Freedom of Expression in Indonesia: An Attempt at a Critical Appraisal from the International Human Rights Point of View

by

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Abstract

The right to freedom of expression is intertwined with other rights and may be limited when they contradict. These problems are prone to happen especially in a heterogeneous country like Indonesia. Perhaps nowhere was this more evident than in the 2017 trial and conviction of Basuki Tjahaja Purnama, commonly known by the name “Ahok”, the former governor of Jakarta. Previous studies on the practice of freedom of expression in Indonesia revealed a disparity between Indonesian values and universal freedom of expression standards. However, those distinctions are not mentioned directly, hence the purpose of this study is to fill in those gaps. The methodology used in this study is document analysis. A variety of sources were evaluated, including media coverage.

The research concluded that (1) Indonesia’s government and regulatory framework is quite perplexing, fraught with both duplication and contradiction among regulations in effect, (2) Indonesian court rulings on freedom of expression cases appeared to be heavily susceptible to public pressure of the majority, and (3) The current Indonesian legal system has two strengths. First, the 1945 Constitution provides a framework within which the Indonesians people reserve to themselves certain fundamental rights and freedoms. Second, Indonesia’s ratification of the ICCPR established rights and obligations for the country to pass and/or amend existing laws to promote human rights and the betterment of domestic governance. However, these strengths are overshadowed by three factors: first, the disorganized regulatory framework; second, religious persecution under blasphemy law; and third, the judiciary’s inclination to favor a certain party. These are regarded as serious weaknesses of Indonesia’s judiciary in safeguarding freedom of expression.

Due to the limitation of time and anti-pandemic restrictions on the freedom of movement, examination up to the most recent cases is difficult to achieve. Furthermore, the case laws observed in Indonesia were limited to those which led to convictions directly under the

blasphemy law (Article 156a of the Indonesian Criminal Law), despite there are other Indonesian laws utilized to prosecute people under the pretext of being blasphemous. The result of this paper also hints at the practice of discrimination which could be investigated in future research. As a result, additional research in these areas is strongly advised.

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1. Introduction

"*The law is clear: we have the right to blaspheme, to criticize, to caricature religions*" (Macron, 2020, as cited in Willsher, 2020).

In an interview with Le Dauphiné Libéré newspaper, the French President, Emmanuel Macron insists blasphemy is "no crime" while defending a teenager named Mila, who received death threats after filming an anti-religious diatribe on her social media (Willsher, 2020). While Macron's statement sparked a furious public debate in France, in Indonesia such a statement might result in a maximum sentence of five years in prison due to the existing Blasphemy Law (Article 156a of the Criminal Code), as has been the case with Basuki Tjahaja Purnama, better known by his nickname, *Ahok*. Ahok was an ex-governor of Jakarta, who was convicted of anti-Islamic blasphemy and served a two-year sentence in prison from May 2017 to January 2019.

Ahok, a Christian of Chinese descent, a double minority in Indonesia, was elected in 2012 to be the vice governor of Jakarta, the capital of Indonesia. He was then inaugurated as the Governor of Jakarta in November 2014 to fill the position that was left open after Joko Widodo was elected the President of Indonesia. Thereon Ahok served as the Governor of Jakarta until 2017. Furthermore, Ahok was the second non-Muslim figure to govern the capital of Indonesia in the seventy six years of independence, after Hendrik Hermanus Joel Ngantung, a Catholic who governed Jakarta between 1964-1965 (Kusumadewi, 2014). It was not out of the line to say that, being a Chinese, Ahok was the first embodiment of a minority dream of successfully rising to a political eminence in Indonesia to date.

During the election campaign for the Governorship of Jakarta in 2016, Ahok angered religious conservatives after he referred to a verse from the Islamic holy book, *Surah Al-Ma`ida 51*. He boldly told voters they should not be duped by those religious leaders who cited the verse to justify their claim that Muslims should not be led by non-Muslims (Lamb,

2016). An edited version of his speech was later posted online with several words omitted, making it seem as though Ahok was suggesting that the Qur`anic verse itself was misleading (Anggoro, 2017). Masses of people, nearly seven hundred and fifty thousand, gathered in demonstration on 2 December 2016 alone to protest at Ahok's speech (Fealy, 2020). Months of protests and a polarized election campaign preceded Ahok's arrest, trial and jailing, raising concerns over the erosion of Indonesia's key values of pluralism, tolerance, and especially the freedom of expression which are essential for a democratic society (Amnesty International, 2017).

Indonesia has been known as one of the most diverse countries in the world with over 300 ethnic groups, beyond 700 languages and six "officially recognized" religions, allegedly harmoniously united by the motto, "Unity in Diversity" (*Bhinneka Tunggal Ika*), despite also being "the most populous Muslim nation in the world" (Smith, 2018). As citing from the event report of European Institute for Asian Studies (EIAS) in 2017 titled "Indonesia: A Model of Tolerance, Pluralism and Harmony", Alberto Turkstra, the programme coordinator said:

> (…) great admiration for the Indonesian model that provides for freedom of religion and has a history of being the most tolerant Muslim-majority country in the world with well-balanced harmony among numerous religious and ethnic groups.

Yet, the recent episodes have led me to question the religious, harmonious and democratic image of Indonesia today. Irrespective of the importance of fostering and inspiring open debate on critical public discourse in a democratic society, Indonesia's law enforcement, at least in Ahok's case, appears to stifle public debate instead, by coercing unorthodox opinions into silence. For that reason, the initial goal of this research is to provide insight into Indonesia's system of government and regulatory framework for freedom of expression.

Following that, Indonesian legal rules in action and freedom of expression practices will be identified by examining examples of court case law. As a result, one can legitimately complain about the prejudice in Indonesian court judgments and the country's incompatibility with international standards when it comes to maintaining freedom of expression. The strengths and weaknesses of Indonesian law will be discussed at the end of this research. The answers to these issues may help to strengthen and eliminate inadequacies in Indonesia's legal policies, ensuring that freedom of expression is not curtailed unnecessarily and disproportionately in light of public needs in a democratic society.

2. Literature Review

The goal of this research is to determine how far Indonesian norms for guaranteeing freedom of expression differ from international human rights standards. This section is divided into three sections. The first portion looked at international standards of freedom of expression, starting with two divergent approaches to upholding freedom of expression, one from the United States and the other from Europe. The latter approach, as epitomized by the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR), permeates through the ways in which the International Covenant on Civil and Political Rights (ICCPR) was drafted, and has been interpreted by the United Nations Human Rights Committee (UNHRC). Indonesia is a party to the ICCPR, although it is yet to accede to the protocol whereby individuals can file complaints at the UNHRC. The second segment reviews the discussion of how freedom of expression regularly clashes with religious freedom and is judged blasphemous in some nations, resulting in severe punishment. The third looks at literature which had covered the situation of freedom of expression in Indonesia, to identify the research gap that this study aims to fill in.

2.1. Freedom of Expression

2.1.1. United States vs European Approaches

The freedom of expression is deeply related to other rights and is essential for the realization of a liberal democratic society. However, the exercise of the freedom of expression is still highly debated between the United States' approach and the European Convention's approach. The United States' First Amendment has been supported by the "free trade in ideas", as coined by Justice Oliver Wendell Holmes Jr. in the case of *Abram v. The United States*, 250 U.S. 616,630 (1919) that "the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out". This idea was emphasized further by Justice Powell in

Gertz v. Robert Welch, Inc., 418 U.S. 323, 339-40 (1974) that "however pernicious" an opinion may seem, "its correction" depends on "the competition of other ideas" not on the "conscience" of judges and juries. The free trade in ideas prohibited the regulation of provocative expression based on sympathy or repulsion for the ideas it promoted; unless when it is practiced for racist, religious or sexist motives (Zoller, 2019). In other words, Zoller pronounced that ideas are welcomed so long as they do not discriminate.

The First Amendment states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment sees "freedom of expression as the best means for the complete freedom of the individual which is today often tempered with an obligation to respect the dignity of others", thus, the freedom of expression in the United States imposes "prohibitions on the state, but rarely imposes duties" (Zoller, 2009).

By contrast, the freedom of expression in Europe takes upon the duties to impose regulations on its people to ensure every member of society is protected from public expression that may harm the public peace. Article 10 of the European Convention of Human Rights (ECHR) on the freedom of expression, states:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedom, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by

law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Regarding this, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) conforms to the European Convention in reference to duties of individuals. To be exact, Article 19 of ICCPR reads:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
    a. For respect of the rights or reputations of others;
    b. For the protection of national security or of public order (ordre public), or of public health or morals.

Bleich (2013) explained the different approaches of the United States and Europe to ensuring freedom of expression may be caused by different political cultures where the Americans are in support of “the value of liberty”, while the Europeans in support of “human dignity and personal honor”. Bleich also stated the specific legal text relevant to the freedom of expression between these two. The First Amendment’s seemingly “unambiguous” assertion that “Congress shall make no law abridging the freedom of speech…” differs greatly from

Article 10 of ECHR which “explicitly permits limits on freedom of expression” (Bleich, 2013).

The biggest concern of limiting freedom of expression is that excessive restrictions may therefore undermine many other human rights, especially the freedom of thought as a fundamental necessity of a democratic society. Thompson (2019) said, “the legal regulation of ... speech has its costs”. Amnesty International (2012) evidently stated, unambiguous and “narrowly drafted” laws and policies can violate freedom of expression, even be “counterproductive” to efforts to eradicate racial discrimination. Not to mention, freedom of expression is often intertwined especially with freedom of religion and the prohibition of discrimination in multicultural and multi-faith society. As Waldron (2012, p.127) suggested, “religion is an area where offense is always in the air. Each group’s creed seems like an outrage to every other group”. Nevertheless, in *Censorship, or freedom of expression*, Day (2001, p.96) argued that although most people would say they favor free speech, many are uneasy about some kinds of speech and want restrictions on what they assume may pose a threat to their society.

2.1.2. ICCPR (UNHRC) Point of View

The United Nations Human Rights Committee (UNHRC) was formed on 20 September 1976. Individuals who claim that any of their Covenant rights have been infringed and who have exhausted all domestic remedies may file a written submission at UNHRC for review under the Optional Protocol. Even if a state is a party to the Covenant, if it is not a party to the Optional Protocol, no message can be received by UNHRC. By becoming a State party to the Optional Protocol, the State party has acknowledged UNHRC’s competence to evaluate whether the Covenant has been violated in a specific case but the State party is not obliged to follow UNHRC’s recommendations, which are legally not binding.

UNHRC adopted General Comment No. 34 on freedom of opinion and expression in

2011, noting that the need to safeguard freedoms of opinion and expression applies to all States parties. State parties are expected to ensure that the rights set forth in Article 19 of the Covenant concerning freedom of opinion and expression are implemented in their domestic laws in accordance with the Committee's guidance. According to General Comment No. 34, Blasphemy laws are incompatible with the Covenant since they prohibit the "displays of lack of respect for a religion or other belief system". Any law that discriminates in favor of or against one or more religions or belief systems would be incompatible. Such prohibitions would also be discriminatory if they were intended to discourage or punish criticism of religious leaders or commentary on religious doctrines and beliefs.

When a State party invokes a legitimate ground for restricting freedom of expression, it must pass a strict justification test in any free and democratic society. If a piece of domestic legislation is formulated in "broad and unspecific terms"[1] which allows for broad interpretation and leads to punishment of conduct that are not actually dangerous, the piece will be regarded to be prone to abusive interpretation of the Covenant. Citizens must be free to learn about alternative political systems or parties in power and to question or critique the government openly and publicly (within the limitation set by Article 19 paragraph 3) without fear of intervention or punishment[2].

Based on the Covenant, basically any restriction on freedom of expression must fulfill all of the following criteria: it must be provided by law, address one of the aims in paragraph 3, i.e. respect for the rights or reputations of others, protection of national security and of public order, health and morals, and it must be necessary to achieve a legitimate goal. Thus, authorities' overwhelming responses to individuals' attempts to freely voice their opinions and

[1] UNHRC, Communication No. 518/1992, *Jong-Kyu Sohn v. Republic of Korea*; UNHRC, Communication No. 574/1994, *Keun-Tae Kim v. Republic of Korea*; UNHRC, Communication No. 628/1995, *Tae Hoon Park v. Republic of Korea*; UNHRC, Communication No. 926/2000, *Hak-Chul Shin v. Republic of Korea*; UNHRC, Communication No.1119/2002, *Jeong-Eun Lee v. Republic of Korea*

[2] UNHRC, Communication No. 422/1990, 423/1990 and 424/1990, *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*

promote political ideals are violations of Article 19.

In limiting freedom of expression, any State party must be able to confirm that the content of a certain speech has "additional effects upon the audience"[3], such as posing a threat to public safety, in order for restrictions to be justified. Even where a restriction is mandated by law, it must still be assessed whether it is necessary for a legitimate purpose. The assessment of necessity entails a "proportionality"[4] factor, in that, any restriction imposed on freedom of expression must be proportional to the value protected by the restriction. In some cases, a legal requirement may result in constraints that go beyond what is permissible. Given that one of the goals of the Covenant is to stimulate public dialogue, when it comes to politicians and public figures who are by the nature of their status supposed to be open to criticism and opposition, the boundaries of appropriate criticism are broader than when it comes to private individuals, who do not have the same level of access to effective communication channels to dispute inaccurate remarks by authorities[5].

2.1.3. ECHR (ECtHR) Point of View

People in countries that are members of the Council of Europe have their human rights protected by the European Convention of Human Rights that has been ratified by all 47 members of the Council in 1953 after being signed in Rome in 1950 (Council of Europe, n.d.). The full title is "*Convention for the Protection of Human Rights and Fundamental Freedom*". Following the Second World War, the Council of Europe was established to preserve human rights, the rule of law, and to promote democracy. The European Court of Human Rights (ECtHR) implements and protects the rights and guarantees set out in the

[3] UNHRC, Communication No. 574/1994, *Keun-Tae Kim v. Republic of Korea*

[4] UNHRC, Communication No. 1128/2002, *Rafael Marques de Morais v. Angola*

[5] UNHRC, Communication No. 314/1988, *Peter Chiiko Bwalya v. Zambia*; UNHRC, Communication No. 386/1989, *Famara Koné v. Senegal*; UNHRC, Communication No. 458/1992, *Albert Womah Mukong v. Cameroon*; UNHRC, Communication No. 727/1996, *Dobroslav Paraga v, Croatia*; UNHRC, Communication No. 909/2000, *Victor Ivan Majuwana Kankanamge v. Sri Lanka*; UNHRC, Communication No. 1128/2002, *Rafael Marques de Morais v. Angola*

Convention. The court's primary means of judicial interpretation is the living instrument doctrine, meaning that the Convention is construed in light of present-day circumstances.

When deciding whether a member state has violated the Convention, ECtHR has created a notion known as the *margin of appreciation*. It means that when a member state takes legislative, administrative, or judicial action in the scope of a Convention right, it is given certain flexibility under ECtHR surveillance (Open Society Justice Initiative, 2012). The doctrine allows ECtHR to take into account the fact that various member states will approach the Convention differently due to their differing legal and cultural traditions. The margin of appreciation gives ECtHR the flexibility it needs to find the right balance between member states' sovereignty and their duties under the Convention.

With respect to the *margin of appreciation* discretion, Ghantous (2018) argues that its existence, as well as its nature, scope, and substance, is still a matter of debate. The idea provides the governments of the member States with such a degree of discretion as the international court (ECtHR) deems fair, in implementing the Convention rights. There are a variety of reasons for its adoption, but the following are the most significant: international courts must treat domestic courts and authorities with deference and respect for how they carry out their international obligations because of national "sovereignty"; the idea provides for "normative flexibility" in law interpretation (Ghantous, 2018).

Kratochvil (2011), similarly, expressed concerns over the evasive breadth of the margin of appreciation. Kratochvil (2011) used the metaphor of a bar in a high jump competition to illustrate how the margin works. The Court sets the bar at a specific height for the State to clear in order to avoid committing a violation. A narrow margin indicates that the bar is relatively high, making it difficult to jump; whereas a wide margin indicates that the jump is easy. Despite this, we have no idea what the bar's exact height is. Only that it is higher in some situations than in others is known (Kratochvil, 2011). To put it another way, the

margin's width is frequently unknown, and we have no idea what a state must do to comply with the Convention's requirements. Despite his criticisms, Kratochvil (2011) observed that in circumstances of a narrow margin of appreciation, the practice appears to be fairly consistent as the Court holds that states must demonstrate "very solid reasons" to justify the interference.

In *Handyside v. United Kingdom*[6], the Court explained the margin of appreciation for the first time. In that decision, the Court had to decide whether a conviction for having an obscene article could be justified under Article 10(2) as a necessary restriction on freedom of expression to safeguard morals. The Court made the following observations:

> By reason of their direct and continuous contact with the vital forces of their countries, state authorities are in principle in a better position than the international judge to give an opinion on the exact content of those requirements [of morals] as well as on the 'necessity' of a 'restriction' or 'penalty' intended to meet them …
>
> Nevertheless, Article 10(2) does not give the contracting states an unlimited power of appreciation. The Court which … is responsible for ensuring the observance of those states' engagements, is empowered to give the final ruling on whether a 'restriction' or 'penalty' is reconcilable with freedom of expression as protected by Article 10. The domestic margin of appreciation thus goes hand in hand with European supervision.

In line with UNHRC, ECtHR also is of the opinion that restraints and constraints on the right to freedom of expression, in particular, must be interpreted narrowly. Other member states of the Council of Europe with less strong democratic institutions or have undergone growing pains as they have progressed democratically still faced challenges in the practice of freedom of expression on a domestic level (Voorhoof, 2015).

The ECHR's Article 10 represents a social responsibility approach to the right to freedom

[6] ECHR, 07 December 1976, Case No. 5493/72, *Handyside v. UK*

of expression. The ECHR has stated that government involvement must be prescribed by legislation in a sufficiently detailed manner, be used non-arbitrarily, be justified by a legitimate goal, and most crucially, be "necessary in a democratic society". According to judicial precedent, an open, pluralistic, and democratic society should construe Article 10 from the perspective of a high level of freedom of expression and information protection. Public discussion must be prioritized in a democratic society within the values proclaimed and guaranteed by Convention, notably "tolerance, social peace and non-discrimination"[7]. Even if the state or some groups[8], corporations, organizations, institutions, or public figures[9] are believed to be affected by the expressed opinions or facts.

The court has allowed a broad margin of appreciation by the member states in circumstances where interferences are founded on the protection of others religious emotions[10] or on morals[11], acknowledging the interferences at issue as necessary in a democratic society. However, there is a difference between offensive views and aggressive attacks on one's religion. In any event, applying criminal punishments rather than civil penalties is a disproportionate approach. ECHR ruled in *İ.A. v. Turkey*[12] that Turkish authorities did not infringe freedom of expression by prosecuting a book publisher for blasphemy.

Mr. *İ.A.* is the owner and managing director of Berfin, a publishing business that released

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[7] ECHR, 24 June 2003, Case No. 65831/01, *Garaudy v. France*; ECHR, 16 July 2003, Case No.23131/03, *Norwood v. The UK*; ECHR, 27 August 2004, Case No.35222/04, *Ivanov v. Russia*; ECHR, 20 April 2010, Case No. 18788/09, *Le Pen v. France*; ECHR, 09 February 2012, Case No. 1813/07, *Vedjeland and others v. Sweden*

[8] ECHR, 04 December 2003, Case No. 35071/97, *Gündüz v. Turkey*; ECHR, 31 January 2006, Case No. 64016/00, *Giniewski v. France*

[9] ECHR, 29 March 2005, Case No. 40287/98, *Alinak v. Turkey*; ECHR, 06 July 2010, *Gözel and Özer v. Turkey*; ECHR, 21 February 2012, Case No. 32131/08 & 41617/08,*Tuşalp v. Turkey*; ECHR, 01 October 2013, Case No. 25764/09, 25773/09, 25786/09, 25793/09, 25804/09, 25811/09, 25815/09, 25928/09, 25936/09, 25944/09, 26233/09, 26242/09, 26245/09, 26249/09, 26252/09, 26254/09, 26719/09, 26726/09 & 27222/09, *Yalçınkaya and Others v. Turkey*

[10] ECHR, 20 September 1994, Case No. 13470/87, *Otto-Preminger-Institut v. Austria*; ECHR, 25 November 1996, Case No. 17419/90, *Wingrove v. The UK*; ECHR, 10 July 2003, Case No. 44179/98, *Murphy v. Ireland*; ECHR, 13 September 2005, Case No. 42571/98, *İ.A. v. Turkey*

[11] ECHR, 29 May 1988, Case No. 10737/84, *Müller and Other v. Switzerland*

[12] ECHR, 13 September 2005, Case No. 42571/98, *İ.A. v. Turkey*

Abdullah Rıza Ergüven's novel "*Yasak Tümceler*" (The Forbidden Phrases) in 1993. The novelistic style of the book presented the author's ideas on philosophical and spiritual topics. Through the publication of the book in question, the Istanbul public prosecutor charged Mr. *İ.A.* with blasphemy against "God, the Religion, the Prophet, and the Holy Book".

The expert quoted several sections from the book under examination in his assessment, including:

> "... just think about it, ... all beliefs and all religions are essentially no more than performances. The actors played their roles without knowing what it was all about. Everyone has been led blindly along that path. The imaginary god, to whom people have become symbolically attached, has never appeared on stage. He has always been made to speak through the curtain. The people have been taken over by pathological imaginary projections. They have been brainwashed by fanciful stories ...
> ... this divests the imams of all thought and capacity to think and reduces them to the state of a pile of grass ... [regarding the story of the Prophet Abraham's sacrifice] it is clear that we are being duped here ... is God a sadist? ... so the God of Abraham is just as murderous as the God of Muhammad ..."

The Court held penalties taken against the publisher were justified because the book went beyond the bounds of shock, insult, and disturbance. Furthermore, because the book's comment amounted to an insulting attack on the Prophet of Islam, the Court ruled that interference met an "urgent social need". However, the Court emphasized that religious individuals must tolerate and accept the denial of their religious beliefs by others, as well as the spread of doctrines antagonistic to their faith by others.

2.2. Blasphemy

Today, one can still be imprisoned, even worse, sentenced to death, for blasphemy in 61 countries worldwide. Nigeria, Pakistan, Iran, Afghanistan, Somalia, Mauritania, Saudi Arabia,

and Brunei are listed by Humanist International (2020) as countries upholding the death sentence for blasphemy, and the other 53 countries make it punishable by terms of imprisonment. Etymologically, the word blasphemy comes from a Greek word, "*blasphémia*", meaning "speaking evil" and used to signify insult by one person or another (Hassan, 2007). However, in present-day, blasphemy represents "the action or offence of speaking sacrilegiously about God or sacred things" (Lexico, n.d.). In Anglo-American law, *Black's Law Dictionary* defined blasphemy as "speaking evil of the Deity with an impious purpose to derogate from the divine majesty, and to alienate the minds of others from the love and reverence of God" (1968, p. 216). However, in practice, blasphemy is very broadly defined depending on the religion in question. This subjective nature makes blasphemy law highly prone to abuse in practice. Citing from Arsil et al. (2018), Table 1 shows types of acts that are considered as blasphemous in various countries.

Table 1

Types of acts that are considered blasphemous in various countries.

Type of act	Country
To insult, attack and disrespect God or sacred or holy things of a religion	Thailand, Greece, Finland, Germany, Ireland, Italy, Liechtenstein, Montenegro, Turkey, Nigeria, Brazil, El Salvador, etc.
To insult, attack, or disrespect God or sacred or holy things in a religion, or to disrespect the religious feelings of believers	India, the Philippines, Kazakhstan, Pakistan, Autria, Cyprus, Poland, Russia, Ethiopia, Gambia, etc.
To spread religion other than Islam	Algeria, Tunisia, Jordan
To attack a religious leader	Rwanda
To undermine a Muslim's faith	Algeria, Morocco
To eat pork if you are Muslim	United Arab Emirates
Atheism	Bangladesh, Kuwait

Arsil et al. (2018) mentioned two concepts of blasphemy: one that "focuses on the insult to God" or other sacred things of a religion, and another one that "considers the effect of that insult on the adherents' religious feelings". The second notion is an insult to religious feelings of the believers of a certain religion which is extremely problematic to manage as the feeling of hurt differs from one person to another. The major concern and criticism against regulations prohibiting blasphemy or defamation of religion are rooted in its conflict with the silencing of debate of ideas (Arsil et al., 2018). Of course, the freedom of religion must be protected, as stated in Article 18 of International Covenant of Civil and Political Rights (ICCPR):

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Even so, it is just as significant to guarantee an environment in which a critical discussion about religion can be held as there is no fundamental right not to be offended especially in democratic society. Aforementioned, Voorhoof (2015) identified that in cases where

interferences are based on the protection of the religious feelings of others or on morals, the European Court of Human Rights has accepted a broad margin of appreciation, accepting the interferences at issue - against books, movies or paintings exposed in public - as being necessary in a democratic society.

2.3. Previous Researches

Historically speaking, Indonesia began to democratize itself after the collapse of Soeharto's dictatorship in 1998 (Bourchier, 2019). From its independence in 1945, Indonesia was governed by authoritarian rulers, its first and second presidents, Soekarno and Soeharto, who had implemented the "laws, policies and practices" which were contrary to international human rights standards, and even implicated in serious and systemic "human rights abuses" (Colbran, 2010; Bourchier, 2019; Mc.Gregor & Setiawan, 2019). The first of Indonesia's state principles, *Pancasila* ("five principles") in the preamble of the Constitution, which states 'Belief in Almighty God' (*Ketuhanan Yang Maha Esa*) is invoked to claim Indonesia as a "state which has a religious characteristic" (Colbran, 2010).

McGregor and Setiawan (2019) vocalized that the justice in Indonesia has shifted from international measures to what they labeled as "Indonesian" justice measures despite the push to adopt international human rights principles. From their case study on the 1965 violence in Indonesia, they traced the development of the human rights framework in Indonesia. They concluded in the matter of human rights issues, that influential political elites urged the Indonesians to "reconcile for the future of the nation". Their conclusion resonates with the Indonesian political elites' preferences of "Indonesian" mechanisms that are increasingly removed from universal standards. Thus, this paper will explore "Indonesian" mechanisms un upholding freedom of expression.

On the other hand, Colbran (2010) examines in detail the domestic human rights provisions in Indonesia as well as the limitations of the Constitutional Court and Human

Rights Commission both in theory and practice. Her major limitation in examining the realities and challenges in safeguarding freedom of religion or belief in Indonesia, is that she mostly focuses at the discrimination faced by the followers of "non-enumerated" religions. Her only passage regarding the discrimination against the adherents of those "enumerated" religions is the case of Christian Church Kemah Daud, where three sunday school teachers were sentenced to three years in prison in West Java under the accusation of "encouraging children to leave Islam for Christianity" by the local Indonesian Ulama Council (*Majelis Ulama Indonesia*, MUI), Indonesia's top Sunni Islamic scholars body, despite none of the children had actually converted to Christianity. Colbran (2010, p. 692) stresses the importance of the independence of Indonesia's judiciary in ensuring that domestic law is interpreted and applied in a "manner consistent with the provisions of international human rights" treaties as ratified by Indonesia. However, she refers to no official case reports, so that we are left unclear about the exact manners in which the Indonesian domestic law has been interpreted and applied, let alone whether or not the manners are consistent with international human rights standards.

Meanwhile, Marshall (2018) indicates that the Indonesians tend to view religious freedom as a Western concept and they tend to be more comfortable stressing the importance of religious toleration and harmony instead. He points out that the deterioration of religious harmony started in 2014, especially with respect to the government treatment of "deviant" religious minorities. The deterioration culminated in the case of Ahok's which drew "worldwide attention" and produced "worst polarization" of the Indonesian public opinion. The court's ruling split the country in ways never seen since 1998 with many of Ahok's supporters found themselves being "afraid to speak out" (Marshall, 2018). Shortcoming of his work is that he does not discuss how Ahok's case actually underlines a more vital problem at hand: the violation of the freedom of expression under the cover of maintaining "religious

harmony". I will discuss these further in my research (See 4.2.2.).

Bourchier (2019) noted a period of the ground-breaking democratic reforms in Indonesia by the end of 1998, which was eventually followed by a period of conservative religious nationalism starting in 2014 when President Susilo Bambang Yudhoyono gave the conservative Indonesian Ulama Council (*Majelis Ulama Indonesia*, MUI) a central role in matters regarding the Islamic faith, so that the government or state should heed MUI's *fatwa*[13]. Bourchier demonstrates how the illiberal political ideas have been woven into the fabric of Indonesian democratic politics and freedom of speech to make up the political backdrop against which Ahok was convicted, marking a "sharp deterioration in the quality of democracy". Of special importance in Bourchier's article was that he found it undemocratic for Indonesia's Constitutional Court to have upheld the blasphemy law and to have dissociated itself from the secular and liberal values that the Court regarded to be too Western to be accepted. Whereas Bourchier focuses on the islamization of Indonesia's politics, my research will explore further these "Western" values mentioned in his work and to find the international human rights standard that is expected to be upheld in a democratic society.

In a different manner, Diprose et al. (2019) surveyed the illiberal turn in Indonesia through policy making as well as in the approaches to recognising past human rights abuses. They noted that illiberal tendency emerged when the State failed to address social injustices and inequalities, and such a tendency developed all the way up to the 2019 Indonesia's presidential contest. In line with Diprose et al., I argue that such inequalities have fueled human rights abuse in Indonesia (See 4.2.1).

Previous studies had compared Indonesia's actions and interpretations of freedom of expression to universal standards or western principles. Previous works showed the discrepancy between Indonesia's practice and these universal criteria, highlighting the

[13] Interpretation on Islamic law perspective given by a competent legal scholar (Britannica, n.d.)

country's human rights violations. Despite that, their findings remain rather anecdotal. This study attempts to fill in the gaps left by past research by addressing the following specific research questions:

1. What is the system of government and regulatory framework in Indonesia?
2. What does Indonesian case law indicate about the practice of freedom of expression in the country?
3. What are the strengths and weaknesses of the current Indonesian law from the International Human Rights Point of View?

3. Methodology

The research approach used in this study is document analysis. A technique for assessing or evaluating documents that have been captured without the assistance of a researcher - both printed and electronic information containing text (words) and images - is known as document analysis (Bowen, 2009). Document analysis seems to be useful in qualitative case studies as a research method. As Yin (2003) points out, the case study approach has the power to create a profound understanding of a specific event and capture the circumstances of a typical or daily situation. This paper focuses primarily on Ahok's case since it represents a blatant infringement and also a manifestation of typical violation of the right to freedom of expression in Indonesia.

By bearing witness to past events, documents provide wide coverage as well as historical perspective. It helps this research trace the historical roots of Indonesia's diverse viewpoints of freedom of expression. Even if the persons involved have forgotten the details, the court judgements can be utilized to follow the growth of freedom of expression in the country. To avoid the potential fault of biased selectivity in document analysis, this study relies mostly on court rulings of freedom of expression case laws since they are non-obstructive and non-reactive - that is, they are untouched by the research process. Furthermore, as long as courts exist, previous court judgements are always re-examined.

In addition to court judgements, this study also looked at a wide range of sources to generate a preponderance of evidence. For instance, pre-existing material on Indonesian law and society, newspapers, MUI's press release, and the video of Ahok's interview with Al Jazeera. This is done to maintain a chain of evidence and boost the information's credibility.

4. Findings

The findings are organized into three categories. The first segment delves into Indonesia's government and regulatory framework. The second portion examines how court decisions in Indonesia seemed to be strongly affected by pressure from the public to suppress dissenting viewpoints. The third segment examines the strengths and weaknesses of Indonesia's human rights protection system.

4.1. System of Government and Regulatory Framework in Indonesia

The most significant initiative for human rights reform in Indonesia started with the enactment of a national legal framework supported by its third president, Bacharuddin Jusuf Habibie despite his brief time as president (May 1998-October 1999). In November 1998, a Special Session of Indonesia's People Consultative Assembly (*Majelis Permusyawaratan Rakyat*, MPR) was held and resulted in the promulgation of MPR Decree No. 17 of 1998 on Human Rights (Peterson, 2020, p.38). This MPR Decree would later facilitate the enactment of Undang-Undang No 39 of 1999 on Human Rights and the incorporation of Chapter XA into the 1945 Constitution.

4.1.1. System of Government.

Indonesia's system of government is founded on the amended 1945 Constitution, which establishes a separation of legislative, executive, and judicial authorities. Indonesia's 1945 Constitution as a symbol of their struggle for independence and the founding pillar of the reunification of the Republic of Indonesia, has lasting emotional significance for most Indonesians. Indonesia's democratic process began in May 1998, when the authoritarian New Order regime of former President Soeharto was overthrown. The New Order regime silenced critics and used parliament, the courts, and the media as President Soeharto's tools. On May 21, Soeharto's Vice-President, B. J. Habibie, took office, promising political reform. However, practically every facet of Indonesia's political institutions had to be reformed in

order for this to happen. During the transitional period since 1998, the 1945 Constitution was amended four times in 1999, 2000, 2001 and 2002.

The political system before and after the amendment of 1945 Constitution are shown in the figures below.

Figure 1

Indonesia's system of government before the amendment of 1945 Constitution

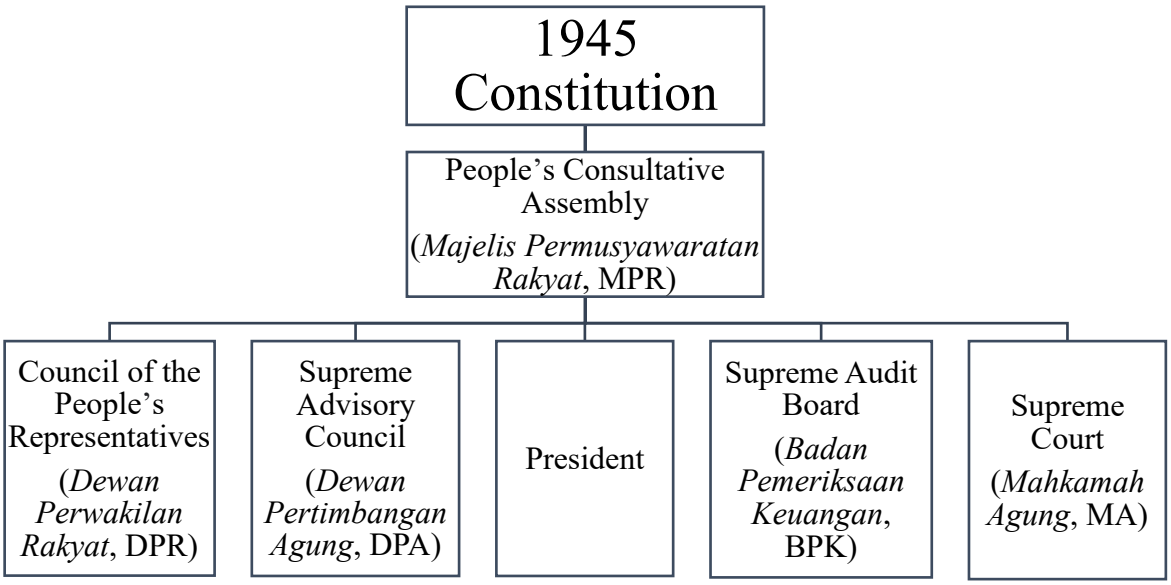
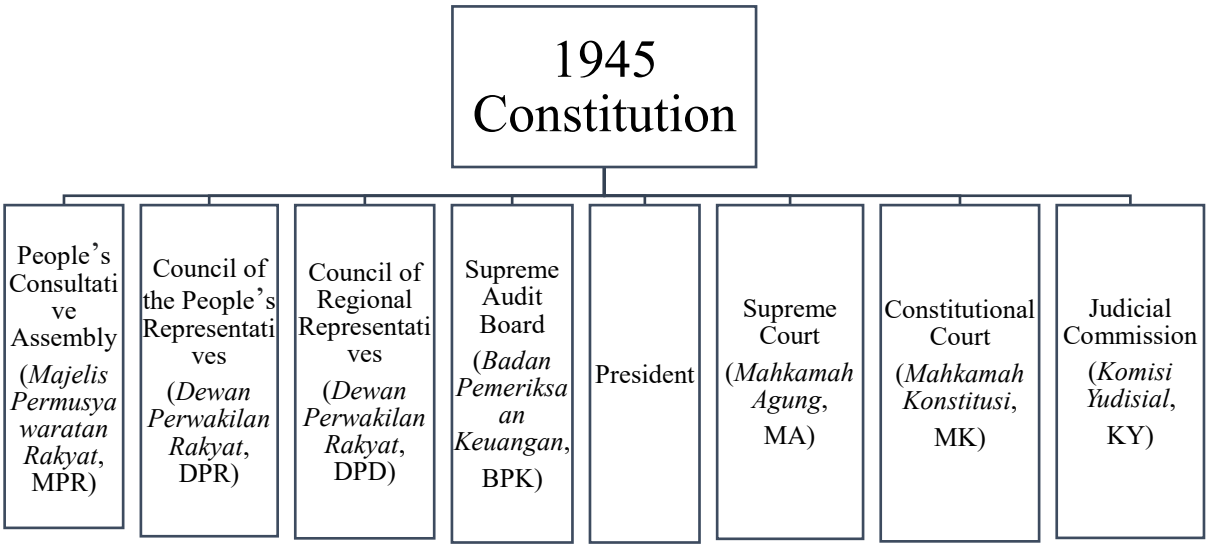


Figure 2

Indonesia's system of government after the amendment of 1945 Constitution



Before these significant amendments to the 1945 Constitution, the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*, MPR) was the highest institution and held the right to appoint and dismiss the president of Indonesia. MPR chose the president and vice president every five years until 2002, when a new rule mandated that both leaders be directly elected beginning in 2004. MPR is largely responsible for interpreting the country's constitution and general policy guidelines. The House of Representatives (*Dewan Perwakilan Rakyat*, DPR) is made up of representatives elected from political party lists under an open-list proportional representation (OLPR) system from multi-member electoral districts with three to 10 seats each depending on district population. However, the specifics of the system as implemented in Indonesia have imposed relatively stringent limits on the amount of influence voters have over which candidates from their preferred party are elected to represent them. The Regional Representative Council (*Dewan Perwakilan Daerah*, DPD) has four representatives from each province who are chosen using a single non-transferable vote system. DPR has the authority to design a bill, pass a statute, make a state budget and oversee the executive body in enforcing statutes. DPD's functions are limited to the regional level.

The President serves as the head of the executive branch, both the head of state and the head of government and can be elected for a maximum of two five-year terms. The amendments to 1945 Constitution Article 5(1) also revoked the authority of the president to make a statute. Instead the president may submit a draft of statute. This resulted in the changes in the legal hierarchy from 1998 and onwards. Based on the newest statute UU No.12/2011, legal hierarchy in Indonesia is as follows:

1. 1945 Constitution (*Undang-Undang Dasar 1945*)
2. People's Consultative Assembly's Decree (*Ketetapan MPR*)
3. Statute (*Undang-Undang*)/Government Regulation in Lieu of Acts (*Peraturan Pemerintah Pengganti Undang-Undang* or *Perpu*), president's authority to set policies

to strengthen public order and safety.

4. Government Regulation (*Peraturan Pemerintah*)
5. President Regulation (*Peraturan Presiden*)
6. Province Regulation (*Peraturan Daerah Provinsi*)
7. Regional Regulation (*Peraturan Daerah*)

In practice, there are also Presidential Decrees (Keputusan Presiden, Keppres), Presidential Instructions (Instruksi Presiden or Inpres), Ministerial Regulations (Peraturan Menteri or Permen/PM), Ministerial Decrees (Keputusan Menteri or Kepmen/KM) and Circulation Letters (Surat Edaran), which sometimes conflict with each other.

Indonesia's judicial system consists of the Supreme Court (*Mahkamah Agung*, MA) in Jakarta as the final court of appeal in Indonesia's legal system. MA does not have the authority to review the constitutionality of a statute under the 1945 Constitution. Instead, the Constitutional Court (*Mahkamah Konstitusi*, MK) was founded in 2003 to assess the constitutionality of the laws. Pursuant to article 24C(1), at the request of citizens and legal entities, MK is empowered to assess the constitutionality of national statutes (*Undang-Undang*) passed by Indonesia's People's Representative Council (*Dewan Perwakilan Rakyat*, DPR). The Judicial Commission's (*Komisi Yudicial*, KY) primary responsibility is to choose Supreme Court's judges and recommend their elevation. Judges' code of ethics and behavior were intended to be overseen by the Judicial Commission.

Under the colonial administration, Indonesia's law was a mixture of Dutch law as the dominant legal system, local customary law (*sistem hukum adat*), and Islamic *Sharia* Law (only implemented in Aceh Province). Each of the four judicial sectors (general, religious, military, and administrative) has its own set of courts. The religious (*Pengadilan Agama*, PA), military (*Pengadilan Militer*, PM), and administrative (*Pengadilan Tata Usaha Negara*, PTUN) courts deal with specific cases or groups of persons, whilst the general (*Pengadilan*

Negeri, PN) courts deal with both civil and criminal cases. Religious courts deal with Muslim's civil matters, such as marriage, inheritance, and property donated for religious purposes.

4.1.2. Regulatory Framework of Human Rights.

MPR Decree No. XVII/MPR/1998 (revoked in 2003) resulted in the creation of Undang-UndangNo. 39 of 1999 which then followed with the addition of Chapter XA of Basic Human Rights into the 1945 Constitution in 2000. This is another peculiarity of Indonesia's Human Rights regulation where it has been constructed first as a statute (Undang-Undang No. 39 of 1999) and then as part of the Constitution (Chapter XA) which makes them have some difference in expression. According to Sardol (2014), statute No. 39 of 1999 should be repealed and replaced with a law that better reflects the content of Chapter XA of the 1945 Constitution.

On the freedom of expression, Article 28E(2) of Chapter XA of the 1945 Constitution states:

> Every person shall be entitled to freedom to be convinced of a belief, to express thought and attitude in accordance with his/her conscience.

Similarly, Article 23 of Undang-Undang No. 39 of 1999 states:

1. Everyone has the freedom to choose and hold his/her political beliefs.
2. Everyone has the freedom to hold, impart and widely disseminate his/her beliefs, orally or in writing through printed or electronic media, taking into consideration religious values, morals, law and order, the public interest and national unity.

On the other hand, Indonesia also has active criminal law against *penodaan agama* (literally translates as religious defilement) in public under Article 156a of the Indonesian

Criminal Law, or the Blasphemy Law. The criminal prohibition of Blasphemy Law prohibits anybody from expressing an emotion or acting in a way that appears to be hostile to an Indonesian faith. This directly defies the 1945 Constitution's provision of freedom of expression.

Furthermore, other law provisions also used to punish *penistaan agama* (religious sacrilege) on the internet under Article 27(3) and 28(2) of Undang-Undang No. 11/2008 on Electronic Information and Transactions (*UU Informasi dan Transaksi Elektronik*, ITE Law). Although Article 28(2) of ITE Law basically prohibits the dissemination of material "with the intent to incite hatred or animosity [against] individuals", it has been utilized in reality to prosecute those who have been accused of defaming or insulting a religion over the internet. While Article 27(3) of the ITE Law is more commonly used to prosecute and sue defamation in general rather than blasphemous statements, it is also used to prosecute people who "deliberately" distribute or transmit religious information that is deemed to "contain insulting and/or defaming content" (Amnesty International, 2014).

4.2. Freedom of Expression and Freedom of Religion in Indonesia

Indonesia was ruled under authoritarianism by its first and second presidents, Soekarno and Soeharto, from the declaration of independence of Indonesia in 1945 until the downfall of Soeharto on 21 May 1998. Both Soeharto and its predecessor, Soekarno, dismissed notions of democracy and human rights as something 'typically Western and inappropriate for Indonesia' (Nasution, 1992, p.2). However, Peterson (2020, p.34) mentioned, long before Indonesia's independence the concept of human rights had been formulated, even prior to colonization, indigenous cultural precedents for human rights existed throughout the archipelago. For example, Lubis (1993, p.49) found that Buginese (an ethnic group from South Sulawesi) testament from the 15th century, *Lontara*, guaranteed the right to life and to be free. To conclude that human rights are misplaced in Indonesia is therefore misleading.

Lubis (1993, p.82) writes Soekarno, who was the Chairman of the Drafting Committee of the Constitution, feared that universal human rights would lead to individualism and generate competition which gives rise to capitalism. Nasution (1992, p.94) explained further that Soekarno believed capitalism was the source that caused Indonesia to be colonized for 350 years. This belief rooted Soekarno's distrust of the human rights of individuals. Therefore, Soekarno was of the opinion that the sovereignty of the people needed to be prioritized over the "sovereignty of the individual" to ensure social justice, as guaranteed by Indonesia's state ideology, *Pancasila* (Nasution, 1992, p.94).

The expression, "the sovereignty of the individual" is Soekarno's. Citing from Compilation of Trials Notes from the Commission of Inquiry into Preparatory Measures for Indonesian Independence (*Himpunan Risalah Sidang-Sidang dari Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia*), in his speech on 15 July 1945, Soekarno pronounced: "(...) Respected Ladies and Gentlemen! Let us draft the Constitution based on the sovereignty of people and not the sovereignty of individual. Once again, the sovereignty of people and not the sovereignty of the individual". The idea that individuals have certain rights which are reserved to themselves when they have established the Republic and given powers to it under the terms of its Constitution, is presupposing the "sovereignty of the people" and very different from the "sovereignty of the individual".

Mohammad Yamin, a writer and lawyer, and Mohammad Hatta, Indonesia's first vice president, were two proponents of liberal democracy and insisted that citizens' rights, particularly the rights to freedom of association and freedom of expression should be guaranteed in the Constitution (Peterson, 2020, p.36). As a result, the 1945 Constitution does not define the state as the sole source of law. Instead, the General Elucidation to the Constitution included the reference to Indonesia being a *"Rechtstaat"* (literally: "law state") which is often translated into *"negara hukum"* in Indonesian, and then to its closest English

equivalent, *"the rule of law"* (Peterson, 2020, p.36). The Constitutional Court of Indonesia has offered partial explanations of the term, but the meaning of *negara hukum* remains contested to this day. The rule of law means that the government must sometimes lose in court.

4.2.1. Blasphemy Prosecutions in Indonesia

Amnesty International (2014, p.40) reported that between 2005 and 2014, 39 people were convicted of religious defamation and sentenced to between 5 months and 6 years in prison in Indonesia. Some cases mentioned by Amnesty International in their 2014 report had shown signs of questionable court's ruling, for instance: Yusman Roy was found guilty of leading Islamic prayers in Bahasa Indonesia rather than in Arabic and sentenced to 2 years in 2005.

According to Amnesty International Report 2017/18, at least 11 people were convicted under blasphemy laws including Basuki Tjahaya Purnama or mostly known as Ahok, the Governor of Jakarta and incumbent in the election, whose conviction drew the public attention in early 2017. Ahok, an ethnic Chinese Christian, was the first high-ranking government official to be convicted of blasphemy for "insulting Islam" in a video posted on the internet. Ahok then was sentenced to 2 years imprisonment. According to the report of Setara Institute for Democracy and Peace, this tendency continued with 9 blasphemy convictions in 2019 and 12 in 2020 (Hafiz & Hasani, 2020; Sigit & Hasani, 2021).

4.2.2.1. Constitutional Court on the Blasphemy Law Cases.

In 2010, an application was made to the Constitutional Court by seven civil society organizations and four individuals (one of the individuals was Indonesia's fourth president, K.H. Abdurrahman Wahid), requesting that the Blasphemy Law be invalidated (Peterson, 2020, p.45). After performing a process known as "material review" (*uji materi*), the court dismissed the application by an eight-to-one margin, holding that the Blasphemy Law complies with the 1945 Constitution. Peterson emphasized that this ruling remains "the most

definitive judicial explanation" of the current state of human rights of individuals in Indonesia.

Blasphemy was first made a criminal offense in Indonesia on 27 January 1965 with the promulgation of Presidential Determination No. 1/PNPS/1965 on the Prevention of the Abuse/Sullying of Religion. Presidential Determination No. 1/PNPS/1965 was also issued as a temporary measure during a state emergency. Four years after its issuance, this presidential determination, by virtue of Undang-Undang No. 5 of 1969 on the Declaration of Various Presidential Determinations and Presidential Regulations as Laws, was promoted to the level of a statute (*Undang-Undang*).

The blasphemy law covers two types of blasphemous acts: deviation (*penyimpangan*) from the six officially recognized religions and defamation (*penodaan*) of these religions as stipulated in Articles 1 and 4, respectively, of Presidential Decree No. 1/PNPS/1965. The Presidential Decree was enacted and signed by President Soekarno, Indonesia's first president, on January 27, 1965, but it was not converted into law until President Soeharto's administration in 1969 (Undang-Undang No. 5 of 1969). This Presidential Decree is responsible for the majority of criminal trials and convictions in Indonesia for blasphemous acts.

These two "blasphemous acts" are followed by different legal procedures leading to prosecution. The restriction imposed by arts 1 to 3 of the Blasphemy Law is administrative while art 4 is criminal. Article 1 of the blasphemy law states that:

> Every individual is prohibited in public from intentionally conveying, endorsing or attempting to gain public support in his interpretation of a certain religion embraced by the people of Indonesia or undertaking religion-based activities that resemble the religious activities of the religion in question, where such interpretation and activities are in deviation of the basic teachings of the religion.

Articles 1 to 3 criminalize heresy which is referred to as instances of doctrinal disagreement and "deviant" religious practice by informing, promoting, or concocting public support for interpretations and practices that diverge from the religion's core principles. Article 2(1) states that persons who contravene art 1 will be instructed, in writing, by the Minister of Religion (*Menteri Agama*), the Attorney-General and General Prosecutor (*Menteri/Jaksa Agung*), and the Minister of the Domestic Affairs (*Menteri Dalam Negeri*), to halt those activities. Article 2(2) empowers the President of Indonesia to disband an organization or sect that has violated Article 2(1) and proclaim that organization or sect unlawful on the recommendation of the three authorities listed in Article 2(1). Article 3 specifies that if the forbidden organization or sect continues to violate article 1 after the warning, individuals who are in violation might be imprisoned for up to five years.

The charge of heresy is distinct from the offense of insulting or sullying a recognized Indonesian religion, which is outlawed by art 4 of the Blasphemy Law and art 156a of Indonesia's Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP). Article 156a was incorporated into the KUHP by art 4 of the Blasphemy Law, which states:

A new article is inserted into the Criminal Code, which declares as follows:

Article 156a

Punishable by up to five years' imprisonment whoever intentionally or in public, expresses a feeling or conducts themselves in a way that:

a. is primarily of a nature of enmity toward, abuse, or sullying of a religion followed in Indonesia; intends to discourage persons from embracing a religion based on the belief in Almighty God;
b. intended to stop a person from adhering to any religion based on Almighty God.

In their decision, the majority of the Constitutional Court's judges first referred to

Almighty God (*Ketuhanan Yang Maha Esa*), the first principle of *Pancasila*. The Court found that Indonesia does not adhere to any explicit religion or secularism, however Indonesia is a state that supports the principle of "Almighty God". The majority of judges specified that "The judicature is administered FOR THE SAKE OF JUSTICE BASED ON ALMIGHTY GOD", such that the nation is "Godly" (*bertuhan*) and not atheistic[14]. Hooker (2008, p.6), however, cautions that the wording of the 1945 constitution as a text, which was written before the conclusion of World War II, is "conceptually European", and despite the fact that it was written in Indonesian, the key ideas were derived from Dutch, German and French constitutional notions. Therefore, "God" that is mentioned in the first principle of *Pancasila*, was more the result of common European constitutional practice than, as quoted from Peterson (2020, p.47), "an overt expression of national religiosity or piety". Hence, following European democracies, there shall be official separation of religion and state and also the gradual decline of the role of religion in the formation of modern self.

The second reference identified by the majority was the limitation of human rights that contained in art 28J(2) of the 1945 Constitution, based on the consideration for "religious values". Article 28J(2) does limit the exercise of rights in accordance "with considerations for morality, religious values, security, and public order in a democratic society". Thus, the court reasoned that a religion in Indonesia is not only something that its residents may embrace, but that its citizens' liberties are genuinely linked to religious acknowledgment and respect.

The majority stated[15]:

> The Constitution of the Unitary State of Indonesian Republic (*Negara Kesatuan Republik Indonesia*) does not provide the possibility of a campaign for the freedom not to be religious, freedom to promote anti-religious ideas, and does not make it

[14] Constitutional Court Decision No. 140/PUU-VII/2009 [3.34.3]
[15] Constitutional Court Decision No. 140/PUU-VII/2009 [3.34.11]

> possible to insult or sully religious teachings or scriptures that have become the source of religious beliefs, or even to sully the name of God. It is this element that constitutes one of the elements that distinguish Indonesian "law state" (*negara hukum Indonesia*) from the rule of law in Western [sic] states, and consequently, in the implementation of state administration, law-making, the implementation of governance and justice, the basis of God and His teachings, as well as religious values, become a measuring stick to tell good laws from bad laws, and even to distinguish between constitutional laws and unconstitutional laws. For such purposes, the limitation of human rights based on the consideration for "religious value", as referred to in art 28J(2) of the 1945 Constitution, constitutes one of the considerations to limit the implementation of human rights. This differs from Article 18 of the ICCPR, which does not include religious values as a limitation on individual freedom.

Indonesia's Constitutional Court had an opportunity to adapt religious laws to contemporary international standards contained in the ICCPR and UDHR in 2010. Instead, it subordinated the rights of individual religious followers to the religious ideas and sentiments of an undefined majority. The court's ruling refused to uphold the individual human rights contained in Chapter XA of the 1945 Constitution. Additionally, statute No. 1/PNPS/1965 was enacted when Indonesia proclaimed a state of emergency, which was intended to be temporary and overturned after the emergency ended.

4.2.2. Ahok's Blasphemy Case.

On 27 September 2016, Ahok traveled to Pramuka Island in the Thousand Islands district (*Kepulauan Seribu*) off the coast of Jakarta. As Governor of Jakarta, his visit was to talk to the district's fishermen about a cooperative fisheries program that his provincial government implemented in both 2014 and 2015. Yet, only one fisherman participated in the program

despite the opportunity the program promised. 80 percent of the net profit from the caught fish were returned to the fishermen and the remaining 20 percent of this profit would be reinvested in the program to ensure the maintenance and sustainability.

In an interview with Al Jazeera in January 2017, the fishermen's evident disinterest had evoked memories of Ahok's failed gubernatorial campaign in 2007 in his home province of Bangka Belitung Islands (*Kepulauan Bangka Belitung*). During this campaign, a certain voter explained to Ahok that her Muslim faith and in particular the Qur`anic verse *Surah Al-Ma`ida 51*, prohibited her from voting for him due to his Christian faith, as this would make her an apostate (*murtad*).

Later, Ahok learned that during his 2007 gubernatorial campaign, certain political opponents of his had distributed pamphlets containing the same message, namely that the Qur`anic verse *Surah Al Ma`ida 51* prohibited Muslims from choosing a Christian as their leader. After losing that election, Ahok, a Christian of Chinese descent, asked Abdurrahman Wahid about the Qur`anic verse *Surah Al Ma`ida 51*. It is important to note that Abdurrahman Wahid's political and Islamic credentials were unequaled, at least in Indonesia. Wahid was the fourth president of Indonesia, a former leader of Nahdlatul Ulama (NU), the largest Islamic social organization, and himself a leading Islamic scholar.

Wahid told Ahok that the verse does not apply to political elections. In fact, the verse was revealed at a time when certain Muslims were forming a coalition with Christians and Jews to assassinate the Prophet Muhammad. However, the critical official Arabic-Indonesian translation of *Surah Al Ma`ida 51* by the Ministry of Religion says:

> O ye who believe, do not take Jews and Christians as your *leaders (pemimpin)*; they are *leaders* for another group. Whoever among you takes them as their *leader*, then behold that person is part of their group. Behold God does not provide instructions to wrongdoers. (Emphasis added)

The translation of *"pemimpin"* (leader) from its original Arabic *"awliya"* to Indonesian generates the misinterpretation, the word *"awliya"* itself has various meanings. Astari et al. (2021) writes, in Arabic dictionary *Mu`jam Al Wasith*, *"awliya"* means helper, lover, friend, ally, neighbor, protector, captain, follower, giving freedom, obedient person, heirs, female guardian, orphan guardian, rain after rain. In Indonesian translation, the word *"awliya"* also variously translated, from "leader", "friends", "protector", "spouse", "guardians", or even "helper".

In the first version of Al Qur`an published by the Indonesia's Ministry of Religion in 1965, *awliya* in Surah Al Ma`ida 51 was translated only as "leader" (*pemimpin*). However, since 1965, Indonesia's Ministry of Religion has revised the Indonesian translation of Al Qur`an twice, in 1989-1990 and 1998-2002 as explained by the Ministry of Religion (Hannafi, 2016). In the 1989-1990 first revised edition, *awliya* in Surah Al Ma`ida 51 also translated as "leader" (*pemimpin*). Nevertheless, in the second revised edition in 1998-2002, the Indonesian translation was changed to *"teman baik"* (loyal friend) (Portal Islam, 2016). Following this, the core of Ahok's case is basically groundless, this also proves Ahok's understanding of the passage is accurate. Despite everything, the court decided to ignore this.

Back to the matter of Ahok's case, when Ahok spoke to about 100 people, most of whom were fishermen on the Pramuka Island, encouraging their participation in his government's fisheries program. Ahok also assured his audience that if he lost the next gubernatorial election in February 2017, his program would continue unchanged until the end of his term in October 2017. Ahok then slightly changed the course of his speech and told his audience not to vote for him on the issue of the upcoming elections if they felt that their Islamic beliefs forbade it. To be exact, Ahok with his outspoken way of speaking says in Indonesian:

> "Jadi jangan percaya sama orang. Kan bisa saja dalam hati kecil bapak ibu enggak bisa pilih saya karena dibohongin pakai surat *Al Ma`ida 51* macem-macem gitu lho

> (orang-orang tertawa). Itu hak bapak ibu, ya. Jadi kalau bapak ibu perasaan enggak bisa pilih nih, saya takut masuk neraka dibodohin gitu ya, enggak apa-apa, karena ini kan panggilan pribadi bapak ibu. Program ini jalan saja. Jadi bapak ibu enggak usah merasa enggak enak. Dalam nuraninya enggak bisa pilih Ahok, enggak suka sama Ahok nih. Tapi programnya, gue kalau terima, gue enggak enak dong sama dia. Kalau bapak ibu punya perasaan enggak enak nanti mati pelan-pelan lho kena stroke. (Orang-orang tertawa)"

This is translated into English as follows:

> "So Ladies and gentlemen, don't believe what people say. It could be in your heart, you can't vote for me because you are misled (*dibohongi*) by these people using (*pakai*) [the Qur`anic chapter] *Al Ma`ida* verse 51 and so on (audience laughed). That's your right. So if you feel you can't vote [for me] because you're afraid to go to hell (*takut masuk neraka*) after you've been fooled (*dibodohin*), that's fine. That is your personal calling. This program will continue regardless. On one's conscience, I can't vote for Ahok. I don't like Ahok but if I accept his program, I would feel uneasy. Ladies and gentlemen, if you keep on feeling guilty [for not voting for Ahok] it could lead to slow death by stroke over time. (Audience laughed)"

Ahok's speech on Pramuka Island was entirely recorded, as well as the question-and-answer session that followed. The one hour, 48 minutes, and 32 seconds video was uploaded in full to the government's official YouTube channel. The public, including those who had heard Ahok's speech in person, expressed no concern about the substance of his speech. However, nine days later, that is, on 6 October 2016, everything changed when a 30-second video that was excerpted from Ahok's Pramuka Island speech was uploaded to Facebook by

Buni Yani, a lecturer in graduate communications at the London School of Public Relations Jakarta.

Buni Yani, a "hater" of Ahok, according to his own Facebook page, and also a supporter of Ahok's political rival, Anies Baswedan and Sandiaga Uno who won the Jakarta governorate in 2017. The 30-second video uploaded on the Facebook contained an edited portion of Ahok's speech followed with a provocative caption, which stated:

> DEFAMATION OF RELIGION?
>
> "Ladies and gentlemen [Muslim voters] … misled by *Surah Al Ma`ida 51*" … [and]
>
> "going to hell [also, ladies and gentlemen] fooled".

Things went awry after the 30-second video had gone viral and grasped by Indonesia's Islamic Defenders' Front (*Front Pembela Islam*, FPI) and Indonesia Ulama Council (*Majelis Ulama Indonesia*, MUI). Shortly after, Ahok was reported to the police by either members of FPI or members of organizations affiliated with FPI. On 7 October 2016, the day after Buni Yani's Facebook post, Ahok expressed and clarified his comments to the media in a similar interpretation as the earlier advice of Wahid to Ahok.

Guntur Romli, who was then an employee of the lieutenant governor of Ahok, reported Buni Yani to the police for uploading the 30-second video with his own edited caption. Buni Yani has also been accused of omitting the word "use" (*pakai*) which gives impression that Ahok suggested that Al Qu`ran was misleading Muslims rather than the people who *used* or invoked the verse to discourage Muslims from electing a non-Muslim like Ahok, was (Peterson, 2020). Arrested on 23 November 2016, Buni Yani was sentenced to a year and a half in prison on 14 November 2017 for violating Article 32 of Undang-Undang No. 11 of 2008 for spreading hate speech. The court found that Buni Yani's behavior disrupted the peace and showed no remorse for his actions (Dipa, 2017).

On 9 October 2016, two days after Ahok turned to the media, the Jakarta branch of MUI

issued Ahok with a strict reprimand (*Surat Teguran*). Some points of the reprimand are: not to do anything or make statements affecting the public life and especially Muslims also not to participate in discussions outside of his area of competence and instead focus on his role as the governor in moving Jakarta forward and increasing the prosperity of the people of Jakarta (Rozak, 2016). On 10 October 2016, Ahok publicly apologized to those were offended by his comments and stated that he had no intention of denigrating Islam or the Qu`ran (Yuliani, 2016). Despite Ahok's apology, right on the next day, 11 October 2016, the MUI headquarters published the first ever in its history, a Religious Opinion and Stance (*Pendapat dan Sikap Keagamaan*) 981-a/MUI/X/2016, labelling Ahok's remarks as "*haram*" (forbidden) and an insult to the *ulama* (Islamic scholars) and *umma* (Muslim community).

4.2.2.1. Majelis Ulama Indonesia (MUI).

As stated on its official website, the Indonesia Ulama Council (*Majelis Ulama Indonesia*, MUI) was established by its own charter (*Piagam Berdirinya MUI*) on 26 July 1975 as a result of an *ulama* conference convened in Jakarta. When MUI was founded in Indonesia, the other four nationally recognized religions of Catholicism, Protestantism, Hinduism and Buddhism, already had their own national governing bodies. It was not until 2000 that Confucianism was recognized again as the sixth state-recognized religion under Wahid's presidency, as Confucianism had been derecognized since 1978.

These official religious institutions hold ultimate authority to interpret religious teachings and to settle religious disputes for their respective religions in Indonesia. The 1945 Constitution art 28E(2) and art 29(2) clearly state the right of every citizen to follow any religion. However, in practice, an individual in Indonesia who does not have a religion or whose belief is not recognized by the state faces difficulties in obtaining an identity card as Undang-Undang No. 23 of 2006 Article 61 and 64 mandated that one of the six religions must be mentioned on the card. It was not until the enactment of Undang-Undang No. 24 of 2013

that a person whose religion or belief is not yet recognized as a religion in Indonesia, finally could obtain an identity card with the religion column left blank without being accused of violating the Constitution by being an atheist.

Due to the authority held by these official religious institutions, indigenous communities are often accused of being "deviant groups" who must "return" to the established religions. Despite the status of these organizations being private, MUI's influence being the official religious institution to interpret Islam teaching in a state with the Muslim majority is unquestionable and enormous. Basically, MUI's role is to give Islamic opinions to the growing concerns in society or to the questions posed by the government, individuals or institutions, through issuing *fatwa* (Widigdo & Hamid, 2018). To issue *fatwa*, MUI has a special commission called *Komisi Fatwa dan Hukum* (Legal and *Fatwa* Commission).

In its conventional sense, *fatwa* refers to a recognized expert's opinion on a specific matter from the perspective of Islamic law (Kaptein & Laffan, 2005). In spite of being not legally binding in Islamic legal tradition, the influence of *fatwa* on the hearts of Muslims is undoubtable. In 2007, the sixth president of Indonesia, Susilo Bambang Yudhiyono boldly stated that in handling issues of deviant's sects the government would ask MUI for a *fatwa* as the basis of state action (Munjid, 2008).

Following this, MUI *fatwas* have been implemented by the state's bureaucracy. Since *fatwas* serve as a type of rationale for government action, the state follows the *fatwa* by enforcing it through its bureaucracies. Widigdo & Hamid (2018) writes even when MUI *fatwas* are incompatible with Indonesian pluralism, the government prefers to support MUI *fatwas* by remaining silent or refusing to evaluate them. This is evident in the issuance of the Religious Opinion and Stance that triggered the biggest demonstration on 2 December 2016 demanding Ahok be jailed. Notwithstanding that the authority to issue a Religious Opinion and Stance cannot be found in MUI's own internal regulatory guidelines, MUI Chairman

Ma`aruf Amin told the court of Ahok's trial that the Religious Opinion and Stance in the case was directed at police officers to prevent chaotic behavior and social unrest, and that the police deemed its issuance necessary before they and the general prosecutor could go ahead with the prosecution[16]. However, Ma`aruf Amin did not cite any provision of law nor MUI's Organizational Coordination Guidelines (*Pedoman Penyelenggaraan Organisasi*) that support his statement.

MUI's Religious Opinion and Stance 981-a/MUI/X/2016 states:

1. The Qu`ran *Surah Al Ma`ida 51* explicitly prohibits Jews and Chistians from becoming leaders. This verse serves as one prohibition on non-Muslims becoming leaders.
2. The *ulama* are obliged to notify the *umma* (Islamic community) of the content of *Surah Al Ma`ida 51* that the election of Muslim leaders is obligatory (*wajib*).
3. All Muslims are obliged to convince themselves of the truth of the content of *Surah Al Ma`ida 51* as a guideline in choosing a leader.
4. Declaring that the content of *Surah Al Ma`ida 51* bans any Jew or Christian from becoming leaders as a lie is forbidden (*haram*) and constitutes the disgrace of the Qur`an.
5. Declaring the *ulama* which conveys the prohibition on non-Muslim leaders as deceitful is an insult to the *ulama* and the *umma*.

As stated above, thus **the statement of Basuki Tjahaja Purnama is categorized: (1) an insult of the Qur`an and/or (2) an insult of the *ulama*, which has legal consequences.** (emphasis in the original)

Therefore, MUI recommends the following:

[16] North Jakarta State Court Decision No 1537/Pid.B/2016/PN.Jkt.Utr.

1. The government and society are obliged to maintain harmony of religious, social, national and state life.
2. The government is obliged to prevent the disgrace and defamation of the Qur`an and the Islamic faith by not failing to act.
3. Law enforcement agencies are obliged to respond firmly to any person who dishonors or defames the Qur`an and the Islamic religious teachings, as well as insults the *ulama* and *umma*, in accordance with prevailing legislative instruments.
4. Law enforcement agencies are requested to be proactive in enforcing the law in a firm, quick, proportional and professional manner by paying attention to public sentiment regarding justice in order that society has faith in law enforcement.
5. Society is requested to remain calm and not to condone vigilantism leaving the law enforcement to the authorized agencies, along with continuous surveillance of religious defamation activities and reporting them to authorities.

4.2.2.2. Public Pressure and Unduly Influenced Court Rulings.

Thousands of members of hardcore Muslim groups participated in the "Actions in Islamic Defense" demonstration on 14 October 2016, just three days after the announcement of MUI's Religious Opinion and Stance, despite MUI's final recommendations for the society to be composed. The demonstration ended with a fierce clash between police and demonstrators. Then on 1 December 2016, just days after the police sent Ahok's case file to the prosecutor, the North Jakarta Attorney-General's Department and General Prosecutor filed an indictment against Ahok with the North Jakarta State Court.

Following the charges against Ahok, two more massive demonstrations were held on 2 December 2016 and 11 February 2017, calling for Ahok's imprisonment and dismissal from public office, and President Jokowi's discharge (Kwok, 2016). Some even demanded death for Ahok (Cochrane, 2016). Azyumardi Azra, an analyst and prominent Muslim scholar,

believed that the protests were organized at the request of the opposition to prevent Ahok from being reelected in February 2017 (Cochrane, 2016). Although neither President Jokowi nor Ahok directly implicated the involvement of Ahok's gubernatorial competitor, President Jokowi later mentioned "political actors" had taken advantage of Islamist fury to incite violence (Cochrane, 2016).

Regardless of who may have planned the protests, the resulting perceived public pressure on the judiciary played a key role in the first-ever blasphemy conviction of an Indonesian politician and the obstruction of a fair election in the "democratic" country. According to CNN Indonesia, Indonesia's then-Chief Commissioner of Police, Tito Karnavian, admitted that the police's decision to charge Ahok with blasphemy was heavily influenced by public opinion and, in fact, violated an internal police directive designed to prevent politicization of cases and protect the police's neutrality (Sofwan, 2016). The directive's full title was Chief Commissioner of Police Secret Telegram (*Surat Telegram Rahasia*, STR) No 498 of October 2015 on Delaying the Investigation of a Case if it Involves a Candidate who will Register or has Already been Stipulated as a Candidate for a Regional Head Election. STR No 498 of October 2015 then has been made no longer applicable after Ahok's case, the investigation of a case will no longer be delayed despite the regional head election (Wardi, 2017).

Heavily prejudiced court rulings[17] in blasphemy cases convictions had been prominent even before Ahok's conviction, namely in the case of Meliana who was convicted for violating blasphemy law, Article 156(a) KUHP in 2018[18]. The problem started in July 2016 when Meliana complained about the volume of the *azan* (call to prayer for Muslims) from the speaker of the community mosque in the hearing of her neighbor, an owner of a convenience store. Meliana voiced, "Ma'm, please tell that uncle, (to) lower the volume of the mosque ('s

[17] Denpasar District Court Decision No. 132/Pid.B/2013/PN.Dps; Ende District Court Decision No. 55/Pid.B/2012/PN.END; Ende District Court Decision No. 84/Pid.B/2012/PN.END; Kepanjen District Court Decision No. 461/Pid.B/2005/PN.Kpjn

[18] Medan District Court Decision No. 1612/Pid.B/2018/PN.Mdn

speaker), it hurted my ears, (it's) noisy." (Andriansyah, 2019). The neighbor then told her family about what Meliana had said, and the story began to spread. Meliana was soon accused of attempting to outlaw the Muslim call to prayer. This immediately spread on social media, sparking riots as Muslims were angered by the words and went on to attack (Soeriaatmadja, 2018). MUI of Tanjung Balai branch stated that Meliana's statement regarding the *azan* amounted to the defamation of Islam. Meliana's residence was then attacked by mobs and the attacks spread to the burning of 14 Buddhist temples in Tanjung Balai in December 2016. Meliana was sentenced to 18 month imprisonment in May 2018.

MUI's statement leading to violence against individuals or group members of "deviant" religious teachings has been a common pattern found in the blasphemy cases in Indonesia. Ahmaddiyah and Shi`a[19] believers were attacked and had to flee from their village as their lives were threatened if they were to return after MUI stated these teachings were 'deviant' and unacceptable (Amnesty International, 2014). The court decisions were found to be consistently in line with MUI's opinions resulting in the convictions of individuals who had different understandings from MUI's for blasphemy. This was not limited to the spreading of the anti-mainstream teachings[20] such as the case of Lia Eden[21] (2006), but also the writings of books,[22] and distribution of leaflets[23] were judged to be heretical by MUI.

Court decision on Ahok's stressed the public unrest caused by Ahok's statement regarding *Surah Al Ma`ida 51* and did not take into account the different versions of the videos spread

[19] Sampang District Court Decision No. 68/Pid.B/2012/PN.Spg

[20] Banda Aceh District Court Decision No. 80/Pid.B/2015/PN.Bna, 81/Pid.B/2015/PN.Bna, 83/Pid.B/2015/PN.Bna, 85/Pid.B/2015/PN.Bna; Ciamis District Court Decision No. 157/Pid.B/2012/PN.Cms; Klaten District Court Decision No. 03/Pid.B/2012/PN.KLT; Lubuk Pakam District Court Decision No. 1192/Pid.B/2013/PN.LP; Supreme Court Decision No. 787 K/Pid/2006, 1839 K/Pid/2011; Tasikmalaya District Court Decision No. 117/Pid.B/2006/PN.Tsm, 2529 K/Pid/2006

[21] Central Jakarta District Court Decision No. 677/Pid.B/2006/PN.Jakarta.Pst

[22] Dompu District Court Decision No. 73/Pid.B/2012/PN.DOM; Kalabahi District Court Decision No. 87/Pid.B/2005/PN.KLB; Probolinggo District Court Decision No. 280/Pid.B/2005/PN.Kab.Prob; Temanggung District Court Decision No. 06/Pid.B/2011/PN. TMG

[23] Sengkang District Court Decision No. 31/Pid.B/2016/PN.Skg

online[24]. The North Jakarta Court disagreed that Ahok's case was related to the gubernatorial election and found that Ahok's case was purely the sullying of religion[25]. The court went on as far as to state that Ahok, as a public official and religious person, must have certainly been aware of the sensitivity of a religious matter and ought to have avoided using derogatory words[26].

[24] North Jakarta State Court Decision No 1537/Pid.B/2016/PN.Jkt.Utr.
[25] Ibid
[26] Ibid

5. Discussion

Prior studies (e.g., Bouchier, 2019; Marshall, 2018; McGregor & Setiawan, 2019) hinted at differences between Indonesian values and international human rights standards. This study sought to identify those differences. Indonesia is established on a Constitution that maintains the separation of powers between the legislative, executive, and judicial branches but without the separation of State and the religious authorities such as Church and Ulama. Despite significant modifications to the 1945 Constitution, Indonesia's overlapping legal structure between the legal hierarchy prior to 1998 and that after 1998 remains unanswered. Conflicting pieces of legislation, such as the right to free expression versus blasphemy laws, which punish unorthodox opinions of an "officially recognized" religion, add fuel to the fire of persecution of minorities, which is the focus of this study.

This study has discovered that Indonesia's human rights perspective is based on a misunderstanding of the notion of universal human rights. President Soekarno, Indonesia's first president, stated unequivocally that he feared that universal human rights would lead to individualism, which would lead to capitalism, which was the foundation of Indonesia's 350-year colonization. The rights of individuals were viewed as a "Western value" by Soekarno, and the idea appears to have persisted in Indonesia's legal system as well.

Throughout the ECtHR and UNHRC case law, universal criteria for restrictions on freedom of expression demonstrated that restrictions must undergo a rigorous test. Government intervention in freedom must be specified in sufficient detail by legislation, carried out without bias, justified by a reasonable goal, and, most crucially, be "necessary in a democratic society". Nonetheless, this study discovered that Indonesian court judgments on freedom of expression, particularly those involving freedom of religion (blasphemy cases), were plainly biased and unduly influenced by Ulama's Islamic legal opinions.

The ruling of Indonesia's Constitutional Court in 2010 regarding the blasphemy law also

aroused concerns. The Court has the power to strike down laws that violate the principles of Chapter XA on Human Rights, yet, it chose to uphold the blasphemy law. The Court concluded that while Indonesia does not adhere to any formal religion, it is not atheistic either, and hence does not allow for non-religious people. Furthermore, the Constitutional Court determined that restrictions on the consideration of "religious values" in Indonesia are permissible. The Court believed this is what differentiate Indonesia's value from universal or "Western" value.

MUI, Indonesian Ulama Council, wields significant power in Indonesia, as evidenced by this study. Freedom of expression appears to be so insignificant that a MUI pronouncement can obstruct the electoral process, as demonstrated by the prosecution and conviction of Ahok. This is consistent with Diprose et al.'s (2019) finding that illiberalism evolved as a result of the government's failure to confront social injustice, or more precisely, the judiciary's inability to be independent of the other authorities. In Indonesia, such inequalities have fostered human rights abuses, with non-"officially recognized" religion believers frequently accused of being "deviant groups" who are not protected by the law. Furthermore, judicial rulings have been proven to be unduly influenced by popular opinion.

6. Conclusion

The key question in this research has been whether Indonesia's human rights practices are in compliance with international standards, specifically the ICCPR and the ECHR as interpreted by UNHRC and ECtHR, respectively. As part of this investigation, I looked into Ahok's blasphemy case and the power of Islamic law as interpreted by MUI, which was seen as a factor in current Indonesian human rights practice, particularly in terms of freedom of expression. I also drew on material gleaned from previous publications and news reports on the subject.

I noticed the same tendency in judging whether freedom of expression has been violated from the UNHRC and ECtHR perspectives. The UNHRC, like ECtHR, believes that limits and constraints on the right to freedom of expression, in particular, should be subject to strict tests. Government engagement must be specified in sufficient detail by legislation, employed without bias, justified by a legitimate aim, and, most importantly, be "necessary in a democratic society". In a democratic society, public debate must be valued within the ideals declared and secured by the Convention, which is tolerance, social harmony, and non-discrimination.

This study found that (1) Indonesia's government and regulatory framework has been fraught with duplication and contradiction, (2) Indonesian court rulings are unduly influenced by MUI decisions and public pressure, and (3) The current legal system in Indonesia offers two strengths. The 1945 Constitution, for starters, establishes a framework within which Indonesians are allowed some fundamental rights and freedoms. Second, Indonesia's ratification of the ICCPR gave the government the right and obligation to pass and/or amend existing laws in order to promote human rights and improve domestic governance. However, three weaknesses overshadow these strengths: first, a chaotic regulatory structure; second, religious persecution under blasphemy law; and third, the judiciary's proclivity to favor one

party over another.

This paper serves as a reminder that constitutionalism alone is insufficient to protect the rights guaranteed by the 1945 Constitution. Religion, blasphemy, and human rights are all likely to be completely contentious, especially in a country like Indonesia, where the central government is weak and religious leaders wield substantial power. The Indonesian Constitutional Court might wish to learn that the separation of State (the Legislature, the Executive, and the Judiciary) and National Governing Bodies of Religions is not synonymous with “atheism” and does not violate the Pancasila. Of course, when human rights are applied and implemented, Indonesian values must be taken into account. Instead of openly denying universal human rights principles, Indonesia’s lawmakers, law enforcement officials, and the judiciary may wish to reconsider their values in order to comply with their international obligations under the ICCPR.

The two most major limitations of this paper are the time constraint and the anti-pandemic restrictions on the freedom of movement. The investigation of the most recent cases was not possible due to time constraints. As a result, despite the fact that there is a direct link to concerns of discrimination, this study focused entirely on freedom of expression. In addition, despite the development of various laws limiting freedom of expression, the Indonesian cases observed in this study were limited to those convictions under the blasphemy law (156a KUHP). Because of the anti-pandemic restrictions on the freedom of movement, this research relied heavily on online resources. Thereby, more research in these areas is strongly advised.

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