

# **The Limitation of Act of Insulting Certain Religion in Social Media: Indonesian ITE Law's Lens**

By

Dr. Go Lisanawati

Faculty of Law, University of Surabaya, Indonesia

Email: lisanawatigo@gmail.com

go\_lisanawati@staff.ubaya.ac.id

## **Abstract**

Indonesia has Pancasila as the state ideology and became the main foundation of Indonesia with Five Principles. The first principle is that the citizens of Indonesia “belief in the Almighty God” become the religious spirit of Indonesia as a Nation to respect religions and/or other beliefs, and it guarantees the freedom of religion. This principle/pillar has manifested in some regulations in Indonesia. The act of insulting certain religions and/or beliefs has been criminalized in Indonesia. Along with the development of technology, the case of insulting certain religions and/or beliefs is increasing. The terminology that used in Article 28 (2) of ITE law is: “disseminates information”, “aimed at inflicting”, “hatred” or “dissension” on “individual and/or certain groups” of “community” based on ethnic groups, religions, races, and inter-groups”. The uncertainty of the phrase's limitation in its implementation and law enforcement, and especially in the context of the use of IT nowadays, raises many problems. In some contexts, it could be determined as criticism but against the freedom of speech and expression. Thus the problem now tends to become over-criminalization rather than criminalization. The fear of speaking about something that people may think is too sensitive since it is related to religions and/or the belief of a community is actually against human rights. The limit of law must be clear and does not use double standards. There are some existing laws and regulations that support the implementation of freedom of religion and speech as a system of human rights foundation. Unfortunately, the critics remain addressed to the issue of over-criminalization. The 2021 Annual Reports of USCIRF recommend Indonesia and other 11 countries for placement on the State Department’s Special Watch List because of the Government’s tolerance of severe violations. It reports that the religious freedom conditions in Indonesia have stagnated. The reports said in May 2020, non-governmental organizations indicated an increase in Blasphemy allegations, primarily through applications of the ITE law, even as the coronavirus pandemic raged. Somehow a criticism of religions and/or beliefs, as well as the support for atheism, is prohibited in Indonesia. This paper will criticize and analyze the dynamics of uncertain limitations of the acceptance of the religions and belief in Indonesian spirit of people but on other hand, it has become over-criminalization (especially in the use of IT). The Challenges of the ITE law are to be consistently implemented through unbiased standards.

Keywords: blasphemy; hatred; Indonesian Freedom of speech; consistency of law enforcement

## Introduction

Pancasila reflected the five values of people's life. Pancasila is not only a blueprint of the nation but also the way of life of the Indonesian people. The founding father of Indonesia mentions that Pancasila is important for Indonesia as a state. Formerly the five principles have been arranged: Indonesian nationalism, internationalism, or humanism, consent, or democracy; social prosperity; and belief in one God. After all, in the 1945 Consitution of the Republic of Indonesia (so-called UUDNRI 1945), the list of the five principles is was slightly different. It is re-arrange in different words and order, as follow:

1. Belief in one God;
2. Just and civilized humanity;
3. The Unity of Indonesia;
4. Democracy under the wise guidance of representative consultations; and
5. Social justice for all the people of Indonesia

The value aspect of religion has appeared in the first place, but it does not mean that Indonesia belongs to only one religion. It is a democratic country that reflected the value of religion as well. Indonesia declared to live in harmony and diversity. Diver in religions, tribes, race, and another group of people. In terms of Indonesian people's religions, Indonesia recognized 6 religions and other beliefs, but not atheism. Those 6 religions are:

- Islam
- Christian (Protestant)
- Catholic
- Hindu
- Buddha
- Kong Hu Cu (Confucianism)

Formerly, Indonesia only recognized 5 (five) religions. In the era of President Abdurachman Wachid, in 2000, Kong Hu Cu was then officially recognized as a religion in Indonesia.

According to indonesia.go.id<sup>1</sup>, the data of Indonesian religion can be seen below:

<b>Religion</b>	<b>Percentage (%)</b>
Islam	87,2
Christian (Protestant)	6,9
Catholic	2,9
Hindu	1,7
Buddha	0,7
Kong Hu Cu (Confucianism)	0,05
	99.45%

Tabel 1: Indonesian Religion Data, retrieved 14th of June 2021

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<sup>1</sup> <https://indonesia.go.id>, accessed: July 14yh, 2021

Indonesia has stated that Indonesia is a religious country as mentioned in the first principle of Pancasila. The attitude of guarantee the freedom of religion has been reflected by the Government of Indonesia but limited to those 6 religions. Each Indonesian people shall have one of those religions as mentioned in the several official documents (i.e identity card, passport, and others) as the data privacy. But on the contrary, the law does not guarantee for people who did not embrace one of that identity, including Atheism. Freedom of religion is correlating with freedom of expression. In some cases, the freedom of religion has been shifting into the freedom of speech, and some may become confusingly execution of the law enforcement itself.

The State of Indonesia shall be a unitary state in the form of a Republic (Article 1 (1) UUDNRI 1945), and it is not a religious State. According to Article 1 (3) UUDNRI 1945, Indonesia is a State Law (*rechtstaat*) that shall be based on the rule of law. As a rule of law state, Indonesia guarantees Human Rights and including the rights of having religions. In the UUDNRI 1945, Human Rights is arranged under Chapter XA and can be seen from the Article 28 E, Article 28 I, Article 28 J, Article 29, and Article 31 UUDNRI 1945. Article 28 E UUDNRI 1945 states that:

- (1) Every person shall have the right of the freedom to choose and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.
- (2) Every person shall have the right to the freedom to believe his/her faith, and to express his/her views and thoughts, following with his/her conscience.
- (3) Every person shall have the right to the freedom to associate, to assemble, and to express opinions (speech)

Based on those provided in the subparagraph (1) and (2), it is well showing that every person has the rights of the freedom:

- To choose and to practice the religion of his/her choice;
- To believe his/her faith

Between those two subparagraphs, it should be not defined on the contrary. While subparagraph (2) guarantees the freedom to express opinions.

Several Laws become the legal basis for the issue of freedom of religions, freedom to believe in his/her faith, and freedom of expression, and it can be used as an instrument to exercise the consistency of the meaning and in the implementation. Those laws are:

- Article 156 and Article 156 a of the Indonesian Penal Code
- Law Number 1/Pnps/1965 regarding the prevention of abuse and/or religious blasphemy (so-called Law on Religion Defamation)
- Law Number 39 of 1999 concerning Human Rights
- Law Number 11 of 2008 as amended Law Number 19 of 2016 concerning Electronic Information and Transaction.

The actualization of the freedom to choose and to practice religion, and/or to believe his/her faith correlates with the freedom of expression (to speech) itself. In this regard, cases of freedom of religion that happened indirectly charged using the religion blasphemy provisions, but it manifested as a violation against freedom to express opinions (to speech).

Article 28 I (1) states:

The rights to life, freedom from torture, freedom of thought and conscience, **freedom of religion**, freedom from enslavement, recognition as a person before the

law, and the right not to be tried under the law with retrospective effect are all human rights that cannot be limited under any circumstances.

Furthermore, the Constitutions of Indonesia guarantee the freedom of religion, in the same matter as in the guaranteeing every person to exercise the rights and freedoms by receiving the restrictions given by law to achieve the purpose by recognition and respect of the rights and freedom as mention in the Article 28 J below:

In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

Article 28 J mentions the use of religious values as one of many aspects of limitation and/or restriction for every person in exercising their right and freedoms. It means that besides the law, there are also standards of morality, religion, security, and public order that will be operated in this context. That is the regulation for the rights and obligations of every citizen. The freedom of religion must be understood from the perspective mentioned.

Article 29:

- (1) The State shall be based upon the belief in the One and Only God.
- (2) The State guarantees all persons the freedom of worship, each according to his/her religion or belief.

Article 29 *mutatis mutandis* mentions that the freedom of religion acknowledged by our constitution is 'in a religion' or 'having a religion'. It expressed from subparagraph (1) that the State shall be based upon the belief in the One and Only God. Anyone who did not acknowledge a religion that is based on his/her belief in the One and Only God is not a religion. Based on this article, Indonesia required its citizens to have a belief in the One and Only God. If a person has a belief in the One and Only God, then the State will give guarantee in the form of freedom of worship according to his/her religion or belief. Some questions about how atheism, agnostic, and other 'belief' can be protected by the law remain addressed. Regarding this issue, it will be discussed in the next sub-chapter below.

Under the law of Indonesia, several regulations need to be applied to confirm those questions.

Article 156 a of the Indonesian Penal Code states:

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 enmity with, abusing or staining a religion, adhered to in Indonesia;
- b. To prevent a person to adhere to any religion based on the belief of the almighty God.

It may take an understanding that there is a correlation between freedom of religion and freedom of speech (expression), but it is not exchangeable. Article 156a of the Indonesian Penal Code prohibited any expression of feeling or committing an act as mentioned in the number a, and b.

Article 156 a of the Indonesian Penal Code is appointed by Law Number 1/Pnps/1965 regarding the prevention of abuse and/or religious blasphemy (defamation) in Article 4. In its consideration basis point a, the Law mentions that in terms of State and Community security, the idea of the National Revolution, and national

development toward a fair and prosperous society, it is necessary to enact regulations to prevent the abuse or blasphemy of religion. Article 1 states:

Everyone is prohibited from intentionally telling in public to recommend or seek general support, to interpret a religion adhered to in Indonesia, or to carry out religious activities that resemble the religious activities of that religion; which interpretations and activities deviate from the main points of the religious teachings.

Article 1 above prohibit several acts that were intentionally conducted regarding:

- Telling in public recommend; or
- Seek general support;
- To interpret a religion adhered to in Indonesia;
- To carry out religious activities that resemble the religious activities of that religion;

which interpretations and activities deviate from the main points of the religious teachings

In the context of information technology development, the act related to any issues of religion, and freedom of expression (speech) are easily disseminated. In this regard, Indonesia has regulations regarding the activities conducted through electronics. Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transaction (so-called ITE Law). Article 28 (2) of the ITE Law. Some cases against the freedom of religion and/or freedom of speech (expression) in social media proceed by this article.

The freedom of religion and expression has become more troublesome through social media. The “extensification” in implementation of that Article 28 subparagraph (2), and appears as unclear articles. Some cases will be discussed in this paper to assess and to analyze how law enforcement is exercising the implementation of the constitutional guarantee for the freedom of religion and freedom of speech (expression) based on the Court decision.

### **The Freedom of Religion and Belief: The Lens of Indonesian Law**

In November 2014, Amnesty International released a book with a title: Prosecuting Belief Indonesian Blasphemy’s Law. The Amnesty<sup>2</sup> (2014:7) started by giving analysis:

Such cases are not uncommon. Despite some positive human rights developments in Indonesia since the 1998 reform period, freedom of religion remains severely restricted. Law Number 1/PNPS/1965 on the Prevention of “Religious Abuse and/or Defamation”, commonly known in Indonesia as the blasphemy law (Undang-Undang Penodaan Agama), can be used to imprison people for as long as five years simply because they have peacefully exercised their right to freedom of expression or to freedom of thought, conscience or religion, which are protected under international human rights law... “Incitement” provisions in Law No. 11/2008 on Electronic Information and Transaction (ITE) have similarly been used to criminalize protected expression. Both of these laws are often used to target individuals who belong to minority religions, faiths and opinions, and particularly those who adhere to interpretations of Islam that deviate from the mainstream form of Islam in Indonesia.

As a democratic state, the fulfillment of human rights is guaranteed by the State. In this context is the right to have freedom of religion and belief, and the freedom of

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<sup>2</sup> Amnesty International, Prosecuting Beliefs Indonesia’s Blasphemy Laws, 2014

expression (speech). Indonesia has enacted Law Number 39 of 1999 concerning Human Rights (so-called Law Number 39 of 1999). As a basic right, Article 2 of Law Number 39 of 1999 acknowledges and holds the rights and freedom of humans as rights. In complete, Article 2 states:

The Republic of Indonesia acknowledges and holds in high esteem the rights and freedoms of humans as rights which are bestowed by God and which are an integral part of humans, which must be protected, respected, and upheld in the interests of promoting human dignity, prosperity, contentment, intellectual capacity, and justice.

This acknowledgment is expressed must be fully respected and protected, as with the way to push people to fully fulfill the obligations and duties as humans. In this context, there will be a balance between the fulfillment of rights and obligations. This perspective will avoids the clash of interests, and will never arise in law cases.

The rights and freedom are guaranteed by the Law. Article 22 of Law Number 39 of 1999 states:

- (1) Everyone has the right to freedom to choose his religion and to worship according to the teachings of his religion and beliefs.
- (2) The state guarantees everyone the freedom to choose and practice his religion and to worship according to his religion and beliefs.

Article 25 of Law Number 39 of 1999 then states:

Every citizen has the right to express his opinion in public, and this includes the right to strike, according to prevailing law

Both those articles guarantee the right to freedom to choose his religion, to worship according to the teachings of his religion and beliefs, and to express his opinion in public. The States shall guarantee the implementation of those rights of freedom and set a rule and regulation that will give certainty in that matter. Since Indonesia is a rule of law country, Indonesia must ensure that law will give protection.

In the context of having the freedom of religion does not mean having the freedom to be atheist or agnostic or any other however it is called by society as freedom. The phrase "religion or belief" could be confusing.

A contemplation question is whether atheism and agnosticism are categorized as a belief in something or something against this belief? Do Atheism or Agnosticism and other beliefs in some communities could be weighted as religion or belief to get the guarantee as mentioned in UUDNRI 1945? Do Atheism and agnostics believe in something that is based on their belief, or something against this belief?

Atheism is not an option in Indonesia, and it is not common for society in Indonesia. Thus, this condition brings a situation where expressing Atheism in social media brings punishment. Some cases happened regarding Atheism in Indonesia. For example in 2012, Alexander (an employee in West Sumatera) posted a message on his Facebook saying that "There is no God". He was caught by Police after he was attacked by a group of people because of his post. He was charged through Article 156a of the Indonesian Penal Code.

As mentioned previously, Article 156 a of Indonesian Penal Code has been prohibited any person who deliberately in public gives expression to feelings or commits an act of enmity with, abusing, or staining a religion, and to prevent a person to adhere to any religion based on the belief of the almighty God. The elements of Article 156 a letter (a), are:

- Deliberately in public
- Gives expression to feelings, or commit an act;

- Have the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia;

The elements of Article 156 a letter (b), are:

- Deliberately in public
- Gives expression to feeling, or commit an act;
- To prevent a person from adhering to any religion based on the belief of the almighty God.

This law is strictly purposed to any feeling of and/or commit an act that is expressing enmity, abusing or staining a religion, or prevent someone from following the religion based on the belief of the almighty.

Article 156 of the Indonesian Penal Code mention:

The person who publicly gives expression to the feeling of hostility, hatred, or contempt against one or more groups of the population of Indonesia, shall be punished by a maximum imprisonment of 4 years or a maximum fine of three hundred rupiahs

By group in this and the following article shall be understood each part of the population of Indonesia that distinguishes itself from one or more other parts of the population by race, country of origin, **religion** (-bold by author, sic), origin, descent, nationality or constitutional condition.

The elements of the crime of Article 156 of the Indonesian Penal Code are:

- publicly gives expression to the feeling of hostility, hatred, or contempt;
- against one or more groups of the population of Indonesia

This Article 156 is directed to the hostility, hatred, contempt's expression of feeling committed against one or more groups of the population. Those two Article 156 and Article 156 a of the Indonesian Penal Code can be easily understood as below:

	Article 156	Article 156 a
Specific condition	Publicly	
Criminal act	Expression to a feeling of: <ul style="list-style-type: none"> <li>- hostility,</li> <li>- hatred, or</li> <li>- contempt</li> </ul>	(a) Expression to feelings or commits an act of: <ul style="list-style-type: none"> <li>- enmity with,</li> <li>- abusing, or</li> <li>- staining a religion, adhered in Indonesia</li> </ul> (b) Expression to a feeling or commits an act of: <ul style="list-style-type: none"> <li>- To prevent a person to adhere to any religion based on the belief of the almighty God</li> </ul>
Addresses	Specific to one or more groups of people of Indonesia	general
Explanation of the definition of Group	Each part of the population of Indonesia distinguishes itself from one or more other parts of the population by race, country of origin, religion, origin, descent, nationality, or constitutional condition.	

**Tabel 2 Article 156 and Article 156 a of Indonesian Penal Code**

Important to be noted here is that the requirement of the criminal act must be publicly conducted. In the context of the freedom of religion and belief, then there are specific questions that can be addressed. These two articles are difficult to be proved, at least for the questions:

- What is the definition of religious blasphemy? What are the criteria? Who's standard?
- How to prove a religious blasphemy?

Since this regulation is criminal law, thus analogy interpretation is not allowed. Criminal Law must be met to a *Lex Certa*, *Lex Scripta*, and *Lex Stricta* as the elements of The Principle of Legality (*nullum delictum nulla poena sine praevia lege poenali*).

There is no single authority who can ensure what the correct religion is. Even though there are single authority, i.e. Council of Indonesian Ulema (MUI – for Islam), Council of Indonesian Churches (PGI – for Protestant), The representative of Indonesian Buddhist (Walubi – for Buddhism). The presence of those representatives does not mean in mutatis mutandis could be the sole authority that can decide whether one religion is correct or the teaching of religion is incorrect unless what the believed of the people from what they believe in the first they belief in their religious teachings by using the parameter of the holy Scripture of each religion. In this regard, it could be very risky to assess whether the religious teachings are correct or incorrect, and how can give equal treatment for the recent development in the teachings itself.

The Blasphemy Law was enacted to prevent Religious abuse and/or Defamation. It has been more than one time requested to be judicially reviewed. On 19 April 2010 through the Decision of Constitutional Court Number 140/PUU-VII/2009, mentioned that Limitation of human rights on the grounds of “religious values” as stipulated in Article 28 J (2) of the 1945 Constitution is one of the considerations to limit the implementation of human rights.<sup>3</sup> That decision has also been recommended to be revised. The other is the Decision of Constitutional Court Number 56/PUU-XV/2017. In this decision, the Constitutional Court stated that the regulation (the Law of Blasphemy) is considered as the basis for the Government to prohibit sects or religions that are considered heretical from the officially recognized religion in Indonesia, which is considered constitutional.<sup>4</sup>

Hence the existence of the Blasphemy Law must be assumed as a presence of the State towards the existence of religion in Indonesia. Sometimes it could be hard to fully understand whether the State intervenes too far for the “forum internum”, and argue that State must only intervene for “forum externum”. But in this matter, the State must guarantee the achievement of legal certainty, legal justice, and legal utility through Pancasila and the 1945 Constitution and legal instruments.

Though to choose and to have religions as freedom, and to express thought or speech publicly about his/her religion and/or belief of faith, there is still the need to follow what constitutional framework and limitation. In this context, the Constitutional will be the instrument to create legal certainty, by then it can be used to give legal protection, legal justice, and legal utility.

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<sup>3</sup> Constitutional Court Decision Number 140/PUU-VII/2009

<sup>4</sup> Constitutional Court Decision Number 56/PUU-XV/2017



## The Indonesian ITE Law and Act of Hatred

The danger of hate speech toward democracy cannot be doubted. Nevertheless, the regulations that limit hate speeches remain unclear and controversial. One of the regulations is the ITE Law if the speech is expressed through social media and/or use electronic instruments. The ITE Law is still considered as the law that limits the freedom of speech whereas people know it is one of the fundamental freedoms in a democracy. Unfortunately, the law and the case are in a “competition”. People still try to exercise his/her rights without ‘border’, while he/she understand there is already a law that prohibits certain acts as mentioned in the ITE Law itself.

The rapid development of technology has changed the behavior and values that exist in society. There are always two side impacts in every development. Without a doubt, technology assists human beings, but on the other hand, technology has been exploited by some people to gain “benefit” through performing an illegal activity. Further, this development of technology must be followed by the development of legal instruments to reach the activities in the public areas.

Since 2008, Indonesia has enacted the ITE Law. As it is understood, Indonesian ITE Law is not categorized as cybercrime. From its first enactment, ITE Law has been understood as the combination of the criminalization adopted from the Convention on Cybercrime and the conventional crime as arranged in the national criminal law. The criminal provision in the ITE Law is not a pure criminal provision. The content of ITE Law itself can be distinct as an old crime in the new instruments/package (Article 27 – 29) and a new crime in the new instruments/package (Article 30 – 35). The first law for ITE Law is Law Number 11 of 2008, and in 2016, there is 1<sup>st</sup> revision conducted regarding some issues in the ITE Law, through Law Number 19 of 2016 concerning the amendment of the Law Number 11 of 2008 concerning Electronic Information and Transaction. In 2021, ITE Law will be revised for the 2<sup>nd</sup> time, and the process is still in progress whether it can be in the form of 2<sup>nd</sup> amendment or new law. While this amendment is remaining in progress, then on 23<sup>rd</sup> of June, 2021, the Indonesian Ministry of Communication and Informatics, Attorney General, and Head of Indonesian National Police of the Republic of Indonesia issue A Decree regarding the guideline of the implementation of certain articles in the ITE Law, and one of them is related to the Article 28 subparagraph (2). This decree is a guideline for law enforcement when preceding the legal case regarding the ITE law.

In the context of the discussion of religion and freedom of speech (expression) related to religion, one needs to understand how the ITE Law can be difficult to implement. The criminal act as mentioned in Article 28 (2) mentioned:

Any person who knowingly and without authority disseminates information aimed at inflicting hatred or dissension in individuals and/or certain groups of community-based on ethnic groups, religions, races, and intergroup (SARA)

The elements of crime based on Article 28 (2) are as follow:

- Knowingly and without authority;
- Disseminates information aimed
- Inflicting hatred or dissension in individuals and/or certain groups of community
- Based on ethnic groups, religions, races, and intergroup (SARA).

Adami Chazawi and Ardi Ferdian<sup>5</sup> (2011:132) comments that this article is not clear, and creates differences of opinion. There are two opinions regarding the classification of the offense forms itself whether it is a material offense or formal offense.

This opinion has been reflected in implementation. This article is more likely a material offense rather than a formal offense. In the court, it needs to be proven that the act of hatred or dissension in individuals and/or certain groups of the community has caused hate or dissension in individuals and/or among certain groups of community. The expression of his/her opinion whether agreeing and/or dislike to in individuals or group of people cannot be categorized as a criminal action unless the information that has been disseminated can be proven there is a specific action of requesting, influencing, and/or make movement in the society, inciting/bring into conflict to incline a sense of hatred or hostility based on certain societies based on tribe, religion, race, and intergroup (SARA).

The limitation of Insulting as mentioned in the Article 28 subparagraph (2) as same as mentioned in other articles that prohibited any criminal act related to religion and/or belief must be clear. Ideally, hate speech regarding religion or belief must be purposely targeted to a specific people or groups for the hatred or dissension whereas the identity of tribe, religions, race, or intergroup adhered to in individual or groups itself. It is not purposively as just hate speech.

The sanction for Article 28 (2) is arranged in Article 45 A (2) as:

Any person who knowingly and without authority disseminates information aimed at inflicting hatred or dissension in individuals and/or certain groups of community-based on ethnic groups, religions, races, and intergroup (SARA) as referred to in Article 28 subparagraph 2 shall be punished with maximum 6 years imprisonment and/or fine with 1,000,000,000 rupiahs (one billion rupiahs).

The essential materials that are regulated by Article 156, 156 a of Indonesian Penal Code, The Blasphemy law, and Article 28 subparagraph (2) of ITE Law seem similar but have a difference. The Blasphemy law exists as a *lex specialist* of the Indonesian Penal Code, while the arrangement of the ITE Law is more related to tribe, religions, race, or intergroup. The ITE Law defined blasphemy as broader than Article 156 a of the Indonesian Penal Code.

The problem is that Article 28 subparagraph (2) recently has been used as a weapon to limiting the freedom of expression, even though the ITE Law must be used as an instrument to give a framework for people to have the freedom to exercise their rights and thoughts, but must be followed the Indonesian Constitutions, the rule and regulations, the customs, and public order as the limitation. In exercising his/her rights, he/she must perform obligations as well.

The content of insulting religion needs extra care to be arranged and proceeds to the court when there are cases that happened, and could not be implemented with a broader interpretation. Meanwhile, the law enforcement must ensure that the criminal act has met all the elements of crime, and the purpose is against tribe, religions, race, and intergroup, and the specific targeted person or group of people got the impact.

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<sup>5</sup> Adami Chazawi& Ardi Ferdian. *Tindak Pidana Infomasi& Transaksi Elektronik: Penyerangan Terhadap kepentingan Hukum Pemanfaatan Teknologi Informasi dan Transaksi Elektronik*. Bayumedia Publishing, 2011.

## The Landscape of Law Enforcement: Lesson Learned from Several Cases

In its annual report in 2021, the United States Commission on International Religious Freedom<sup>6</sup> mentioned that:

The enforcement of blasphemy laws, which Indonesia inherited from the Dutch colonial period but expanded under Presidential Decree No. 1/PNPS/1965 and the Law on Information and Electronic Transactions (ITE), continued to impact all religious communities. In May, nongovernmental organizations (NGOs) indicated an increase in blasphemy allegations, primarily through application of the ITE law—even as the coronavirus pandemic raged. For example, in March authorities in Probolinggo Regency, East Java, arrested a local man for sharing lewd religious images online; in July, the State Court of East Java sentenced him to four years' imprisonment and fined him five million Indonesian rupiahs (\$350 USD). Beginning in April, a number of people across the country faced arrest and blasphemy charges for sharing a song about a wife of the Prophet Muhammad with altered lyrics that some religious conservatives found offensive. These detainees included a popular YouTube celebrity who was arrested in April in Medan, North Sumatra, and sentenced in October to seven months' imprisonment, as well as three young adults in Gorontalo Province who were arrested in May after posting a video of them dancing and singing to the song in question. While these cases involved the dissemination of potentially offensive material, none included incitement to violence. In its report, the US Commission on International Religious Freedom addressed the remarks that in 2020, the religious freedom condition in Indonesia was stagnant. In its analysis, Indonesia did not promote greater religious freedom or expand recognition of other religious minorities.

In another case in West Sumatera, the Governor successfully petitioned for the removal of a Christian Bible-apps in the minority Minangkabau language from the Google Play Store due to concerns about Christian proselytization to the Muslim majority community. In May, acting Governor of Aceh, Nova Iriansya, was likewise successful in removing the Aceh Holy Bible App from the Google Playstore.

Concerning the topic of this paper concerning the act of Insulting a certain religion, it can be said that it needs more consistency on how to exercise the law in the case that happened. The law enforcement in the use of social media to do the act as regarded in Article 28 (2) can be said to be inconsistent. Some cases are brought to court, but some are not. A case of Alexander An (Aan). He is a public servant in West Sumatera. He was jailed in June 2012 for religious blasphemy. Aan has accused as an Atheist after posting a statement and image in his Facebook and Facebook group called "Atheist Minang". Some people interpreted it as Islam blasphemy and Nabi Muhammad SAW. The posting has been printed out and distributed by his colleagues. On 18 January 2012, he was persecuted by some people who threatened to be beaten. Police brought him to the police office to save him but unfortunately did not take any action to proceed with the people who attacked him. On 20 January 2012, he was accused of allegedly violating Article 28 subparagraph (2) of ITE Law, and Article 156a of the Indonesian Penal Code. He was accused of religious blasphemy and asked people to follow atheism (Article 156 a letter (b) of ITE Law). The Court of Negeri Muaro punished him with 2.5 years imprisonment and a fine of 100,000,000 (a hundred million rupiah) for violating

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<sup>6</sup> United States Commission on International Religious Freedom Annual Report. 2021. Retrieved from [www.uscrif.gov](http://www.uscrif.gov), May 25, 2021

The Law. The judges of the court believe that publicly expressing the belief of atheism was not allowed under the Ideology of Pancasila and UUDNRI 1945. Further his belief in atheism disturbing public order.

The recent ongoing case is the case of Jozeph Paul Zhang, a YouTuber, who claimed that he was the 26<sup>th</sup> prophet. His initial name is Shindy Paul Suryomulyono. The case is quite difficult the first time since there is unclear information. He claimed that he has released his nationality of Indonesia belonging to another nationality in a European country, and he is not living in Indonesia. The Indonesian National Police then proceed with the case by declaring that he is a Suspect of Religious Blasphemy. Indonesian National Police release a red notice to Interpol, request to revoke his passport, and extradition to some countries in Europe. The [voi.id/en](https://voi.id/en) (2021)<sup>7</sup> report that the case began when Jozeph Paul Zhang, through the discussion forum via zoom, claimed to be the 26th prophet. The video was shown on his personal YouTube channel. The [voi](https://voi.id/en) report that Jozeph Paul Zhang opened a zoom discussion forum entitled 'Puasa Lalim Islam'. He challenges anyone who dares to report himself to the police regarding blasphemy by claiming to be the 26th prophet. While [makassar.tribunnews.com](https://makassar.tribunnews.com)<sup>8</sup> gives updates that Jozeph Paul Zhang is still not caught until now.

The case of Jozeph Paul Zhang attracts public attention, especially Muslims, since Muslims believe that the last prophet is Muhammad S.A.W. Thus this case is categorized as religious blasphemy to insult Islam. This case created a disturbance in society. Another interesting court decision (selected cases) that is interesting to be learned can be seen from this tabel 2 as shown in the last pages of this paper.

To end up the discussion regarding the freedom of religion and freedom to speech, Heru Susetyo et.al (2020)<sup>9</sup> mention that the polemics appear in the society when the discussion on the law on religious blasphemy effectiveness in creating public order. Further, the religious blasphemy law as regulated by Law Number 12/PNPS/1965 remains effective, but it needs certain limitations.

The blasphemy case might have happened massively especially regarding the development of Information Communication and Technology in the form of digital platforms legal instruments, social media, and many more. The enforcement of certain cases regarding religious blasphemy was tended to subjective rather than objectives. This subjective assessment is influenced by political motives, power, and discrimination based on ethnic groups, religions, races, and intergroup. The law regarding religious blasphemy still needs to be controlled and must be penetrated by providing guidelines, and to be followed by clear regulation.

## Conclusion

The freedom of religion and the freedom of expression (speech) of religion/belief is protected by the law and has been guaranteed by the State as a part of human rights. To exercise those rights, it must be following Pancasila as the foundation of the State, the 1945 Constitution (UUDNRI 1945), and all laws and regulations in Indonesia that arrange the limitation.

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<sup>7</sup> <https://voi.id/en/news/46297/is-it-true-that-joseph-paul-zhang-fought-back-and-was-shot-dead-when-he-was-arrested-by-the-police>, accessed: June 2<sup>nd</sup>, 2021

<sup>8</sup> <https://makassar.tribunnews.com/2021/06/04/masih-ingat-joseph-paul-zhang-penista-agama-itu-sudah-ditangkap-ini-kabar-terbaru-dari-polri>, accessed: June 6<sup>th</sup>, 2021

<sup>9</sup> Heru Susetyo, et.al. "Keberlakuan Hukum Penodaan Agama di Indonesia antara Tertib Hukum dan Tantangan Hak Asasi Manusia", *Perspektif Hukum*, Vol. 20 No. 1 Mei 2020

In the context of freedom of expression (to speech) as mentioned in Article 28 subparagraph (2) of ITE Law, it must strictly follow the rules. Insulting of religion must be limited by several criteria such as the hate speech must be directed to individuals or groups of people based on Religion that adhered in Indonesia. This hate speech causes the feeling insecure for the individuals or the group of people who have been insulted. These elements must be proved in court.

As the recommendation, it needed a more clear guideline on how the scope and criteria of Religious Blasphemy must be treated, and the limitation of the use of Article 28 subparagraph (2) of ITE Law in guaranteeing the implementation of the right of freedom of speech (expression). It needs to take action on the recommendation given by the Constitutional Court in their decision in 2010 to revise the Blasphemy Law and make it more clear.

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**Tabel 2: Selected cases of Court Decision on Violation of the Blasphemy Law and ITE Law**

Court Decision Number	Name of Defendant	Religion	Case	Medium	Element of Crime Proved	Judge Consideration and Decision
113/Pid.Sus/2019/PN Mtk	Daud Rafles Lumban Toruan alias Daud	Christianity (Protestant)	<p>Case:</p> <p>The defendant disseminates a video contained a comment on the direction of Muslim's prayer, and makes it a joke, and distributed it to one of his groups on WhatsApp.</p> <p>Violation of:</p> <ul style="list-style-type: none"> <li>- Article 45 a (2) subparagraph (2) of ITE Law</li> </ul> <p>Subsidiary:</p> <ul style="list-style-type: none"> <li>- Article 156a Indonesian Penal Code</li> </ul>	Online (Whatsapp)	<ul style="list-style-type: none"> <li>- Article 28 (2): <ul style="list-style-type: none"> <li>a. Everyone:</li> <li>b. Intentionally and without right disseminates information</li> <li>c. aimed at inflicting hatred or dissension on individuals and/or certain groups of community-based on ethnic groups, religions, races, and inter-groups (SARA)</li> </ul> </li> </ul>	<p>Consideration:</p> <ul style="list-style-type: none"> <li>- The punishment for the defendant is repressive as a result of his actions because he has violated the law so that the defendant must be sentenced according to the actions he has committed;</li> <li>- while for the community, it is prevention so that similar acts do not happen again as much as possible;</li> <li>- It has an educational aspect for the community not to do the same thing,</li> <li>- Punishment has fulfilled a sense of justice.</li> </ul> <p>- Decision: the defendant is guilty of violating the criminal act as mentioned in Article 28(2) of ITE law, and punished with 3 years imprisonment and IDR 100 million</p>

252/Pid.B/2018 /PN Tbh	RAMDANY ALIAS GURU ALIAS SUHU BINABDUL HAMID	Muslim	<p><b>Case:</b></p> <p>The defendant requested the witness in his case to trampling on the Quran, pouring urine into the Quran, and telling that the obligation of a Muslim instead of praying five times is not an obligation.</p> <p>Violation of:</p> <p>Article 156a letter (a) of Indonesian Penal Code</p> <p><u>Or</u></p> <p>Article 156a letter (b) of Indonesian Penal Code</p>	Non-Online	<p>Article 156a letter (a) of the Indonesian Penal Code:</p> <ul style="list-style-type: none"> <li>- Anyone</li> <li>- Which principally have the character of being at enmity with, abusing, or staining a religion, adhered to in Indonesia</li> </ul>	<p>Consideration:</p> <ul style="list-style-type: none"> <li>- All elements of Article 156 a letter of the Criminal Code have been fulfilled, the Defendant must be declared to have been legally and convincingly proven to have committed a criminal act</li> <li>- Whereas in the trial, the Panel of Judges did not find anything that could eliminate criminal liability, either as a justification or excuse for forgiveness, the Defendant must behave criminal responsibility for his actions.</li> </ul> <p>Decision: Guilty of violated Article 156a of Indonesian Penal Code, and punished with 3 Years Imprisonment</p>
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