



BALANCE OF HUMAN RIGHTS PRINCIPLES TOWARDS BLASPHEMY REGULATIONS IN LAW NUMBER 1 OF 2023 CONCERNING THE CRIMINAL CODE

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Article Info	Abstract
Article History Received : 2024-09-03 Revised: 2024-09-05 Published: 2024-10-01 Keywords: <i>Criminal Code 2023, criminal acts of blasphemy, human rights.</i>	Law Number 1 of 2023 concerning the Criminal Code (KUHP) brings significant changes to the Indonesian criminal law system, especially in terms of regulating the crime of blasphemy. This regulation aims to maintain public order and respect the religious values adopted by the Indonesian people. However, this provision has sparked debate, especially regarding freedom of religion and expression. Some parties support this regulation to maintain social harmony, while others are concerned about the potential for abuse that can restrict individual freedom and hinder criticism of religious practices. This study uses a normative approach to analyze the conformity of this law with human rights principles, especially in the context of a multicultural society. The results of the analysis are expected to provide recommendations for the harmonization of fair and balanced regulations, so that there is no discrimination and restriction of freedom of expression in Indonesia.

I. INTRODUCTION

Law Number 1 of 2023 concerning the New Criminal Code (KUHP) has brought significant changes to the Indonesian criminal law system. The new Criminal Code replaces the Dutch colonial legacy Criminal Code that has long been used in Indonesia. One of the provisions in the spotlight in this law is the regulation regarding blasphemy or the crime of blasphemy. This regulation criminalizes acts that are considered to tarnish the religions practiced in Indonesia, with the aim of maintaining public order and respecting the religious beliefs of the community. The articles regulating the crime of blasphemy in the New Indonesian Criminal Code have sparked quite a sharp debate among the public and legal academics (Mazaya and Michael, 2024).

On the one hand, there are those who support this provision as an important step to protect religious values and maintain social harmony. They argue that insulting religion can trigger social conflict and damage community cohesion. On the other hand, there are concerns that this regulation could conflict with human rights principles, especially freedom of religion and expression. Critics argue that this provision has the potential to be abused to suppress individual freedoms and silence criticism of certain religious practices.

The legal basis for the regulation of the crime of blasphemy in the new Criminal Code

refers to a number of articles in the law that specifically regulate insults to religion. In addition, this regulation must also be understood in the context of the Indonesian constitution, namely the 1945 Constitution, which in Article 28 guarantees freedom of religion and in Article 29 recognizes the state based on the One Almighty God and guarantees the freedom of each resident to embrace religion and worship according to their religion and beliefs.

Inequality in law enforcement, as illustrated by the phrase "sharp downwards, blunt upwards," shows that the law is often applied unfairly, especially against the weak (Henry Aspan, Agus Adhari, & Ansori Maulana, 2024). Law enforcement in Indonesia is often marked by inequality and human rights violations, especially in protecting the rights of suspects. The legal process tends to adopt a Crime Control model that prioritizes speed, often ignoring basic rights such as legal assistance and the right to the presumption of innocence (Adhari, Fatmawati, & Supandi, 2016). In the context of the crime of blasphemy, this imbalance in rights protection risks causing excessive discrimination and criminalization of suspects. Therefore, it is important to apply the principle of Due Process that respects human rights, as recommended in this manuscript, to ensure that law enforcement related to blasphemy can be carried out fairly,

transparently, and non-discriminatory, by respecting the basic rights of each individual.

On the other hand, Indonesia has also ratified various international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) which guarantees freedom of religion and expression (Rahmat, 2014). The provisions in the new Criminal Code need to be tested for their conformity with these international standards, so that there are no violations of human rights guaranteed by international law. In a multicultural and multireligious context like Indonesia, the regulation of the crime of blasphemy must be carried out very carefully. Mistakes in its regulation and implementation can potentially cause tensions between religious groups, discrimination, and human rights violations (Arsil et al., 2018). Therefore, it is important to analyze how these provisions can be implemented fairly and balanced, taking into account the principles of human rights and the need to protect religious values.

This study aims to analyze the balance of human rights principles in the regulation of blasphemy in the new Criminal Code. This study will evaluate whether the regulation is in accordance with internationally recognized human rights principles and guaranteed by the Indonesian constitution. In addition, this study will also assess the legal and social implications of the application of this provision in the context of a multicultural and multireligious Indonesian society. Thus, it is hoped that the results of this study can provide constructive recommendations for improving regulations in Indonesia to maintain a balance between protecting human rights and respecting religious values.

II. RESEARCH METHODS

This study uses a normative legal research type that focuses on the analysis of applicable legal norms, aiming to evaluate laws and regulations, doctrines, and legal theories relevant to the regulation of the crime of blasphemy in Law Number 1 of 2023 concerning the Criminal Code. This normative legal approach involves an in-depth study of legal texts, including laws and regulations and international instruments relating to human rights, to understand how the provisions in the new Criminal Code are formulated and their legal implications for the protection of freedom of religion and expression. Thus, this study aims to provide a comprehensive

analysis of the legality and legitimacy of legal provisions related to the crime of blasphemy in the new Criminal Code, as well as to provide recommendations for improving regulations to ensure that the law can be applied fairly and in accordance with human rights principles.

The nature of this research is descriptive analytical, which combines a descriptive approach to describe the provisions in the new Criminal Code related to the crime of blasphemy, and an analytical approach to evaluate the conformity of these provisions with human rights principles. This research also uses a legislative approach to examine various relevant legal regulations, as well as a case approach to analyze the concrete application of related legal provisions in real situations. The data sources used include scientific literature, journal articles, books, research reports, and official legal documents, which will be analyzed qualitatively through document study techniques and literature reviews. Data analysis is carried out by organizing raw data, identifying important themes, and interpreting data to produce conclusions and recommendations that are relevant to the research objectives.

III. RESULTS AND DISCUSSION

A. Regulation of Criminal Acts of Blasphemy in Law Number 1 of 2023 concerning the Criminal Code

The regulation of blasphemy crimes is a controversial issue and often triggers debates about the limits of freedom of speech. In countries with a Muslim majority, faith is of great importance. Islamic law (maqāṣid al-Sharī'ah) prioritizes the protection of religion. Insults to Islam or the Prophet are considered serious because Islam is not just a religion, but a way of life. Islamic countries, like some democracies, impose severe penalties for serious attacks on religion, because these insults are considered to undermine the foundations of religion, degrade Islam, and trigger disharmony in society (Wan, 2019).

The history of blasphemy laws in Muslim-majority countries reflects the complex relationship between religious orthodoxy, political power, and social dynamics. The application of these laws stems from a historical alliance between the clergy and political rulers aimed at maintaining Sunni orthodoxy and suppressing divergent philosophical views. This alliance, which began around 1050 CE, marked

the beginning of what scholars call the clerical-state alliance, in which questioning religious orthodoxy was considered equivalent to apostasy and rebellion (Khan et al., 2024).

Blasphemy is considered a serious offense in all monotheistic religions of the world. Prohibitions against blasphemy in countries with a majority of the population adhering to a particular religion are generally implemented to protect the dominant religion in the country. Legal protection against blasphemy in countries with a certain religious majority aims to maintain social stability and protect the beliefs of the majority. However, these rules can limit freedom of expression and harm minority groups, create tensions between religious protection and civil liberties, and inhibit diversity of views in society (Temperman, 2024).

The description underlines that blasphemy laws in Muslim-majority countries are often not only based on religious values, but also influenced by political interests. These laws are used to maintain the stability of power and inhibit dissent in the public sphere. As a result, these laws have the potential to inhibit the development of critical thinking in society, because different views can easily be categorized as blasphemy or a threat to religious orthodoxy.

In Indonesia, the blasphemy law is regulated in Law No. 1/PNPS/1965 and Article 156a of the Criminal Code. However, these two regulations do not provide a clear explanation of criminal acts related to religion, and are not in sync in their implementation. Blasphemers are often immediately sentenced to prison under Article 156a without prior warning, different from the provisions in the Blasphemy Law, which should complement each other (Natamiharja et al., 2023).

The inconsistency between Law No. 1/PNPS/1965 and Article 156a of the Criminal Code in the case of blasphemy shows the need for legal harmonization. The unclear definition and different procedures, such as the absence of warnings, have the potential to cause injustice. Alignment of these rules will help create more consistent and fair law enforcement, as well as maintain a balance between religious protection and freedom of expression.

The interpretation of the crime of blasphemy in the context of Article 156a of the Criminal Code in Indonesia often faces challenges because the formulation of the article tends to be multi-interpretable. This causes law enforcers to have to deal with various interpretations that are influenced by the socio-political context and

personal beliefs, rather than just based on objective legal analysis. This inconsistent interpretation causes problems in the application of the law, especially because there is no clear guidance in determining the elements of the crime of blasphemy (Arsil et al., 2018). As a result, the courts often ignore the principles of human rights that should be the basis for the application of this law, so that protection of freedom of religion and expression is less than optimal.

The criminal act of blasphemy in Indonesia itself has a complex and controversial history, especially in the post-Reformasi context. Since the enactment of Law Number 1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy of Religion, this law has often been used to suppress non-mainstream religious groups such as the Ahmadiyah and Shia. Although the initial purpose of this law was to maintain public order and prevent inter-religious conflict, in practice, the blasphemy law has often been used as a tool to perpetuate discrimination against religious minorities. The Indonesian Constitutional Court in 2010 affirmed the constitutionality of this law, although the court also suggested the need for revision to ensure that this law does not conflict with the principles of human rights and pluralism (Bagir, 2013).

The crime of blasphemy in Law Number 1 of 2023 concerning the Criminal Code (KUHP) reflects an effort to adapt Indonesian criminal law to the social and cultural developments of a more religious and cultured society. The enactment of the Criminal Code has caused various problems for religious Indonesian society, in accordance with the first principle of Pancasila and Eastern culture. The validity of the Criminal Code from the perspective of religious law and customary law has loopholes that cause problems, such as the article on adultery which has a different meaning and principle from that stipulated in religious law and customary law. The principle of "without reason" implied in the Criminal Code does not reflect the religious and cultural character of Indonesian society which prioritizes the concept of forgiveness (Harun et al., 2023).

In line with this objective, the criminal act of blasphemy in Law Number 1 of 2023 emphasizes the importance of maintaining harmony between religious communities and protecting religions recognized in Indonesia from actions that are considered insulting or insulting. This regulation places blasphemy as a criminal act that can be subject to criminal sanctions, with the main objective of preventing social conflict that can

arise from insults to religious beliefs. However, the application of this article also raises concerns regarding freedom of expression, where there is the potential for this law to be used to suppress criticism or different views. Therefore, it is important to have a balance between law enforcement and protection of human rights.

The views of the scholars in formulating the crime of blasphemy are driven by the background of a religiously homogeneous society. One figure, Maulana Ahmad Saeed Kazmi, is of the opinion that the death penalty is the only appropriate response to acts of blasphemy that insult the Prophet Muhammad (Abdullah, 2023). In the context of Indonesia which is diverse in religion, the crime of blasphemy in Law Number 1 of 2023 is regulated more strictly to maintain harmony and order in society. This law broadens the definition of blasphemy and establishes clearer sanctions for anyone who is proven to have committed an act that is considered insulting to religion.

The crime of blasphemy in Law Number 1 of 2023 is regulated with the aim of maintaining public order and respecting religious beliefs in Indonesia. This law includes articles that stipulate sanctions for individuals who commit acts that are considered insulting or degrading a particular religion. However, although it aims to protect social harmony, this regulation also raises concerns regarding its application which could be used to curb freedom of expression. The use of blasphemy laws that are too broad has the potential to discriminate against minority groups and curb legitimate criticism, so caution is needed in its application so as not to conflict with human rights principles (Fahrudin et al., 2023).

B. Compliance of the Regulation of the Criminal Act of Blasphemy in Law Number 1 of 2023 concerning the Criminal Code with the Principles of Human Rights, Especially Freedom of Religion and Expression

That in order to interpret just law, a balance is needed in understanding it, not only based on the text of the law alone, but also must consider the laws that live and apply in society and existing religious values. Paul Scholten, a legal expert from the Netherlands, said that "the law does exist in the law, but it still has to be discovered" (Sarib, Iqsandri, and Mokodenseho, 2023). This opinion is supported by Satjipto Rahardjo who stated that "to find it requires the highest intelligence, namely

spiritual intelligence." According to Satjipto, finding law in regulations is finding the meaning and value contained in the regulations, not just reading it flatly. Law is not just a list of regulations and articles, but is full of meaning and value (Pratiwi, 2021).

The opinions of Satjipto Rahardjo and Paul Scholten provide an understanding that there must be a principle of balance in interpreting the law, which cannot only see the rules of law alone. Law enforcers are also required to have in-depth knowledge and understanding, which goes beyond the text of the law. Thus, there is a balance between good laws and regulations and supported by wise law enforcers.

Law Number 1 of 2023 on the Criminal Code (KUHP) in Indonesia introduces new provisions on the crime of blasphemy which aims to protect religions recognized in Indonesia from acts of insult or harassment. However, the implementation of this provision must be critically analyzed to ensure its compliance with human rights principles, especially freedom of religion and expression guaranteed both in the Indonesian constitution and international instruments such as the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia.

Table. Compliance of the Regulation of the Criminal Act of Blasphemy with the Principles of Human Rights

Law No. 1 of 2023	Article Contents	Relevant Human Rights Principles	Compliance with Human Rights Principles	Notes/Comments
Article 300	Prohibiting actions that are considered insulting or demeaning to religions recognized in Indonesia.	Freedom of Religion (Article 18 ICCPR) & Freedom of Expression (Article 19 ICCPR)	Partially Appropriate: Protecting religion from insult is consistent with the need to maintain public order, but has the potential to excessively limit freedom of expression.	Clear boundaries are needed to ensure that it is not used as a tool to suppress freedom of expression.
Article 301	Establish criminal sanctions for individuals who commit acts of insult to religion.	Freedom of Religion (Article 18 ICCPR) & Freedom of Expression (Article 19 ICCPR)	Partially Appropriate: Criminal sanctions can be considered a protective measure, but disproportionate application can violate the rights to	Criminal sanctions must be applied carefully so as not to violate an individual's freedom to express his or her beliefs.

			freedom of religion and expression.	
Article 302	Regulates the prohibition of the distribution of material deemed to be insulting to religion.	Freedom of Expression (Article 19 ICCPR) & Freedom of Religion (Article 18 ICCPR)	Partially Appropriate: Regulating the dissemination of hateful material can protect public order, but the risk of excessive restrictions on freedom of expression remains.	There needs to be clear criteria for "insult" to prevent the suppression of legitimate freedom of expression.
Article 303	States that anyone who openly blasphemes religion can be sentenced to prison or a fine.	Freedom of Religion (Article 18 ICCPR) & Freedom of Expression (Article 19 ICCPR)	Partially Appropriate: Protecting state-recognized religions is in accordance with human rights protection, but risks restricting freedom of expression if applied broadly and without clear limits.	More specific regulations are needed so that this article is not misused to limit legitimate criticism of religion or belief.
Article 304	Regulates the state's obligation to follow up on reports of criminal acts of blasphemy.	Right to Legal Protection (Article 14 ICCPR) & Freedom of Religion (Article 18 ICCPR)	Appropriate: Provide legal mechanisms for those who feel their religion has been insulted, but it is important to ensure these mechanisms are not used to curb freedom of expression.	States must ensure that these legal mechanisms are not used to repress religious minorities or dissenting opinions.

require clear criteria and limitations to prevent abuse that can suppress legitimate criticism and freedom of expression, especially for religious minorities. In order to be in line with human rights principles, these articles need to be implemented with care, balancing protection for religion without sacrificing fundamental freedom of expression (Nurahman and Soponyono, 2019).

The Indonesian Constitution guarantees the right and freedom of religion and worship for its citizens, as regulated in Article 28E paragraph (1) and (2) of the 1945 Constitution, Article 29 paragraph (2), Law No. 39 of 1999 concerning Human Rights Article 22, and Law No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights. These provisions emphasize that the right to religion and worship is a constitutional right that must be guaranteed by the state (Manulang, Novriyanti, Firdaus, & Zulwisman, 2024). On the other hand, Law No. 1 of 2023 concerning the crime of blasphemy aims to protect social harmony by prohibiting acts of insulting religion. Although this regulation can help prevent religious-based conflict in plural societies, there is a risk that this regulation can suppress religious freedom, especially for adherents of religions outside the six official religions. This regulation has the potential to be misused to suppress minority beliefs and strengthen the dominance of the majority religion, which can ultimately violate minority rights.

Significant changes in the formulation of the crime of blasphemy occurred from Article 156a of the old Criminal Code to Article 300 of the new Criminal Code. The old Criminal Code required an element of intent in the act of "expressing feelings," while the new Criminal Code removes this element and focuses on acts of incitement to hostility, violence, or discrimination. The maximum penalty was also reduced from five to three years in prison, with an additional fine of up to IDR 200 million as an alternative sanction (Azhari, Iqbal, & Yunaldi, 2024). Although intended to protect religious feelings, the blasphemy law is often misused to silence criticism of the majority religion or political interests. Ideally, this regulation should be in line with human rights principles such as non-discrimination, proportionality, and freedom from oppression. According to the ICCPR, restrictions on freedom of expression and religion are only permitted if necessary to protect national security, public order, or the rights and freedoms of others.

Law No. 1 of 2023 regulates the crime of blasphemy through a number of articles aimed at protecting religion from insults and maintaining public order. However, the application of these articles to human rights principles, such as freedom of religion and expression (Articles 18 and 19 of the ICCPR), shows that the conformity is partially fulfilled. Some provisions, such as the prohibition on insulting religion (Article 300) and sanctions for perpetrators of insults (Article 301), do provide legal protection, but are prone to excessively restricting freedom of expression. Other articles, such as the prohibition on the dissemination of material that insults religion (Article 302) and the state's obligation to act on reports of insults to religion (Article 304), also

In the context of regulating the crime of blasphemy in Law Number 1 of 2023 concerning the Criminal Code, the balance between human rights and the protection of religious values is very important. This regulation requires an approach that focuses not only on retaliation, but also prevention and rehabilitation, in order to avoid potential violations of the right to freedom of expression. The combination theory of punishment, which includes aspects of prevention, retaliation, and resocialization, can be a solution in handling blasphemy cases in a more humane manner (Aspan, H., D. Andiza, and ES Wahyuni, 2021). Excessive and unbalanced law enforcement in the context of criminal acts often ignores human rights principles, such as the right to fair treatment and the right to the presumption of innocence, as seen in the handling of terrorism in Indonesia (Zarzani, Fitrianto, & Annisa, 2024). Excessive authority for law enforcement officers, such as detention and wiretapping without strict control, creates the risk of abuse of authority that can violate the basic rights of citizens. In the context of blasphemy, this imbalance can create the potential for excessive criminalization of individuals or groups with different views. Therefore, legal reform based on human rights protection is needed so that law enforcement, including for blasphemy, can be carried out fairly and non-discriminatory, respecting freedom of expression and ensuring a transparent and balanced legal process.

The state needs to strike a balance between maintaining public order and protecting religious freedom and the right to express opinions. The blasphemy provisions in the new Criminal Code emphasize that the state must protect religious values upheld by society, but this law also needs to pay attention to individual human rights, such as freedom of expression which has been recognized as a human right under international law. This balance is important to prevent misunderstandings or the use of the law as a tool to suppress legitimate dissenting views, which could occur if the definition of blasphemy is too broad or applied without adequate oversight mechanisms (Zarzani, Fitrianto, and Annisa, 2024).

IV. CONCLUSIONS AND RECOMMENDATIONS

The regulation of the crime of blasphemy in Law Number 1 of 2023 concerning the Criminal Code reflects an effort to maintain social harmony in Indonesia through protection of religious

values. Muslim-majority countries, such as Indonesia, set strict rules against insulting religion to protect the beliefs of the majority and prevent social disharmony. On the other hand, the principle of human rights demands that this regulation still pays attention to the right to freedom of opinion and religion, which is recognized in international law. Therefore, this law needs to have clear limitations to avoid overly broad interpretations that could lead to discrimination or the silencing of legitimate views from religious minorities.

In its implementation, the regulation of blasphemy often faces challenges related to inconsistent definitions and the potential for abuse to suppress dissent. The Constitutional Court has emphasized the importance of revision so that this regulation is in line with human rights principles, such as freedom of religion and expression. Harmonization between religious protection and civil liberties is crucial to prevent conflict and maintain pluralism in Indonesian society. Balanced law enforcement can help protect recognized religions without sacrificing individual rights to freedom of expression.

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