Islamism, Blasphemy, and Public Order in Contemporary Indonesia

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Abstract

Public order has remained a central focus of successive Indonesian governments since independence. Since President Soeharto's political demise in 1998, blasphemy and associated religious vigilantism have, at times, posed a serious threat to public order. Using several recent case studies, this article addresses that issue and argues that, insofar as Islamist actors, opportunistic politicians, and a complicit judiciary are permitted to use religion to disrupt public order and persecute those espousing minority beliefs, constitutional guarantees of the rule of law, legal certainty and equality before the law, citizenship, and other fundamental liberal democratic rights, will continue to be undermined in contemporary Indonesia.

Keywords: Islam, blasphemy, public order, majoritarianism, freedom of expression

Introduction

During an interview in May 2020, Professor Tim Lindsey remarked that it is "a set piece of Indonesian history that rioting in the streets – [with] large numbers of demonstrators – is something that will intimidate governments" (Moore, 2020). Lindsey's remark pertained to the Indonesian government's slow response to the Covid-19 pandemic and the subsequent economic fallout that he feared could lead to public disorder. The "set piece of Indonesian history" to which he referred, however, is that the maintenance of public order has remained a key focus of every Indonesian government since the nation declared independence in 1945. Indonesia's ethnically and religiously diverse population of more than 275 million people[1] has meant that the maintenance of public order has remained a central concern of successive Indonesian governments – and for good reason. Indeed, as Agrama (2012) writes, "the notion of public order is an expression of state sovereignty" (p. 30). A state's ability to maintain public order and the ways by which it does this therefore reveal much about the nature of its statehood and the fabric of its society.

In the past few years, thousands of Indonesians have publicly protested the passing of Indonesia's contentious Job Creation Omnibus Law (*BBC*, 2020), as well as proposed changes to the country's Criminal Code, the *Kitab Undang-Undang Hukum Pidana* (KUHP) (Lamb 2019). In both cases, the protests proved unsuccessful, with Law No. 11 of 2020 on Job Creation being passed by the national legislature and signed by President Joko Widodo (Jokowi) on 2 November 2020, and the new criminal code being rushed through the legislature and signed by Jokowi on 6 December 2022.

Similarly, issues pertaining to religious thought, religious expression, and public criticism of religious orthodoxy have – on occasion – given rise to

[1] As of February 29, 2024, the population of Indonesia is 279,042,510. See: *Worldometer*, accessed Feb 29, 2024, https://www.worldometers.info/world-population/indonesia-population/.

mass public demonstrations. The most notable contemporary example thereof remains the 'Action to Defend Islam' (*Aksi Bela Islam*) demonstrations that ensued after then-Jakarta governor Basuki 'Ahok' Tjahaja Purnama, on 27 September 2016, made reference to the Quranic verse *Surah Al-Ma'ida* 51 while speaking with a group of fishermen on Pramuka Island in the Thousand Islands district (*Kepulauan Seribu*) (Peterson, 2020, pp. 1 and 90). In post-Soeharto Indonesia, the policing of religious thought and religious expression has become a means to maintain public order. Indeed, in 2010, Indonesia's Constitutional Court (*Mahkamah Konstitusi*), in its landmark decision to uphold Law No. 1/PNPS/1965 on the Prevention of the Abuse/Sullying of Religion (herein, 'the Blasphemy Law'), ruled that public order in contemporary Indonesia is maintained by prioritising the protection of the religious sensibilities of the country's Muslim majority over the fundamental rights of religious minorities (Decision No. 140/PUU-VII/2009 [3.53] and [3.58]). And while it seemed that the high-profile blasphemy trials and convictions of Ahok and Meliana in 2017 and 2018 respectively had seen Indonesia reach peak levels of Islamisation, the introduction of new restrictions on religious expression via Indonesia's new criminal code will, as Lindsey contends, likely "strengthen and expand the bases on which minority religious groups can be persecuted" (Lindsey, 2022).

My argument, therefore, throughout this article is trite but, I believe, significant. Collectively, the seven cases I discuss below strongly suggest, if not confirm, that Indonesia's judiciary has been ideologically captured by Islamist majoritarian sentiment. Insofar as that ideological capture persists, it is therefore in the interests of anyone accused of 'blasphemy'[2]

[2] I use inverted commas with the word 'blasphemy' because what Indonesia's Blasphemy Law actually prohibits is not 'blasphemy', the Indonesian word for which is 'penghujahan'. As Fenwick (2017) writes, the term 'penghujahan' appears nowhere in the Blasphemy Law. As Fenwick writes, this suggests that, rather than having a blasphemy law per se, Indonesia '[maintains] a de facto blasphemy regime' (p. 73).

– whether that be deviation from, or criticism of, prevailing religious orthodoxy – to avoid litigation at all costs. Rather – and evidence likewise exists to suggest that this is indeed possible – it would be expedient for anyone accused of blasphemy to address and resolve those allegations with the relevant local authorities before being served with an indictment. Indeed, as the evidence I produce below also suggests, once an indictment has been served, it is essentially a *fait accompli* that a court will find an alleged blasphemer guilty as charged.

New restrictions on religious expression

In what I believe was the last interview he gave on blasphemy, the late Arswendo Atmowiloto[3] told me:

> Why can't this matter [of blasphemy] be settled? That's all. By settled I mean article 156a should be permitted to remain, but with an elucidation – at a minimum, with parameters so the people know [what actually constitutes blasphemy] (Peterson, 2019).

The current blasphemy provision, namely article 156a of Indonesia's current KUHP was incorporated into the KUHP by article 4 of Presidential Determination No. 1/PNPS/1965 on the Prevention of the Abuse/Sullying of Religion.[4] It states:

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

[3] Arswendo Atmowiloto was one of the nine people to be convicted of blasphemy during the Soeharto presidency (1966-1998). Arswendo was convicted of blasphemy in 1990 after his tabloid publication *Monitor* published a popularity survey that placed the Prophet Muhammad 11th, below Soeharto, who finished first, and below Arswendo himself, who placed 10th.

[4] This Presidential Determination was converted into a law four years later by virtue of Law No. 5 of 1969 on the Declaration of Various Presidential Determinations and Presidential Regulations as Laws.

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

As mentioned, the new KUHP places new restrictions on religious expression. Unfortunately, they do nothing to alleviate the uncertainty about which Arswendo had raised concern. Rather, article 300 of the new code prohibits, and punishes with up to three years' jail, anyone who, in public:

a. commits an act of enmity;
b. expresses hatred or enmity; and
c. incites enmity, violence, or discrimination, toward a religion, another person's beliefs, or a group, based on a religion or belief in Indonesia.

Article 301 of the new KUHP then prohibits such sentiment being expressed in public, whether through broadcasting, showing, affixing writing or a picture somewhere, or playing a recording. Significantly, it prescribes a maximum penalty of five years' jail.

Article 302(1) prescribes a punishment of up to two years' jail for anyone who incites or provokes someone such that they renounce a religion or belief held in Indonesia. Article 302(2) makes that punishment a maximum of four years' jail if the accused uses violence or a threat of violence to achieve the same ends.

Article 303 prohibits all persons from causing a disruption by or near a place of worship. Article 303(1) states that if that disruption is merely making noise, the offender can be fined. Article 303(2) prescribes a

maximum punishment of two years' jail for anyone who uses violence or the threat of violence to disturb, hinder, or break up a religious meeting, while article 303(3) prescribes a maximum punishment of five years' jail for anyone who does the same while a religious ceremony or worship is taking place.

Article 304 prohibits all persons from insulting, in public, anyone performing or leading a religious ceremony or worship. It prescribes either a fine or a maximum custodial sentence of one year.

Finally, article 305(1) of the new KUHP prescribes a maximum punishment of one year jail for anyone who defiles a place of worship, or an object used in worship, while article 305(2) prescribes a maximum custodial sentence of five years for anyone who illegally damages or burns down a place of worship.

While these new provisions appear to be straight forward, the concern – at least, based on the past treatment of religious minorities in Indonesia – is that they will serve as 'rubber provisions' (*pasal karet*) to further marginalise those who adhere to minority beliefs and practices, and grant vigilantes a platform to persecute them. For example, a 2012 report from the United States Commission on International Religious Freedom revealed that many religious vigilante groups in Indonesia enjoy highly disproportionate levels of influence over lawmakers and officials (Uddin, 2014, p. 228). Further, as Pausacker (2013) writes, groups such as the now-defunct Islamic Defenders' Front or *Front Pembela Islam* (FPI), and its militant wing, *Laskar Pembela Islam* (LPI), have a history of working with Indonesia's peak Islamic organisation, the Indonesian Council of Ulama or *Majelis Ulama Indonesia* (MUI), to suppress the religious expression of religious minority groups they consider unorthodox. MUI typically issues a fatwa against a particular 'heretical' sect and then Islamist vigilantes follow the issuance of that fatwa with violence or threats of violence toward the sect, which leads to complaints about

public disorder. The police then intervene and arrest the leader of the sect on the grounds of public order disturbance (pp. 47 and 57-58). The new criminal code notwithstanding, these problems have persisted under the current blasphemy regime.

The Blasphemy Law as It Stands

Until 2026, article 156a of Indonesia's current KUHP remains in effect. For context, it is worth noting that, in the face of various challenges to its validity and legitimacy, Indonesia's two highest courts – the Constitutional Court (*Mahkamah Konstitusi*) and the Supreme Court (*Mahkamah Agung*) – have upheld the validity of Indonesia's Blasphemy Law and, in the process, demonstrated a preference for an Islamist majoritarian interpretation of Indonesia's 1945 Constitution (Peterson, 2020). The following discussions of three Constitutional Court judgments and one Supreme Court judgment are, I contend, evidence that Indonesia's judiciary has been ideologically captured by Islamist majoritarian sentiment.

The Constitutional Court

The Constitutional Court has ruled on three occasions – in 2010, 2013, and 2018 – to uphold Indonesia's Blasphemy Law.

Constitutional Court Decision No. 140/PUU-VII/2009

In 2009, seven civil society organisations and four individuals, including former Indonesian president Abdurrahman Wahid, petitioned the Constitutional Court to find the Blasphemy Law unconstitutional. Central to its decision to dismiss the application, the Constitutional Court declared Indonesia to be "a religious country that protects its religious communities" (*negara beragama yang melindungi umat beragama*) (Decision No. 140 of 2009/PUU-VII/2009 [2.12]). Furthermore, owing to Indonesia's unique history, public order – which the court referred to as "religious social order" (*ketertiban masyarakat keagamaan*) – is maintained by Indonesia's religious parent organisations (*organisasi*

keagamaan induk). These parent organisations work as "government partners" (*mitra pemerintah*) to protect religious orthodoxy from doctrinal disagreement and public criticism (Decision No: 140/PUU-VII/2009 [3.53] and [3.58]). The court reasoned:

> ... that every religion has religious tenets that are generally accepted internally by every religion, therefore those who determine religious tenets are internal members of each religion. Indonesia, as a state that adheres to religious interpretations that cannot be separated from the state, has a Department of Religion that serves and protects the healthy growth and development of religion, and the Department of Religion has organisations and apparatuses to accumulate the various opinions from within a religion. So, in this instance, the state, not autonomously, determines the religious tenets of a religion, but only based on an agreement of the relevant religious internal parties (Decision No: 140/PUU-VII/2009 [3.16]).

Furthermore, the court found that were it to invalidate the Blasphemy Law, law enforcement apparatuses would "lose their footing" (*kehilangan pijakan*) (Decision No. 140/PUU-VII/2009 [3.51]). This would, in turn, leave a void vigilante groups might fill. The majority of the court conceded that this was not a *fait accompli,* but that the Blasphemy Law's value lay in its ability to anticipate religious conflicts (Decision No. 140/PUU-VII/2009 [3.61 and 3.70]).

Constitutional Court Decision No. 84 of 2012 (Blasphemy Law Case No. 2)

At the time of this second challenge, the first applicant Tajul Muluk (aka H. Ali Murtadha) had already been convicted of blasphemy, in accordance with article 156a of the KUHP, and sentenced to two years' jail (See: Decision No. 69/Pid.B/2012/PN.Spg). The fifth applicant, Sebastian Joe bin Abdul Hadi, was under investigation for violating article 156a, having

set up a Facebook account under the name Sebastian Joe Tajir in 2008. On 19 June 2012, he posted the following:

> In the real world there is no place to face the supposed Almighty in life. Because the supposed Almighty in that life isn't in the real world in life. But...there are many places to face/worship idols...x...yeah.

On 24 June 2012, he then posted the following:

> According to a novel/book/comic/newspaper, it is said that Adam and Eve were banished from heaven because a genie/satan/the devil persuaded them to eat fruit forbidden by God, meaning that the genie/satan/the devil also lived in heaven with adam and eve...because if the genie/satan/the devil lived in hell there is no way that they could have persuaded adam and eve in heaven because only those near each other and those who came into contact with each other who could whisper or persuade those near them, hahahahaha... (Decision No: 84/PUU-X/2012, p. 5).

The second, third, and fourth applicants were Shi'a Muslims who believed that, as minority Muslims, the Blasphemy Law had an unjust impact on their lives and their constitutional right to freedom of religion.

The applicants argued that different schools of thought and deviation were inevitable given the intellectual tradition within Islam; moreover, that depending on the time and place, what might be considered blasphemous by one group could be considered the norm by another. It followed that the state, if it wanted to criminalise blasphemy, should have put in place concrete parameters rather than "grey" (*abu-abu*) ones, so as to prevent multiple interpretations of the law (Decision No. 84/PUU-X/2012, pp. 15-17). This lack of clear parameters, the applicants submitted, meant that article 156a of the KUHP violated their

constitutional right to legal certainty and equal and fair treatment before the law, as guaranteed by article 28D(1) of the 1945 Constitution.[5] The applicants requested that the court therefore invalidate article 156a of the KUHP and article 4 of the Blasphemy Law for violating the 1945 Constitution. In lieu thereof, they requested that the wording of article 156a be declared contrary to the 1945 Constitution, unless it were to be read in conjunction with the words "be given an order and firm warning to cease their behaviour in the form of a joint decree of the Minister of Religion, the Minister/Attorney-General and the Minister of the Interior" (Decision No. 84/PUU-X/2012, pp. 16-17).

In dismissing this application, the Constitutional Court noted that it had already, in 2010, based on a raft of considerations, dismissed a challenge to the Blasphemy Law. It also quoted verbatim that same passage quoted above regarding how religious tenets are determined by religious adherents rather than the state. Conspicuously, the court's judgment contained no acknowledgment of the applicants' constitutional rights.

Constitutional Court Decision No. 56 of 2017 (Blasphemy Law Case No. 3)

In this third unsuccessful challenge, nine Ahmadis submitted that they had been direct victims of the Blasphemy Law and another regulation issued based on the Blasphemy Law, namely Joint Decree of the Minister of Religion, the Attorney-General, and the Minister of the Interior No. 3 of 2008 on a Warning and Order to Adherents, Members, and/or Coordinating Members of Jemaat Ahmadiyah Indonesia and Society (Decision No: 56/PUU-XV/2017, pp. 10-13). The applicants also cited

[5] Indonesian 1945 Constitution, article 28D(1): Every person has the right to just recognition, guarantees, protection, and legal certainty, together with equal treatment before the law (*Setiap orang berhak atas pengakuan, jaminan, perlindungan, dan kepastian hukum yang adil serta perlakuan yang sama dihadapan hukum*).

several other regulations and decrees that censored the Ahmadiyya in regional jurisdictions, namely:

1. Pekanbaru Mayoral Decree No. 450/BKBPPM/749 on Ceasing Ahmadiyya Activities (dated 16 November 2010);
2. Samarinda Mayoral Decree No. 200/160/BKBPPM.I/II/2011 on Orders for the Cessation of Ahmadiyya Activities (dated 25 February 2011);
3. Lubuklinggau Mayoral Decree No. 300/29/Kesbang.Pol&Linmas/2011 (dated 19 February 2011); and
4. Bekasi Mayoral Regulation No. 40 of 2011 on the Prohibition on Ahmadiyya Activities in the City of Bekasi (Decision No: 56/PUU-XV/2017, pp. 19-20).

In dismissing the applicants' challenge, the Constitutional Court affirmed the concept of protecting religious orthodoxy, ruling that chaos could, in fact, ensue if people were free to interpret religion on their own:

> [Religious] interpretation cannot be conducted freely based on an individual right or freedom to carry out one's religion or convictions. As a result, the moment religious interpretation is freely conducted or transferred to individuals, chaos in conducting religion will occur (Decision No: 56/PUU-XV/2017 [3.16.5]).

As it did in 2010, the Constitutional Court maintained its position that it was religion per se that required protection rather than religious adherents, and it was these adherents who required protection from deviant interpretations of religion. The court stated:

> In this case, the principle of Almighty God positions religion as an inseparable part of state life. Therefore, it is in the state's interest to protect the existence, harmony, and continuity of religions adhered to by its citizens (Decision No: 56/PUU-XV/2017 [3.16.5]).

In a somewhat convoluted manner, the court also affirmed its 2010 finding that the state was obliged to protect its citizens' religious identity, which included protecting them from deviant interpretations of religion. The court stated:

> That even though interpretation of a religious teaching is the area of expertise of the relevant religious adherents and the state may not meddle, that does not absolve the state of its constitutional responsibility and obligation to protect each of its citizens, whatever their convictions. The state may not permit the persecution of a group by another group. If a legal violation of [the Blasphemy Law] is adjudged to have occurred then the state is authorized to take law enforcement measures against that suspected violation, which is to be submitted to the court for the purpose of being tried in a just and impartial manner in accordance with law state principles (*prinsip-prinsip negara hukum*) (Decision No: 56/PUU-XV/2017 [3.16.5]).

As it did in 2010, the Constitutional Court construed a person's apparent right not to have their religious sensibilities offended as not only a human right, but a human right of greater importance than a person's constitutionally guaranteed right to freedom of religion. As I note next, Indonesia's Supreme Court (*Mahkamah Agung*) has likewise endorsed the notion of religious harmony over religious freedom.

Supreme Court Decision No. 25 of 2020 (Joint Regulation Case)

In February 2020, a group of 15 applicants filed a challenge in the Supreme Court regarding the compatibility of certain provisions contained in Joint Regulation of the Minister of Religion and the Minister of the Interior No. 9–8 of 2006 on Regional Head/Deputy Head Duties for the Maintenance of Religious Harmony with guarantees contained in Law No. 39 of 1999 on Basic Human Rights. Indeed, article 24A of the Constitution, article 31(1) of Law No. 14 of 1985 on the Supreme Court, article 20(2)(b) of Law No. 48 of 2009 on Judicial Authority, and article 9(2) of Law No. 12 of 2011 on Lawmaking all empower the Supreme Court to review regulations for compatibility with superior statutes (*undang-undang*). Specifically, the applicants sought to impugn certain phrases contained in articles 13(1), 13(3) and 14(2)(b) of the joint regulation, which, they claimed, violated article 22(1) and (2) of the superior Law No. 39 of 1999 on Basic Human Rights (Decision No. 25 P/HUM/2020, pp. 12-13).

The relevant provisions from the Joint Regulation, including the phrases the applicants problematised (in italics) read as follows:

> Article 13(1): The establishment of a place of worship is based on a real and genuine need, *based on the number of residents*, to accommodate the relevant religious people in the ward/village.
> Article 13(3): In the event that that real need to accommodate a religious people, as referred to in sub-article (1), is not met, *consideration regarding the number of residents* uses sub-regency or regency/city or provincial boundaries.
> Article 14(2): Aside from meeting the criteria referred to in sub-article (1), the establishment of a place of worship must meet special criteria covering:

> b. *local societal support of at least 60 (sixty) people who have been certified by the village head* (Decision No. 25 P/HUM/2020, pp. 12-13).

Conversely, article 22 of Law No. 39 of 1999 on Basic Human Rights states:

> (1) Every person is free to embrace their respective religion and to worship in accordance with that religion and belief.
> (2) The state guarantees the independence of every person to embrace that religion and belief.

This coalition comprised 15 private citizens, 10 of whom were lawyers, while the other five included a homemaker, a school teacher, a priest, a photographer, and a realtor. Distinct from previous coalitions that have challenged the constitutional validity of the Blasphemy Law, this group arguably represented the silent majority of Indonesians who were left disenchanted by the 2017 blasphemy conviction of the former governor of Jakarta, Basuki 'Ahok' Tjahaja Purnama, and the levels of religious zealotry that ultimately informed Ahok's conviction.[6]

The Supreme Court nevertheless dismissed their application. In doing so, the Supreme Court conspicuously made no reference to human rights in its judgment. On religious harmony, the court found that the applicants had failed to specifically understand:

> that freedom to worship does not mean to ignore or not respect the adherents of other religions. If by freedom to worship what is meant is that every person is free to worship without having to consider adherents of other religions, then inter-religious conflict is unavoidable, inter-religious harmony is disrupted and national

[6] Personal communication with Kanti W. Janis, 11 July 2021.

> stability is hard to achieve... (Decision No. 25 P/HUM/2020, pp. 63-64).

In line with the Constitutional Court, the Supreme Court found that public order in Indonesia is maintained by protecting both the religious sensibilities of others, as well as the religious orthodoxy defined by religious parent organizations and religious scholars. Furthermore:

> Maintenance [of religious harmony] becomes the joint responsibility of religious groups, local government, and the Government. For that reason, a religious harmony forum has been formed by society and facilitated by the Government for the purposes of developing, maintaining, and empowering religious groups. Aside from that, a religious harmony forum advisory group has been established... (Decision No. 25 P/HUM/2020, pp. 63-64).

Notwithstanding that the Supreme Court is often described as the Constitutional Court's institutional rival (Butt and Lindsey, 2018, p. 464), it is significant that Indonesia's Supreme Court likewise adopted an Islamist majoritarian approach to maintaining public order, namely by prioritising the protection of religious orthodoxy and religious sensibilities over the liberal concepts of freedom of religion and freedom of expression.

In the remainder of this article, I use three blasphemy cases – those of the former governor of Jakarta, Basuki 'Ahok' Tjahaja Purnama, an ethnic-Chinese Buddhist woman, Meliana,[7] and the third daughter of Indonesia's first president Sukarno, Sukmawati Soekarnoputri – to demonstrate how opportunistic political elites and Islamist actors have weaponised Indonesia's Blasphemy Law for purposes of political powerplays, how the judiciary in the two instances that allegations of blasphemy were litigated

[7] Many Indonesians use only a single name.

was ideologically captured by Islamist majoritarian sentiment, and how these outcomes undermine confidence in the state, judiciary, and Indonesia's nascent democracy.

Ahok

As the most high-profile blasphemy conviction in Indonesian history, much has been written about Ahok's case and trial (Peterson 2020; Lohanda 2021; Setijadi 2019). The basis of the former governor's conviction was a 29-second video excerpt of a speech Ahok delivered to a group of fishermen on Pramuka Island on 27 September 2016. Ahok was there to discuss his government's fisheries programme with the people of Pramuka Island and, during his speech, referred to the Quranic verse *Surah Al-Ma'ida* 51 – specifically the fact that politicians had used the verse to discourage Muslims from electing him because of his Christian faith.

To understand Ahok's remarks, however, one needs to revert to 2007, when Ahok first became aware of politicians using the verse for political means. It was then, while campaigning for the governorship of his home province of Bangka Belitung, that Ahok encountered a member of the electorate who explained to him that while she wanted to vote for him, her Muslim faith prohibited her from voting for him because of his Christian faith (Decision No. 1537/Pid.B/2016/PN.Jkt Utr., pp. 532-534). After seeking the counsel of several Muslim leaders and imams, including former Indonesian president Abdurrahman Wahid, Ahok was assured that the true meaning and intention of the verse did not, in fact, relate to politics whatsoever (Tim Advokasi Bhinneka Tunggal Ika BTP, 2017, p. 276). Nevertheless, multiple translations and exegeses of *Surah Al-Ma'ida* 51 abound. Most of the debate revolving around the meaning of the verse centres on the meaning of the word '*auliya*', which has been translated as 'guardians', 'loyal friends', and even 'leaders'. The official Indonesian Ministry of Religion translation of the original Arabic verse translates *auliya* as leaders. Therefore, it reads:

> O ye who believe, do not take Jews and Christians as your leaders (*pemimpin*); they are leaders for another group. Whoever among you takes them as their leader, then behold that person is part of their group. Behold God does not provide instructions to wrongdoers (North Jakarta Attorney-General and General Prosecutor, 2016, p. 3).

Indeed, nine days after Ahok made those remarks on Pramuka Island, the 29-second excerpt went viral, after it was posted by and to the personal Facebook account of Buni Yani, a former London School of Public Relations Jakarta lecturer and prominent detractor of Ahok's. According to his own Facebook page, Buni Yani was a 'hater' (*pembenci*) of Ahok and a supporter of Ahok's political rivals and the ultimate victors of the 2017 Jakarta gubernatorial election, Anies Baswedan and Sandiaga Uno (Peterson, 2020, p. 92). Along with the video excerpt, Buni Yani posted an edited transcript of Ahok's speech, which distorted the meaning of the former governor's remarks, making it appear that Ahok had suggested his audience could be misled by the Quranic verse to which he referred. In actual fact, Ahok said (my translation):

> So don't believe people – it's possible that in your heart of hearts [you] can't choose me, you know, misled using *Surah Al-Ma'ida* 51, and suchlike. That is [your] right, so if [you] feel you can't choose me because you're afraid you'll go to hell because you've been fooled, that doesn't matter, because that is your own call...

Fourteen people, all of whom had affiliations to the high-profile Indonesian radical Islamist organisation the Islamic Defenders' Front or *Front Pembela Islam* (FPI), subsequently reported Ahok to the police, alleging that he had blasphemed *Surah Al-Ma'ida* 51. They supported their complaints to police with the 29-second video excerpt, which had been extracted from a video recording of Ahok's entire, much longer, speech (1:48:32 hours), as recorded and uploaded to YouTube by the

Jakarta provincial government (Tim Advokasi Bhinneka Tunggal Ika BTP, 2017, p. 376).

Notwithstanding that the police received 14 separate complaints in response to Ahok's remarks (Tim Advokasi Bhinneka Tunggal Ika BTP, 2017, p. 6), they initially believed the then-governor had no case to answer (Peterson, 2020, p. 92). On 11 October 2016, MUI issued a statement titled 'Religious Opinion and Stance' (*Pendapat dan Sikap Keagamaan*), which condemned Ahok's remarks and declared them to be both blasphemous and hateful. Indeed, this statement was unprecedented – it was not a formal fatwa and MUI had never before issued anything of its kind. Then, on 14 October, the first of several demonstrations ensued, seemingly sparked by the statement, but it was not until the grand-scale *aksi 411* demonstration – named after the date on which it was held, namely 4 November 2016 – that Ahok's fate would ultimately be sealed.

On that date, under the moniker '*Aksi Bela Islam*' (Action to Defend Islam), anywhere between 150,000 and 250,000 people took to the streets. The demonstration turned violent, with one person dying and a Chinese-owned business being looted and burned to the ground (*Republika*, 2016). On 16 November 2016, Ahok's arrest was announced to the media, notwithstanding that law enforcement officials had not yet issued the requisite investigation order notice (*Surat Perintah Penyidikan*).

Observers noted throughout the fallout from Ahok's remarks that the case was as much about undermining the presidency of the incumbent Jokowi, as it was about Ahok's remarks and the perceived attack on the Islamic faith that they allegedly constituted (Cochrane, 2016; Lindsey, 2016). Indeed, not only had Ahok served as deputy governor of Jakarta between October 2012 and October 2014, when President Jokowi was still governor of Jakarta, but, as Islamic scholar and human rights activist

Guntur Romli explained, he was also considered by many to be Jokowi's preferred vice-presidential candidate for the incumbent's looming second presidential term campaign (Peterson, 2020, 100). Orchestrated by the Islamist coalition developed to target Ahok, which called itself the National Movement to Safeguard the MUI Fatwa or *Gerakan Nasional Pengawal Fatwa MUI* (GNPF-MUI), the demonstrations were designed to disrupt public order, thereby pressuring the state and law enforcement to charge Ahok with blasphemy (Sofwan, 2016).

Preying on the government's fear of disruption of public order, the organisers of the *aksi 411* demonstration achieved their aim, forcing the hand of law enforcement authorities and, in the process, violating Ahok's constitutional right to freedom of expression, as guaranteed by article 28E(2) of the 1945 Constitution. That provision states:

> Every person is entitled to freedom of the conviction of their beliefs, to express their thoughts and attitude, in accordance with their conscience.

The Notice of Objection (*Nota Keberatan*) issued by Ahok's defence team later claimed that the team of police offers that investigated Ahok's case had failed to agree that grounds did, in fact, exist for Ahok's arrest. In support of this claim, the Notice of Objection cited *Tempo* (2016), but that article does not appear to make such an assertion. As then-police chief Tito Karnavian conceded, however, the reality was that the police had arrested Ahok because of a perceived need to maintain public order that had little to do with whether Ahok had actually committed a crime (Tim Advokasi Bhinneka Tunggal Ika BTP, 2017, p. 4). As Romli explained, *aksi 411* was a game changer for GNPF-MUI's cause: the death of one of the demonstrators meant that they had a martyr for their cause, which would place greater pressure on the state and law enforcement authorities to arrest Ahok to reinstate public order (Peterson, 2020, p. 98). Indeed, when the next demonstration – *aksi 212* – was scheduled for 2 December

2016, Tito attended a press conference at MUI Headquarters in Central Jakarta alongside GNPF-MUI top brass in an attempt to ensure that that demonstration would remain peaceful (Peterson and Schafer, 2021, p. 110). Indeed, as journalist Step Vaessen told me, *aksi 212* was far more peaceful than *aksi 411*, and even had a 'familial' and communal feel to it (Peterson, 2020, 120).

Ultimately, Ahok was found guilty of violating article 156a(a) of the KUHP and, on 9 May 2017, was sentenced to two years' jail. To recall, article 156a(a) states:

> Punishable by up to five years' imprisonment whoever, intentionally, in public, expresses a feeling or conducts themselves in a way that:
>
> (a) is principally of a nature of enmity toward, abusive, or sullying of a religion followed in Indonesia; intends to discourage persons from embracing a religion based on the belief in Almighty God

Notwithstanding the raft of human rights and statutory-based defences submitted by Ahok's legal team (Tim Advokasi Bhinneka Tunggal Ika BTP, 2017), the North Jakarta State Court found as follows:

> Considering, that the opinion of the court is in line and in accordance with the opinions of the experts produced by the general prosecutor ... and also in accordance with MUI Religious Opinion and Stance No: Kep- 981-a /MUI/X/2016, 11 October 2016, all of which, in principle, declares that the state of the accused is of a blasphemous nature (Decision No. 1537/Pid.B/2016/PN.Jkt Utr., pp. 605–06).

Ahok's conviction was not without precedent. As mentioned, the Jakarta-based Setara Institute notes that while only nine blasphemy cases were

prosecuted successfully prior to 1998, 88 blasphemy cases were successfully prosecuted between 1998 and 2017 (Setara Institute, n.d.). The rationale that underpins those guilty verdicts was also best articulated by Indonesia's Constitutional Court (*Mahkamah Konstitusi*), which, as discussed above, in 2010 (and again in 2013 and 2018), ruled to uphold Indonesia's Blasphemy Law (Decision No. 140/PUU-VII/2009; Decision No. 84/PUU-X/2012; Decision No. No. 56/PUU-XV/2017).

Crouch (2016) has described this approach as 'religious deference', insofar as the police and judiciary both typically bow to the demands of local religious leaders, as well as MUI fatwas (legal opinions), while Tew (2018) has referred to it as 'stealth theocracy'. Elsewhere, I have argued that such an arrangement is plainly theocratic in nature, notwithstanding that the Constitutional Court, in its judgment, failed 'to offer an explanation on the merits of the distinction between a theocratic state per se and a religious state that protects religious orthodoxy as defined by religious scholars' (Peterson, 2020, p. 52).

Theocratic or otherwise, the premise that public order in Indonesia is best maintained by subordinating the fundamental rights of religious minorities to the protection of the religious orthodoxy, including MUI's assessment of religious sensibilities of the Sunni Muslim majority, has been refuted by Panggabean and Ali-Fauzi (2014). In that study, Panggabean and Ali-Fauzi found that when senior local police fairly implemented their operational protocols and intervened quickly and effectively, the risk of violence was greatly reduced. Conversely, when the police were weak or sided with the sectarian elements, disorder typically resulted. The Constitutional Court's position, therefore, could be referred to as what the German philosopher Josef Pieper (1988) called an ideological 'pseudoreality'. Pieper wrote:

> [T]he place of authentic reality is taken over by a fictitious reality; my perception is indeed still directed toward an object, but now it is a *pseudoreality*, deceptively appearing as being real, so much so that it becomes almost impossible any more to discern the truth (Pieper, 1988, p. 34).

In this instance, authentic reality is arguably that identified by Panggabean and Ali-Fauzi's study, which is distinct from the pseudoreality perpetuated by the Constitutional Court's ruling. Indeed, by upholding the Blasphemy Law, the court ignored constitutional guarantees to a raft of liberal democratic human rights guarantees contained in Chapter XA of the 1945 Constitution, as well as the constitutional guarantees to the rule of law[8] and to legal certainty. The irony of the Blasphemy Law is that rather than achieving its ostensible aim, which is to anticipate and, therefore, prevent religious conflict, it has the opposite effect: by prohibiting public criticism of religion and the expression of minority religious beliefs, it portends religious conflict and arguably encourages vigilantism (Uddin, 2014, p. 234).

In Ahok's case, the North Jakarta State Court adopted the same reasoning as the Constitutional Court and even reprimanded Ahok for not knowing that his miscalculated remarks could potentially disrupt public order (Decision No. 1537/Pid.B/2016/PN.Jkt Utr., p. 614). In fact, the Blasphemy Law uses the term 'intentionally' to set a far higher evidentiary threshold, namely the accused must knowingly blaspheme, but the court showed no awareness of that threshold in its judgment.

As human rights lawyer Ricky Gunawan explained to me, the political reality of Ahok's case – that is, the extent to which GNPF-MUI and others could engineer a moral panic, such that public order in the nation's capital could be disrupted – 'defeated all attempts to reason legally' (Peterson,

[8] Indonesian 1945 Constitution, article 1(3): Indonesia is a law state (*Indonesia adalah negara hukum*).

2020, p. 118). As my next case study reveals, however, Ahok's case was, by no means, the only time a political reality – or, rather, pseudoreality – defeated the rule of law.

Meliana

The case of Meliana was similar to that of Ahok's and overlapped with the former governor's blasphemy trial. On 22 July 2016, in Tanjung Balai, two months prior to Ahok's fateful visit to the Thousand Islands district, an ethnic Chinese Buddhist woman named Meliana went to buy bread at a neighbouring kiosk. There, she remarked to the kiosk attendant, Kasini, that the volume of the *adzan* or call to prayer at Masjid Al Maksum, a mosque only six metres from her home, had become conspicuously louder as of late. Meliana was alleged to have remarked to Kasini:

> *Kak,*[9] the speaker from the mosque never used to be so loud, now it seems quite noisy (Kantor Hukum Ranto Sibarani, S.H. & Rekan, 2018, p. 5).

On 29 July 2016, after rumours had abounded via message groups and word of mouth that a Chinese woman wearing shorts had complained about the *adzan* in general, rather than its heightened volume, vigilantes vandalised Meliana's home and burned a Buddhist monastery and 14 Buddhist statues to the ground. As in Ahok's case, agitators had distorted and recontextualised Meliana's comment. While Meliana would ultimately be charged with blasphemy on 30 May 2018, a series of events that preceded her arrest played a crucial role in her being charged.

On 28 December 2016, having recently spearheaded the *aksi 212* demonstration at Jakarta's central park, Medan Merdeka, in central Jakarta, the firebrand FPI leader Rizieq Shihab visited Medan to speak at an event endorsed by GNPF-MUI and the Movement Against the Abuse of

[9] Literally 'older sibling'.

Islam (*Gerakan Anti Pelecehan Agama Islam*) (Mulyartono, Rafsadi and Nursahid, 2018). As Mulyartono, Rafsadi and Nursahid (2018) from the Paramadina Centre for the Study of Religion and Democracy (PUSAD Paramadina), a university research centre, found:

> There is a strong chance that [Rizieq's] presence encouraged local police to continue to process Meliana's case. Police revealed that they did so despite the fact that they had difficulty building a case against her because the statements of three key witnesses, Lobe, Dai and Rif, differed considerably.

On 23 January 2017, eight people were charged and convicted of vandalism and issued with, on average, a one-month prison sentence, although police had initially identified 22 potential offenders in total (Mulyartono, Rafsadi and Nursahid, 2018). The next day, the local MUI branch issued Fatwa 001/KF/MUI-SU/I/2017. While the fatwa declared Meliana's remarks to be blasphemous, MUI had been hesitant to issue it; indeed, it only did so after Islamist pressure groups, including *Forum Umat Islam* (Islamic People's Forum), the now-prohibited *Hizbut Tahrir Indonesia* (Indonesian Party of Liberation), *Al Wasliyah*, and *Aliansi Mahasiswa dan Masyarakat Independen Bersatu* (AMMIB, the United Alliance of Independent Students and Society), placed significant pressure on MUI to act. The AMMIB, for example, demonstrated in front of, and sealed off access to, MUI's branch office in Tanjung Balai (Mulyartono, Rafsadi and Nursahid, 2018). Yet, significantly, and unlike Ahok's case, not one single member of the community reported Meliana to police; rather, police had to ask one of their own rank and file to lodge the initial complaint (Mulyartono, Rafsadi and Nursahid, 2018).

Eventually, on 30 May 2018, police arrested Meliana and charged her with blasphemy. Meliana – a wife and mother of four young children – was convicted of blasphemy on 21 August 2018 and sentenced to 18 months' jail. In finding Meliana guilty, the court noted that it had chosen to

disregard a subsequent conversation Meliana had had with persons who had objected to her initial remark regarding the volume of the *adzan*, in which she had sought to clarify and qualify the meaning of her words. The court, rather, found that Meliana's remarks had indeed "given rise to anger among the Islamic community" (*menimbulkan kemarahan umat Islam*) – as evidenced by their subsequent violent and destructive conduct – and that that anger that had been validated by the MUI fatwa issued on 24 January 2017 (Decision No. 1612/Pid.B/2018/PN Mdn., p. 94). In so doing, the Medan State Court, like the North Jakarta State Court in Ahok's case before it, adopted the reasoning of the Constitutional Court by prioritising the religious sensibilities of the Muslim majority over the accused's fundamental human rights as a religious minority. Meliana would appeal to the Medan High Court and Supreme Court on 22 October 2018 and 23 November 2018 respectively, but in both instances her appeals were dismissed (Saputra, 2019).

Meliana was a poor ethnic Chinese woman and a Buddhist. Her plight proved somewhat different from the subject of my next case study – another woman, but one who had little else in common with Meliana.

Sukmawati

The case of Sukmawati Soekarnoputri – the third daughter of Indonesia's first president Sukarno – was distinct from that of Ahok and Meliana for several reasons, but none more so than the fact that she was neither charged nor convicted of blasphemy. The fact that she was not meant that her constitutional guarantees to freedom of expression and the like were, in this instance, upheld. Sukmawati's case therefore emphasises the fact that Ahok and Meliana's constitutional rights, as well as certain other constitutional guarantees, such as those to the rule of law ('*Indonesia adalah negara hukum*') (article 1(3)) and legal certainty (*kepastian hukum*) (article 28D(1)), were not upheld.

On 30 March 2018, Sukmawati, a Muslim, recited a poem before an audience at Indonesian Fashion Week. The poem, entitled *Ibu Indonesia* (Mother Indonesia), contained the following:

> I don't know Islamic shari'a
> What I do know is that the *sari konde* (a wig in the shape of a traditional Javanese women's hairstyle) of Mother Indonesia is beautiful
> More beautiful than your niqab. ...
>
> I don't know Islamic shari'a
> What I do know is that the sound of Mother Indonesia's ballad is beautiful
> More dulcet than your *adzan* (call to prayer).

In response, Sukmawati was criticised by Islamist figures, including Felix Siauw and former secretary-general of FPI's Jakarta branch, Novel Bamukmin. More significantly, police received eight formal complaints claiming that Sukmawati's poetry recitation had blasphemed Islam, contrary to article 156a of the KUHP and/or constituted hate speech, contrary to article 16 of Law No. 40 of 2008 on the Eradication of Racial and Ethnic Discrimination.

On 4 April, five days after reciting her poem, Sukmawati called a press conference. There, she explained that her poem was not intended to offend. She expressed her pride and gratitude both as a Muslim and as the daughter of Sukarno, who, she reminded the media, was himself a respected figure of Muhammadiyah, Indonesia's largest reformist Islamic social organisation, and the recipient of an honorary degree from Indonesia's largest Islamic social organisation, Nahdlatul Ulama. Sukmawati also explained that the poem originated from a compilation of previously published poems, which, to her knowledge, had never caused any offence.

A day after Sukmawati's press conference, MUI held a press conference of its own. There, MUI Chairman Ma'ruf Amin reasoned that to perpetuate the controversy surrounding Sukmawati's comments would only give rise to public unrest. As Sukmawati had already apologised and seemingly realised the error of her ways, Ma'ruf both implored the police to cease its investigation and for would-be protestors to refrain from taking to the streets.

While seemingly sound in logic, Ma'ruf had offered a rather different logic at Ahok's trial. When giving evidence in court, Ma'ruf told the court that MUI had issued the Religious Opinion and Stance in response to Ahok's remarks because 'society had demanded it' (Decision No. 1537/Pid.B/2016/PN.Jkt Utr., pp. 128-129 and 135). He also told the court that MUI fatwas are generally directed at law enforcers in order to prevent societal discord and vigilantism (Decision No. 1537/Pid.B/2016/PN.Jkt Utr., p. 118). MUI knows full well, however, that its edicts have the opposite effect. Indeed, the issuance of its Religious Opinion and Stance preceded mass religious demonstrations, as many of its fatwas often do. Similarly, if its edicts are designed to maintain public order, why did Ma'ruf and MUI decide to address the controversy surrounding Sukmawati with a press conference rather than simply issue a fatwa?

Novel Bamukmin, who was also the first person to report Ahok to the police, told reporters that he believed Sukmawati was being spared the same fate as Ahok because of who her father was. As I have written elsewhere, Sukmawati's case suggests that 'displays of humility, coupled with nationalist pedigree and a traceable lineage to Indonesia's establishment, appear to have provided Sukmawati sufficient protection from the demands of religious populism' (Peterson, 2018). That said, displays of humility, nationalist pedigree, and ties to Indonesia's most prominent founding father, even if effective, are obviously not legitimate legal defences.

As mentioned, the broader problem appears to be that, as Arswendo Atmowiloto decried, in not one single blasphemy case have law enforcement officials or the judiciary ever provided a clear definition of blasphemy. Therein lies the perpetual problem to Indonesia's Blasphemy Law: no one knows, with any degree of certainty, what actually constitutes blasphemy. What many do know, however, is how to weaponise the Blasphemy Law to disrupt public order and to achieve one's own political ends. Such an arrangement, however, is contrary to the democratic guarantees of human rights enshrined in Indonesia's highest law, the 1945 Constitution, and therefore undermines Indonesian democracy. Furthermore, as I have noted above, the provisions further regulating religion and religious life contained in Indonesia's new KUHP have the distinct potential to only make life even more precarious for Indonesia's beleaguered religious minorities.

Conclusion

Sukmawati's escape from prosecution affirms Panggabean and Ali-Fauzi's argument that political and religious elites have the potential to play instrumental roles in cases such as these three case studies: they can either fan or extinguish the flames of blasphemy allegations, and they can either weaponise the Blasphemy Law or hold fire. Indeed, as Josef Kristiadi of the Center for Strategic and International Studies (CSIS), a leading policy thinktank in Jakarta, once explained to me, 'public opinion is the opinion of elites who contribute to the discourse' (Peterson, 2020, p. 76). It is therefore people with the clout of Ma'ruf Amin, now the Vice President of Indonesia and formerly of MUI, who can dictate how religious conflicts play out. It was unsurprising that President Jokowi's co-optation of Ma'ruf Amin as his vice president correlated with a drop – if not complete cessation – in the number of blasphemy trials and convictions.[10]

[10] A recent example is that of Lina Mukherjee, a Muslim and TikTok influencer who posted a video of herself saying an Islamic prayer before eating pork. A Palem-

But if a high-profile, albeit unelected, religious figure becomes the gatekeeper of such instances of conflict, or if religious zealots such as Rizieq Shihab have *carte blanche* to disrupt public order when they believe their religious sensibilities have been offended, this only affirms the theocratic nature of Indonesian statehood. Indonesia is not a theocratic state, and so this current arrangement needs to change. The provisions that further regulate religion and religious life in Indonesia's new criminal code, however, portend further instances of persecution.

Note: An abridged version of this article was published – in English and French – on the *Observatoire international du religieux* website, Bulletin No. 44, in July 2023. See: https://obsreligion.cnrs.fr/bulletin/islamism-blasphemy-and-public-order-in-contemporary-indonesia-english-version/.

bang cleric reported the video to police, alleging it was blasphemous, but the police ultimately decided not to press charges. For further discussion of the case, see Putra (2023).

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