



Volume 40 No. 1, June

P-ISSN: 1412-2723

BLASPHEMY LAWS AND THEIR IMPLICATIONS FOR RELIGIOUS FREEDOM AND EXPRESSION: A TRI-COUNTRY SOUTHEAST ASIAN PERSPECTIVE

Ampuan Situmeang

Faculty of Law, Universitas Internasional Batam, Batam, Indonesia. Corresponding author: ampuan.situmeang@uib.ac.id

Shelvi Rusdiana

Faculty of Law, Universitas Internasional Batam, Batam, Indonesia. Email: shelvi@uib.ac.id

Hien Trinh

Faculty of Economic Law, University of Economics and Law, Vietnam. Email: hientt@uel.edu.vn

Agustianto Agustianto

Faculty of Law, Universitas Internasional Batam, Batam, Indonesia. Email: agustianto.lec@uib.ac.id

Winsherly Tan

Faculty of Law, Universitas Internasional Batam, Batam, Indonesia. Email: winsherly@uib.ac.id

ARTICLE INFO

Keywords:

Blasphemy; Criminal Law; Human Rights; Freedom of Religion; Freedom of Expression.

DOI:

10.26532/jh.v40i1.36893

ABSTRACT

Blasphemy laws, while deemed important by some in protecting religious beliefs and practices, can have implications for conflicts with human rights. This research aims to analyze the possible human rights conflicts from blasphemy laws in Indonesia, Thailand, and Vietnam. This study combines the normative legal research method with the theoretical framework of human rights law, particularly focusing on the interplay between religious freedom, freedom of expression, and state regulation of religious discourse. This study reveals that certain legal frameworks in Indonesia and Thailand have implications of conflicts with freedom of expression and religion. Indonesia presents the most complex conflict between these human rights, while Thailand, despite offering greater freedom of expression, normatively falls short in religious freedom due to its preferential treatment of Buddhism and its clergy. Vietnam has the least implication of conflicts, as it only governs the prohibition against profaning religion and normatively allows little to no room for multi-interpretation.

1. Introduction

Religions can play an important role in the development of society as a force for good against immoral acts and other acts that are deemed detrimental to society.¹ However, religions can also become a negative influence, particularly when it has absorbed enough power to do so, with key actors within many religious spheres spreading radical ideas and intolerant behaviors.² It is not only a threat to civil society but also a serious threat to freedom of religion.³ The urgency for careful accommodation of this through a robust legal framework cannot be overstated, as the absence can increase the risk of social unrest and other types of divisions within society, as what has already happened in Indonesia involving a high-profile politician.⁴

Freedom of religion is the right to subscribe to and express one's faith, along with all of its practices, as long as it does not express any form of hostility towards others.⁵ The latter part of this definition plays a key role in ensuring balance within society, as some form of religious beliefs and practices might not necessarily promote such rights. This goes back to the long history of world religions, which is followed by a series of persecutions of not only people who opposed them but also people who did not subscribe to them.⁶ However, as previously noted, religious beliefs can also affect the legal system by pushing the enactment of laws and regulations that protect religious influence at the cost of other important human rights.

Blasphemy laws are drafted to protect the rights of religious believers but can also subsequently suppress freedom of expression for most people and limit the freedom of religion for minority religious groups. The United States Commission on International Religious Freedom gathered a relevant set of data from 2014-2018, highlighting 732 total blasphemy cases in 41 countries. Among those cases are some Southeast Asian countries, with Indonesia specifically cited as having the sixth most blasphemy cases in the world throughout that period.⁷ This data ultimately shows that despite the diverse culture in Southeast Asia, the region is still at risk of human rights abuse.

¹ Ryan McKay and Harvey Whitehouse., Religion and Morality, *Psychological Bulletin*, Vol.141 No.2, 2015, page 449.

² Muhammad Adnan and Anita Amaliyah., Radicalism VS Extremism: The Dilemma of Islam And Politics In Indonesia, *Jurnal Ilmu Sosial*, Vol.1 No.1, 2021, page 29.

³ Adam J. Fenton., Faith, Intolerance, Violence and Bigotry: Legal and Constitutional Issues of Freedom of Religion in Indonesia, *Journal of Indonesian Islam*, Vol.10 No.2, 2016, page 184-185.

⁴ Fardan Mahmudatul Imamah., Discourse on Penistaan Agama of Basuki Tjahaja Purnama's Blasphemy Trial in Twitter, *Religió: Jurnal Studi Agama-Agama*, Vol.7 No.1, 2017, page 101-102.

⁵ Anthony Peirson Xavier Bothwell., International Standards for Protection of Religious Freedom, *Annual Survey of International & Comparative Law*, Vol.23 No.1, 2019, page 56.

⁶ Sriya Iyer., Religion and Discrimination: A Review Essay of Persecution and Toleration: The Long Road to Religious Freedom, *Journal of Economic Literature*, Vol.60 No.1, 2022, page 263.

⁷ Patrick Greenwalt., 2022, Blasphemy and Related Laws in ASEAN Member Countries, *The United States Commission on International Religious Freedom (USCIRF) Report*, Washington, October, 2022.

The 'judicialization' of religious freedom, as described by Richardson, involves the judicial system monitoring religious groups' interests to protect minority rights.⁸ While this process has faced criticism for favoring secular values over religious beliefs, it has paradoxically fostered the growth of diverse faiths in some Western countries. Vlieg's study further complicates this picture by revealing challenges in protecting religious freedom even in Western nations.⁹ The research also highlights the complex interplay between different types of secularity, where accommodating religious diversity often conflicts with individual liberties and secular integration goals in Western societies.

Blasphemy as an offense has also been analyzed by Hauksdóttir, acknowledging three types of religious offenses: religious hatred, religious insult, and blasphemy, as the base of the study's theoretical framework.¹⁰ The study ultimately advocates for considering religious sentiments when analyzing blasphemy laws. An example of religious influence within the legal system is the *Sharia*, as analyzed by Hashemi.¹¹ The study also reveals that blasphemy laws, when used to punish heresy, pose a greater threat to freedom of expression and conscience than laws criminalizing conversion or apostasy.

Overall, the development of the literature highlights the importance of legal framework and making sure that religious influence does not come at the cost of other human rights. However, there's a gap in analyzing blasphemy laws and their effects on freedom of expression and freedom of religion in societies with diverse socio-cultural and religious influences, particularly within the Southeast Asia region. This research aims to address this issue by providing a comparative analysis between Indonesia, Thailand, and Vietnam. These countries present differing points of view where: Indonesia is predominantly Muslim, Thailand is predominantly Buddhist, and Vietnam is predominantly secularist. These differing points of view can add nuance to the ultimate aim of addressing the implications of blasphemy laws in Southeast Asia. The main focus of the comparative analysis is the act of blasphemy as a criminal offense and how blasphemy laws in both countries affect the growing concerns regarding freedom of expression and freedom of religion.

2. Research Methods

This research utilizes the normative legal research method to offer insights into blasphemy laws within the Indonesian, Thai, and Vietnamese legal systems. By employing this method along with a comparative approach, the study aims to analyze and compare how blasphemy is defined, interpreted, and prosecuted in

⁸ James T. Richardson., Managing Religion and the Judicialization of Religious Freedom, *Journal for the Scientific Study of Religion*, Vol.54 No. 1, 2015, page 3.

⁹ Maria Vlieg., Challenging Secularities, Challenging Religion: 'Secularist Ex-Muslim Voices' in the British Debate on Islam and Freedom of Expression, *Journal of Religion in Europe*, Vol.11 No.4, 2018, page 373.

¹⁰ Eva Hauksdóttir., Restricting Freedom of Expression for Religious Peace: On the Echr's Approach to Blasphemy, *European Convention on Human Rights Law Review*, Vol.2 No. 1, 2021, page 86.

¹¹ Kamran Hashemi., Limitations on Freedom of Religion and Expression under Muslim Legal Traditions of Apostasy and under International Human Rights Law, *Hum. Rts.*, Vol.12 No. 2, 2017, page 66.

these three Southeast Asian countries. This combination of approach and method allows for a comprehensive examination of legal frameworks regarding blasphemy, offering insights that can guide policy decisions and legal reforms to balance religious protections with individual freedoms better. Analysis of the normative legal research method focuses on the existing legal norms within relevant positive laws, juxtaposing them with a specific legal issue.¹² It typically includes the analysis of legal norms to dive into a specific legal problem using secondary data.¹³ Secondary data employed in this research are Indonesian Criminal Law Code, Stipulation of the President of the Republic of Indonesia No. 1 of 1965 on the Prevention, Abuse, and/or Blasphemy of Religion, Law No. 11 of 2008 on Electronic Information and Transactions, Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions, Constitution of the Kingdom of Thailand 2017, Thailand Penal Code, Sangha Act 1962, Vietnam's Law on Belief and Religion.

3. Results and Discussion

3.1. Interplay between Freedom of Expression, Freedom of Religion, and Blasphemy Laws

Freedom of expression and freedom of religion are both considered basic human rights that must be protected by governments all around the world. The protection of these rights is not just about ensuring that everyone can express their thoughts and beliefs but also about the appreciation of human consciousness within each person and how it affects the world around them. This is at its core, these rights are all rooted in the freedom of thought, along with the concept of liberty of conscience.¹⁴ The impacts of these interdependent forms of human rights extend beyond philosophical discourse, even influencing the realm of politics and legal.

Freedom of expression serves as one of the foundations of a democratic society,¹⁵ enabling individuals to exchange ideas, critique government actions, and promote social progress. This right is mentioned as one of the foundational human rights documents in history, specifically through Article 19 of the Universal Declaration of Human Rights.¹⁶ This acknowledgment signifies the vital role of free speech in public discourse and discussions. However, the boundaries of freedom of expression are often tested when expressions offend religious sentiments or beliefs.¹⁷ The tension arises in delineating the scope of this freedom, particularly

¹² Hari Sutra Disemadi., Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies, *Journal of Judicial Review*, Vol.24 No.2, 2022, page 298.

¹³ David Tan., Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum, *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, Vol.8 No.8, 2021, page 2467.

¹⁴ Lucas Swaine., Freedom of Thought as a Basic Liberty, *Political Theory*, Vol.46 No.3, 2018, page 407.

¹⁵ Theo Tsomidis., Freedom of Expression in Turbulent Times—Comparative Approaches to Dangerous Speech: The ECtHR and the US Supreme Court, *International Journal of Human Rights*, Vol.26 No.3, 2022, page 382.

¹⁶ Emily Howie., Protecting the Human Right to Freedom of Expression in International Law, *International Journal of Speech-Language Pathology*, Vol.20 No.1, 2018, page 12.

¹⁷ Kari Steen-Johnsen and Bernard Enjolras., The Fear of Offending: Social Norms and Freedom of Expression, *Society*, Vol.53 No.4, 2016, page 361.

when it intersects with respect for religious diversity and harmony. The tension can lead to other problems, such as social unrest and actual violence between religious groups, particularly when radicalism is already an underlying problem.¹⁸ This is the case with Indonesia, as interreligious conflicts have become a central issue in recent years, challenging the country's management of its multicultural society and highlighting the complex interplay between religion, politics, and social tensions.¹⁹ Cases have also emerged in Thailand, including even violent ones, where Muslim separatist groups have carried out bombings, attacks on schools, and assassinations, particularly targeting teachers, government officials, and Buddhist monks in the southern provinces.²⁰

Freedom of religion ensures every member of a society the liberty to practice, change, or refrain from any religion or belief in accordance with their conscience and moral compass.²¹ This freedom is intrinsic to the dignity of every person and is foundational to the pursuit of personal and collective identity and meaning. It encompasses not only the private dimension of faith but also the public expression and practice of religious beliefs.²² Freedom of religion and freedom of expression can clash when others defend statements considered blasphemous by some religious groups as legitimate exercises of freedom of expression. This can also be abused to silence any form of criticism and arguments that one might have about religion or its practice, although the opinion is never meant to offend the relevant religious communities. Furthermore, it's also important to note that the exploitation of blasphemy law is especially dangerous because the criticism of religions often overlaps with political messages.²³ Balancing these rights requires a nuanced approach that protects religious practices from vilification while ensuring that such protections do not stifle legitimate, critical discourse about religious institutions and beliefs.

Blasphemy laws acknowledge the sacredness of religious beliefs and the importance of preserving them by protecting individuals and communities from offensive and disrespectful attacks on their faith.²⁴ These laws are essentially rooted in the mission to preserve religious harmony and respect within society. However, the application of blasphemy laws often reveals their double-edged nature.²⁵ While intended to shield religious sensibilities, these laws can

¹⁸ Sargon S. Poulis., 2015, *The Post-Arab Spring Geopolitical Instability And Its Effects On Middle East And North Africa*, Master Theses, Fort Hays State University, page 43.

¹⁹ Maksimus Regus., *Interreligious Conflicts in Post-Authoritarian Indonesia: Assumptions, Causes, and Implications*, *Jurnal Politik*, Vol.5 No.2, 2020, page 120.

²⁰ Lisan Nulhasanah., *The Impact of Islamic Conflict in Pattani Thailand*, *Jurnal Kawasan Sejarah*, Vol.1 No.1, 2023, page 26.

²¹ Michael J. Perry., *Freedom of Conscience as Religious and Moral Freedom*, *Journal of Law and Religion*, Vol.29 No.1, 2014, page 130-131.

²² Leslie J. Francis et al., 2018, *Freedom of Religion and Freedom of Religious Clothing and Symbols in School: Exploring the Impact of Church Schools in a Religiously Diverse Society*, in *Religion and Civil Human Rights in Empirical Perspective*, edited by Hans-Georg Ziebertz and Carl Sterkens, Cham, Springer International Publishing, page 159.

²³ Hauksdóttir., *Restricting Freedom of Expression for Religious Peace*, page 78.

²⁴ Neville Cox., *Justifying Blasphemy Laws: Freedom of Expression, Public Morals, and International Human Rights Law*, *Journal of Law and Religion*, Vol.35 No.1, 2020, page 40-41.

²⁵ Heini í Skorini., 2019, *Free Speech, Religion and the United Nations: The Political Struggle to*

inadvertently become tools for censorship or oppression, suppressing dissenting voices and penalizing individuals for expressions of belief or non-belief. This is usually the case when there's a majority religion, and other religious communities, in a lot of ways, have to accommodate for its practices and beliefs while having little to no room for any kind of discourse, even when it's needed because those other religious communities are having problems because of the practices and beliefs of that majority religion.

When blasphemy laws are broad in scope and vague in definition, they can serve as instruments of censorship. This suppression of speech is not only antithetical to the principle of free expression but also promotes false promises of tolerance,²⁶ as it prevents people from complaining about issues that can significantly affect them, minimizing the significance of their problems and their perspectives. On the other hand, this also limits the chances of self-critical assessments of the favored religious communities, which ultimately can hamper societal progress. The fear of prosecution under these laws can lead to self-censorship, where individuals and media outlets refrain from discussing certain topics, limiting the public's access to a full range of viewpoints and information. This is what has affected Indonesian society, particularly after a high-profile case involving a governor, which has helped manufacture fear among minorities.²⁷

Conversely, blasphemy laws also threaten freedom of religion by creating a legal environment where certain religious beliefs are privileged over others, indicating the unfair enforcement of the law.²⁸ This undermines the pluralistic foundation of societies such as the ones in Indonesia, Thailand, and Vietnam. Ideally, a pluralistic society should allow individuals to freely follow, abstain from, or change their beliefs and traditions. In religious contexts, blasphemy laws can implicitly endorse one set of religious beliefs over others, discriminating against minority religions and sects. This not only infringes on the individual's right to religious freedom but also fosters an atmosphere of intolerance and discrimination. Furthermore, such laws can fuel sectarian violence and social division, as accusations of blasphemy become tools for settling personal vendettas or for political manipulation through identity politics, thereby exacerbating tensions in already volatile interfaith relationships. Ultimately, the blasphemy law itself is not designed to protect people but rather the religion.²⁹ Therefore, the enforcement of this law is often not justified as it revolves around the protection of an idea, which can have many interpretations.

Define International Free Speech Norms, London, Routledge, page 13.

²⁶ Augusto Zimmermann., The Unconstitutionality of Religious Vilification Laws in Australia: Why Religious Vilification Laws Are Contrary to the Implied Freedom of Political Communication Affirmed in the Australian Constitution, *Brigham Young University Law Review*, Vol.2013 No.3, 2013, page 458.

²⁷ Mohamed Nawab Mohamed Osman and Prashant Waikar., Fear and Loathing: Uncivil Islamism and Indonesia's Anti-Ahok Movement, *Indonesia*, Vol.2018 No.106, 2018, page 89.

²⁸ Matteo Bonotti and Jonathan Seglow., Introduction: Religion and Public Life, *Ethnicities*, Vol.17 No.2, 2017, page 144.

²⁹ Mahaarum Kusuma Pertiwi., 2021, *Religious Freedom and the Indonesian Constitution: A Case Study of the Blasphemy Law, Marriage Law, and Civil Administrative Law*, PhD. Dissertation, Macquarie University, page 132.

Furthermore, it's essential to explore legal frameworks and societal norms that both prevent the incitement of religious hatred and protect individuals' rights to freedom of expression and religion. The advent of technology adds to the complexity of this problem. With the existence of social media and other digital spaces, societies around the world are more connected than ever.³⁰ This can increase the sharing of opinions, knowledge, cultures, and beliefs, which are all elements of freedom of expression and freedom of religion. On the other hand, these developments can also create a hostile environment between people with different socio-economic, cultural, and religious backgrounds. The differences of opinion and way of expression can overlap into what some might consider as 'offensive'. This offensive act can also be considered 'blasphemous', as the sharing or the creation of a certain type of content on social media might be against the teachings of a certain religion.³¹ This socio-cultural and religious friction is what has led to many cases of blasphemy in social media, particularly in Indonesia, where religious tension on the internet has been very high recently.³²

It's imperative for a legal system to balance the interests of religious groups with the broader perspective of human rights. Therefore, an assessment of the normative structure that exists within the relevant positive laws must be able to address the risks of exploitation using blasphemy laws, particularly against freedom of expression and freedom of religion. Normative implications, particularly on the broader fabrics of plural Southeast Asian society, need to be addressed by scrutinizing the blasphemy laws in Indonesia, Thailand, and Vietnam.

3.2. Comparative Analysis of Legal Norms and Their Implications on Freedom of Expression and Freedom of Religion

The first part of analyzing the differences between how countries regulate blasphemy laws is understanding definitions of blasphemy. In these definitions, a key aspect that needs to be addressed is the reason behind these laws and the philosophical basis as to why such laws must exist. Next, another aspect that needs to be analyzed is the purposes of these laws, and who they are trying to protect. With these elements in mind, analysis regarding blasphemy laws can be understood in its full scope, allowing a level of clarity that can accommodate a comprehensive structure and analysis of the legal norms that exist within the blasphemy laws. Consequently, the main aspect of the analysis regarding this lies within how the normative structures constitute 'blasphemy' within the relevant laws and regulations of Indonesia, Thailand, and Vietnam.

Blasphemy is considered an offense in Indonesia's criminal law, mainly through the provision of Article 156a of the Criminal Law Code (KUHP),³³ which governs

³⁰ Mary Chayko., 2019, Digital Technology, Social Media, and Techno-Social Life, in *The Wiley Blackwell companion to sociology*, edited by George Ritzer and Wendy Wiedenhoft Murphy, New Jersey, John Wiley & Sons Ltd., page 390.

³¹ Neil Hicks., The Public Disorder of Blasphemy Laws: A Comparative Perspective, *Review of Faith and International Affairs*, Vol.13 No. 1, 2015, page 53.

³² Ahmad Yogi Fahrudin, Ardiansyah, and Bintang Wicaksono Ajie., Hukum Pidana Dan Konflik Agama: Menganalisis Kasus Penistaan Agama Dan Dampak Sosialnya, *HUMANIORUM*, Vol.1 No. 4, 2024, page 121.

³³ Lonna Yohanes Lengkong and Tomson Situmeang., Makna Delik Penodaan Agama Dalam Pasal

that *"Shall be punished by a maximum imprisonment of five years, any person who with deliberate intent in public expresses feelings or commits acts: a. which is essentially hostile, abusive or blasphemous towards a religion professed in Indonesia; b. with intent to prevent people from adhering to any religion which is based on the One True God."* This provision displays the uniqueness of Indonesia's legal view on religions, namely through the mention of 'One True God' and 'religion professed in Indonesia'. This also has freedom of expression indication, as 'blasphemous' has no clear definition provided by the law. Therefore, this can be abused as a way to restrict freedom of religion, as the line between blasphemy and criticism of religious belief or practice is fairly thin.

Consequently, these provisions also show that Indonesia is not entirely in line with what is considered to be freedom of religion, as it only gives proper support and protection to the practice and the spread of religions that are formally accepted. Philosophically, this policy of selective religious recognition in Indonesia raises fundamental questions about the role of the state in managing religious diversity, the limits of religious freedom, and the challenges of balancing national unity with respect for individual belief systems in a pluralistic society. This outlook is inherently against what is promoted in Pancasila values, which supports the application of *Bhinneka Tunggal Ika* (Unity in Diversity) as the main philosophical foundation of Indonesia's diverse society.³⁴

Religions that are formally accepted are Islam, Protestant Christianity, Roman Catholicism, Hindu, Buddha, and Confucianism, as governed by the explanation of Article 1 of the PNPS Law No. 1 of 1965 on the Prevention, Abuse, and/or Blasphemy of Religion (PNPS Law 1/1965).³⁵ This law is also the source from which Article 156a of the Criminal Law Code is based, with Article 1 stating that *"every person is prohibited from deliberately in public telling, advocating or seeking public support, to carry out an interpretation of a religion adhered to in Indonesia or to carry out religious activities that resemble religious activities of that religion; which interpretation and activities deviate from the main teachings of that religion."* The provision from this article is focused more on the purity of religious practices by ensuring that it's not muddied by other forms of practices that essentially deviate from the teachings of that religion. However, the scope of understanding regarding the 'main teachings' of a religion, along with the perspective of those teachings, is purely subjective. This is particularly true in the case of schools of thought and denominations among many religions and their closedness against the less popular ones.

In the context of the digital era, Indonesia also extends the protection of religions against blasphemy through Article 28 paragraph (2) of Law No. 11 of 2008 on Electronic Information and Transactions (EIT Law), which governs that *"Every Person intentionally and without the right to disseminate information aimed at*

156a KUHP Dan Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP, *JPPI (Jurnal Penelitian Pendidikan Indonesia)*, Vol.9 No.4, 2023, page 119.

³⁴ Harman Ziduhu Laia., Unity in Diversity: An Exploration of the Indonesian Concept of 'Bhinneka Tunggal Ika' According to the Bible, *Pharos Journal of Theology*, Vol.105 No.2, 2023, page 2.

³⁵ Heru Susetyo et al., Keberlakuan Hukum Penodaan Agama Di Indonesia Antara Tertib Hukum Dan Tantangan Hak Asasi Manusia, *Perspektif Hukum*, Vol.20 No.1, 2020, page 82.

creating a sense of hatred or hostility of individuals and/or certain community groups based on ethnicity, religion, race, and intergroup (SARA)." The provision of this law is perhaps the most dangerous among the three, where blasphemy still is not defined, and its scope is expanded into *'information aimed at creating a sense of hatred and hostility'* in the digital space, which in itself can create multiple interpretations.³⁶ Furthermore, this provision is later revised through Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (Second Revision of EIT Law). The revised version of Article 28, paragraph (2) governs that *"Every Person intentionally and without the right to distribute and/or transmit Electronic Information and/or Electronic Documents that are inciting, inviting, or influencing others so as to create a sense of hatred or hostility towards certain individuals and/or community groups based on race, nationality, ethnicity, skin color, religion, belief, gender, mental disability, or physical disability."*

This expansion of scope threatens freedom of expression and freedom of religion even more, as it now covers acts that are incitive, inviting, and influential in nature to create a sense of hatred and hostility. This approach is very questionable, as the previous version of the provision already received much backlash and has already been abused many times to oppress non-Muslims who are not a part of the majority. Indonesia's position as the country with the highest number of Muslim populations in the world has exacerbated this problem, as these provisions are mainly used to oppress non-Muslims, allowing almost zero room for criticism against the religion of Islam, along with its practices. Opinions like this can even now be considered provocative, which, in the end, significantly limits freedom of expression and the development of religious discourse in Indonesia's multicultural society. Furthermore, teachings of other religions or written records of scholars throughout the history of those religions, while they can be considered doctrines, can also be considered blasphemous, especially when they involve the criticism of other religions, mainly Islam. This is also the case with Islam's second biggest denomination in the world, Shia Islam, which is oppressed in Indonesia's predominantly Sunni Muslim population.

Thailand has its own provisions to protect religions from blasphemy, which is also governed by its Penal Code, mainly by Section 206,³⁷ which governs that *"Whoever, to do, by any means whatever, to the object or place of religious worship of any group of persons in the manner likely to insult such religion, shall be imprisoned as from two years to seven years or fined as from two thousand Baht to fourteen thousand Baht, or both."* This provision is essentially similar to Indonesia's provision in Article 156a of the Criminal Law Code but with a wider scope by protecting religions in general, as opposed to only protecting religions that are formally accepted as governed in Indonesia. Despite officially recognizing

³⁶ Aulia Anastasya Putri Permana and Shafarina Intan Khomsah., *Penafsiran Restriktif Atas Pasal 28 Ayat (2) UU ITE*, *Jurnal Yustika: Media Hukum Dan Keadilan*, Vol.24 No.01, 2021, page 27.

³⁷ Cut Aja Mawaddah Rahmah and Eddy Purnama., *Studi Perbandingan Jaminan Perlindungan Terhadap Hak Asasi Manusia Tentang Kebebasan Beragama Di Negara Republik Indonesia Dan Negara Kerajaan Thailand*, *Jurnal Ilmiah Bidang Hukum Kenegaraan*, Vol.2 No. 4, 2018, page 752.

only five religions,³⁸ Thailand's normative structure provides a disconnection between that recognition with this provision, which is important in ensuring that blasphemy laws can be used to protect all religious communities, regardless of their recognition status. However, the possible implications to freedom of expression are much more serious as it imposes a minimum sentence of two years, while Indonesia's law does not provide a minimum sentence. Thailand's law also imposes a longer maximum sentence of seven years compared to Indonesia's five-year maximum.

While Thailand's Penal Law has fewer indications of conflicts with freedom of religion, the country's Sangha Act 1962 has a serious indication of conflicts with freedom of religion. Section 44 bis prohibits any type of defamation or insult of Buddhism and Buddhist clergies, particularly the Patriarch.³⁹ According to Section 8, the Patriarch is the head of the national *Sangha*, which governs the affairs of the religion of Buddhism in Thailand. It even has its own supreme council, which has the ultimate authority over ecclesiastical matters of the Buddhist order in Thailand. This provision is more dangerous than any of the provisions provided by Indonesia, as it specifically protects only one religion, which is also the majority in Thailand. It also grants special rights to Buddhist scholars, creating inequality in legal protection among many religious groups in Thailand. This provision can be considered a blasphemy provision because the existence of the Patriarch itself is a practice of Buddhism in Thailand, and a manifestation of Buddhism's religious beliefs.

Philosophically, the provision from the Sangha Act goes directly against their own Constitution, specifically section 27, which prohibits unjust discrimination based on religious beliefs, among other factors. Section 31 guarantees full liberty to profess and practice any religion, with limited restrictions related to public safety and order. Even with the specific mention of Buddhism in Section 67, the Constitution does not inherently put Buddhism above other religions. The spirit implied by these constitutional provisions underscores the importance of ensuring fair and equal treatment of everyone within Thai society and that no one shall have an unfair advantage in the eyes of the legal system.⁴⁰

Vietnam, on the other hand, does not have any provision that can be considered as blasphemy law. This means that Vietnam does not criminalize acts that would otherwise be considered blasphemy in Indonesia and Thailand. However, this does not mean that Vietnam has no protection for religious communities. Article 5 of the Law on Belief and Religion (Belief and Religion Law) prohibits the act of profaning a belief or religion. Unlike blasphemy, 'profaning a belief or religion' lacks

³⁸ Surasak Jamnongsarn., 2022, Reinterpreting Religious and Ethnic Music in Thailand, in *International Proceeding on Religion, Culture, Law, Education, And Hindu Studies*, pp. 53–65. Palangka Raya, December 2022, page 53.

³⁹ Jaclyn L. Neo., 2018, Regulation of Religious Communities in a Multicultural Polity, in *Research Handbook on Law and Religion*, edited by Rex Ahdar, Cheltenham, Edward Elgar Publishing, page 187.

⁴⁰ Nguyen Van Chieu., The Religious and Ethnic Issues in Thailand: Impacts to Sustainability in South East Asian and Implications for Vietnam, *Advances in Social Sciences Research Journal*, Vol.5 No.11, 2018, page 539.

the comprehensive norms that govern how an expression can be considered offensive by religious communities. Instead, it only prohibits the expressions of contempt against a belief or religion, which leaves little room for interpretation, unlike blasphemy which covers all aspects of religious beliefs and practices. This provision has significantly lesser implications of conflicts with freedom of expression and freedom of religion, which can philosophically be attributed to its secular influence from communism.⁴¹ Vietnam also does not have any provision that specifically protects certain religious communities, unlike Thailand. Additionally, Article 5 of the Belief and Religion Law can also be applied to protect any religion, unlike blasphemy laws in Indonesia.

Furthermore, Vietnam also protects the right not to follow a religion, while Indonesia and Thailand only explicitly protect the right to follow a religion through their laws. This is governed by Article 6, paragraph (1) of the Belief and Religion Law, which states that *"Everyone has the right to freedom of belief and religion, to follow or not to follow a religion."* The indication of this provision extends beyond the protection of personal conviction regarding faith. It guarantees the freedom of expression of those who do not believe in any religion or deity, allowing them to express non-religious views.⁴² This ensures that those who do not subscribe to any religion or deity have the liberty to openly articulate their lack of belief in any religious doctrines or practices without fear of offending religious communities and, consequently, being charged with blasphemy laws.

4. Conclusion

Among the three countries compared, Indonesia's blasphemy laws present the most significant conflicts with freedom of expression and religion, primarily due to ambiguous interpretations of 'One True God' and 'deviation of main teachings', along with further complications presented by the EIT Law. Thailand's laws have been observed to be less restrictive on religious freedom but pose serious challenges to freedom of expression, particularly in protecting Buddhist scholars and practices under the Patriarch's authority. Vietnam demonstrates the least conflict, with minimal legal norms constituting blasphemy and explicit protection for non-religious expression, thus better preserving both freedom of expression and religion. A more prudent approach for Indonesia and Thailand would be to emulate Vietnam's model of protecting religious communities from profane expressions without resorting to ill-defined blasphemy charges, which can ensure a more balanced preservation of both religious dignity and individual freedoms. This can be done by revising the existing legal frameworks to be more sensitive to the issues of human rights, particularly regarding freedom of expression and religion. Further research could explore public sentiments regarding these legal frameworks and other relevant sources, such as case laws and judicial

⁴¹ Edyta Roszko., *Controlled Religious Plurality: Possibilities for Covenantal Pluralism in Vietnam*, *Review of Faith and International Affairs*, Vol.19 No.3, 2021, page 89.

⁴² Peter C. Phan., 2019, *Communist Ideology, Secularity, and Reenchantment: Challenges for the Catholic Church in Vietnam, 1954–2015*, in *The Secular in South, East, and Southeast Asia*, edited by Kenneth Dean and Peter van der Veer, Cham, Springer International Publishing, page 205.

interpretations, to provide a more comprehensive understanding of the real-world impact of blasphemy laws on freedom of expression and religion in Southeast Asia.

Acknowledgments

We would like to express our sincere gratitude to the Universitas Internasional Batam and the University of Economics and Law for their invaluable support, both moral and material, throughout our research. Their commitment and resources have been instrumental in the success of our work. We appreciate their continuous encouragement and assistance, which have allowed us to achieve our research goals.

References

Journal Articles:

- Adnan, Muhammad, and Anita Amaliyah., Radicalism VS Extremism: The Dilemma of Islam And Politics In Indonesia, *Jurnal Ilmu Sosial*, Vol.1 No.1, 2021, pp. 24–48. <https://doi.org/10.14710/jis.1.1.2021.24-48>;
- Bonotti, Matteo, and Jonathan Seglow., Introduction: Religion and Public Life, *Ethnicities*, Vol.17 No.2, 2017, pp. 141–53. <https://doi.org/10.1177/1468796817692630>;
- Bothwell, Anthony Peirson Xavier., International Standards for Protection of Religious Freedom, *Annual Survey of International & Comparative Law*, Vol.23 No.1, 2019, pp. 49–77. <https://digitalcommons.law.ggu.edu/annlsurvey/vol23/iss1/4/>;
- Chieu, Nguyen Van., The Religious and Ethnic Issues in Thailand: Impacts to Sustainability in South East Asian and Implications for Vietnam, *Advances in Social Sciences Research Journal*, Vol.5 No.11, 2018, pp. 539–46. <https://doi.org/10.14738/assrj.511.5682>;
- Cox, Neville., Justifying Blasphemy Laws: Freedom of Expression, Public Morals, and International Human Rights Law, *Journal of Law and Religion*, Vol.35 No.1, 2020, pp. 33–60. <https://doi.org/10.1017/jlr.2020.11>;
- Disemadi, Hari Sutra., Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies, *Journal of Judicial Review*, Vol.24 No.2, 2022, pp. 289–304. <https://doi.org/10.37253/jjr.v24i2.7280>;
- Fahrudin, Ahmad Yogi, Ardiansyah Ardiansyah, and Bintang Wicaksono Ajie., Hukum Pidana Dan Konflik Agama: Menganalisis Kasus Penistaan Agama Dan Dampak Sosialnya, *HUMANIORUM*, Vol.1 No. 4, 2024, pp. 116–23. <https://doi.org/10.37010/hmr.v1i4.32>;
- Fenton, Adam J., Faith, Intolerance, Violence and Bigotry: Legal and Constitutional Issues of Freedom of Religion in Indonesia, *Journal of Indonesian Islam*, Vol.10 No.2, 2016, pp. 181–212. <https://doi.org/10.15642/JIIS.2016.10.2.181-212>;
- Hashemi, Kamran., Limitations on Freedom of Religion and Expression under Muslim Legal Traditions of Apostasy and under International Human Rights

- Law, *Hum. Rts.*, Vol.12 No. 2, 2017, pp. 39–72.
<https://doi.org/10.22096/hr.2018.92717.1063>;
- Hauksdóttir, Eva., Restricting Freedom of Expression for Religious Peace: On the Echr's Approach to Blasphemy, *European Convention on Human Rights Law Review*, Vol.2 No. 1, 2021, pp. 75–118.
<https://doi.org/10.1163/26663236-bja10008>;
- Hicks, Neil., The Public Disorder of Blasphemy Laws: A Comparative Perspective, *Review of Faith and International Affairs*, Vol.13 No. 1, 2015, pp. 51–58.
<https://doi.org/10.1080/15570274.2015.1005917>;
- Howie, Emily., Protecting the Human Right to Freedom of Expression in International Law, *International Journal of Speech-Language Pathology*, Vol.20 No.1, 2018, pp. 12–15.
<https://doi.org/10.1080/17549507.2018.1392612>;
- Imamah, Fardan Mahmudatul., Discourse on Penistaan Agama of Basuki Tjahaja Purnama's Blasphemy Trial in Twitter, *Religió: Jurnal Studi Agama-Agama*, Vol.7 No.1, 2017, pp. 84–116. <https://doi.org/10.15642/religio.v7i1.880>;
- Iyer, Sriya., Religion and Discrimination: A Review Essay of Persecution and Toleration: The Long Road to Religious Freedom, *Journal of Economic Literature*, Vol.60 No.1, 2022, pp. 256–78.
<https://doi.org/10.1257/jel.20201594>;
- Laia, Harman Ziduhu., Unity in Diversity: An Exploration of the Indonesian Concept of 'Bhinneka Tunggal Ika' According to the Bible, *Pharos Journal of Theology*, Vol.105 No.2, 2023, pp. 1–8.
<https://doi.org/10.46222/PHAROSJOT.105.22>;
- Lengkong, Lonna Yohanes, and Tomson Situmeang., Makna Delik Penodaan Agama Dalam Pasal 156a KUHP Dan Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP, *JPPI (Jurnal Penelitian Pendidikan Indonesia)*, Vol.9 No.4, 2023, pp. 118–26. <https://doi.org/10.29210/020232682>;
- McKay, Ryan, and Harvey Whitehouse., Religion and Morality, *Psychological Bulletin*, Vol.141 No.2, 2015, pp. 447–73.
<https://doi.org/10.1037/a0038455>;
- Nulhasanah, Lisan., The Impact of Islamic Conflict in Pattani Thailand, *Jurnal Kawasan Sejarah*, Vol.1 No.1, 2023, pp. 26–41.
<https://journal.uinsgd.ac.id/index.php/jks/article/view/31970>;
- Osman, Mohamed Nawab Mohamed, and Prashant Waikar., Fear and Loathing: Uncivil Islamism and Indonesia's Anti-Ahok Movement, *Indonesia*, Vol.2018 No.106, 2018, pp. 89–109.
<https://doi.org/10.1353/ind.2018.0016>;
- Permana, Aulia Anastasya Putri, and Shafarina Intan Khomsah., Penafsiran Restriktif Atas Pasal 28 Ayat (2) UU ITE, *Jurnal Yustika: Media Hukum Dan Keadilan*, Vol.24 No.01, 2021, pp. 25–36.
<https://doi.org/10.24123/yustika.v24i01.4603>;

- Perry, Michael J., Freedom of Conscience as Religious and Moral Freedom, *Journal of Law and Religion*, Vol.29 No.1, 2014, pp. 124–41. <https://doi.org/10.1017/jlr.2013.1>;
- Rahmah, Cut Aja Mawaddah, and Eddy Purnama., Studi Perbandingan Jaminan Perlindungan Terhadap Hak Asasi Manusia Tentang Kebebasan Beragama Di Negara Republik Indonesia Dan Negara Kerajaan Thailand, *Jurnal Ilmiah Bidang Hukum Kenegaraan*, Vol.2 No. 4, 2018, pp. 745–56;
- Regus, Maksimus., Interreligious Conflicts in Post-Authoritarian Indonesia: Assumptions, Causes, and Implications, *Jurnal Politik*, Vol.5 No.2, 2020, pp. 199–219. <https://doi.org/10.7454/jp.v5i2.267>;
- Richardson, James T., Managing Religion and the Judicialization of Religious Freedom, *Journal for the Scientific Study of Religion*, Vol.54 No. 1, 2015, pp. 1–19. <https://doi.org/10.1111/jssr.12172>;
- Roszko, Edyta., Controlled Religious Plurality: Possibilities for Covenantal Pluralism in Vietnam, *Review of Faith and International Affairs*, Vol.19 No.3, 2021, pp. 89–103. <https://doi.org/10.1080/15570274.2021.1954421>;
- Steen-Johnsen, Kari, and Bernard Enjolras., The Fear of Offending: Social Norms and Freedom of Expression, *Society*, Vol.53 No.4, 2016, pp. 352–62. <https://doi.org/10.1007/s12115-016-0044-2>;
- Susetyo, Heru, Farida Prihatini, Abdurakhman Abdurakhman, Nurindah Hilimi, Intan Mahabah, Ira Apriyanti, and Suri Rahmadhani., Keberlakuan Hukum Penodaan Agama Di Indonesia Antara Tertib Hukum Dan Tantangan Hak Asasi Manusia, *Perspektif Hukum*, Vol.20 No.1, 2020, pp. 71–99. <https://doi.org/10.30649/ph.v20i1.78>;
- Swaine, Lucas., Freedom of Thought as a Basic Liberty, *Political Theory*, Vol.46 No.3, 2018, pp. 405–25. <https://doi.org/10.1177/0090591716676293>.
- Tan, David., Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum, *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, Vol.8 No.8, 2021, pp. 1332–36. <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/5601>;
- Tsomidis, Theo., Freedom of Expression in Turbulent Times—Comparative Approaches to Dangerous Speech: The ECtHR and the US Supreme Court, *International Journal of Human Rights*, Vol.26 No.3, 2022, pp. 379–99. <https://doi.org/10.1080/13642987.2021.1928084>;
- Vliek, Maria., Challenging Secularities, Challenging Religion: ‘Secularist Ex-Muslim Voices’ in the British Debate on Islam and Freedom of Expression, *Journal of Religion in Europe*, Vol.11 No.4, 2018, pp. 348–77. <https://doi.org/10.1163/18748929-01104004>;

Books:

- í Skorini, Heini., 2019, *Free Speech, Religion and the United Nations: The Political Struggle to Define International Free Speech Norms*, Routledge, London;

Book Section:

- Chayko, Mary., 2019, Digital Technology, Social Media, and Techno-Social Life, in *The Wiley Blackwell companion to sociology*, edited by George Ritzer and Wendy Wiedenhof Murphy, pp. 377-397, John Wiley & Sons Ltd., New Jersey;
- Francis, Leslie J., Andrew Village, Ursula McKenna, and Gemma Penny., 2018, Freedom of Religion and Freedom of Religious Clothing and Symbols in School: Exploring the Impact of Church Schools in a Religiously Diverse Society, in *Religion and Civil Human Rights in Empirical Perspective*, edited by Hans-Georg Ziebertz and Carl Sterkens, pp. 157–75, Springer International Publishing, Cham;
- Phan, Peter C., 2019, Communist Ideology, Secularity, and Reenchantment: Challenges for the Catholic Church in Vietnam, 1954–2015, In *The Secular in South, East, and Southeast Asia*, edited by Kenneth Dean and Peter van der Veer, pp. 191–213, Springer International Publishing, Cham;
- Neo, Jaclyn L., 2018, Regulation of Religious Communities in a Multicultural Polity, in *Research Handbook on Law and Religion*, edited by Rex Ahdar, pp. 178–97, Edward Elgar Publishing, Cheltenham;
- Zimmermann, Augusto., The Unconstitutionality of Religious Vilification Laws in Australia: Why Religious Vilification Laws Are Contrary to the Implied Freedom of Political Communication Affirmed in the Australian Constitution, *Brigham Young University Law Review*, Vol.2013 No.3, 2013, pp. 457–504.
[https://digitalcommons.law.byu.edu/lawreview/vol2013/iss3/4/;](https://digitalcommons.law.byu.edu/lawreview/vol2013/iss3/4/)

Conference Proceeding:

- Jamnongsarn, Surasak., 2022, Reinterpreting Religious and Ethnic Music in Thailand, in *International Proceeding on Religion, Culture, Law, Education, And Hindu Studies*, pp. 53–65. Palangka Raya, December 2022;

Master Theses and PhD Dissertation:

- Pertiwi, Mahaarum Kusuma., 2021, *Religious Freedom and the Indonesian Constitution: A Case Study of the Blasphemy Law, Marriage Law, and Civil Administrative Law*, PhD. Dissertation, Macquarie University;
- Poulis, Sargon S., 2015, *The Post-Arab Spring Geopolitical Instability And Its Effects On Middle East And North Africa*, Master Theses, Fort Hays State University;

Reports:

- Greenwalt, Patrick., 2022, Blasphemy and Related Laws in ASEAN Member Countries, *The United States Commission on International Religious Freedom (USCIRF) Report*, Washington, October, 2022.
<https://www.uscirf.gov/publications/blasphemy-and-related-laws-asean-member-countries>.