

THE POLITICS AND LAW OF BLASPHEMY IN INDONESIA

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Outline

I. Locating Indonesian blasphemy law: global comparison

II. Indonesian blasphemy law

- ▣ What (political) works does it do?
- ▣ How has it been used?

III. Current revitalization of the law

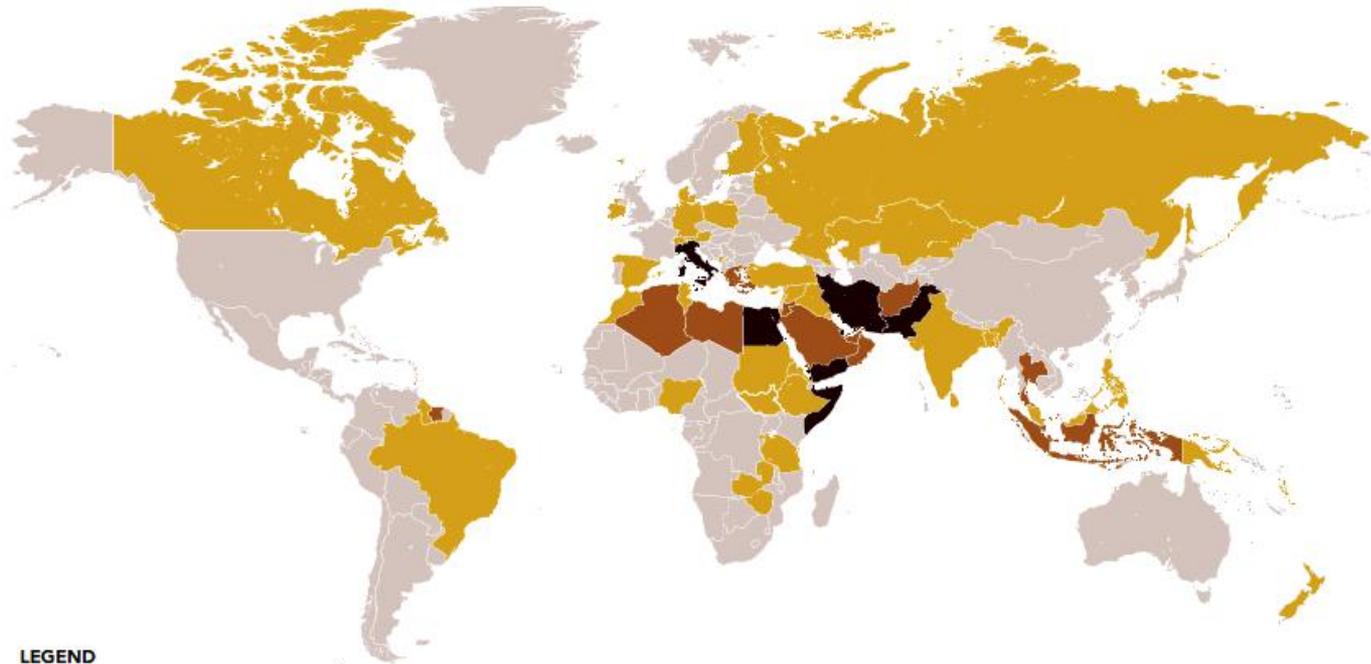
IV. Paths for revisions

World's Blasphemy Laws

- USCIRF report *Respecting Rights, Measuring the World's Blasphemy Laws* (2017), 71 countries.

TABLE 3

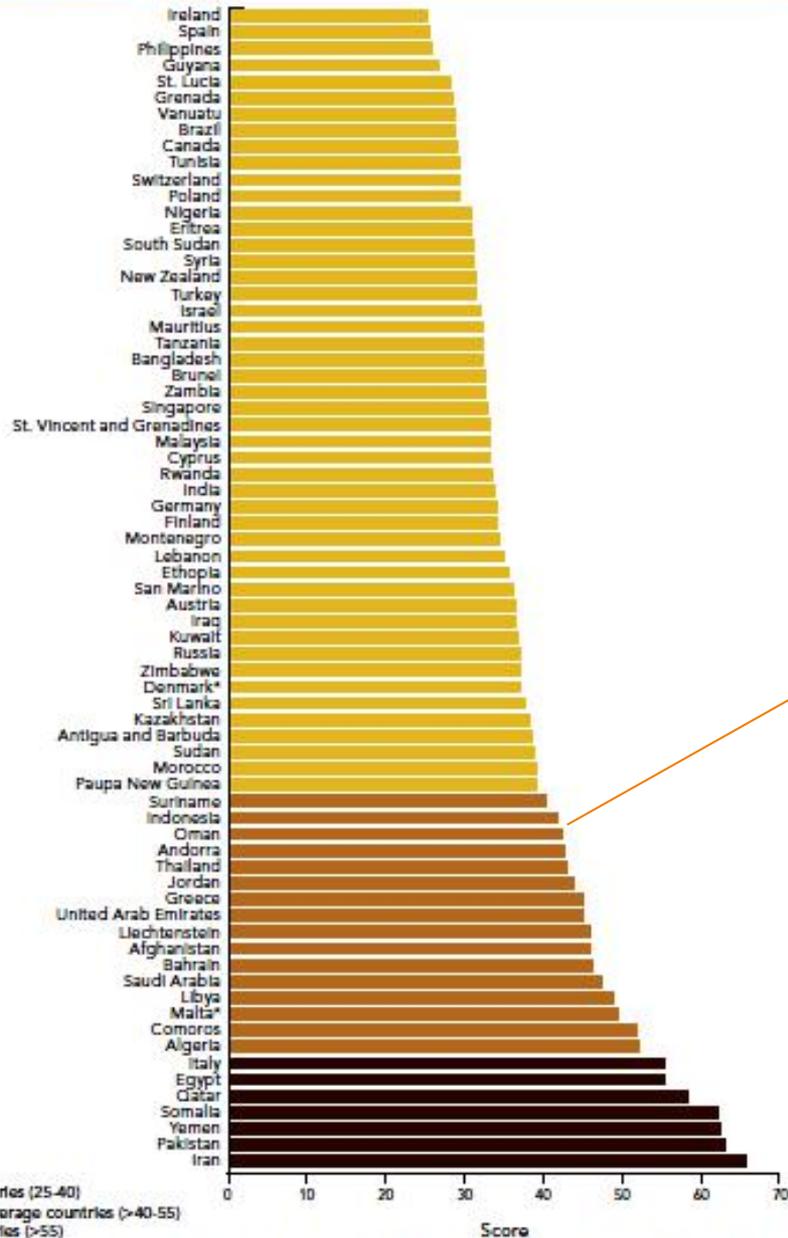
Total Scores and Trends



LEGEND

- Countries without blasphemy laws
- Average countries
- Higher than average countries
- Highest countries

TABLE 3A
Total Scores and Trends



INDONESIA

*Since the data for this report was collected, coded, and analyzed, both Malta and Denmark repealed their blasphemy laws.

Criteria	Pakis- tan	Italy	Saudi A.	Thai- land	Indo- nesia	Malay sia	Philip pines	Ire- land
1) FoE limitations?	9,17	8,33	6,67	7,50	7,50	7,50	4,17	5,83
2) FORB limitations?	3,67	2,67	2,33	1,33	2,33	1,67	1,00	2,00
3) Legality/vagueness	8,00	8,00	8,67	8,00	4,33	5,33	6,67	2,67
4) proportional/severity	8,33	5,00	1,67	5,00	5,00	5,00	5,00	1,00
5) Discrimination & equality	10,00	10,0	10,00	1,67	5,00	0,00	0,00	0,00
6) Protection of groups	10,00	10,0 0	8,33	6,67	6,67	0,00	0,00	0,00
7) Speech and forum limitations	10,00	7,17	7,17	10,00	8,33	10,00	4,33	9,17
8) Hierarchy of law	5,00	5,00	7.50	5,00	5,00	5,00	5,00	5,00
TOTAL	64,17	56,17	52,33	45,17	44,17	34,50	26,17	25,67

Penal Code Art. 156A

By a maximum imprisonment of **five years** shall be punished any person who deliberately in public gives expression to feelings or commits an act,

a. which principally have the character of being at ***enimty with, abusing or staining a religion***, adhered to in Indonesia;

b. with the intention ***to prevent a person to adhere to any religion*** based on the belief of the almighty God.

Indonesian blasphemy law (1965), Art. 1

“Every individual is prohibited from—intentionally, in public—conveying, endorsing [advising], or soliciting public support for an interpretation of a certain religion embraced by Indonesian people or undertaking religious activities that resemble the religious activities of the religion, where such interpretation and activities deviate from the basic tenets of the religion.”

Historical - Political significance of Defamation of Religion Law

- Historical roots: 1945 Constitutional debate; 1965 competition between Nationalist, Communist, and Muslim political groups
- Its Elucidation is one of the sources of definition of “religion”, which limits the scope of freedom of religion or belief (FORB)
- In general, the law was imposed to draw boundaries of orthodoxy/ mainstream on macro and micro level

Revitalization of the law



1. It has been used more frequently since 2000
2. Supported by the Constitutional Court in 2010, 2012, 2018
3. Appearance of the phrase “defamation of religion” in other laws created after 2002
4. Adoption at the local level regulations
5. Maintained in the new draft Penal Code

Shifts of Target

- 1965: mainly targeting the “kebatinan” (syncretic spiritual, mostly Javanese, movements).
- 1965-1998: only around 10 cases
- 2001 – 2010: 40 cases
- 2010 – 2019: more than 40 cases
- New targets: groups considered non-mainstream:
 - ▣ Ahmadiya (since 2005),
 - ▣ Shi’a (since 2012),

Other targets

- Smaller new religious movements
 - ▣ Children of God, Jehovah Witness, Hare Khrishna
 - ▣ Salamullah (the founder as the Archangel Gabriel)
 - ▣ Al-Qiyadah al-Islamiyah/ Gafatar
 - ▣ Praying while whistling, or praying facing Borobudur
- Individual Actions
 - ▣ Facebook postings (3 cases in 2012)
 - ▣ Criticism of religious leaders
 - ▣ Criticism of loud azan.
 - ▣ Utterance about Hindu offerings, etc.

Constitutional reviews of the law

- **Petitioner's main arguments :**
 - ▣ **2010:** HR, liberal and constitutional arguments (the law has contradicted the Constitution, not in line with the spirit of 1998 democratization; used to criminalize differences (alleged as “deviant”))
 - ▣ **2012:** Victims' perspective (Christian, Shi'i)
 - ▣ **2018:** Victims' perspective (Ahmadiyah)
- [The law has marginalized, discriminated people, hundreds of them are living as refugees for years].

The 2010 Constitutional Court's arguments:

- Protection of religion (“religious values” clause in Constitution)
- Public order (within the allowed limitation of freedom); “harmony” (?); communal rights.
- Needed to avoid legal vacuum
- *It may be “revised”*, to maintain Indonesian pluralism and no-discrimination

How can it be revised?

No clue in the Court's Decision, but possible sources:

- Clarify the limit of permissible limitations of rights
→ hate speech; “incitement” to violence
- Emphasize the clause “necessary in democratic society”
- New international norms: Resolution 16/18 (2011)
on *Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief*

Resolution 16/18

- **1999**: defamation of Islam → changed into defamation of religions → more debates, losing support in later years
- → **2011**: the Resolution was dropped, changed into “Combating Intolerance” resolution → accepted without vote at both the UN HRC and UN GA.
- Criticized in international fora
- But domestically, it may inspire a change of direction: from blasphemy to the issue of intolerance

Characteristics of Resolution 16/18

- Shifting the target of the discourse:
 - ▣ Blasphemy: non-conformist minority religious groups;
 - ▣ Combating intolerance: the (intolerant) group that incites hatred to the “deviant” group.
- However difficult it is to define “incitement”, it does not require orthodoxy to determine the perpetrator; but use more objective and tangible standards—unlike blasphemy/deviation/religious defamation
- Who is protected? The minority.

Another normative source:

□ ***Rabat Plan of Action***

on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2012)

Pragmatic way forward

Revision of Indonesian Penal Code:

- Focus on hate speech and incitement to discrimination and violence, rather than maintaining orthodoxy + raise the threshold
- Minimize criminalization; find other ways to deal with such problems (make use of the new norms)

Today's Challenge in Indonesia: *Strange Dilemma*

Illustrations

- *Maintaining pluralism → authoritarian measures: “non-democratic pluralism”?*
- **State:** the new Minister of Religious Affairs: promises to act strongly on radicalism and terrorism issues, but vague position on issues of intolerance and religious freedom (such as those related to blasphemy accusations). *Anti-radicalism vs religious freedom?*

State Construction of Religion

From The Elucidation of the Defamation of Religion Law (1965)

