between Law No. 1/PNPS/1965 and Article 156a, which are both part of the same legal framework. This ensures that Article 156a remains an inseparable part of the law. However, Andi Hamzah argues that, given the law's intention to maintain public order, the norms in these two provisions should be seen as alternatives, not cumulative. This means that punishment for religious blasphemy can be imposed under either Law No. 1/PNPS/1965 or Article 156a of the Penal Code, but not both.

The elements of religious blasphemy under Article 156a are as follows:

- a. The element of "whoever" refers to the perpetrator or subject of the offense, defined by the Supreme Court's ruling No. 1398 K/Pid/1994 on June 30, 1995. This refers to any individual who can be held legally accountable for their actions.<sup>33</sup>
- b. The element of "intentionally" is consistent with the same element in Article 1 of Law No. 1/PNPS/1965. "Intention" (*opzet*) means that the individual not only desires the act but is also fully aware of the legal consequences of their actions.<sup>34</sup>
- c. The element of "in public" refers to an act performed in a location that can be seen and visited by the public.<sup>35</sup> This element is similar to that in Article 1 of Law No. 1/PNPS/1965.
- d. The element of "expressing feelings" includes both oral and written statements. The term "feelings" refers to personal views or emotions. This introduces issues regarding the protection of religious beliefs and the violation of freedom of expression, which is a fundamental right guaranteed by the constitution.<sup>36</sup>
- e. The element of "blasphemy" requires definition, as no clear definition is provided in judicial rulings. This definition has been inferred from actions deemed to undermine something sacred in a religion protected in Indonesia.<sup>37</sup> While one court ruling in the Ronald Tambunan case

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<sup>31</sup> NRI Law No. 1 of 1965 concerning Prevention of Abuse and/or Blasphemy of Religion, Article 2 and Article 3

<sup>32</sup>Shidarta, *The Dangers of Ahistorical Interpretation of Article 156a of the Criminal Code*, <https://business-law.binus.ac.id/2018/07/10/bahaya-tafsir-a-historis-terhadap-pasal-156a-kuhp/>, (Accessed on August 12, 2024)

<sup>33</sup> Decision No. 73/Pid.B/2012/PN.DOM, p.75

<sup>34</sup> *Ibid*, Leden Marpaung, page 44

<sup>35</sup> R. Soesilo, *Criminal Code (KUHP): Complete Article by Article Commentaries*, Politea, Bogor, 1995, 278

<sup>36</sup> Arsil, Dian Rositawati, et al., *Interpretation of Article 156a of the Criminal Code on Blasphemy (Legal and Human Rights Analysis)*, Indonesia Institute the Independent Judiciary Institute for the Study and Advocacy of Judicial Independence (LeIP) in Collaboration, Jakarta, 2018, p. 64

<sup>37</sup> *Ibid*, PP. 62

defined “blasphemy” as the act of damaging (sacredness, integrity, etc.), this definition remains too broad.<sup>38</sup>

Unlike Article 1 of Law No. 1/PNPS/1965, Article 156a of the Penal Code is essentially an inseparable part of Article 1 of Law No. 1/PNPS/1965, as it is included in Article 4 of Law No. 1/PNPS/1965. When judges interpret the elements of Article 156a of the Penal Code differently by using various references, such discrepancies will directly undermine legal certainty. This is problematic because legal certainty is a fundamental prerequisite for the application of law, as outlined in the principle of legality. The subjectivity of interpretations and enforcement of the elements of criminal acts also impacts the integrity of the judicial process in delivering justice. Article 156a consistently leads to criminal penalties and thus becomes a critical area that requires correction with respect to the norms, which include:

1. The offense of hostility
2. The offense of abuse
3. The offense of blasphemy
4. The offense of encouraging people not to adhere to a religion based on the One God.<sup>39</sup>

Based on the description of these norms, similarities can be found between Law No. 1/PNPS/1965 and Article 156a of the Penal Code, as follows:

**Table 2. Table of Similarities between Law No. 1/PNPS/1965 and Article 156a of the Criminal Code**

Elements Primary Norm	Article 1 of Law No. 1/PNPS Year 1965	Article 156a of the Criminal Code
<b>Subject</b>	Everyone (Individual/ Organization	Everyone
<b>Operator</b>	Prohibited	Prohibited
<b>Object 1</b>	Preaching, advocating or seeking public support for an interpretation of a religion practiced in Indonesia. ➤ Which means that the interpretation deviates from the main teachings of that religion	Expressing feelings or committing acts ➤ Which in essence are: hostility, abuse, or desecration ➤ Against a religion adhered to in Indonesia ➤ With the intention that people do not adhere to any religion that is based on God Almighty
<b>Object 2</b>	Conducting religious activities that resemble religious activities of religions (protected religions in Indonesia)	
<b>Condition</b>	➤ Intentionally ➤ In public	➤ Intentionally ➤ In public
<b>Norma Sekunder</b>	<b>Pasal 1 UU No. 1/PNPS Tahun 1965</b>	➤ <b>Pasal 156a KUHP</b>
<b>Penalty Threats</b>	- Administrative punishment warning letter - Dissolution	Imprisonment for up to 5 years
	Imprisonment for up to 5 years	

### 3. Overview of Blasphemy Cases in the Digital Age and Alternative Solutions

<sup>38</sup>Decision No. 55/ Pid.B/2012/PN.END, page 24

<sup>39</sup> Ahmad Jazuli, *Resolving Blasphemy Conflicts in the Perspective of Indonesian Criminal Law*, De Jure Legal Research Journal, Vol. 17, No. 3, Year 2017, p. 337

Before the reform era, the blasphemy law was rarely invoked in executing cases of blasphemy, with only nine (9) cases between 1965 and 1998 utilizing the law in question. In contrast, post-reform, the number of blasphemy cases has steadily increased. This rise in blasphemy cases is accompanied by notable cases emerging from the virtual realm, particularly from social media.

In the digital age, current social media trends build emotional engagement among users, either to support or undermine one another. This has a significant influence on reactions in the real world. In several blasphemy cases, the controversy is often sparked by opinion manipulation through social media, which causes the issue to go viral and fosters shared sentiments. As a result, these cases tend to broaden the scope of escalation, becoming more complex, and potentially culminating in mass mobilization, leading to a "trial by social media" where demands are validated by social media users. It is almost certain that these blasphemy cases end in criminal sentencing based on Article 156a of the Penal Code, as outlined below:

**Table 3. Case of Law No. 1/PNPS/1965 and Article 156a of the Criminal Code**

Actions			
No	Cases	Examples of Cases	Verdicts
1	Actions, verbal or written statements explicitly intended to eliminate or insult religious symbols sanctified by a particular religion, or hate speech through social media applications.	Nauval Wira Hakim (2024)	Imprisonment for 3 (three) years based on the decision 5/Pid.B/2024/PN Bsk.
		Alissa Wahid (2023)	No process continuation found
		Paul Maurelgar Lalong (2021)	6 (six) months imprisonment through decision 102/Pid.Sus/2021/PN Tjs
		Jhoneirilk Munthel alilas Jhon Elrilk (2020)	3 (three) years imprisonment through decision 949/Pid.Sus/2020/PN Jkt.Utr
		Elpelrilanus Duha (2020)	10 (ten) years imprisonment through decision 44/Pild.Sus/2020/PN Tjt
		Ahmad Dhani (2018)	1 (one) year imprisonment through decision 7/Pild.Sus/2018/PN Wmn
2	The deliberate act of disseminating, publicizing, or sharing video content that describes religious symbols or those considered sacred, or contains statements that differ from those symbols	Tril Purwoko alilas Cokro (2022)	2 (two) years and 6 (six) months imprisonment through decision 97/Pild.B/2022/PN Pwr
		Lina Mukherjee (2023)	2 (two) years imprisonment through decision 275/PID/2023/PDT.PLG
		Billmar Lumban Gaol (2020)	1 (one ) year imprisonment through decision 7/Pild.Sus/2018/PN Wm
		Alelxandelr Aan/Account Athelils	Imprisonment of 2 years and 6 months
		Antonilus Rilch mond Baweln gan	5 years imprisonment

3	The issue, which is suspected to contain religious blasphemy, was intentionally posted multiple times with the aim of mass gathering.	Ilr. Basukil Tjahaja Purnama alilas Ahok (2016)	2 years imprisonment 1537/Pild.B/2016/PN Jkt. Utr
		Meliana (2018)	Sentenced to 1.5 years 1612/Pud. B/2018/PN.Mdn.
		Lila Amilnuddiln alilas Lila Eldeln	Two years' imprisonment

Indonesia clearly states itself as a nation with divine values<sup>40</sup>. These divine values serve as fundamental ethical-religious principles of the nation, which are based on the moral values taught by religion and the beliefs of individuals regarding their religion and faith, which must be respected and practiced by their followers. The fundamental ethical-religious principles imply that divine values, as the foundation of the state, are transcendental in nature within the practical governance<sup>41</sup> that is inseparable from the 'sovereignty of God' in one aspect and the sovereignty of the people in another. Religion plays an essential role in the life of the Indonesian nation, which is why the guarantee of religious freedom in Indonesia cannot be separated from individual or personal freedom. However, the government has the right to intervene for control purposes, meaning that religion, within the context of public law, must be regulated.

Mahfud M.D. also asserts that Indonesia is a country based on the belief in God and religious values, which protect all adherents of religion without discrimination between the followers of different religions. Therefore, the state has a constitutional obligation (Constitutional Obligation/Judicial Review) to maintain interfaith harmony in Indonesia, in accordance with international guarantees in the Universal Declaration of Human Rights (UDHR), Article 18. Thus, to maintain this order, Law No. 1/PNPS/1965 is highly necessary.

The guarantee of religious freedom, as limited by the arguments above, intersects with the guarantee of freedom of expression as the constitution also guarantees in Article 28E paragraph (3), which states, "Every person has the right to freedom of association, assembly, and expression." Similarly, the guarantee of religious freedom and the guarantee of the freedom to express opinions cannot be absolute, as the first principle of Pancasila serves as the foundation for all norms in Pancasila. Therefore, any form of expression that contradicts the values of religion, national norms, and traditions must be limited by law, as religion and the norms of Indonesian traditions form a fundamental principle. However, these limitations should not be equated with criminal offenses based on intentional acts, as the tradition of deliberation, emphasized in the fourth principle of Pancasila, is crucial. Data shows that cases of religious blasphemy through social media often end with prison sentences.

There are at least four arguments that religious blasphemy accusations should not result in prison sentences. First, the Law on Religious Blasphemy has established a clear mechanism for resolving cases through warnings and administrative sanctions as stipulated in Article 2 of Law No. 1/PNPS/1965. Second, the Law on Religious Blasphemy does not provide clear criteria regarding what constitutes blasphemy, thus failing to provide legal certainty for the victims of alleged blasphemy. Third, the purpose of the Law No. 1/PNPS/1965 is to maintain public order, and therefore, resolutions can be

<sup>40</sup> Thematic Research Report on Nationality, Religion and Belief 2017: The Blasphemy Regime 1965-2017, Setara Institute, 27 February 2017

<sup>41</sup> Mujiburrahman, "Religion in the Pancasila State" in Elza Peldi Taher (Editor), Celebrating Religious Freedom, First Edition, Democracy Project Yayasan Abad Demokrasi, Jakarta, 2011, p. 48

reached through family-based or restorative justice approaches. Fourth, penal sanctions not only increase the number of religious blasphemy cases but also burden the state due to overcrowding in Indonesian prisons.

Restorative justice is defined by British criminologist Tony F. Marshall as follows: “Restorative Justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.”

Based on this definition, restorative justice is a process in which all parties involved in an offense come together to collectively address the consequences of the offense for the future. The restorative justice system uses a sociocultural approach rather than a normative one as an alternative to law enforcement. In the framework of restorative justice, as outlined in the sociocultural approach, the core values promoted by restorative justice are rooted in traditional community values such as balance, harmony, and peace. This can be seen as a meeting point between the regulatory goals of Law No. 1/PNPS/1965 concerning public order and the harmonious life of religious practice, which cannot be separated from the life of the Indonesian nation, providing an alternative for resolving such issues.

### **Conclusion:**

Based on the explanation above, two conclusions can be drawn. First, Law No. 1/PNPS/1965 has become the legal framework that guarantees religious freedom in Indonesia. This guarantee takes the form of maintaining religious harmony and ensuring public order. However, at the same time, this law has also generated controversy in its implementation, as it is considered to be in conflict with international human rights guarantees regarding freedom of religion and freedom of expression. Second, regarding the prison sentence used in Law No. 1/PNPS/1965, it is highly contradictory to religious freedom, considering that the implementation of the punishment under this law should follow a graduated process in accordance with Articles 2 and 3, and not end in criminal punishment. Therefore, legal reform steps can be taken with the approach of the Restorative Justice System, using a sociocultural approach rather than a normative one as an alternative to law enforcement. In the framework of restorative justice, as stated in the sociocultural approach, the core values promoted by restorative justice are rooted in traditional community values such as balance, harmony, and peace in society.

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