



Bersihkan Madura D
Aliran² Sesat Dan Peni
Agama islam/Sesuai
1/PNPS/1965.

Bersihkan Sampang Dari
Aliran Sesat
Tajrol Murluk CS.

PROSECUTING BELIEFS

INDONESIA'S BLASPHEMY LAWS

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Cover photo: On 20 June 2013, thousands of people demonstrated in Sampang district, East Java, calling for the displaced Shi'a community living in temporary shelter at a sports complex to be evicted from the district because of their "deviant beliefs". © KontraS Surabaya

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CONTENTS

GLOSSARY	5
1. Introduction	6
1.1 Aim of the report	8
1.2 Methodology	8
2. CRIMINALIZATION OF BLASPHEMY	9
2.1 Constitutional protection of, and limitations on, freedoms of expression, thought, conscience and religion	9
2.2 Presidential Decree No. 1/PNPS/1965 and Article 156(a) of the Criminal Code	11
2.3 Judicial reviews of the blasphemy law	12
2.4 Blasphemy provisions in other laws	13
2.5 Institutions involved in the criminalization of blasphemy: The Bakor Pakem and the MUI	14
2.6 Expanding the criminalization of blasphemous acts	15
3. JAILED FOR THEIR BELIEFS	17
Case 1 – Tajul Muluk: Shi’a leader in East Java imprisoned	17
Case 2 – Andreas Guntur: Sect leader prosecuted for “deviancy”	19
Case 3 – Herison Riwu: Prosecuted for “inappropriate behaviour” in a church	19
Case 4 – Sebastian Joe: accused of insulting Islam	20
Case 5 – Alexander An: imprisoned for his atheist beliefs	21
4. HUMAN RIGHTS ANALYSIS	23
4.1 Freedom of expression	23
4.2 Freedom of religion or belief	25
4.3 The right to equality and non-discrimination	26
4.4 Arbitrary detention	26

4.5 Fair trial rights.....	26
5. IMPACT ON MINORITY RELIGIOUS COMMUNITIES.....	28
6. CONCLUSION AND RECOMMENDATIONS.....	31
APPENDIX	33
Individuals convicted in blasphemy cases in Indonesia between 2005-2014.....	33
ENDNOTES	41

GLOSSARY

ENGLISH

ICCPR International Covenant on Civil and Political Rights

INDONESIAN

AKI Mandate of the Greatness of God (a religious sect)
(Amanat Keagungan Ilahi)

Bakor Pakem Coordinating Board for Monitoring Mystical Beliefs in
(Badan Koordinasi Pengawasan Society
Aliran dan Kepercayaan/Bakor
Pakem)

FKAM Communication Forum of Mosque Activists
(Forum Komunikasi Aktivis Masjid)

FPI Islamic Defenders Front
(Front Pembela Islam)

KUHP Indonesian Criminal Code
(Kitab Undang-Undang Hukum
Pidana)

MUI Indonesian Ulema Council
(Majelis Ulema Indonesia)

Muspika (Musyawarah Pimpinan Sub-district consultative leadership
Kecamatan)

ITE Electronic Information and Transaction Law
(Undang-Undang Informasi dan
Transaksi Elektronik)

1. INTRODUCTION

“Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant [ICCPR]...”

UN Human Rights Committee, General Comment No. 34, para 48

Tajul Muluk, a Shi'a Muslim religious leader from East Java, was sentenced to two years' imprisonment for blasphemy by the Sampang District Court in July 2012, increased to four years on appeal. He had been displaced from his village with over 300 other Shi'a villagers in December 2011, when an anti-Shi'a mob of some 500 people attacked and burned houses, a school and a Shi'a place of worship in Sampang district, East Java province. In August 2012, there was another attack against Shi'a followers by an anti-Shi'a mob of around 500 people armed with sharp weapons and stones. One person was slashed to death while another victim was stabbed and badly injured. At least four people with serious injuries were treated at the Sampang hospital.

After the August 2012 attack, the community was evacuated to a temporary shelter at a sports complex in Sampang and lived there until June 2013 when they were forcibly evicted again by Sampang authorities and moved to a housing facility at least four hours away from their homes, where they have remained. They do not know how long they will remain there or what kind of support and protection, including food, healthcare and education for their children, they will receive from the authorities.¹

In January 2012, the Indonesian Ulema Council (*Majelis Ulema Indonesia*, MUI), a non-governmental association of Islamic clerics that issues religious opinions (fatwa), accused Tajul Muluk of “deviant teachings”. In March 2012 the East Java regional police charged him with blasphemy. He was convicted and imprisoned by the Sampang District Court in July 2012.

Such cases are not uncommon. Despite some positive human rights developments in Indonesia since the 1998 reform period, freedom of religion remains severely restricted. Law Number 1/PNPS/1965 on the Prevention of “Religious Abuse and/or Defamation”, commonly known in Indonesia as the blasphemy law (*Undang-Undang Penodaan Agama*), can be used to imprison people for as long as five years simply because they have peacefully exercised their right to freedom of expression or to freedom of thought, conscience or religion, which are protected under international human rights law (see section 4 below).² “Incitement”

provisions in Law No. 11/2008 on Electronic Information and Transaction (ITE) have similarly been used to criminalize protected expression. Both of these laws are often used to target individuals who belong to minority religions, faiths and opinions, and particularly those who adhere to interpretations of Islam that deviate from the mainstream form of Islam in Indonesia.

Concerns surrounding freedom of religion have long been raised widely both within Indonesia and internationally. Blasphemy laws such as those above are fundamentally incompatible with Indonesia's obligations under international human rights law and, specifically, violate legally binding provisions on freedom of expression, thought, conscience and religion, equality before the law and freedom from discrimination. Civil society, human rights groups and academic institutions in Indonesia raise the issue frequently in their reports,³ as do international human rights NGOs.⁴ Concerns have also been raised during Indonesia's human rights review by both UN treaty and UN Charter based bodies⁵ as well as in the annual human rights reports of other national and multilateral bodies.⁶

Amnesty International has documented and consistently raised the issue of restrictions on freedom of religion in Indonesia, including the prosecution of people under the blasphemy law. The organization, jointly with three other NGOs, submitted a legal brief ("amicus curiae") to Indonesia's Constitutional Court in connection with its judicial review of the blasphemy law in 2010 and has issued press releases, public statements, urgent calls for action, and submissions to international human rights mechanisms and other human rights forums on the issue.⁷

Amnesty International considers those imprisoned solely for their religious views or beliefs to be prisoners of conscience, and calls for their immediate and unconditional release. A number of such cases are included in this report. The criminalization of individuals for blasphemy has taken place in the context of growing restrictions on freedom of thought, conscience and religion during former President Susilo Bambang Yudhoyono's term in office (2004-2014).

WHAT IS A PRISONER OF CONSCIENCE?

Amnesty International considers as a prisoner of conscience a person imprisoned or otherwise physically restricted because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status – who has not used violence or advocated violence or hatred. The organization calls for their immediate and unconditional release.

Amnesty International has also documented increasing levels of harassment, intimidation and attacks against religious minorities, fuelled by discriminatory laws and regulations both at the national and local level.⁸

There have been numerous incidents of violence against religious minorities. These include attacks on, and burning of, places of worship and homes by mobs, in some cases resulting in the forced eviction of communities – including children – from their homes into temporary shelters and accommodation. In some such cases, despite having prior knowledge of threats against minority religious communities, the Indonesian police have not taken necessary preventive measures to stop the attacks or mobilize adequate numbers of police personnel to

protect the community.⁹

The presidency of Joko 'Jokowi' Widodo offers an opportunity to turn a page to a new era in which freedom of expression, thought, conscience and religion are genuinely respected in Indonesia. It is encouraging that President Widodo has signalled his commitment "to guarantee the protection and rights to freedom of religion and thought, as well as to take legal measures against violence in the name of religion" in his official vision and mission document during the recent presidential election campaign.¹⁰

1.1 AIM OF THE REPORT

The aim of this report is to highlight how laws criminalizing blasphemy continue to be used arbitrarily to imprison people who belong to minority religions or faiths, or whose beliefs are considered a deviation from the central tenets of the officially recognized religions in Indonesia. Using a number of illustrative cases it will highlight how individuals in various provinces in the country have been prosecuted purely for the peaceful expression of their beliefs in violation of Indonesia's human rights obligations to respect freedom of expression and freedom of thought, conscience and religion. In some cases, the authorities have also failed to adhere to fair trial standards. The report calls on the Indonesian authorities to better protect religious minorities as well as review and amend laws and policies, so that individuals holding minority religious beliefs or opinions can practice their faith or express their views without fear of criminalization.

1.2 METHODOLOGY

This report builds on Amnesty International's past work documenting human rights violations and abuses in the context of blasphemy laws in Indonesia. It is part of a wider programme of work to ensure that the Indonesian authorities adhere to their human rights obligations to guarantee the rights to freedom of expression and freedom of thought, conscience and religion.

The findings of this report are based primarily on a visit to Indonesia in October and November 2013. Amnesty International delegates visited Malang, Sidoarjo, Surabaya (East Java), Semarang (Central Java), Bandung, Ciamis (West Java), Muaro Sijunjung, Padang (West Sumatra) and Jakarta, meeting with individuals convicted for blasphemy, their lawyers, human rights activists and academics. This report also draws on decisions by the courts on cases under blasphemy laws, academic and other professional publications¹¹, and news monitoring of issues related to freedom of religion in Indonesia.

2. CRIMINALIZATION OF BLASPHEMY

"When we both want to prevent the development of deviant teachings in this country and address it properly, then in accordance with the rules of the game, we would request a fatwa [religious opinion from Islamic clerics] from the MUI [Indonesian Ulema Council]... [a] President cannot issue a fatwa. After a fatwa has been issued, the state agencies, in accordance with their mandate provided by the constitution and laws, will carry out their duty. This guideline is what we hope to continue in the future".

President Susilo Bambang Yudhoyono¹²

2.1 CONSTITUTIONAL PROTECTION OF, AND LIMITATIONS ON, FREEDOMS OF EXPRESSION, THOUGHT, CONSCIENCE AND RELIGION

The second amendment of the 1945 Constitution, enacted in 2000, guarantees freedom of expression, thought, conscience and religion.¹³ These rights are also protected in Law No. 39/1999 on Human Rights.¹⁴ Furthermore, freedom of thought, conscience and religion are recognized as non-derogable rights in Article 28I(1) of the 1945 constitution and Article 4 of Law No. 39/1999. However, these legal guarantees are subject to more, and more broadly interpreted, limitations than those permissible under international human rights law and standards, particularly the International Covenant on Civil and Political Rights (ICCPR). Article 28J(2) of the second amendment to the 1945 Constitution and Article 23(2) of Law No. 39/1999 on Human Rights stipulate that freedom of expression, thought, conscience and religion can be limited by other considerations established by law, including morality,

religious values, security and public order in a democratic society. Article 18 of the ICCPR does not include 'religious values' as a legitimate reason for imposing limitations and, while it permits certain limitations on the manifestation of religion or belief on certain grounds, including public order, stipulates that such limitations are permissible only if they meet a strict test of necessity (see chapter 4).

The use of Article 28J(2) as a limitation to the human rights provisions in Chapter XA (Article 28A-I) of the 1945 constitution has been upheld by the Constitutional Court in two key decisions: firstly in its 2007 decision on the constitutionality of the death penalty under the Law on Narcotics (No. 22/1997),¹⁵ and reaffirmed in its 2010 decision following judicial review of the blasphemy law, which is covered later in this chapter.¹⁶

The Constitutional Court, in their 2010 decision on the Judicial Review of Law No. 1/PNPS/1965, reaffirming the limitation of human rights on the grounds of religious values, in this instance in relation to freedom of expression, thought, conscience and religion, stated that:

"Limitation of human rights on the grounds of "religious values" as stipulated in article 28J(2) of the 1945 Constitution is one of the considerations to limit implementation of human rights. This is different from article 18 of the ICCPR which does not include religious values as a limitation of individual freedom".¹⁷

The limitation on the grounds of public order, which is recognised in the ICCPR as a permissible reason for imposing limitations on certain rights, has been interpreted expansively by the Constitutional Court which stated that forbidding the publication of different interpretations of religions adhered to in Indonesia is a form of preventive action of possible "horizontal conflict" or "social disunity" among the people.¹⁸

The UN Human Rights Committee, the expert body charged with interpreting the ICCPR and monitoring states' compliance with it, commenting on the scope of permissible limitations on certain rights under the ICCPR, has underlined that such restrictions must not be overbroad and must conform to the principle of proportionality; they must be the least intrusive measure which might achieve the legitimate purpose and proportionate to the interest to be protected. States imposing such restrictions must demonstrate the precise nature of the threat, and the necessity and proportionality of the specific action taken, and the imposition of such restrictions must not put in jeopardy the right itself. The Committee has also underlined Article 5(1) of the ICCPR which provides that "nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant".¹⁹

With regard to "public order" as a ground for imposing certain restrictions, Principle 22 of the Siracusa Principles²⁰, adopted in 1984 in a high-level international conference of distinguished independent experts in international law, underlines that "[t]he expression 'public order (ordre public)' as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (ordre public)".

Accordingly, rather than punishing people for protected forms of expression, the government should fulfil its obligation to ensure that all Indonesians can exercise their rights without fear of retaliation. As the Human Rights Committee has noted: "the obligation also requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities".²¹

Subsequent to its 2010 decision on the judicial review of the blasphemy law, the arguments made by the Constitutional Court have also been used by parliament to justify the inclusion of blasphemy provisions in a number of other laws, covered in the following sections of this chapter, which punish people for the peaceful exercise of their rights to freedom of expression, and freedom of thought, conscience and religion.

Article 28J(2) of the 1945 constitution is often used to justify regulations and bylaws that restrict freedom of expression, thought, conscience and religion.²² For instance, Article 28J(2), along with the blasphemy law, were used by the Minister of Religious Affairs, the Attorney General, and Minister of Home Affairs when they issued a Joint Ministerial Decree (No. 3/2008) in 2008 which forbids the Ahmadiyya, a religious group who consider themselves a part of Islam, but who, according to many Muslim groups, do not adhere to the accepted belief system²³ from promoting their activities and spreading their religious teachings.²⁴

2.2 PRESIDENTIAL DECREE NO. 1/PNPS/1965 AND ARTICLE 156(A) OF THE CRIMINAL CODE

In 1965, Indonesia enacted Presidential Decree No. 1/PNPS/1965 on the Prevention of "Religious Abuse and/or Defamation", which is more popularly known as "*Undang-Undang Penodaan Agama*" or the blasphemy law.²⁵ The Presidential Decree was passed by President Sukarno, the first president of Indonesia, to accommodate requests from Islamic organizations to prohibit mystical indigenous beliefs (*aliran kepercayaan*)²⁶ which they believed could tarnish existing religions in Indonesia.²⁷ President Sukarno signed the decree on 27 January 1965, but it was made law (Law No. 5/1969) in 1969 during President Suharto's administration. Most of the criminal prosecutions and convictions in Indonesia for acts considered as blasphemy are due to this Presidential Decree (see appendix at the end of this report).

The blasphemy law covers two types of blasphemous acts: deviation (*penyimpangan*) from the six officially recognized religions²⁸ and defamation (*penodaan*) of these religions as stipulated in Articles 1 and 4 respectively of Presidential Decree No. 1/PNPS/1965.²⁹ These two 'blasphemous acts' require different legal procedures leading to prosecution. Article 1 of the blasphemy law states that:

"Every individual is prohibited in public from intentionally conveying, endorsing or attempting to gain public support in the interpretation of a certain religion embraced by the people of Indonesia or undertaking religious based activities that resemble the religious activities of the religion in question, where such interpretation and activities are in deviation of the basic teachings of the religion".³⁰

Before a person can be prosecuted for a blasphemous act under Article 1 they must receive an administrative warning under Article 2(1). Article 2(1) provides that the Minister of Religion, the Attorney General and the Minister of Home Affairs can issue a joint decree to warn a person who has violated Article 1 by promoting deviant teachings. If the violation is committed by a religious organization, the President has the power to ban the group on the recommendation of the three authorities listed above. If there has been a warning or ban and the person or persons in the organization continues to act in breach of Article 1, then Article 3 provides that they can be prosecuted and, if convicted, imprisoned for a maximum of five years.

However in most blasphemy cases the prosecution has used Article 4 of the law which stipulates that:

“By a maximum imprisonment of five years shall be punished for whosoever in public deliberately expresses their feelings or engages in actions that:
a. in principle is hostile and considered as abuse or defamation of a religion embraced in Indonesia;
b. has the intention that a person should not practice any religion at all that is based on belief in Almighty God.”³¹

In 1966, this provision was incorporated as article 156(a) of the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP*) in section V of crimes against public order,³² and, unlike Article 1 of the law, can be used directly for prosecution without first providing an administrative warning under Article 2(1).

2.3 JUDICIAL REVIEWS OF THE BLASPHEMY LAW

In 2009, a coalition of NGOs and several prominent individuals³³ lodged an application for a judicial review with the Constitutional Court arguing that the blasphemy law contravened the right to religious freedom as set out in articles 28E and 29 of the Constitution. Amnesty International, jointly with three other NGOs, submitted a legal brief (“amicus curiae”) to Indonesia’s Constitutional Court in connection with this judicial review, submitting that the blasphemy law and Article 156(a) of the Criminal Code were in contravention of international human rights law on freedom of expression, freedom of religion, and equality.³⁴

The Constitutional Court upheld the validity of the blasphemy law on the grounds of “public order” and “religious values” as set out in Article 28J(2) of the Constitution³⁵. The limitation related to “public order” was defined widely to include matters of national stability, reflecting concerns that “chaos” may erupt if the blasphemy law was repealed. The court held that the State had the right to intervene in the convictions or beliefs of a group and prohibit teachings in the interests of public order.³⁶ According to the Constitutional Court, if there was no regulation to criminalize acts of blasphemy, it could cause “horizontal conflict, social unrest, social disunity and hostility within society.”³⁷ The Constitutional Court reaffirmed this position in their decision following a second judicial review on Article 4 of the blasphemy law and Article 156(a) of the Criminal Code in 2013.³⁸ In these decisions, the Constitutional Court made it clear that it considers non-orthodox religious teachings, different interpretations of certain beliefs and even criticism of certain religious values a threat to

public order or political stability.³⁹

Aside from public order, the other ground that the court explicitly used to justify the blasphemy law was “religious values”. The court stated that the “limitation on human rights based on the consideration of religious values as referred to in Article 28J(2) of the 1945 Constitution is one of the considerations to limit human rights”.⁴⁰ The court rejected the idea that the mention of only six religions as set out in the Elucidation to Article 1 of the blasphemy law discriminated against other religions and beliefs. The court reasoned that although these six religions are officially supported by the State, this did not preclude or prohibit a person from practicing another religion or belief, and therefore does not constitute discrimination.⁴¹

2.4 BLASPHEMY PROVISIONS IN OTHER LAWS

The blasphemy provisions in the Presidential Decree No. 1/PNPS/1965 have also inspired the use of similar provisions in more recently enacted laws. At least two laws have been used to prosecute people accused of “defaming religion”. Firstly, two sections of Law No. 11/2008 on Electronic Information and Transaction (*UU Informasi dan Transaksi Elektronik* or ITE Law) are used. Although Article 28(2) of this law speaks of information “aimed to inflict hatred or hostility [against] individuals,” it has in practice also been used to prosecute individuals who have been accused of defaming or insulting a religion online. Article 28(2) of the ITE Law applies to:

“Any person who deliberately and without right disseminates information aimed to inflict hatred or hostility on individuals and/or certain groups of community based on ethnic groups, religions, races and inter-groups (antargolongan).”⁴²

Under the ITE Law, any individual convicted could face up to six years’ imprisonment and a fine of up to 1 billion rupiah (US\$82,610).⁴³ This penalty is higher than the provisions found under Law No. 1/PNPS/1965 on the Prevention of “Religious Abuse and/or Defamation”. It appears that the Courts now prefer to sentence individuals convicted of committing blasphemy or defamation of religion with harsher punishments under the ITE Law rather than using the Presidential Decree No. 1/PNPS/1965 or Article 156(a) of the Criminal Code.⁴⁴ Since 2008 at least three people have been convicted for acts deemed blasphemous or defaming religion under Article 28(2) of ITE Law.⁴⁵

Another provision, Article 27(3), of the ITE law has also been used in one case (see below) for prosecution of an act deemed blasphemous or defaming religion. The article applies to:

“Any person who deliberately and without right distributes and/or transmits and/or makes electronic information and/or documents accessible that contains insulting and/or defaming content”.⁴⁶

Abraham Sujoko was convicted in West Nusa Tenggara province in June 2014 by the Dompu District Court for committing “defamation of religion” under Article 27(3) of the ITE Law, and sentenced to two years’ imprisonment and a fine of three and a half million rupiah (US\$288).⁴⁷ Sujoko posted a video of himself on YouTube saying that Ka’bah (an Islamic holy shrine in Mecca) was a mere stone idol. He also urged the Muslims not to pray facing

the *qiblah* (direction of the Ka'bah).⁴⁸

However, Article 27(3) of the ITE Law is mostly used to prosecute defamation generally, rather than for expression deemed blasphemous, which is most often prosecuted under Article 28(2) of the ITE Law.⁴⁹

The government is reportedly planning to revise provisions in the ITE Law related to criminal defamation.⁵⁰ In this context, the Ministry of Communication and Information, which is overseeing the revisions, is proposing tougher fines for acts “aimed to inflict religious hatred” under the ITE Law.⁵¹

A second law used to prosecute people accused of blasphemy is Law No. 23/2002 on the Protection of Children, which stipulates in Article 86 that:

*“Any person who deliberately uses deception, a series of lies or persuades a child to choose another religion not of his/her own will, even though the perpetrator knows or should know that the child is not sufficiently intellectually developed and responsible enough to make such a choice in accordance with their religion shall be punished with imprisonment of 5 (five) years and/or a maximum fine of Rp 100,000,000 (one hundred million rupiah, US\$8,252)”.*⁵²

This provision has been used by the East Lampung district court to convict two members of the Baha'i faith to five years' imprisonment in 2010 for allegedly trying to convert Muslim children to the Baha'i faith.⁵³ The two Baha'i members, Syahroni and Iwan Purwanto, along with another man, who was a Muslim, ran an informal Sunday school for both Baha'i and non-Baha'i children aged between 11 and 14 years in their neighbourhood. The children were taught numerous subjects including morality and ethics, respecting parents and social harmony. After learning about the informal school, some of their neighbours accused Syahroni and Iwan Purwanto of trying to convert Muslim children to the Baha'i faith. Initially they pressured Syahroni and Iwan Purwanto to convert to Islam or leave the village. After refusing these options, they were reported to police.⁵⁴

2.5 INSTITUTIONS INVOLVED IN THE CRIMINALIZATION OF BLASPHEMY: THE BAKOR PAKEM AND THE MUJ

The role of the state in religious affairs in Indonesia has a long history, including establishing government bodies monitoring any mystical indigenous beliefs (*aliran kepercayaan*) deemed as a potential threat to social order.⁵⁵ One of these bodies is the Coordinating Board for Monitoring Mystical Beliefs in Society (*Badan Koordinasi Pengawasan Aliran dan Kepercayaan/Bakor Pakem*, or Bakor Pakem). The Bakor Pakem was initially set up under the Ministry of Religion in 1952, but it was moved under the Attorney General's Office in 1984.⁵⁶ It is tasked to receive information about any beliefs in society and to assess whether those beliefs can disrupt public order.⁵⁷ Bakor Pakem then submits its findings or recommendations to the Attorney General. It has structures at the national, provincial and district level alongside the Attorney General's Office and its corresponding structures, which chair the Bakor Pakem at each level, and is connected to other state agencies, including the police, military, intelligence service, Ministry of Religion, Ministry of Home Affairs, and Ministry of Education and Culture.⁵⁸

Although the Bakor Pakem has a mandate to undertake investigations and to monitor any beliefs deemed as “deviant”, according to an Indonesian human rights activist the Indonesian Ulema Council (MUI), a non-governmental body formed as an association of Islamic clerics, has been in reality more influential in the prosecution of blasphemy cases in the courts.⁵⁹ The main task of the MUI is to issue religious opinions (fatwas) as guidance for Indonesian Muslims to practice their religious beliefs.⁶⁰ The fatwas of the MUI are not legally binding decisions in the Indonesian criminal justice system.⁶¹ The MUI has structures at the national, provincial and district level and all such structures have the authority to issue a fatwa.⁶²

The MUI began to gain more influence in 2005 after receiving open political support from former President Yudhoyono, who invited the MUI to make recommendations to shape government policy,⁶³ including asking the MUI to produce guidelines to be implemented by the government to prevent the development of “deviant religious teaching (*aliran sesat*)”.⁶⁴ The MUI has issued fatwas against “liberalism, pluralism and secularism”⁶⁵ and declared the Ahmadiyya as being “outside of Islam and deviant”.⁶⁶ In 2007, the MUI issued a fatwa on 10 guidelines for determining whether a belief can be considered deviant.⁶⁷ The head of the MUI fatwa committee, KH Ma'ruf Amin, was also appointed as the Chairman of the Presidential Advisory Council (*Dewan Pertimbangan Presiden/Wantimpres*)⁶⁸ for religious affairs during Yudhoyono's presidency.⁶⁹

2.6 EXPANDING THE CRIMINALIZATION OF BLASPHEMOUS ACTS

At the end of the 2010 judicial review of the blasphemy law, the Constitutional Court advised that it should be revised to avoid misinterpretation in its implementation, although the court stated it was not its remit to actually amend it.⁷⁰

Instead, there are two current initiatives by Indonesian authorities to expand blasphemy offences in Indonesia's criminal justice system.⁷¹

The revision of the Criminal Code (KUHP) has been the subject of a long-standing discussion in parliament. The current draft of the Criminal Code contains, among other things, new provisions on criminalizing blasphemy⁷², including additional provisions related to blasphemy, defamation of, or insult to religions:⁷³

- Publicly expressing feelings or acts that are insulting a religion adhered to in Indonesia (Article 341);⁷⁴
- Publicly insulting the greatness of God, His word and nature (Article 342);⁷⁵
- Publicly mocking, tainting or degrading religion, messengers of God (*rasul*), Prophets, Holy Scripture, religious doctrine or religious worship (Article 343);⁷⁶
- Broadcasting, showing or displaying text or images, so that is seen by the public, or playing a recording that is heard by the public, which contains criminal offenses referred to in Article 341 or Article 343, with an intention of the contents of writings, drawings, or the recording to be known or more known by the public (Article 344(1));⁷⁷

- Engaging in public incitement in any form for the purpose of negating belief in a legitimate religion adhered to in Indonesia (Article 345).⁷⁸

A Draft Law on Inter-Religious Harmony (*Rancangan Undang-Undang Kerukunan Umat Agama*) initiated by the Indonesian parliament not only maintains Articles 1 and 4 of the Presidential Decree No. 1/PNPS/1965 on the Prevention of the Abuse and/or Defamation of a Religion, but also creates other offences.⁷⁹ The draft law uses vague language in criminalizing acts considered blasphemous or insulting to religion, including:⁸⁰

- Using threatening spoken or written words and/or behaviour towards other faiths;
- Printing and publishing writing and/or pictures that defames or threatens people of other faiths;
- Publicly performing with words and/or behaviour not in accordance with the teachings of religious propriety; or distributing, showing and playing recording, either images or in audio, insulting, threatening and not in accordance with the teachings of religious propriety;
- Discrediting other religions and considering their religion as the most righteous;
- Spreading deviant teachings;
- Distributing pamphlets, magazines, newsletters, books and other forms of publishing or printing, to a person or group of people who have embraced another religion, and conducting visits from house to house of people who have embraced another religion.

The Bill on Inter-Religious Harmony was included in the 2011 national legislation programme but it has not been included in the annual legislation programme since then.

3. JAILED FOR THEIR BELIEFS

“I’m always ready and prepared for a discussion or debate on any issue with other Islamic groups. I’m ready if any other ulemas [Islamic clerics] disagree with me, but I’m very disappointed that they criminalised and prosecuted me instead of just debating with me.”

Tajul Muluk⁸¹

Since 2005 Amnesty International has recorded at least 106 individuals who have been prosecuted and convicted under blasphemy laws detailed in the previous chapter. They are mostly from religious minorities or express religious beliefs that are considered a deviation from the central tenets of the officially recognized religions (see appendix at the end of this report).⁸²

Although the blasphemy law (Presidential Decree No. 1/PNPS/1965) and Article 156(a) of the Criminal Code were enacted in 1965, they were used to prosecute only around 10 individuals between 1965 and 1998, when former President Suharto was in power during which time the right to freedom of expression was severely curtailed.⁸³ The increase in the number of blasphemy prosecutions coincides with the democratic transition during the post-1998 reform period, in which the Indonesian government has frequently made public commitments to promote human rights values, including religious tolerance and pluralism, and to uphold the right to freedom of religion.

The following are some illustrative cases of individuals prosecuted and convicted for blasphemy in recent years:

CASE 1 – TAJUL MULUK: SHI’A LEADER IN EAST JAVA IMPRISONED⁸⁴

Tajul Muluk, aged 41, a Shi’a Muslim religious leader from East Java, is currently serving a four-year sentence for blasphemy under Article 156(a) of the Indonesian Criminal Code.

Tajul Muluk set up a religious boarding school in Nangkrenang village, Sampang, Madura Island, East Java in 2004 and was the principal of the school. In 2006, Sunni Muslim leaders in the village and religious authorities began to object to his Shi'a teachings which they considered 'deviant'. After this there were numerous threats and acts of intimidation against him and other Shi'a followers in the village.

On 29 December 2011, Tajul Muluk had to leave his village after he and his Shi'a followers were attacked by some 500 people. Afterwards, Tajul Muluk and about 20 other villagers, including his family, were prevented from returning to the village by the attackers, who reportedly threatened to kill them if they returned, and by the police.⁸⁵ On 1 January 2012 a religious decree (fatwa) was issued by the Sampang branch of the Indonesia Ulema Council (MUI) about what was described as Tajul Muluk's "deviant teachings" and on 16 March, the East Java regional police charged Tajul Muluk with blasphemy under Article 156(a) of the Indonesian Criminal Code.

According to Tajul Muluk's lawyers, before he was arrested various local state agencies including the police, the military, local government authorities, the local prosecutor office and representative from the judiciary attended a meeting in which they concluded that Tajul Muluk's teaching was "deviant" and that he could be prosecuted under the blasphemy law.⁸⁶ Human rights activists also told Amnesty International that they were told by the head of East Java Police Force that initially the police were reluctant to charge Tajul Muluk but proceeded after facing pressure from the Sampang District Head (Bupati).⁸⁷

On 12 July 2012 Tajul Muluk was convicted and sentenced to two years' imprisonment for blasphemy by the Sampang District Court. In particular, the court found him guilty of saying the Qur'an that Muslims were using was not the original text. Tajul Muluk has denied these allegations. He appealed the decision to the higher court. His sentence was increased on appeal to four years on 10 September 2012 by the Surabaya High Court to have a "deterrent effect" and because Tajul Muluk had caused "disharmony among Muslims". On 17 January 2013 his appeal was rejected by the Supreme Court. He has no other legal avenues through which to appeal.



Shi'a religious leader Tajul Muluk during his trial, Sampang District Court, Indonesia, 2012.

© Otman Ralibi

Local authorities have prohibited the Shi'a community to which Tajul Muluk belongs from returning to the village where they lived before the mob drove them out by issuing an official ban, claiming their safety cannot be guaranteed. In August 2012 they were first moved by local authorities to a temporary shelter with minimal facilities at a sports complex in Sampang, where they lived for 10 months. On 21 June 2013, the Sampang district authorities forcibly moved the community to a housing facility in Sidoarjo, East Java where they continue to live today. They do not have any access to their property nor opportunity to earn a livelihood. They depend on government support for water, electricity and food in the housing facility.⁸⁸

CASE 2 – ANDREAS GUNTUR: SECT LEADER PROSECUTED FOR “DEVIANCY”

Andreas Guntur, aged 40, the local leader of Amanat Keagungan Ilahi (AKI), a religious sect in Central Java province, was sentenced to four years' imprisonment for blasphemy in March 2012. AKI apparently draws on divine inspiration received by its founder, reportedly referencing Qur'anic verses but rejecting conventional Islamic rituals.⁸⁹ Since 1982 the Serang District Attorney (Kejaksaan Negeri Serang) had issued a ban on all AKI's activities in West Java province and in 2009, the Indonesian Ulema Council (MUI) issued a religious edict (fatwa) against AKI for its “incorrect interpretations of Islamic teachings”.⁹⁰

On 14 October 2011, Andreas Guntur was holding a gathering with his followers in Girimulyo village in Klaten district, Central Java, when members of the sub-district consultative leadership (*Musyawarah Pimpinan Kecamatan/Muspika*) including the sub-district head (*camat*), local police and military, as well as Islamic organizations, including FKAM (Forum Komunikasi Aktivis Masjid or Communication Forum of Mosque Activists) stormed his house.⁹¹ They accused him and AKI of deviant teachings, pointing to a series of posters in his house with religious wordings in Arabic that were not from the Qur'an.

According to Andreas Guntur, the posters were for private use and had been given to him by an AKI spiritual leader in Jakarta who had used the words on the posters to cure him from an illness he had suffered. Since then he had been attracted to these teachings and wanted to heal others through prayer.⁹²

Andreas Guntur was then arrested and charged under Article 156(a) of the Indonesian Criminal Code for blasphemy. His arrest was conducted jointly by FKAM and members of the *Muspika*, including the *camat*, the local police and military. During his trial the court was heavily guarded by the Klaten district police as dozens of members of various Islamic organizations including the Islamic Defenders Front (FPI), a hard-line Islamist group⁹³ were present.

He was sentenced to four years' imprisonment in March 2012 by the Klaten district court under Article 156(a) of the Criminal Code. The decision was later upheld by the Central Java High Court in April 2012 and the Supreme Court in August 2012.⁹⁴

CASE 3 – HERISON RIWU: PROSECUTED FOR “INAPPROPRIATE BEHAVIOUR” IN A CHURCH

Herison Yohanis Riwu, aged 30, was imprisoned for blasphemy in the province of East Nusa

Tenggara in 2012.

According to court documents, on the morning of 15 July 2012, Herison, a Protestant Christian, walked into the Stasi Arnoldus Yanssen Wolowona Catholic Church in Ende district to attend a service. When the Catholic Holy Communion took place during the service, he accepted the host. Witnesses at his trial said that he did not accept it correctly according to Catholic practice.

Herison was detained by a member of the congregation after the service and handed over to the police. He was charged by the police for blasphemy against the Catholic Church under Article 156(a) of the Criminal Code and tried at the Ende District Court. He was sentenced to 18 months' imprisonment on 7 November 2012. The Kupang High Court upheld his sentence in January 2013.⁹⁵

CASE 4 – SEBASTIAN JOE: ACCUSED OF INSULTING ISLAM

Sebastian Joe bin Abdul Hadi, aged 40, from Ciamis, West Java, was sentenced to five years' imprisonment for blasphemy in 2012.

In mid-2012 the Islamic Defenders Front (FPI), a hard-line Islamist group, filed a report to the police against Sebastian Joe for his "deviant" views.⁹⁶ They alleged that he had posted statements on Facebook which insulted Islam and that he appeared to be creating a new religion.

On 3 July 2012, around 20 members of the FPI local chapter raided Sebastian Joe's house with some police officers⁹⁷, claiming it was the headquarters of a deviant sect.⁹⁸ He was detained by the group before he was then taken to the Ciamis sub-district police station where he was charged with blasphemy. During his trial, members of FPI and Soldiers for the Defence of Islam were present.⁹⁹ His wife, who they also accused of deviant beliefs, was pressured by FPI members to publicly declare her Muslim faith in front of the local mosque; otherwise, they would report her, too, to the police for committing blasphemy. The FPI members claimed they had enough evidence from her Facebook page to prove it.¹⁰⁰



Outside Sebastian Joe's blasphemy trial, Ciamis, West Java, 2012.

@Kabar Priangan

During his trial, Sebastian Joe stated that he believed his postings on Facebook were made in accordance with "his right to freedom of thought, conscience or belief of his choice and the freedom to exercise his own religion or belief as guaranteed by the Indonesian Constitution and other laws."¹⁰¹

Sebastian Joe was convicted and sentenced to four years' imprisonment for blasphemy in November 2012 by the Ciamis District Court under Article 156(a) of the Criminal Code. In January 2013, the Bandung High Court increased his sentence to five years' imprisonment for "disseminating information aimed at inciting religious hatred or hostility" under Article 28(2) of the Electronic Information and Transactions (ITE) Law.¹⁰²

CASE 5 – ALEXANDER AN: IMPRISONED FOR HIS ATHEIST BELIEFS¹⁰³

Alexander An (Aan), a 30 year old civil servant from Pulau Punjung subdistrict in West Sumatera province, was imprisoned for blasphemy in June 2012.



Alexander An, November 2013

© Amnesty International

Aan was accused of atheism and for posting statements and pictures on his personal Facebook site and on the "Minang atheist" Facebook group, which some people construed as insulting Islam and the prophet Mohammad. According to his lawyers, his postings on Facebook had been printed and distributed by his colleagues.¹⁰⁴

On 18 January 2012, an angry crowd, who had heard about his alleged Facebook posts, gathered at his workplace and threatened to beat him. Police officers intervened and took him to the Pulau Punjung Sub-District police station, allegedly for his safety. His lawyers told Amnesty International that the police asked him to repent but when Aan refused he was charged.¹⁰⁵ The police did not take any action against those who attacked him. But on 20 January he was charged with "disseminating information aimed at inciting religious hatred or hostility" under Article 28(2) of the Electronic Information and Transaction (ITE) Law, blasphemy under Article 156(a) of the Criminal Code and calling for others to embrace atheism under Article 156(b) of the same code.

Aan's trial began at the Muaro District Court on 2 April 2012. On 14 June the court convicted him and sentenced him to two and a half years' imprisonment and a fine of 100 million rupiah (US\$10,600) for violating the ITE Law.

In their ruling the judges stated that publicly declaring his atheistic beliefs was not allowed under the state ideology of Pancasila¹⁰⁶ and the Indonesian Constitution, which obliges every citizen to believe in God, and that his beliefs "disturbed public order".¹⁰⁷ He was released in January 2014 after serving his prison term, but now has to live in a different province to avoid any harassment by religious groups for being labelled as 'insulting religion'.¹⁰⁸

* * *

Amnesty International considers all those detained or imprisoned – as the five individuals mentioned above – solely for their religious views or beliefs, or for the peaceful exercise of their right to freedom of expression, to be prisoners of conscience, and calls for their immediate and unconditional release.

At the end of this report Amnesty International provides a list of 106 individuals who have been jailed under the blasphemy laws.

4. HUMAN RIGHTS ANALYSIS

Indonesia acceded to the ICCPR (the International Covenant on Civil and Political Rights) in 2006.¹⁰⁹ The ICCPR provides the principal legal framework for Indonesia's international obligations in relation to the protection of freedom of thought, conscience and religion or belief (Article 18), freedom of opinion and expression (Article 19) and equality before the law and the prohibition of discrimination (Articles 2, 26 and 27). Indonesia is required, both under the ICCPR itself and under general international law, to enact legislation to give domestic effect to its provisions and to bring domestic laws in line with the ICCPR.¹¹⁰

The blasphemy laws and their implementation, as described in this report, violate a number of rights which, as a state party to the ICCPR, Indonesia has an international obligation to respect and ensure. Specifically, it must refrain from violation of the rights recognized by the ICCPR, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. In particular, if any such restrictions are made, the authorities must demonstrate their necessity and only take such measures as are proportionate to the pursuance of a legitimate purpose expressly permitted under the ICCPR; in no case may the restrictions be applied or invoked in a manner that would impair the essence of the right. Moreover, the state must protect individuals not just against violations of those rights by its own agents, but also against acts committed by non-state individuals or entities that would impair the enjoyment of those rights.¹¹¹

4.1 FREEDOM OF EXPRESSION

The blasphemy laws and their implementation violate Indonesia's international legal obligations to respect and protect the right to freedom of expression.

Article 19(1) of the ICCPR states that everyone has the right to hold opinions without interference and Article 19(2) states that everyone has the right to freedom of expression, including to impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice.

Under Article 19(3) of the ICCPR, certain restrictions on the exercise of the right to freedom of expression may be permissible, for the purpose of ensuring respect for the rights of others, or the protection of national security or of public order, or of public health or morals, but only where such restrictions are provided by a precisely formulated law which complies with human rights, are demonstrably necessary and proportionate to the stipulated purpose, and do not put in jeopardy the right itself. In the case of any such restrictions, the authorities must demonstrate in specific and individualised fashion the precise nature of the threat and specifically how it relates to the expression being restricted, and the necessity and proportionality of the specific action taken. Restrictions must not be overbroad – they must conform to the principle of proportionality and must be the least intrusive instrument amongst those which might achieve their protective function and proportionate to the interest

to be protected; the principle of proportionality must be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law.¹¹²

Article 5(1) of the ICCPR states that “nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant”. In line with their obligation to respect and protect the right to freedom of expression, the Indonesian authorities should take effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression.¹¹³

In particular, the prohibition in the blasphemy law of the “public endorsement of a deviation from the basic teachings” of certain religions of the people of Indonesia violates freedom of expression, as do the other laws described above which are applied to penalise deviation from mainstream religious beliefs, or criticism of such beliefs. The ICCPR does not allow restrictions to be placed on the exercise of the right to freedom of expression for the purposes of ensuring respect for religions or protecting them from “defamation”. The ICCPR protects the rights of individual persons and, in some instances, of groups of persons, but does not protect abstract entities such as religions, beliefs, ideas or symbols. Specifically, the UN Human Rights Committee has criticized blasphemy laws and noted that restrictions on the right to freedom of expression should not “be used to prevent or punish criticism of religious leaders or commentary on religious doctrine or tenets of faith.”¹¹⁴ Similarly, the UN Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion has stated that limitations on the right to freedom of expression were “designed in order to protect individuals against direct violations of their rights” and “are not designed to protect belief systems from external or internal criticism.”¹¹⁵

While states can and should prohibit the advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, this is not the target of the blasphemy law or other laws prohibiting blasphemy.

International human rights law requires states to prohibit advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence (often called “hate speech”), as provided in Article 20(2) of the ICCPR. However, such prohibitions must be very precisely formulated to cover only forms of expression which contain both the element of advocacy of national, racial or religious hatred and the element of incitement against the people concerned; the prohibition does not include defamation, insult or criticism of religions, beliefs, symbols or institutions as such. Any such prohibition must also meet the criteria of demonstrable necessity and proportionality for a legitimate purpose, as described above. The issue of “hate speech” was the focus of the 2012 Rabat Plan of Action, the outcome document of a consultative process involving three UN Special Rapporteurs (on freedom of opinion and expression; on freedom of religion or belief; on racism, racial discrimination, xenophobia and related intolerance) and over 45 experts on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.¹¹⁶ Among other things the Rabat Plan of Action concludes that “the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or a belief that is free from criticism or ridicule” and

recommends that “states that have blasphemy laws should repeal these as such laws have a stifling impact on the enjoyment of freedom of religion or belief and healthy dialogue and debate about religion.”¹¹⁷

4.2 FREEDOM OF RELIGION OR BELIEF

The provisions in the blasphemy law also violate international human rights law on freedom of religion or belief.

Article 18(1) of the ICCPR states that the right to freedom of thought, conscience and religion includes both the right to hold beliefs and the right to manifest them individually or in community with others and in private or public through worship, observance, practice and teaching.

Further, freedom of religion or belief prohibits the ban provided for by the blasphemy law on diverse interpretations of religious concepts. The law prohibits forms of expression and activities which are “in deviation of the basic teachings” of a “certain religion embraced by the people of Indonesia”. This prohibition seriously conflicts with the right to freedom of religion or belief, which necessarily covers the protection of individuals with diverse interpretations of religions and protects their ability to hold and manifest their religious beliefs.

The Human Rights Committee has stated that the terms “belief” and “religion” are to be broadly construed and include theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. Moreover, it has underlined that Article 18 of the ICCPR is not limited in its application to traditional religions or to religions and beliefs, and has expressed concern about tendencies to discriminate against any religion or belief or religious minorities that may be the subject of hostility on the part of a predominant religious community.¹¹⁸

The UN Special Rapporteur on freedom of religion or belief has also emphasised that “the terms ‘religion’ and ‘belief’ are to be interpreted in a broad sense and that human rights protection is not limited to members of traditional religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The contents of a religion or belief should be defined by the worshippers themselves”.¹¹⁹ Furthermore, as the Human Rights Committee has clarified, the “freedom from coercion to have or to adopt a religion or belief... cannot be restricted”.¹²⁰ Therefore, laws that in effect coerce a person or a group to adopt a religion or belief different from that which they would freely choose, because they induce a fear of prosecution, are contrary to Article 18 of the ICCPR.

The ICCPR makes clear that no restrictions are permissible on the right to hold (or not to hold) religious or other beliefs, or opinions generally known as the *forum internum* or internal private dimension of religion or belief.¹²¹

Article 18(2) explicitly underlines that no one shall be subject to coercion which would impair their freedom to have or to adopt a religion of their choice. Article 18(3), like Article 19(3) in respect of freedom of expression, permits certain limitations to be imposed on the freedom to manifest one's religion or beliefs, but only if such limitations are provided by law

and necessary to protect public safety, order, health or morals or the rights of others. As in the case of restrictions on the exercise of the right to freedom of expression, the UN Human Rights Committee has stressed that this provision must be strictly interpreted, and must not be applied in a manner that would jeopardize the right itself. Limitations may be applied only for those purposes for which they were prescribed and cannot be restricted for reasons other than those stated in Article 18(3) of the ICCPR; they must be directly related and proportionate to the specific need on which they are predicated; they may not be imposed for discriminatory purposes or applied in a discriminatory manner.¹²²

4.3 THE RIGHT TO EQUALITY AND NON-DISCRIMINATION

The right to equality before the law and the protection of all persons against discrimination including on the basis of religion is protected by Articles 2, 26 and 27 of the ICCPR.

The blasphemy laws discriminate against individuals who express or wish to express religious views “in deviation of the basic teachings” of “a certain religion embraced by the people of Indonesia”, as well as individuals of other religions or beliefs or non-belief. Such individuals are in constant danger of falling foul of the blasphemy laws. In this way, they are discriminated against in the exercise of their freedom of religion or belief.¹²³

4.4 ARBITRARY DETENTION

As noted above, Amnesty International considers that individuals who are detained or imprisoned for the peaceful exercise of their right to freedom of expression or of thought, conscience or religion or belief, are prisoners of conscience, and calls for them to be immediately and unconditionally released. With respect to those who are detained or imprisoned on such grounds, the UN Working Group on Arbitrary Detention has reiterated that: “[i]nternational law does not permit restrictions on the expression of opinions or beliefs which diverge from the religious beliefs of the majority of the population or from the State prescribed one”,¹²⁴ and it has underlined that deprivation of liberty which results from the exercise of the right to freedom of expression or thought, conscience or religion is arbitrary detention, prohibited under international law, including Article 9 of the ICCPR.¹²⁵

4.5 FAIR TRIAL RIGHTS

“The MUI issued a fatwa that Shi’a’s are deviant on 1 January 2012, and then on 3 January someone filed a report about Tajul Muluk committing religious defamation. On 4 January there was a meeting between the local government, the MUI, the police, the military, the prosecutor office and representatives from the judiciary. In the meeting they had already concluded that Tajul Muluk’s teachings were deviant...so why do we need any trial?”

Othman Ralibi, Tajul Muluk’s lawyer¹²⁶

The right to a fair trial is a fundamental safeguard to ensure that individuals are not unjustly punished, and is protected by international human rights law, including the ICCPR. While Amnesty International considers those imprisoned for blasphemy as prisoners of conscience, who should not have been arrested or imprisoned at all, there are also concerns that the

proceedings in their cases have often failed to meet international fair trial standards.

Amnesty International is concerned that in a number of the illustrative cases documented in chapter 3 of this report, religious groups and other mass organizations packed courtrooms during trials, creating an intimidating atmosphere for the accused and their lawyers as well as for judges overseeing the trial. According to the Human Rights Committee “a hearing is not fair if the defendant in criminal proceedings is faced with the expression of a hostile attitude or support for one party in the courtroom that is tolerated by the court, thereby impinging on the right to defence.”¹²⁷ In at least one case interpreters were not provided and judges dismissed the testimony of witnesses because of their religious beliefs.

■ During Sebastian Joe’s trial at the Ciamis District Court, the courtroom was filled with members of the local FPI chapter. During the trial they often threatened the lawyers, shouting “just behead the lawyers!” and broke flower pots just outside the court room.¹²⁸ No action was taken against them.

■ During Andreas Guntur’s trial at the Klaten District Court, members of several local chapters of Islamic organizations, such as FKAM and MMI (Majelis Mujahidin Indonesia), filled the courtroom and, according to a local NGO monitoring the trial, shouted at the judges, pressured them to find Andreas guilty.¹²⁹ His lawyers requested that the trial be moved to another location for security reasons.¹³⁰ However, the court ruled against the request.

■ In Tajul Muluk’s case, local civil society organizations raised a number of irregularities with the trial. Firstly, his lawyers’ request to the Supreme Court for the location of the trial to be moved on the basis that Sampang was hostile to Shi’a followers was ruled out.¹³¹ According to Tajul Muluk’s lawyers this prevented a number of expert witnesses on the side of the accused testifying.¹³² The hearing was conducted in Indonesian but the Courts did not provide an interpreter for the many witnesses who only spoke Madurese (the predominant language in Sampang). Translation was reportedly done by the judges. The judges also dismissed the testimony of Shi’a followers during the trial, stating that Shi’a followers practiced a particular religious doctrine (“*taqiyah*”) that allowed them to conceal the truth, and therefore they were considered to be unreliable witnesses.

5. IMPACT ON MINORITY RELIGIOUS COMMUNITIES

“I feel this treatment of my evicted community is worse than my imprisonment.”

Tajul Muluk¹³³

The UN Special Rapporteur on freedom of religion and belief has noted that blasphemy laws have other negative social consequences, including that they “may create an atmosphere of intolerance and fear and may even increase the chances of a backlash”.¹³⁴

In addition to the concerns noted above with regard to the jailing of prisoners of conscience and the impact on individuals with regard to the exercise of their right to freedom of expression and of thought, conscience and religion or belief, blasphemy laws in Indonesia exist within a context of, and appear to contribute to, an atmosphere of intolerance which has negative social consequences for minority religious communities.

At least 168 members of Tajul Muluk’s Shi’a community in Sampang, East Java, including 51 children, have been living in a housing facility since August 2012, after their village was attacked by an anti-Shi’a mob.¹³⁵ They were first moved to a temporary shelter with minimal facilities at a sports complex in Sampang, where they lived for ten months. During this time they did not receive adequate food and medical supplies from the Sampang district authorities. Some children suffered from diarrhoea, infections to their respiratory system, gastritis and anaemia during their stay in the shelter. During their stay, they reportedly faced intimidation and harassment by local government officials pressing them to convert to Sunni Islam if they wanted to return to their homes.¹³⁶ Such pressure could amount to coercion which would impair freedom to have or adopt a religion of one’s choice, contrary to Article 18(2) of the ICCPR. So far, the community members have refused to convert their beliefs.

In June 2013, the Sampang district authorities forcibly moved the community to a housing facility in Sidoarjo, East Java. The local authorities have continued to prevent them from returning to their village. This has had a negative impact on community livelihoods –their ability to work and support themselves – as most of the adults are tobacco farmers.¹³⁷



Displaced Shi'a community in Sampang, January 2012.

© KontraS Surabaya

Although in July and August 2013 President Yudhoyono promised to ensure their safe, voluntary and dignified return to their village in Sampang and to rebuild homes and other buildings that were destroyed, up to now they continue to live in limbo and remain uncertain about their future.¹³⁸

A similar situation is being faced by the Ahmadiyya community due to the 2008 Joint Ministerial Decree which forbids the Ahmadiyya from promoting their activities and spreading their religious teachings. The Decree refers to the Law Number 1/PNPS/1965 as its legal basis and Ahmadiyya followers could be prosecuted for blasphemy if they violate it.¹³⁹

Local authorities in a number of provinces, districts and cities have also issued discriminatory by laws or regulations, restricting Ahmadiyya activities and worship. Local authorities and radical Islamist groups have cited the Joint Ministerial Decree and local regulations to justify their intimidation and attacks against the Ahmadiyya. In addition, Ahmadiyya followers face obstacles in obtaining identity cards from local government authorities because of their religious beliefs. The lack of legal identity documents makes it difficult to obtain birth certificates for their children, access education and employment, register their marriages, or access other forms of state assistance.

In Mataram, West Nusa Tenggara province, about 130 people, including women and children, belonging to the Ahmadiyya community have been living in temporary accommodation for over eight years. In February 2006 they were forced to flee their homes in Ketapang, West Lombok sub-district after their houses were destroyed by mobs who attacked the community because of their religious beliefs. After the attack the police carried out investigations, in an attempt to identify the perpetrators, but Amnesty International is not aware of any of the perpetrators being brought to justice. The forcibly evicted families have been unable to return to their homes and rebuild their lives because the local authorities cannot guarantee their security and protection¹⁴⁰.

An Amnesty International visit in March 2010 found that the community was living in three 20-by-8 metre dormitories, with whole families living in rooms of only three metres square, divided by banners and sarongs tied up with plastic string. The facilities lacked essential services. Tap water was frequently cut off by the authorities and there was no electricity supply. Dozens of adults in the shelter did not have identity cards having faced various obstacles in obtaining them; those who applied for new identify cards were told to delete Islam from the “religion” field in their application by the local authorities. Because they lack identity cards, they are unable to access essential services, including free healthcare available to the poor. The situation has not improved since then.

6. CONCLUSION AND RECOMMENDATIONS

Amnesty International considers that the use of blasphemy laws in Indonesia to prosecute people for expression deemed blasphemous, or insulting to or defamatory of certain religions, contravenes Indonesia's international obligations in relation to respect and protection for freedom of thought, conscience and religion or belief, freedom of opinion and expression; equality before the law; and the prohibition of discrimination. The blasphemy laws in Indonesia are having a very negative impact on the right to freedom of expression and freedom of religion of individuals belonging to religious minorities.

Furthermore, prosecuting individuals for their peaceful expression of beliefs that are considered blasphemous is likely contributing to an atmosphere of religious intolerance in the country.

Amnesty International considers those who are imprisoned purely for the peaceful expression of their religious or other conscientiously-held beliefs to be prisoners of conscience.

Amnesty International is calling on the Indonesian authorities to end the use of blasphemy laws to prosecute any persons for the peaceful exercise of their right to freedom of expression or religion or belief.

In particular, Amnesty International makes the following recommendations to the authorities, with a view to addressing the specific issues described in this report:

- Release immediately and unconditionally all prisoners of conscience deprived of liberty solely for peacefully exercising their rights to freedom of expression and thought, conscience and religion or belief;
- Repeal all provisions set out in laws and regulations which impose restrictions on the right to freedom of expression and thought, conscience and religion which go beyond those permitted under international human rights law, or amend such provisions to bring them into compliance with Indonesia's international human rights obligations, in particular Law Number 1/PNPS/1965 on the Prevention of Religious Abuse and/or Defamation and Article 156(a) of the Criminal Code, Law Number 11/2008 on the Electronic Information and Transaction (ITE) Law and Law Number 23/2002 on the Protection of Children, ensuring that these Laws can no longer be used to criminalize freedom of expression and thought, conscience and religion or belief;
- Remove the blasphemy provisions in the current draft Bill of Revision of the Criminal Code and other draft laws;

- Take other steps necessary to give effect to Indonesia's international human rights obligations in the application of domestic law, including by ensuring that judges and prosecutors at all levels are informed of those obligations and the need for the interpretation and application of national law to be consistent with them;
- Take effective steps, including by ensuring adequate police protection, to ensure that members of religious minorities are protected and able to practice their faith free from fear, intimidation and attack;
- Guarantee the safe, voluntary and dignified return of displaced minority religious communities to their homes or provide permanent resettlement and adequate alternative housing elsewhere in the country, after genuine consultation with them;
- Demonstrate a commitment to protecting freedoms of expression and religion by extending an invitation to the UN Special Rapporteur on freedom of opinion and expression and the UN Special Rapporteur on freedom of religion or belief to make country visits, and ensuring the Special Rapporteurs are granted unimpeded access to all relevant locations and are able to meet freely with a wide range of stakeholders, including victims, civil society organizations and state officials.

APPENDIX

INDIVIDUALS CONVICTED IN BLASPHEMY CASES IN INDONESIA BETWEEN 2005-2014

Case	Year	Name	Charge	Court	Case Information	Sentence
1	2005	Ardi Husain and six others	Article 156(a) KUHP	Probolingga District Court, East Java	Imprisoned for writing a book entitled " <i>Menembus Gelap Menuju Terang 2</i> " which was judged heretical by the MUI Probolinggo chapter. He and six others people were charged and tried for blasphemy.	4 years and 6 months
2	2005	Sumardin Tappayya	Article 156(a) KUHP	Polewali Manda District Court, South Sulawesi	The religious teacher was judged to be heretical by the MUI Polewali Mandar chapter for teaching prayers punctuated by whistling.	1 year and 6 months
3	2005	Yusman Roy	Article 156(a) KUHP	Malang District Court, East Java	He was found guilty of leading Islamic prayers in Bahasa Indonesia rather than in Arabic.	2 years
4	2005	Charisal Matsen Agustinus Manu	Article 156(a) KUHP	Kalabahi District Court and Supreme Court (2011). East Nusa Tenggara High Court acquitted him in 2006.	He was imprisoned for making a book cover that was considered insulting the Holy Qur'an and Islam.	2 years
5	2006	Lia Aminuddin alias Lia Eden	Article 156(a) KUHP	Central Jakarta District Court	The leader of the religious sect God's Kingdom of Eden, was found guilty of blasphemy for introducing her own version of religious teachings to her followers.	2 years
6	2007	Abdul Rachman	Article	Supreme Court	Second-in-command	3 years

			156(a) KUHP		in the Lia Eden sect, otherwise known as the Kingdom of God, and found guilty for claiming to be the reincarnation of the Prophet Muhammad.	
7	2007	40 members of LPMI, including Djoko Widodo and Nur Imam Daniel	Article 156(a) KUHP	Malang District Court, East Java	40 members of the Indonesian Students Service Agency (LPMI) were found guilty on 6 September 2007 in relation to the dissemination of a "prayer training" video produced by the organization in Batu, East Java. The video, distributed in early 2007, allegedly depicted Christians being instructed by their leader to put the Qu'ran on the floor at a 2006 gathering.	Djoko Widodo and Nur Imam Daniel were sentenced to 5 years. Surabaya High Court reduced the sentence to 3 years and 6 months. Other sentences unknown.
8	2008	Dedi Priadi and Gerry Lufthi Yudistira	Article 156(a) KUHP	Padang District Court, West Sumatra	The two men from the al-Qiyadah al-Islamiyah sect were found guilty of spreading their teachings which was deemed heretical by the MUI West Sumatera.	3 years
9	2008	Ahmad Moshaddeq	Article 156(a) KUHP	South Jakarta District Court	The al-Qiyadah al-Islamiyah leader, who claimed to be a prophet, was found guilty of leading a sect that was deemed heretical by the MUI.	4 years
10	2008	Six followers of Al-Qiyadah (Hikmat, Faturiddin, Abdul Qadri, Fadli, Maulid Syawal	Article 156(a) KUHP	Makassar District Court, South Sulawesi	Six men from the al-Qiyadah al-Islamiyah sect in Makassar were found guilty of spreading their teachings which were deemed heretical.	4 to 6 months

		and Asrul AB)				
11	2008	Edi Ridwan and three followers, Islam Model Baru, IMB, Islamic sect	Article 156(a) KUHP	Jambi District Court, Central Sumatra	All were accused of teaching that all religions are old and unnecessary, and instead teaching a new religion, the 'New Model of Islam'. This was declared heretical by the MUI Jambi chapter.	5 years
12	2008	Ishak Suhendra	Article 156(a) KUHP	Tasik Malaya District Court, West Java	The martial arts teacher was found guilty of writing a book "Religion and Reality" deemed to have insulted Islam.	4 years
13	2009	Lia Eden Aminuddin	Article 156(a) KUHP	Central Jakarta District Court, Jakarta	She was arrested again on 15 December 2008 and convicted in 2009 for revelations she claimed to have received, which she sent in a letter to all major government departments and Islamic organizations in Indonesia, including the President. In these letters, she argued that Islam as a religion should be dissolved, that all religions should unite and that they should all pray in one direction.	2 years and 6 months
14	2009	Wahyu Wibisono	Article 156(a) KUHP	Central Jakarta District Court, Jakarta	He was found guilty of recording in writing Lia Eden's religious concepts (see case above).	2 years
15	2009	Agus Iman Solihin	Article 156(a) KUHP	South Jakarta District Court	He was the leader of a sect who reportedly encouraged group sex rituals. Prosecutors	2 years and 6 months

					indicted him for spreading heretical teachings among Muslims who attended his religious gathering.	
16	2009	Wilhelmina Holle	Article 156(a) KUHP	Ambon District Court, Maluku	The primary school teacher was accused of insulting Islam and the Prophet Mohammed in front of her students.	1 year
17	2009	FX Marjana	Article 156(a) KUHP	Klaten District Court, Central Java	He was found guilty of insulting Islam while teaching at the Widya Dharma University. He reportedly said that Islam was a religion that liked conflict and its various sects was evidence of this.	2 years
18	2009	Nimrot Lasbaun (and probably 6 other sect leaders: Nehemia Ludji Wadu, Natanel Hendrk Ngahu, Ruben Huki Hawu, David Agustinus, Kornelis Basten Bautanu and Meon Nubatonis)	Article 156(a) KUHP	Kupang District Court, West Nusa Tenggara	The leader of Sion City of Allah sect was found guilty of blasphemy because he banned his followers from joining church masses on Sunday. The sect also rejected the holy communion and wedding ceremonies held by the church.	6 months
19	2010	Abraham Felix	Article 156(a) KUHP	Bekasi district Court, West Java.	He was seen in a photo uploaded on a website where he posed stepping on the Koran while raising his middle finger.	1 year
20	2010	Bakri Abdullah	Article 156(a) KUHP	Selong District Court , East Lombok, East Nusa Tenggara	He claimed to be a prophet and to have ascended to heaven twice.	1 year
21	2010	Wowo Wahyudin, Wawan Setiawan and Abdul Rosid	Article 156(a) KUHP	Garut District Court, West Java	The three members of the Indonesia Islamic State (Negara Islam Indonesia) movement	3 years

					of the Garut region, West Java were found guilty of changing the praying direction from Eastwards with their backs to the Ka'bah (holy shrine). The group also replaced Prophet Muhammad's name with the name of their leader, Sensen Komara, in their confession of faith and in one sentence of the call to prayer.	
22	2010	Gregory Luke	Article 156(a) KUHP	Praya District Court, Lombok, East Nusa Tenggara	The US citizen was accused of blasphemy after he allegedly pulled the plug on a mosque loudspeaker during a prayer reading.	5 months
23	2010	Syahroni and Iwan Purwanto	Article 86 of the Law No. 23/2002 on the Protection of Children	East Lampung District Court, Lampung	The two Baha'i members were convicted for allegedly trying to convert Muslim children to the Baha'i faith.	5 years
24	2011	Oben Sarbini	Article 156(a) KUHP	Tasik Malaya District Court, West Java	He was found guilty for claiming that his teacher Ahmad Sulaeman was Iman Mahdi a prophet after Prophet Muhammad. He was declared heretical by MUI Kota Tasikmalaya.	4 years
25	2011	Antonius Bawengan	Article 156(a) KUHP	Temanggung District Court, Central Java	The preacher and former Catholic was imprisoned for distributing a booklet that was said to desecrate Islam, Christianity and Judaism entitled " <i>Three Sponsors, Three Agendas, Three Results</i> " in Kranggan,	4 years

					a small village near Temanggung.	
26	2011	Ramot Agus Nasib Mangihut Sihotang	Article 156(a) KUHP and 157(1)	Rantauprapat District Court, North Sumatra	He was found guilty of insulting Islam by disseminating a book entitled " <i>Ya Tuhan Tertipu Aku</i> " (Yes God Lied to Me) in shops around Medan, North Sumatera.	5 years
27	2011	Miftahkur Rosyidin Bin Winarko	Article 156(a) KUHP	Blitar District Court, East Java	He was accused of insulting Islam by drawing a cross and the word "Christ" on a wall in a mosque with his blood.	4 months
28	2011	Sandy Hartono	Article 28(2) of the ITE Law	Pontianak District Court, West Kalimantan	He was convicted for insulting Islam and Prophet Muhammad by posting comments on a fake Facebook wall of his friend.	6 years and a fine of 500 million rupiah (US\$41,264)
29	2012	Andreas Guntur	Article 156(a) KUHP	Klaten District Court, Central Java	The leader of Amanat Keagungan Ilahi, a spiritual group which draws upon certain verses of the Koran but rejects conventional Islamic rituals. A fatwa was issued against the group by the MUI in 2009.	4 years
30	2012	Tajul Muluk	Article 156(a) KUHP	Sampang District Court and Surabaya High Court, East Java	He was found guilty for reportedly saying that the Qu'ran the Muslims were using was not the original text. Tajul Muluk has denied these allegations. His sentence was increased four years by the Surabaya High Court because of causing "disharmony among Muslims".	4 years
31	2012	Alexander An	Article 28(2)	Sijunjung District	Alexander An was	2 years and

			of the ITE Law	Court, West Sumatra	imprisoned for posting statements and pictures on Facebook which some people construed as insulting Islam and the prophet Mohammad. He was initially charged under the blasphemy law as well as Article 28(2) of the ITE Law. He was found guilty of violating the ITE Law.	6 months prison and a fine of 100 million rupiah (US\$11,000)
32	2012	Sebastian Joe	Article 156(a) KUHP and Article 28(2) of the ITE Law	Ciamis District Court and Bandung High Court, West Java	He was reported by the Ciamis chapter of the Islam Defenders Front (FPI) for a Facebook posting, which they considered insulting to Islam. He was sentenced to 4 years under Article 156(a) of the Criminal Code but the High Court increased the sentence by a year using the ITE Law.	5 years
33	2012	Charles Sitorus	Article 156(a) KUHP	Dompu District Court, West Nusa Tenggara	He was charged for insulting Islam in his books, entitled <i>"Jangan Aku Tertipu"</i> , <i>"Tuntutan al-Qur'an Supaya Selamat Dunia Akhirat"</i> , and <i>"Yang Khak dan Bati"</i> .	1 year and 2 months
34	2012	Herison Yohanis Riwu	Article 156(a) KUHP	Kupang High Court, East Nusa Tenggara	He was imprisoned for entering a Catholic Church and receiving the Holy Communion in an improper manner.	4 years and 6 months
35	2013	Alfred Waang	Article 156(a) KUHP	Kalabahi District Court, East Nusa Tenggara	He was imprisoned for allegedly forcing a Muslim child to eat pork.	1 year and 6 months
36	2013	Rusgiani	Article 156(a) KUHP	Denpasar High Court, Bali	The Christian woman residing in the Hindu-majority island of Bali	14 months

					was imprisoned for calling Hindu offerings "dirty and disgusting".	
37	2013	Rudi Chairuddin	Article 156(a) KUHP	Lubuk Pakam District Court, North Sumatra	Imprisoned for claiming to have received a revelation from God and for his "deviant" teachings which contradict Islam.	4 years
38	2013	Dedi bin Oyo Sunaryo	Article 156(a) KUHP	Ciamis District Court, West Java	Imprisoned for being the leader of a "deviant" sect and spreading teachings that were not in line with mainstream Islam.	3 years
39	2014	Abraham Sujoko	Article 27(3) of the ITE Law	Dompu District Court, West Nusa Tenggara	Imprisoned for insulting Islam by saying on Youtube that the Ka'bah (shrine in Mecca) are stone idols.	2 years

ENDNOTES

¹ Interview with Ikhlil Al Milal, 29 October 2013. He is Tajul Muluk's brother and leader of the evicted Shi'a Sampang community.

² There is no legal definition of "blasphemy" under the International Human Rights Law. Amnesty International uses the term "blasphemy" in this report to refer to statements or actions or other forms of expression which are prohibited because they are deemed to be offensive or insulting to, or defamatory of, religion or specific religious beliefs.

³ Most of the reports on the situation of the freedom of belief and religion in Indonesia highlight the use of blasphemy provisions for prosecution and as the source of other human rights abuses. See annual reports on the situation of the freedom of religion in Indonesia by NGOs such as the Wahid Institute (weblink: <http://wahidinstitute.org/wahid-id/laporan-dan-publikasi/laporan-kbb/laporan-tahunan-petasitus.html>, accessed 3 March 2014) and the Setara Institute (weblink: <http://www.setara-institute.org/en/category/category/reports/religious-freedom>, accessed 3 March 2014). From the academic institutions, see regular reports from CRCS (Center for Religious and Cross-cultural Studies) of the Gadjah Mada University (<http://cracs.ugm.ac.id/annual-report-top>, accessed 3 March 2014) and PUSAD (Pusat Studi Agama & Demokrasi, Center of Study for Religion and Democracy) Paramadina (weblink: <http://www.paramadina-pusad.or.id/tipe-pustaka/buku>, accessed 3 March 2014). For national human rights institution reports, see National Human Rights Commission's (*Komisi Nasional Hak Asasi Manusia, Komnas HAM*) report to the Human Rights Committee, 14 June 2013 (weblink: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IDN/INT_CCPR_IFN_IDN_14340_E.pdf, accessed 3 March 2014), Komnas HAM's report for Indonesia 2nd Cycle Universal Periodic Review (UPR) before the UN Human Rights Council, 2012 (weblink: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/ID/KomnasHAM_UPR_IDN_S13_2012_IndonesianNationalHumanRightsCommission_E.pdf, accessed 3 March 2014).

⁴ See recent reports by Human Rights Watch (HRW), *In Religion's Name; Abuses against Religious Minorities in Indonesia*, 2013, p11-12, weblink: http://www.hrw.org/sites/default/files/reports/indonesia0213_ForUpload_0.pdf, accessed 3 March 2014 and the Christian Solidarity Worldwide (CSW), *Indonesia: Pluralism in Peril; The rise of religious intolerance across the archipelago*, 2014, weblink: <http://dynamic.csw.org.uk/article.asp?t=report&id=179&search=>, accessed 3 March 2014.

⁵ See for instance the report of the UPR working group (second cycle) on Indonesia (UN Doc. A/HRC/21/7, 5 July 2012) highlighted concerns from other governments about the application of Blasphemy Law in the country. Concluding observations of the Committee against Torture on Indonesia (UN Doc. CAT/C/IDN/CO/2, 2 July 2008) mentioned violence (ill-treatment) against Ahmadiyya groups and inadequate state accountability. It is highlighted again in the CAT's list of issues (UN Doc. CAT/C/IDN/Q/3, 15 February 2011) which should be addressed by Indonesia in their upcoming periodic report due in June 2016; Concluding observations of the Committee on the Elimination of Discrimination against Women (UN Doc. CEDAW/C/IDN/CO/6-7, 27 July 2012) focussing on discrimination, violence and sexual intimidation specifically targeting women who belong to religious minorities; and Concluding observations of the Human Rights Committee on the initial report of Indonesia in 2013 (UN Doc. CCPR/C/IDN/CO/1, 21 August 2013) focusing on the use of blasphemy law and inadequate protection against violence perpetrated against members of religious minorities.

⁶ For instance, there are regular reports on freedom of religion made by the European Parliament Working Group on Freedom of Religion or Belief (EPWG on FoRB) (weblink: <http://www.religiousfreedom.eu/our-reports/>, accessed 3 March 2014) and the US Government (weblink: <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>, accessed 3 March 2014).

⁷ For further information about Amnesty International's concerns relating to blasphemy provisions, see *Indonesia: Judicial review of law number 1/PNPS/1965 concerning the prevention of religious abuse and/or defamation*, amicus curiae submitted by Article 19, Amnesty International, the Cairo Institute for Human Rights Studies, and the Egyptian Initiative for Personal Rights (Index: ASA 21/002/2010), 11 March 2010. Amnesty International, *Indonesia: Submission to the United Nations Human Rights Committee for the 108th Session of the Human Rights Committee* (Index: ASA 21/018/2013), 21 June 2013, p18-20.

⁸ Amnesty International, *Setting the Agenda: Human Rights Priorities for the New Government* (Index: ASA 21/011/2014), 29 April 2014, p7-11.

⁹ Amnesty International, *Indonesia: Submission to the United Nations Human Rights Committee for the 108th Session of the Human Rights Committee* (Index: ASA 21/018/2013), 21 June 2013, p22-25.

¹⁰ Jokowi-Jusuf Kalla, *Jalan Perubahan untuk Indonesia yang Berdaulat, Mandiri, dan Berkepribadian; Visi Misi dan Program Aksi* [Road to change for an Indonesia with Sovereignty, Independence and Individuality; Vision Mission and Action Programmes] Jakarta, May 2014, p27, weblink: http://kpu.go.id/koleksigambar/VISI_MISI_Jokowi-JK.pdf, accessed 30 June 2014.

¹¹ Key recent academic articles on the Blasphemy Law in Indonesia are by Melissa A. Crouch, "Law and Religion in Indonesia: the Constitutional Court and the Blasphemy Law", *Asian Journal of Comparative Law*: Vol. 7:Iss. 1, Article 3, 2012 and Zainal Abidin Bagir, "Defamation of Religion Law in Post-*Reformasi* Indonesia: Is Revision Possible?", *Australian Journal of Asian Law*, 2013, Vol 13 No. 2, Article 3.

¹² President Yudhoyono's speech when opening the National Annual Meeting of the MUI at the Presidential Palace, 5 November 2007, weblink: <http://www.presidenri.go.id/index.php/fokus/2007/11/05/2379.html>, accessed 3 March 2014.

¹³ All of these rights are enumerated in Article 28E of the Second Amendment of the 1945 Constitution, 18 August 2000. Freedom of religion and of worship were already included in Article 29(2) of the original 1945 constitution.

¹⁴ Freedom of expression is recognised in Article 23 and freedom of thought, conscience and religion are protected in Article 22 of the Law No. 39/1999 on Human Rights.

¹⁵ Constitutional Court's Decision on the Law No. 22/1997 on Narcotics, *Putusan Nomor 2-3/PUU-V/2007*, 30 October 2007, p411-415, weblink:

http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_Putusan%202-3%20PUUV2007ttgPidana%20Mati300ktober2007.pdf, accessed 3 March 2014. The Constitutional Court (*Mahkamah Konstitusi*) was established in 2003 after the third amendment of the 1945 constitution which provided this body among other things, a mandate to review laws against the constitution. Subsequently, there is a specific law regulating the Constitutional Court (Law No. 24/2003).

¹⁶ Decision of the Constitutional Court No. 140/PUU-VII/2009 concerning the Request for Judicial Review of Law No. 1/PNPS/1965, 19 April 2010, p269, 274, 276, 277, 292 and 293, weblink: http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_Putusan%20PUU%20140_Senin%2019%20April%202010.pdf, accessed 3 March 2014.

¹⁷ Decision of the Constitutional Court No. 140/PUU-VII/2009, p276, Supranote No. 16.

¹⁸ Decision of the Constitutional Court No. 140/PUU-VII/2009, p294, Supranote No. 16.

¹⁹ UN Human Rights Committee General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, paras 21 and 34; see also General Comment No. 22, Article 18 (Freedom of Thought, Conscience or Religion), UN Doc. CCPR/C/21/Rev.1/Add.4, para. 8; General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add. 13, para. 6.

²⁰ UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Siracusa Principles on the Limitation and Derogation of Provisions of the International Covenant on Civil and Political Rights*, Annex UN Doc. E/CN.4/1985/4 (1984).

²¹ Human Rights Committee General Comment No. 34, Supranote No. 19. See also Human Rights Committee General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para 8, UN Doc. CCPR/C/21/Rev.1/Add. 13.

²² Indonesia's Initial Report to the Human Rights Committee, 19 March 2012, UN Doc CCPR/C/IDN/1, p45, para 253, weblink: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIDN%2f1&Lang=en, accessed 3 March 2014.

²³ For related Amnesty International's publication documents on the Ahmadiyya, see Amnesty International, *Indonesia: Arbitrary closure of Ahmadiyya place of worship highlights religious repression*, 27 June 2014; Amnesty International, *Indonesia: Four Ahmadiyya places of worship closed in a month, one more at imminent risk* (Index: ASA 21/012/2013), 5 May 2013; Amnesty International, *Indonesia: Ahmadiyya killings verdicts will not stem discrimination* (Index: PRE01/371/2011), 28 July 2011; Amnesty International, *Indonesia must commit to freedom of religion* (Index: PRE01/076/2011), 23 February 2011; Amnesty International, *Indonesian authorities must investigate Ahmadiyya killings* (Index: PRE01/051/2011), 7 February 2011; *Open Letter to the Minister of Home Affairs on the Displaced Ahmadiyya Community in Mataram, Lombok* (Index: ASA 21/008/2010), 5 July 2010; Amnesty International, *Displaced and Forgotten; Ahmadiyya in Indonesia* (Index: ASA 21/006/2010), June 2010.

²⁴ See point 1 of the 'Considering (*Mengingat*)' section of the Joint Ministerial Decree [*Keputusan Bersama Menteri Agama, Jaksa Agung, dan Menteri Dalam Negeri Republik Indonesia*], Nomor: 3 Tahun 2008 [Number 3 of 2008], Nomor: KEP-033/AJA/6/2008, Nomor: 199 Tahun 2008 tentang Peringatan dan Perintah Kepada Pengikut, Anggota, Dan/Atau Anggota Pengurus Jemaat Ahmadiyah Indonesia (JAI) dan Warga Masyarakat.

²⁵ The original Bahasa version is *Penetapan Presiden Republik Indonesia Nomor 1/PNPS Tahun 1965 tentang Pencegahan Penyalahgunaan Dan/Atau Penodaan Agama*.

²⁶ *Aliran kepercayaan* is a definition for various traditional local beliefs in Indonesia. In 1952, the Ministry of Religion developed a definition for religion which consisted of elements such as having a prophet, holy scripture and being recognised internationally. There is no official figure on how many people can be categorized as members of *Aliran Kepercayaan*. See Badan Pusat Statistik (Central Agency on Statistics, BPS), "Kewarganegaraan, Suku Bangsa, Agama, dan Bahasa Sehari-hari Penduduk Indonesia; Hasil Sensus Penduduk 2010" [Citizenship, Ethnicity, Religion and Daily Languages of Indonesia; Census of 2010], p10, weblink:

<http://sp2010.bps.go.id/files/ebook/kewarganegaraan%20penduduk%20indonesia/index.html>, accessed 3 March 2014. It was estimated by the Ministry of Culture and Tourism and several association of *Aliran Kepercayaan* through a survey conducted by an NGO that there could be around 10 million members of various local beliefs in Indonesia. See Uli Parulian Sihombing, *Menggugat Bakor Pakem; Kajian Hukum terhadap Pengawasan Agama dan Kepercayaan di Indonesia* [Challenging Bakor Pakem; Legal Study on the Oversight of Religion and Belief in Indonesia], 2008, ILRC [the Indonesian Legal Resource Center], p25 and 40.

²⁷ Melissa A. Crouch, "Law and Religion in Indonesia: the Constitutional Court and the Blasphemy Law", p3 and 5, Supranote No. 11.

²⁸ According to the Elucidation (*Penjelasan*) to the Presidential Decree No. 1/PNPS/1965, these are Islam, Christianity (Protestantism), Catholic, Hinduism, Buddhism and Confucianism. The Presidential Decree does not ban other religions or beliefs, such as Judaism, Zoroastrianism, Shintoism and Taoism, and their believers are free to practice their beliefs and religious activities as long as they do not violate other laws. This argument was reaffirmed by the Constitutional Court's Decision No. 140/PUU-VII/2009 concerning the Request for Judicial Review of Law No. 1/PNPS/1965, 19 April 2010, p290, Supranote No. 16. However, in practice there are limitations on the followers of these non-mainstream religions in Indonesia.

²⁹ Zainal Abidin Bagir, "Defamation of Religion Law in Post-Reformasi Indonesia: Is Revision Possible?", p3, Supranote No. 11.

³⁰ The original Bahasa version of article 1 of the Blasphemy Law is "*Setiap orang dilarang dengan sengaja di muka umum menceritakan, menganjurkan, atau mengusahakan dukungan umum, untuk melakukan penafsiran tentang sesuatu agama yang dianut di Indonesia atau melakukan kegiatan-kegiatan keagamaan yang menyerupai kegiatan-kegiatan keagamaan dari agama itu, penafsiran dan kegiatan mana menyimpang dari pokok-pokok ajaran agama itu*".

³¹ The original text of article 4 of the Blasphemy Law states: "*Pada Kitab Undang-undang Hukum Pidana diadakan pasal baru yang berbunyi sebagai berikut; Pasal 156a, Dipidana dengan pidana penjara selama-lamanya lima tahun barangsiapa dengan sengaja di muka umum mengeluarkan perasaan atau melakukan perbuatan:*

a. yang pada pokoknya bersifat permusuhan, penyalahgunaan atau penodaan terhadap suatu agama yang dianut di Indonesia;

b. dengan maksud agar supaya orang tidak menganut agama apapun juga, yang bersendikan ke-Tuhanan Yang Maha Esa."

³² Article 157 of KUHP has also been used to prosecute persons with non-mainstream beliefs with reference to 'maintaining public order'. In the Yusman Roy case in Malang, East Java, Yusman Roy was convicted under Article 157 of the Criminal Code, but acquitted under Article 156(a). Uli Parulian Sihombing, *Ketidakadilan dalam Beriman; Hasil Monitoring Kasus-Kasus Penodaan Agama dan Ujaran Kebencian atas Dasar Agama di Indonesia* [Injustices in Practicing Belief; Monitoring results of the Blasphemy Cases and Hate Speech Based on Religion in Indonesia], ILRC [the Indonesian Legal Resource Center], Jakarta, 2012, p 30-33.

³³ Organizations involved in the judicial review were Imparsial (the Indonesian Human Rights Monitor), ELSAM (Institute for Policy Research and Advocacy), PBHI (Indonesian Legal Aid and Human Rights Association), DEMOS [Center for Democracy and Human Rights Study], the Setara Institute, Desantara Foundation and YLBHI (the Indonesian Legal Aid Institute). In addition, several prominent individuals also joined the submission, such as Abdurrahman Wahid, a former president of Indonesia, Siti Musdah Mulia, a lecturer at a prominent Islamic University (UIN Hidayatullah), Dawam Raharjo, a prominent

Muslim scholar and Maman Imanul Haq, head of an Islamic boarding school and a member of parliament for the period 2014-2019.

³⁴ See the amicus curiae of Article 19, Amnesty International, the Cairo Institute for Human Rights Studies, and the Egyptian Initiative for Personal Rights, Supranote No. 7.

³⁵ There was one dissenting opinion by the only female Christian judge on the bench, Justice Maria Farida who said that "Law No. 1/PNPS/1965 on the Prevention of Abuse and or Blasphemy... is a product of the past as there have been fundamental changes in the 1945 Constitution related to human rights. The law contravenes several articles in the 1945 Constitution [related to freedom of religion or belief]. See Decision of the Constitutional Court No. 140/PUU-VII/2009, Supranote No. 16 p321, weblink:

http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_Putusan%20PUU%20140_Senin%2019%20April%202010.pdf, accessed 3 March 2014.

³⁶ Decision of the Constitutional Court No. 140/PUU-VII/2009, p197, Supranote No. 16.

³⁷ Decision of the Constitutional Court No. 140/PUU-VII/2009, p287 and 304, Supranote No. 16.

³⁸ The second attempt to challenge the constitutionality of the blasphemy law was submitted by certain individuals, including Tajul Muluk and Sebastian Joe who were convicted by the Law. The second judicial review focussed on the absence in Article 4 of the Blasphemy Law of any warning procedure prior to prosecution as provided for in Article 1 of the Law. Decision of the Constitutional Court No. 84/PUU-X/2012, 19 September 2013, concerning the Request for Judicial Review of Law No. 1/PNPS/1965, p143 and 144, weblink:

http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_84%20PUU%202012-telah%20ucap%2019%20September%202013.pdf, accessed 3 March 2014.

³⁹ Decision of the Constitutional Court No. 84/PUU-X/2012, p116-117 and p142-143. Supranote No. 38.

⁴⁰ Decision of the Constitutional Court No. 140/PUU-VII/2009, p275-276 and p293, Supranote No. 16.

⁴¹ Decision of the Constitutional Court No. 140/PUU-VII/2009, p290, Supranote No. 16. For comments on the narrow scope of limitations which may be permissible under international law, please see section 2.1 above and section 4.1 and 4.2 below.

⁴² The original text of article 28(2) of the ITE Law is "*Setiap orang dengan sengaja dan tanpa hak menyebarkan informasi yang ditujukan untuk menimbulkan rasa kebencian atau permusuhan individu dan/atau kelompok masyarakat tertentu berdasarkan atas suku, agama, ras, dan antargolongan (SARA)*".

⁴³ Article 45(2) of the ITE Law.

⁴⁴ If the courts have to make a choice between the ITE Law and Article 156(a) of the Criminal Code in trials related to blasphemy or defamation of religion cases, the courts seem to prefer to use the former.

⁴⁵ These include the Sandy Hartono case in 2011, the Alexander An case in 2012 and the Sebastian Joe case in 2013 (see section 3). On 20 September 2011 in Pontianak, West Kalimantan, Sandy Hartono was sentenced by the Pontianak District Court to six year's imprisonment and fined 500 million Indonesian rupiah (US\$41,264). He was convicted for insulting Islam and Prophet Muhammad by posting comments on a fake Facebook wall of his friend.

⁴⁶ The original text of article 27(3) of the ITE Law is "*Setiap Orang dengan sengaja dan tanpa hak mendistribusikan dan/atau mentransmisikan dan/atau membuat dapat diaksesnya Informasi Elektronik dan/atau Dokumen Elektronik yang memiliki muatan penghinaan dan/atau pencemaran nama baik*". The punishment under Article 27(3) of the ITE Law is also up to six years' imprisonment.

⁴⁷ Dompu District Court, *Putusan* No:33/Pid.B/2014/PN.DPU, p25-26.

⁴⁸ Dompu District Court, *Putusan* No:33/Pid.B/2014/PN.DPU, p18.

⁴⁹ Amnesty International opposes laws criminalizing defamation, whether of public figures or private individuals, which should be treated as a matter for civil litigation. See also Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 20 April 2010, UN Doc. A/HRC/14/23, para. 83.

⁵⁰ *Kementerian Komunikasi dan Informatika* [Ministry of Communication and Information], "Berita Kementerian: Pemerintah Akan Revisi UU 11/2008 tentang ITE Tahun Depan" [Ministry News: Government Will Revise Law No. 11/2008 on ITE Next Year], 28 October 2013, weblink:

http://kominfo.go.id/index.php/content/detail/3360/Pemerintah+Akan+Revisi+UU+11-2008+Tentang+ITE+Tahun+Depan/O/berita_satker#.VDv4xfldXuQ, accessed 3 March 2014. The Jakartapost, Ministry to revise draconian ITE Law, 25 September 2013, weblink: <http://www.thejakartapost.com/NEWS/2013/09/25/MINISTRY-REVISE-DRACONIAN-ITE-LAW.HTML>, accessed 3 March 2014.

⁵¹ Interview with Wahyudi Djafar (*Lembaga Studi dan Advokasi Masyarakat/ElSam*), 15 November 2013. For the relevant international human rights law and standards regarding prohibition of advocacy of hatred which constitutes incitement, please see section 4.1.

⁵² The original text of article 86 of the Protection of Children Law is “*Setiap orang yang dengan sengaja menggunakan tipu muslihat, rangkaian kebohongan, atau membujuk anak untuk memilih agama lain bukan atas kemauannya sendiri, padahal diketahui atau patut diduga bahwa anak tersebut belum berakal dan belum bertanggung jawab sesuai dengan agama yang dianutnya dipidana dengan pidana penjara paling lama 5 (lima) tahun dan/atau denda paling banyak Rp 100.000.000,00 (seratus juta rupiah)*”.

⁵³ Polres Lampung Timur (East Lampung Police Force), Berkas Perkara (Police Investigation Dossier) No. Pol: BP/62/VII/2010/Reskrim.

⁵⁴ Polres Lampung Timur (East Lampung District police), Berkas Perkara (Police Investigation Dossier) No. Pol: BP/62/VII/2010/Reskrim. Pustaka Masyarakat Setara, *Politik Diskriminasi Rezim Susilo Bambang Yudhoyono; Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia 2011* [The Politics of Discrimination of Susilo Bambang Yudhoyono's Regime; the Situation of Freedom of Religion/Belief in Indonesia 2011], Jakarta, January 2012, p57-59.

⁵⁵ Uli Parulian Sihombing, *Menggugat Bakor Pakem; Kajian Hukum terhadap Pengawasan Agama dan Kepercayaan di Indonesia*, p26, Supranote No. 26.

⁵⁶ The latest legal framework for the establishment of Bakor Pakem is the Attorney General Decree (SK *Kejagung*) No. KEP-004/J.A/01/1994, The Presidential Decree No. 1/PNPS/1965 and Law No. 16/2004 on Attorney Office of Indonesia. Uli Parulian Sihombing, *Menggugat Bakor Pakem; Kajian Hukum terhadap Pengawasan Agama dan Kepercayaan di Indonesia*, p34, Supranote No. 26. Under the Law No. 16/2004 on Public Prosecution, the Attorney General Office has a mandate to “monitor beliefs which can endanger the society and state and to prevent the abuse and/or defamation of religion [article 30(3)]”.

⁵⁷ Article 3(1) of the Keputusan Jaksa Agung Republik Indonesia (the Attorney General Decree) No. KEP-004/J.A/001/1991.

⁵⁸ Article 2 of the Keputusan Jaksa Agung Republik Indonesia No. KEP-004/J.A/001/1991.

⁵⁹ Interview with Alamsyah M Dja'far (the Wahid Institute), 7 November 2013. The establishment of the MUI, an umbrella Islamic organization in Indonesia, was initially proposed by large Islamic organizations that have had a long historical presence in Indonesia, including the Nahdlatul Ulama and the Muhammadiyah, and by several individual Islamic clerics working with the Indonesian security forces. It was formally established by former President Suharto in 1975 who saw the organization as a link between the state and Islamic organizations, and as the main representative of Muslims in dealing with other religious organizations in Indonesia. Religious organizations parallel to the MUI are PGI (*Persatuan Gereja-Gereja Indonesia*) or the Communion of Churches in Indonesia representing the Protestants; KWI (*Konferensi Waligereja Indonesia*) or the Bishops' Conference of Indonesia representing the Catholics; PHDI (*Parisada Hindu Dharma Indonesia*) representing the Hindus; Walubi (*Perwakilan Umat Buddha Indonesia*) representing the Buddhists; and Matakini (*Majelis Tinggi Agama Khonghucu Indonesia*) representing the Confucians.

⁶⁰ See the MUI's goals and functions on their official website: www.mui.or.id, accessed 3 March 2014.

⁶¹ Zainal Abidin Bagir, *Defamation of Religion Law in Post-Reformasi Indonesia: Is Revision Possible?*, p7, Supranote No. 11.

⁶² See *Pedoman Penetapan Fatwa Majelis Ulama Indonesia* (Guidelines for Issuing Fatwas by the MUI) No: U-596/MUI/X/1997, Articles 7 and 8, weblink:

<http://jacksite.files.wordpress.com/2007/08/pedoman-penetapan-fatwa-majelis-ulama-indonesia.pdf>, accessed 3 March 2014. These guidelines however have not guaranteed coherency; for instance, a *fatwa* was issued by the MUI against the Shi'a teachings in Sampang district and East Java province, despite the fact that no such *fatwa* exists at the national level. Interview with Wahyuni Widyarningsih (*CMARs, Center for Marginalized Communities Studies*), 28 October 2013.

⁶³ See President Susilo Yudhoyono's speech at the opening of the 7th National Annual Meeting of the MUI on 26 July 2005. The President delivered his speech in front of high-ranking government officials, including the Minister of Religion and the Chief of National Police, weblink: <http://www.presidentri.go.id/index.php/pidato/2005/07/26/370.html>, accessed 3 March 2014.

⁶⁴ President Yudhoyono's speech at the opening the National Annual Meeting of the MUI at the Presidential Palace, 5 November 2007, weblink:

<http://www.presidentri.go.id/index.php/fokus/2007/11/05/2379.html>, accessed 3 March 2014.

⁶⁵ See *Keputusan Fatwa Majelis Ulama Indonesia Nomor: 7/Munar VII/MUI/11/2005 tentang Pluralisme, Liberalisme, dan Sekularisme Agama* (MUI *fatwa* on pluralism, liberalism and secularism), 28 July

2005, weblink: <http://melatipandanwangi.files.wordpress.com/2011/03/fatwa-mui-tentang-pluralisme-liberalisme-dan-sekularisme-agama.pdf>, accessed 3 March 2014.

⁶⁶ See *Keputusan Fatwa Majelis Ulama Indonesia Nomor: 11/Munas VII/MUI/15/2005 tentang Aliran Ahmadiyah (on Ahmadiyya)*, 29 July 2005, weblink:

[http://www.hukumonline.com/pusatdata/detail/lt4b2a0a8641b64/node/11/keputusan-fatwa-majelis-ulama-indonesia-no-1-munas-vii-mui-15-2005-tahun-2005-perlindungan-hak-kekayaan-intelektual-\(hki\)](http://www.hukumonline.com/pusatdata/detail/lt4b2a0a8641b64/node/11/keputusan-fatwa-majelis-ulama-indonesia-no-1-munas-vii-mui-15-2005-tahun-2005-perlindungan-hak-kekayaan-intelektual-(hki)), accessed 3 March 2014.

⁶⁷ *Keputusan Rakernas* (the Annual Meeting Decision) of the MUI in Jakarta on 6 November 2007. The 10 guidelines are: breaching one of the six pillars of the faith; understanding or following a faith not in line with the Qur'an and prophetic tradition (*hadith*); acknowledging any revelation after the coming of the Qur'an; denying the authenticity of the Qur'an and/or the truth of the content of the Qur'an; interpreting the Qur'an not in line with the interpretation principles; denying the prophetic tradition (*hadith*) as a source of Islamic teaching; insulting, defaming or degrading the prophets; denying prophet Mohammad as the last prophet; changing, adding and/or reducing the principles of worshiping as mentioned in Islamic law (*syariah*); declaring other Muslims as infidel (*kafir*) without argument referring to Islamic law (*syariah*). See NU Online, *MUI tetapkan 10 indikator aliran sesat*, 6 November 2007, weblink: http://www.nu.or.id/a_public-m_dinamic-s_detail-ids,1-id,10437-lang_id-c,warta-t,MUI+Tetapkan+10+Indikator+Aliran+Sesat-.php, accessed 3 March 2014.

⁶⁸ Wantimpres is an advisory body to the President based on Law No. 19/2006 on a Presidential Advisory Council (*Dewan Pertimbangan Presiden*). The main task of the council is to provide advice to the President and for him to consult on related national issues.

⁶⁹ KH Ma'ruf Amin played a key role in influencing President Yudhoyono to issue the Joint Ministerial Decree No. 3/2008 forbidding the activities of Ahmadiyya followers. At the time, the plan to issue the joint ministerial decree was opposed by another member of the Presidential Advisory Council, Adnan Buyung Nasution, who was in charge of law and human rights affairs. However, the President eventually endorsed the joint ministerial decree and Buyung Nasution was replaced in 2009. Interview with Adnan Buyung Nasution (Chairman of the *Presidential* Advisory Council for law and human rights affair, 2007-2009), 16 November 2013.

⁷⁰ In a concurring opinion Justice Harjono pointed out that under a strict reading of the law, a violation could occur where a non-adherent of a religion studied its beliefs, came to a misunderstanding or deviant interpretation, and spoke about it publicly. Justice Harjono believes that such conduct, which could simply involve inquiry and discussion of a different religion, should not be penalized. Thus, to find a "middle road" (*jalan tengah*) the Blasphemy Law clearly needs reform. The Court however stated that the authority to revise the legislation should be with lawmakers. The Constitutional Court's Decision No. 140/PUU-VII/2009, p310-11 & p304-5, Supranote No. 16.

⁷¹ These initiatives are not related with the Constitutional Court's ruling in 2010.

⁷² This is *Rancangan Undang-Undang tentang Kitab Undang-Undang Hukum Pidana* [the Draft Law on Criminal Code] signed by former President Susilo Bambang Yudhoyono on 11 December 2012 before being submitted to parliament. Number R- 88/Pres/12/2012. This Criminal Code, enacted in 1946, adopted many provisions from the Dutch colonial Criminal Code (*Wetboek van Strafrecht voor Nederlandsch-Indie*). A plan to revise the Criminal Code has been in place for around 50 years, and although its revision was also included in the national legislation program (*Program Legislasi Nasional*) in the last few years, the 2009-2014 parliament failed to debate and pass the revisions. It is very likely the 2014-2019 parliament will now oversee the revisions. See President's annotation on the Draft Law of Criminal Code to national parliament, Jakarta, 6 March 2013, weblink:

<http://www.kemenkumham.go.id/berita/headline/1836-keterangan-presiden-atas-rancangan-undang-undang-tentang-kitab-undang-undang-hukum-pidana>, accessed 3 March 2014. See also Report of the UN High Commissioner, Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief, 6 March 2014, para 54, UN Doc. A/HRC/25/34, weblink: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>, accessed 24 March 2014.

⁷³ There is a special chapter (Chapter VII) in the draft revision of the Criminal Code for "crime against religion and religious life".

⁷⁴ Article 341 of the Draft Revision of the Criminal Code. Punishment for violating this article is up to two years' imprisonment or a fine up to Rp 120,000,000 (US\$9,903).

⁷⁵ Article 342 of the Draft Revision of the Criminal Code. Punishment for violating this article is up to five years' imprisonment or a fine up to Rp 300,000,000 (US\$24,755).

- ⁷⁶ Article 343 of the Draft Revision of the Criminal Code. Punishment for violating this article is up to five years' imprisonment or a fine up to Rp 300,000,000 (US\$24,755).
- ⁷⁷ Article 344(1) of the Draft Revision of the Criminal Code. Punishment for violating this article is up to seven years' imprisonment or a fine up to Rp 300,000,000 (US\$24,755).
- ⁷⁸ Article 345 of the Draft Revision of the Criminal Code. Punishment for violating this article is up to four years' imprisonment or a fine up to Rp 300,000,000 (US\$24,755).
- ⁷⁹ See the text of current Draft Law on Inter-religious Harmony (1 August 2011), weblink: [http://www.elsam.or.id/downloads/1320828121_RUU_KUB_dan_Penjelasan\(OK\)\)11.pdf](http://www.elsam.or.id/downloads/1320828121_RUU_KUB_dan_Penjelasan(OK))11.pdf), accessed 3 March 2014. The idea to pass an inter-religious harmony law was discussed in the early 1980s, but only in 2003 was a draft law circulated to the public by Ministry of Religion. The latest version of the draft law was written in 2011 by Parliamentary Commission VIII (overseeing religious, social and children and women empowerment affairs). See also Melissa Crouch, Shifting conceptions of state regulation of religion: the Indonesian Draft Law on Inter-religious Harmony, *Global Change, Peace & Security: formerly Pacific Review: Peace, Security & Global Change*, p3 and 4, weblink: <http://dx.doi.org/10.1080/14781158.2013.764859>, accessed 3 March 2014.
- ⁸⁰ Article 44, 45, 46, 49, 50 and 51 of the Draft Law on Inter-religious Harmony, Supranote No. 79.
- ⁸¹ Interview with Tajul Muluk, 29 October 2013.
- ⁸² While in the past decade there has been an increasing trend of individuals being prosecuted for blasphemy, Amnesty International has also been told by local human rights activists that law enforcement agencies have also chosen to settle some cases of blasphemy outside the legal system. A common solution is either to pressure the accused individual during investigation to repent or to move those individuals away from their homes on the pretext of securing them from future attacks. This can be seen by a document obtained by Amnesty International on the Lampung Provincial Police Criminal Department's Strategic Planning for 2014. The document shows that between 2008 and 2011 the police in Lampung received 17 reports of blasphemy and defamation of religion cases from the public, but only one case was brought to trial while others were reportedly settled out of court. *Kepolisian Negara Republik Indonesia Daerah Lampung Direktorat Reserse Kriminal Umum* [Lampung Provincial Police General Criminal Directorate], *Rencana Kerja Ditreskrim Polda Lampung TA. 2014* [Workplan of the General Criminal Directorate for 2014], p4-9.
- ⁸³ Melissa Crouch, "Law and Religion in Indonesia: the Constitutional Court and the Blasphemy Law", *Asian Journal of Comparative Law*: Vol. 7:Iss. I, Article 3, 2012, p11-12.
- ⁸⁴ For related Amnesty International's statements, see Amnesty International, *Indonesia: Release Tajul Muluk and resolve situation of evicted Shi'a community in East Java* (Index: ASA 21/016/2014), 17 June 2014; Amnesty International, *Indonesia: One year on, displaced Shi'a community remain in limbo* (Index: ASA 21/029/2013), 26 August 2013; Amnesty International, *Indonesia: Religious freedom under attack as Shi'a villagers face eviction* (Index: PRE01/018/2013), 15 January 2013; Amnesty International, *Indonesia: Stop attacks against Shi'a community in East Java* (Index: ASA 21/033/2012), 28 August 2012; Amnesty International, *Indonesia: Shi'a leader imprisoned for blasphemy must be released* (Index: ASA 21/025/2012), 12 July 2012; Amnesty International, *Indonesia: Drop blasphemy charges against Shi'a leader* (Index: ASA 21/016/2012), 17 April 2012.
- ⁸⁵ Interview with Ikil Al Milal, 29 October 2013.
- ⁸⁶ Interview with Othman Ralibi, one of the lawyers of Tajul Muluk, 28 October 2013.
- ⁸⁷ Interview with Asfinawati, one of the lawyers of Tajul Muluk, 29 October 2013. See also The Wahid Institute and Yayasan Tifa, *Mengelola Toleransi dan Kebebasan Beragama: 3 Isu Penting* [Managing Tolerance and Freedom of Religion: 3 Key Issues], Jakarta 2012, p36. This information was said to come from the Head of East Java Police Force (Kapolda Jawa Timur) during a meeting with some NGO activists and Tajul Muluk's lawyers on 26 March 2012 after he was charged for blasphemy by the police.
- ⁸⁸ Interview with Ikil Al Milal, 29 October 2013.
- ⁸⁹ Klaten District Court, *Putusan No. : 3/Pid.B/2012/PN. Klt.*, p62.
- ⁹⁰ See Klaten District Court, *Putusan No. : 3/Pid.B/2012/PN. Klt.*, p58 and *the Jakarta Globe*, "Indonesian Clerics Issue Fatwa on 'Lost and Misguided' Cult, 3 December 2014, weblink: <http://www.thejakartaglobe.com/archive/indonesian-clerics-issue-fatwa-on-lost-and-misguided-cult/>, accessed 5 August 2014.
- ⁹¹ See Klaten District Court, *Putusan No. : 3/Pid.B/2012/PN. Klt.*, p9.
- ⁹² See Klaten District Court, *Putusan No. : 3/Pid.B/2012/PN. Klt.*, p41.
- ⁹³ FPI (*Front Pembela Islam*) is an Islamic mass organization established just after the New Order collapsed. Initially FPI was established as an "anti-vice movement" to implement Islamic Shari'a Law, but later was involved in several attacks against religious minority groups and closure of their places of worship, such as the Ahmadiyya and Christians. See FPI's website: <http://fpi.or.id/>. See also Amnesty

International Press Release, *Indonesia: New mob attack on Ahmadiyya community amid sentencing controversy*, 15 August 2011, weblink: <http://www.amnesty.org/en/for-media/press-releases/indonesia-new-mob-attack-ahmadiyya-community-amid-sentencing-controversy-20>, accessed 15 October 2011; Amnesty International Story, *Indonesia must commit to freedom of religion*, 23 February 2011, weblink: <http://www.amnesty.org/en/news-and-updates/indonesia-must-commit-freedom-religion-2011-02-23>, accessed 15 October 2011. For a study on the background of the FPI, see Ian Douglas Wilson, "The Changing Contours of Organized Violence in Post New Order Indonesia", Working Paper No.118, Asia Research Center of Murdoch University, April 2005, weblink: <http://dspace.africaportal.org/jspui/bitstream/123456789/13083/1/The%20Changing%20Contours%20of%20Organised%20Violence%20in%20Post%20New%20Order%20Indonesia.pdf?1>, accessed 15 October 2014.

⁹⁴ Supreme Court (*Mahkamah Agung*), *Putusan* No. 1115 K/Pid/2012, p13-14.

⁹⁵ See Kupang High Court, *Putusan* No. : 151/PID/2012/PTK.

⁹⁶ Bandung High Court, *Putusan* No. 463 Pid/2012/PT.Bdg. See *Tempo*, "Hukuman Penghina Agama di Facebook Diperberat" [Punishment of Blasphemer in Facebook Exacerbated], 23 January 2013, weblink: <http://www.tempo.co/read/news/2013/01/23/058456441/Hukuman-Penghina-Agama-di-Facebook-Diperberat>, accessed 5 August 2014.

⁹⁷ Interview with Anang Fitriana, Sebastian Joe's lawyer, 11 November 2013.

⁹⁸ Ciamis District Court, *Putusan* No. 278/Pid.Sus/2012/PN.Cms, p8. See Indonesia Toleran, "Kasus Penodaan Agama Sebastian Joe" [The Blasphemy Case of Sebastian Joe], weblink: <http://map.indonesiatoleran.or.id/reports/view/41>, accessed 5 August 2014.

⁹⁹ See *Pengadilan Negeri Ciamis*, "Sidang Penistaan Agama Perkara No.278/Pid.B/2012/PN.CMS" [Trial of Blasphemy Case No.278/Pid.B/2012/PN.CMS], weblink: <http://pn-ciamis.go.id/component/content/article/1-latest/1846-sidang-penistaan-agama-perkara-no278>, accessed 5 August 2014.

¹⁰⁰ Interview with Anang Fitriana, Sebastian Joe's lawyer, 11 November 2013. See also *Kabarpriangan.com*, "Istri Sebastian Mengucapkan Syahadat Kembali" [Sebastian's Wife Restating Religious Oath], 10 July 2012, weblink: <http://www.kabar-priangan.com/news/detail/5319>, accessed 5 August 2014.

¹⁰¹ See *Putusan Mahkamah Agung*, No. 777 K/Pid.Sus/2013, p.9.

¹⁰² See Bandung High Court Decision, *Putusan* Nomor: 463 Pid /2012/PT.Bdg.

¹⁰³ See Amnesty International, *Indonesia: Atheist imprisonment a setback for freedom of expression* (Index: ASA 21/021/2012), 14 June 2012.

¹⁰⁴ Interview with LBH (*Lembaga Bantuan Hukum*) Padang, 14 November 2013.

¹⁰⁵ Interview with LBH (*Lembaga Bantuan Hukum*) Padang, 14 November 2013.

¹⁰⁶ *Pancasila* or literally five principles is the Indonesian state ideology which is enshrined in the preamble of the 1945 Constitution. The five principles are: a belief in the One and Only God; just and civilised humanity; the unity of Indonesia; democracy led by wisdom of thoughts in deliberation amongst representatives of the people; and achieving social justice for all people of Indonesia.

¹⁰⁷ See Muaro District Court decision, NOMOR: 45 /PID.B/2012/PN.MR. p.43-44, 46.

¹⁰⁸ Phone interview with Alexander An, 12 February 2014.

¹⁰⁹ The accession to the ICCPR was approved by the Indonesian parliament (*Dewan Perwakilan Rakyat Republik Indonesia/DPR RI*) through Law No. 12/2005.

¹¹⁰ See amicus curiae to Indonesia's Constitutional Court (*Mahkamah Konstitusi*), Supranote No7, para 8.

¹¹¹ UN Human Rights Committee General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add. 13, paras 6 and 8. The analysis in this section reflects that in the joint NGO amicus curiae to Indonesia's Constitutional Court (*Mahkamah Konstitusi*), Supranote No. 7.

¹¹² UN Human Rights Committee General Comment No. 34, paras 21-2, 25-6 and 34-5, Supranote No. 19.

¹¹³ UN Human Rights Committee General Comment No. 34, para 23, Supranote No. 19.

¹¹⁴ Human Rights Committee, General Comment 34, para. 48; See also UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 35, para. 6.

¹¹⁵ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, to the Human Rights Council, 28 February 2008 A/HRC/7/14 paragraph 85.

- ¹¹⁶ The Rabat Plan of Action was adopted in Rabat, Morocco on 5 October 2012.
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-17-Add4_en.pdf.
- ¹¹⁷ Rabat Plan of Action, paras. 19 and 25; See also Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, A/HRC/2/3 (2006), para. 36 ["the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or belief that is free from criticism or ridicule."]
- ¹¹⁸ HRC General Comment No. 22, para 2, UN Doc. CCPR/C/21/Rev.1/Add.4, 27 September 1993, weblink:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en, accessed 3 March 2014.
- ¹¹⁹ Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, 17 July 2009 A/HRC/64/159 para 31.
- ¹²⁰ Human Rights Committee General Comment No. 22: The right to freedom of thought, conscience and religion, UN Doc CCPR/C/21/Rev.1/Add.4, 30 July 1993, para 8.
- ¹²¹ Manfred Nowak and Tanja Vospernik, "*Permissible Restriction on Freedom of Religion or Belief*", in *Facilitating Freedom of Religion or Belief: A Deskbook*, Tore Lindholm, W. Cole Durham, JR., Bahia G. Tahzib-Lie (editors), Martinus Nijhoff Publishers, Leiden, 2004, p148.
- ¹²² Human Rights Committee General Comment No. 22, para 8, Supranote No. 120.
- ¹²³ Amicus curiae to Indonesia's Constitutional Court, Supranote No. 7, para64.
- ¹²⁴ UN Working Group on Arbitrary Detention, Opinion No. 35/2008 (Egypt), Communication addressed to the Government on 6 December 2007 at paragraph 38, weblink:
<http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-30-Add1.pdf>, accessed 4 October 2014.
- ¹²⁵ See UN Working Group on Arbitrary Detention: "'The Working Group considers that deprivation of liberty is arbitrary in the following cases:(ii) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the [ICCPR] (Category II)", see, for example, Opinion of the Working Group adopted 30 August 2012 in the case of Somyot Prueksakasemsuk, No. 35/2012 (Thailand).
- ¹²⁶ Interview with Othman Ralibi, one of the lawyers of Tajul Muluk, 28 October 2013.
- ¹²⁷ Amnesty International, Fair Trial Manual, Second Edition, 2014 (Index: POL 30/002/2014), p118-119, weblink: <http://www.amnesty.org/en/fairtrials>, accessed 1 May 2014. Human Rights Committee General Comment No. 32, UN Doc. CCPR/C/GC/32, 23 August 2007, para 25.
- ¹²⁸ Interview with Anang Fitriana, Sebastian Joe's lawyer, 11 November 2013.
- ¹²⁹ Interview with Tedi Kholiludin (Lembaga Studi Sosial dan Agama/Elsa), 31 October 2013. *Boyolalipos.com*, "Anggota Ormas Islam Ikut Jaga Sidang Penistaan Agama" [Members of Islamic Mass Organizations Participate to Keep the Defamation of Religion Trial], 10 January 2012, weblink: <http://www.boyolalipos.com/2012/anggota-ormas-islam-ikut-jaga-sidang-penistaan-agama-155225>.
- ¹³⁰ This authority is based on Article 85 of the Criminal Procedure Code (KUHP).
- ¹³¹ Interview with Othman Ralibi, 28 October 2013, interview with Faiq Assiddiqi (LBH Surabaya) and interview with Asfinawati, 29 October 2013. All of them are the lawyers of Tajul Muluk.
- ¹³² Interview with Othman Ralibi, 28 October 2013, interview with Faiq Assiddiqi (LBH Surabaya) and interview with Asfinawati, 29 October 2013.
- ¹³³ Interview with Tajul Muluk, 29 October 2013.
- ¹³⁴ Interim Report of the Special Rapporteur on freedom of religion or belief to the UN General Assembly, UN Doc. A/62/280 20 August 2007, para 77.
- ¹³⁵ For this case, please see section 3 of this report.
- ¹³⁶ Interview with Iklil Al Milal, 29 October 2013.
- ¹³⁷ Interview with Iklil Al Milal, 29 October 2013.
- ¹³⁸ Amnesty International, Indonesia: Submission to the United Nations Committee on Economic, Social and Cultural Rights 52nd Pre-sessional working group, 2 to 6 December 2013 (Index: ASA 21/034/2013), October 2013, p25, weblink:
<http://www.amnesty.org/en/library/asset/ASA21/034/2013/en/10010dc9-2c71-4b1d-b0e8-3ecfdb17a93d/asa210342013en.pdf>, accessed 3 June 2014. Communication with a human rights

activist who has been assisting the Shi'a Sampang community living in the housing facility in Sidoarjo, 3 August 2014.

¹³⁹ Joint Ministerial Decree No. 3/2008 (by the Minister of Religious Affairs, the Attorney General, and the Minister of Home Affairs) forbidding the Ahmadiyya followers from promoting their activities and spreading their religious teachings. The Joint Ministerial Decree does not ban Ahmadiyya teachings, but only instructs the Ahmadiyya community "to stop spreading interpretations and activities that deviate from the principle tenets of Islam that is spreading an ideology that recognizes the presence of another prophet after Prophet Muhammad".

¹⁴⁰ Amnesty International, Indonesia: Submission to the United Nations Committee on Economic, Social and Cultural Rights 52nd Pre-sessional working group, p23-24, Supranote No. 138. The case of the displaced Ahmadiyya Lombok has also been recently cited by the UN Special Rapporteur on Adequate Housing in the report of her mission to Indonesia published in December 2013. The UN Special Rapporteur raised concerns about the "burning and destruction of homes, schools and places of worship belonging to religious minorities forcing hundreds of families in different communities out of their homes into temporary shelters and accommodation without access to basic facilities, services and security". Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, Mission to Indonesia, 26 December 2013, UN Doc. A/HRC/25/54/Add.1, para 72-73.



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PROSECUTING BELIEFS

INDONESIA'S BLASPHEMY LAWS

Freedom of religion remains severely restricted in Indonesia, despite guarantees in the country's Constitution and frequent public commitments by the authorities to promote religious tolerance and pluralism.

The authorities have continued to use provisions in the Criminal Code and other laws to imprison individuals for blasphemy simply because they have peacefully exercised their right to freedom of expression or to freedom of religion. The laws are often used to target people belonging to minority religions, faiths and opinions, and particularly those who adhere to interpretations of religions that are not sanctioned by the government. Convictions for blasphemy increased during former President Susilo Bambang Yudhoyono's term in office.

In this report, Amnesty International highlights how the blasphemy laws are fundamentally incompatible with Indonesia's obligations under international human rights law, and violate legally binding provisions on freedom of expression, conscience and religion, equality before the law and freedom from discrimination.

Amnesty International urges the Indonesian authorities to release all those imprisoned under blasphemy provisions for the legitimate exercise of their rights, and to repeal all legal provisions that criminalize individuals solely for the peaceful exercise of their right to freedom of thought, conscience and religion.

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