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Criminalization for Different Understandings: A Human Rights Analysis of Blasphemy Cases in Indonesia

Pemidanaan terhadap Perbedaan Pemahaman: Analisis Hak Asasi Manusia atas Perkara Penodaan Agama di Indonesia

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ABSTRACT: The right to have different interpretations of mainstream religious teachings in Indonesia can lead to criminal penalties. In practice, judges often rely on expert testimony to gain confidence that "those who are different" have committed the crime of blasphemy. The research method employed in this article is the Human Rights (HAM) research method, which emphasizes the study of court decisions related to criminal acts of blasphemy in Indonesia, particularly regarding the spread of beliefs that differ from the mainstream as blasphemy. The court decisions are analyzed using a human rights approach, especially the right to freedom of religion or belief (FoRB). As a result, 3 (three) of the 11 (eleven) court decisions reviewed still ignore the principle of impartiality in testing differences in interpretations of mainstream religious teachings. Judges do not open up space for dialogue to explore expert testimony from the defendant's perspective. This criminal justice practice, in turn, will undermine FoRB as a meaningful concept. In the future, differences in interpretation of mainstream religious teachings will not be a matter of criminalization, but rather of dialogue. Even if criminalization is necessary, what is prohibited is the crime of broadcasting religious hatred, the judicial process for which is carried out independently and impartially.

ABSTRAK: *Hak untuk berbeda penafsiran atas ajaran agama arus utama di Indonesia dapat berujung pada pemidanaan. Praktiknya, hakim kerap mengandalkan keterangan ahli untuk mendapatkan keyakinan bahwa "mereka yang berbeda" telah melakukan tindak pidana penodaan agama. Metode penelitian yang digunakan dalam artikel ini adalah metode penelitian hak asasi manusia (HAM) dengan menekankan pada studi terhadap putusan pengadilan terkait tindak pidana penodaan agama di Indonesia, khususnya mengenai penyebaran paham yang berbeda dari paham mainstream sebagai penodaan agama. Putusan pengadilan tersebut dianalisis dengan pendekatan HAM, khususnya hak atas kebebasan beragama atau berkeyakinan (KBB). Hasil yang dicapai adalah 3 (tiga) dari 11 (sebelas) putusan pengadilan yang ditelaah masih mengabaikan prinsip imparsialitas dalam menguji perbedaan penafsiran atas ajaran agama arus utama. Hakim tidak membuka ruang dialog untuk menggali keterangan ahli dari sudut pandang terdakwa. Praktik peradilan pidana tersebut pada gilirannya akan meruntuhkan KBB sebagai konsep yang bermakna. Ke depan, perbedaan penafsiran atas ajaran agama arus utama bukan menjadi ranah pemidanaan, tetapi dialog. Kalaupun kemudian perlu ada pemidanaan, maka yang menjadi terlarang adalah kejahatan siar kebencian agama, yang proses peradilannya dilakukan secara independen dan imparsial.*

Keywords:
blasphemy; freedom of religion or belief

Kata Kunci:
kebebasan beragama atau berkeyakinan; penodaan agama

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1 Introduction

In general, any statement, action, or other form of expression that is prohibited on the grounds of being considered offensive, insulting, or defamatory towards a particular religion or religious belief is regarded as blasphemy. Ultimately, each State retains the discretion to define, according to its own political context, the elements and limitations of conduct categorized as blasphemy, as there exists no universally accepted definition of blasphemy.[1] In Indonesia, Article 4 of the Law of the Republic of Indonesia Number 1/PNPS/1965 (Law No. 1/PNPS/1965), formerly known as the Presidential Decree of the Republic of Indonesia Number 1/PNPS/1965 on the Misuse and/or Blasphemy of Religion (Presidential Decree No. 1/PNPS/1965), serves as the legal basis for the enforcement of Article 156a letter a of the of the Indonesian Penal Code (KUHP, 1946), which criminalizes acts, among others, of religious blasphemy.

The drafting of Article 156a letter a of KUHP, 1946, particularly with respect to the crime of religious blasphemy, remains ambiguous, thereby rendering it susceptible to application in diverse cases by dominant religious groups or by the State. Indonesian blasphemy law does not distinguish between acts of intentional sacrilege (nor does it differentiate the object, whether it is directed at religious doctrines, places of worship, or religious figures) and deviations (from the mainstream understanding of a religion) or mere differences (in interpretation).[2] The FoRB does not endorse anti-blasphemy laws or other restrictive measures that frequently curtail freedom of expression;[3] therefore, such legal policies are, in effect, outdated.[4]

In practice, expert testimony has invariably been presented as a form of evidence in judicial proceedings concerning religious blasphemy in Indonesia. Judicial panels base their convictions regarding the occurrence of religious blasphemy primarily on expert testimony submitted by the public prosecutor. Consequently, expert testimony occupies a critical role in determining whether or not an act constitutes the criminal offense of blasphemy. From the perspective of the FoRB rights framework, such criminal justice practices ultimately undermine FoRB as a meaningful concept.[5]

Moreover, the enforcement of criminal law under Article 156a letter a of KUHP, 1946 is problematic not only because it is inconsistent and susceptible to multiple interpretations, but also because it produces penal disparities. Criminalization inherently involves a constitutional consideration between individual freedom and the State's authority to impose criminal sanctions. In criminalization theory, Article 156a letter a of the 1946 Criminal Code should be strictly formulated in accordance with the principles of legality, subsidiarity, and equality. It is also necessary to consider developments in international law and to align the provisions with human rights concepts, particularly from the perspective of FoRB.[6]

Studies concerning blasphemy in Indonesia, such as those conducted by Rumadi, reveal that the use of the term "blasphemy" in Indonesian criminal law remains ambiguous and serves as a source of discrimination against followers of religions or beliefs outside those considered "official.".[7] In certain cases, according to studies by Heru Susetyo and colleagues, law enforcement practices leave substantial room for subjectivity, intertwined with political motives, power dynamics, or discrimination based on ethnicity, religion, race, or inter-group relations.[8] Consequently, research by Wiwik Indrayanti and Anak Agung Ayu Nanda Saraswati emphasizes that the vague formulation of the law, which permits broad interpretation, has been and continues to be used to target activities and expressions that should be protected.[9]

The enforcement of blasphemy law, as noted in studies by Nazar Nurdin, frequently treats the fatwas of the Indonesian Ulema Council (*Majelis Ulama Indonesia*, MUI) as a source of law for judicial panels adjudicating relevant cases.[10] Research by Imam Yahya and Sulistiyono Susilo identifies the justification for using fatwas as instruments of practical politics, including the development of fatwa models that address political issues and reflect changes in Indonesian politics that increasingly recognize the influence of Islamic groups in electoral

1 Asfinawati dkk., *Modul Pendidikan Kebebasan Beragama atau Berkeyakinan*, 74.
2 Bagir, "Resolusi Melawan Intoleransi dan Prospek untuk Merevisi Peraturan tentang Penodaan Agama," 370.
3 Cases of religious defamation are regarded as one of the manifestations of tension between FoRB and freedom of expression. See, Bielefeldt, "Limiting Permissible Limitations: How to Preserve the Substance of Religious Freedom," 12.
4 Lendvai dan Gosztonyi, "Sacred Flames: the Burning of Quran in the Context of Free Speech," 19.
5 Rizal dkk., *Laporan Hasil Anotasi Putusan Pengadilan terkait Tindak Pidana Penodaan Agama di Indonesia*, 29.
6 Rizal, "Penodaan Agama di Indonesia: Dari Disparitas Pidana ke Penyesuaian Kebijakan Kriminalisasinya," 3–40.
7 Ahmad, "Kebebasan dan Penodaan Agama: Menimbang Proyek 'Jalan Tengah' Mahkamah Konstitusi Republik Indonesia," 245–71.
8 Susetyo dkk., "Keberlakuan Hukum Penodaan Agama di Indonesia antara Tertib Hukum dan Tantangan Hak Asasi Manusia," 71–99.
9 Indrayanti dan Saraswati, "Criminalizing And Penalizing Blasphemy: The Need To Adopt A Human Rights Approach In The Reform Of Indonesia's Blasphemy Law," 1–14.
10 Nurdin, "Delik Penodaan Agama Islam di Indonesia," 129–60.

contests. An illustrative example is the 2016 MUI fatwa on blasphemy involving the former Governor of the Special Capital Region of Jakarta, Basuki Tjahaja Purnama (Ahok).[11]

Attempts to test the constitutionality of blasphemy criminalization before the Constitutional Court (*Mahkamah Konstitusi*, MK) have been undertaken, as evidenced by Constitutional Court Decisions No. 140/PUU-VII/2009, dated 19 April 2010; No. 84/PUU-X/2012, dated 19 September 2013; and No. 56/PUU-XV/2017, dated 23 July 2018. However, the Constitutional Court has consistently ruled that blasphemy criminalization remains constitutional, reasoning that annulment would result in a legal vacuum, despite acknowledging the law's inherent weaknesses.[12] According to Yayan Sopyan, the issue with blasphemy criminalization lies in the misapplication of the norm rather than any conflict between the norm and the Constitution.[13] This indicates that Indonesia continues to deem it necessary to maintain the criminalization of blasphemy, whereas such a stance is not in line with the FoRB conception, which refers to several international human rights instruments.

In light of previous studies, this article holds particular urgency to, firstly, annotate selected court decisions concerning blasphemy cases in Indonesia, specifically (which is limited only to) those relating to the dissemination of beliefs divergent from mainstream doctrines as constituting blasphemy. Secondly, it aims to describe the expert testimony presented in blasphemy trials, which bears significance for the advocacy of FoRB rights in Indonesia. Thirdly, it seeks to provide a prescriptive analysis of the dynamics of interpreting blasphemy law in Indonesia, as reflected in judicial reasoning (ratio decidendi) within court decisions, grounded in the FoRB conception.

Based on the foregoing, this article, firstly, traces and annotates court decisions related to blasphemy cases in Indonesia, with particular focus on the issue of disseminating beliefs that diverge from mainstream doctrines as blasphemy. The findings from this tracing and annotation delineate the perspectives of judges and experts regarding blasphemy in Indonesia. Secondly, the article analyzes the results of these traced and annotated court decisions from a human rights perspective, particularly through the lens of FoRB rights, with the objective of providing prescriptive recommendations.

2 Method

The research methodology employed in this article falls within the scope of human rights research, utilizing the FoRB rights conception as a vantage point for analyzing selected District Court (*Pengadilan Negeri*, PN) decisions concerning criminal cases of religious blasphemy in Indonesia, particularly regarding the dissemination of beliefs that diverge from mainstream doctrines as constituting blasphemy. Several of these PN decisions were obtained from the website of the Directory of Decisions of the Supreme Court of the Republic of Indonesia (https://putusan3.mahkamahagung.go.id/) and from the Case Tracking Information System (*Sistem Informasi Penelusuran Perkara*, SIPP) managed by first-instance courts, using the keyword "*penodaan agama*" ("blasphemy"). The researcher downloaded and reviewed the court decisions to identify the names of defendants, brief profiles of experts along with their testimony relevant to FoRB rights issues, and the judicial reasoning of judges related to the criminal offense of blasphemy committed by the defendants. Considering that the researcher employs a statutory and case-based approach, as is customary in legal research, the analysis presented in this article is prescriptive in nature.[14]

3 Findings and Discussion

3.1 Selected Court Decisions Concerning the Criminal Offense of Religious Blasphemy in Indonesia

The criminal offense of religious blasphemy in Indonesia can be categorized into five (5) forms. First, acts or statements that explicitly attack or insult a religious symbol, including symbols sanctified by a particular religion. Second, the dissemination of beliefs that diverge from mainstream doctrines as constituting blasphemy. Third, the

11 Yahya dan Susilo, "Conservative Muslims In Indonesia's Religious And Political Landscapes: Ahok's Blasphemy Case As A Political Leverage," 1–13.

12 Aditya, "Judicial Consistency dalam Putusan Mahkamah Konstitusi tentang Pengujian Undang-Undang Penodaan Agama," 80–103.

13 Sopyan, "Menyoal Kebebasan Beragama dan Penodaan Agama Di Indonesia (Telaah atas Putusan MK No. 140/PUU-VII/2009)," 195–212.

14 In other words, this article provides a prescription regarding what ought to be undertaken by judges, for instance, in adjudicating cases of religious defamation in Indonesia based on the conception of freedom of religion or belief (FoRB). An elaboration regarding this nature can be read in full in Marzuki, *Penelitian Hukum (Edisi Revisi)*, 69–70.

public dissemination of religious publications containing interpretations of other religions. Fourth, the improper performance of religious rituals as constituting blasphemy. Fifth, other acts are interpreted as blasphemy.[15]

This article traces only court decisions concerning criminal cases of religious blasphemy in Indonesia, specifically with regard to the dissemination of beliefs that diverge from mainstream doctrines as constituting blasphemy, as follows:

Tabel 1. District Court Decisions Concerning Criminal Cases of Religious Blasphemy in Indonesia

Decision Number	Case Facts as Determined by Judge	Articles Applied by Judge	Trial Record Regarding Expert Testimony
Decision of PN Lubuk Pakam No.: 1192/Pid.B/2013/PN.LP, dated 18 November 2013, *jo* Decision of Supreme Court of the Republic of Indonesia (Mahkamah Agung, MA) No.: 639 K/PID/2014, dated 13 June 2014.	The *ratio decidendi* of the judicial panel in imposing imprisonment on the defendant referred, inter alia, to the Fatwa of MU) of Serdang Bedagai Regency No.: 01/ DP.P.II.25/F/V/ 2013, dated 21 May 2013, which declared that the teachings of "Islam *Kaffah*," "Islam *Fattah*," or "*Berserah Diri*" (Surrender) propagated by the defendant were deviant and misleading, as they significantly diverged from the Islamic teachings adhered to in Indonesia. The defendant's teachings disrupted Muslim communal harmony in practicing Sharia, constituting desecration of the prevailing Islamic law, thereby fulfilling the elements of Article 156a letter a of KUHP, 1946.[16]	Article 156a letter a of 1946 KUHP	The public prosecutor read the expert testimony of Abdul Rahman Lubis alias Buyung, who had previously been examined by investigators as recorded in the Investigation Report dated 12 June 2013. The prosecutor also read the Fatwa of MUI Serdang Bedagai No. 01/DP.P.II.25/F/V/2013, dated 21 May 2013. The defendant objected to these readings but did not present any expert testimony during the trial.
Decision of PN Klaten No.: 03/Pid.B/2012/PN.Klt, dated 13 March 2012, *jo* decision of Semarang High Court Decision (*Pengadilan Tinggi*, PT) No.: 98/Pid/2012/ PT.Smg, dated 17 April 2012, *jo* Decision of MA No.: 1115 K/Pid/2012, dated 9 August 2012.	The teachings believed and disseminated by the defendant contradicted Islamic creed, which teaches that there are no further revelations beyond those delivered by Allah SWT to Prophet Muhammad SAW as the final prophet. Thus, the teachings propagated by the defendant, originating from Muhammad Harun's narratives and conveyed by the defendant, constituted blasphemy against Islam.[17]	Article 156a letter a of 1946 KUHP	The prosecutor presented two (2) experts: (1) Drs. Murtadlo Purnomo, then Deputy Chairman of MUI Klaten; and (2) Drs. H. Wahib, then Head of Islamic Community Guidance Section at the Ministry of Religious Affairs, Klaten Regency, Central Java. The defendant presented an expert, Syamsul Bakri, S.Ag., M.A., at that time a Lecturer in Aqidah and Islamic Philosophy at the State Islamic University (UIN) Raden Mas Said Surakarta, now a full professor. One expert explained that posters used as evidence needed clarification to avoid misinterpretation.

15 Arsil dkk., *Penafsiran terhadap Pasal 156a Kitab Undang-Undang Hukum Pidana tentang Penodaan Agama (Analisis Hukum dan Hak Asasi Manusia)*, 46.

16 *Putusan Pengadilan Negeri Lubuk Pakam Nomor: 1192/Pid.B/2013/PN.LP, tanggal 18 November 2013*, 25–35.

17 *Putusan Pengadilan Negeri Klaten Nomor: 03/Pid.B/2012/PN.Klt, tanggal 13 Maret 2012*, 46–61.

Decision Number	Case Facts as Determined by Judge	Articles Applied by Judge	Trial Record Regarding Expert Testimony
Decision of PN Sampang No.: 69/Pid.B/2012/PN.Spg, dated 12 July 2012.	The defendant's acts of asserting or teaching that the existing Qur'an is not original clearly demeaned, defiled, and damaged the sanctity of the Qur'an, which, as widely known, is the holy scripture of Islam preserved by Allah SWT. Consequently, such acts constituted blasphemy against Islam.[18]	Article 156a letter a of 1946 KUHP	The Public Prosecutor presented five (5) experts, namely: (1) Drs. K.H. Abdus Somad Buhari, who at the time was known to serve as the Chairman of MUI of East Java Province for the period 2005–2020; (2) K.H. Achmad Zain Alkaf, who at the time was known to serve at Nahdlatul Ulama (NU) as Mustasyar (Adviser), Advisor to MUI, leader of the Al-Bayyinat Foundation in Surabaya, and Deputy Rais Syuriah of PWNU East Java; (3) Prof. Dr. H. Abd. Halim Soebahar, M.A., who at the time was known as Professor of Islamic Education at UIN Kiai Haji Achmad Siddiq Jember and Deputy Chairman of MUI East Java; (4) K.H. Buchori Ma'shum, who at the time was known as the Caretaker of the Al-Islamy Foundation and Chairman of MUI Sampang Regency for the period 2010–2025; and (5) Drs. H. Ali Daud Bey, who at the time was known as a retired official of the Department of Education and Culture of Sampang Regency and Chairman of the Sampang Regency Education Council. In this regard, the defendant objected to the testimonies provided by these experts. The defendant presented four (4) experts. First, Dr. Zainal Abidin Bagir, M.A., who at the time was known as a Doctoral scholar in the field of Philosophy of Religion and served as a Lecturer at Universitas Gadjah Mada and UIN Sunan Kalijaga Yogyakarta since 2002. Some of his testimonies that are significant to the right to FoRB include, for example, that differences of understanding within Islam have existed for hundreds, even thousands, of years and will never be fully resolved, thus requiring tolerance. Differences should not be contested; what is most important is to maintain proper decorum in expressing differing opinions. Furthermore, debates regarding divergent interpretations have been ongoing for thousands of years.[19] Second, Dr. M. Solehuddin, S.H., M.H., who at the time was known as a Permanent Lecturer at Universitas Bhayangkara Surabaya since 1987, focusing on criminology and criminal law. Third, Dr. Umar Shahab, M.A., who at the time was known as a Lecturer for the Master's Program at ICAS/ Paramadina Jakarta and as Head of the Sandra Jakarta College of Islamic Philosophy. Some of his testimonies that are significant to the right to FoRB include, for example, that misunderstandings within a religious sect are common. Shia adherents sometimes misunderstand Sunni practices and vice versa. This occurs due to a lack of direct engagement with primary sources and practices. Understanding Islam involves ijtihad, i.e., scholarly examination of Qur'anic and Hadith data. While scholars agree on the validity of Qur'anic data, Hadith data are considered relatively interpretive.[20] Prof. Dr. Zainun Kamal, M.A., who at the time was known as Professor at UIN Syarif Hidayatullah Jakarta in the field of Islamic Thought. Some of her testimonies that are significant to the right to FoRB include, for example, that limited insight leads to conflicts and mutual blame. In reality, differences are a *rahmat lil alamin* (blessing for all creation). Furthermore, according to him, fatwas are binding only upon the issuer and the person requesting the fatwa.[21]

18 *Putusan Pengadilan Negeri Sampang Nomor 69/Pid.B/2012/PN.Spg, tanggal 12 Juli 2012*, 84–95.
19 *Putusan Pengadilan Negeri Sampang Nomor 69/Pid.B/2012/PN.Spg, tanggal 12 Juli 2012*, 74–76.
20 *Putusan Pengadilan Negeri Sampang Nomor 69/Pid.B/2012/PN.Spg, tanggal 12 Juli 2012*, 78–82.
21 *Putusan Pengadilan Negeri Sampang Nomor 69/Pid.B/2012/PN.Spg, tanggal 12 Juli 2012*, 82–83.

Decision Number	Case Facts as Determined by Judge	Articles Applied by Judge	Trial Record Regarding Expert Testimony
(1) Decision of PN Banda Aceh No.: 80/Pid.B/2015/PN.Bna, dated 15 Juni 2015 *jo* Decision of PT Banda Aceh No.: 137/Pid/2015/PT.Bna, dated 2 September 2015; (2) Decision of PN Banda Aceh No.: 82/Pid.B/2015/PN.Bna, dated 15 June 2015; (3) Decision of PN Banda Aceh No.: 81/Pid.B/2015/PN.Bna, dated 15 June 2015; (4) Decision of PN Banda Aceh No.: 85/Pid.B/2015/PN.Bna, dated 15 June 2015; (5) Decision of PN Banda Aceh No.: 84/Pid.B/2015/PN.Bna, dated 15 June 2015; and (6) Decision of PN Banda Aceh No.: 83/Pid.B/2015/PN.Bna, dated 15 June 2015, *jo* Decision of PT Banda Aceh No.: 140/Pid/2015/PT.Bna, dated 2 September 2015.	The *ratio decidendi* of several panels in imposing imprisonment on the defendants considered acts of conveying to others the understanding of "*messiah*" and/or testifying "*messiah*," *in casu* Ahmad Musadeq, as the bearer of God's message for humanity. Thus, the defendants intended to desecrate the purity of religious teachings in Indonesia, specifically Islam, regarding Allah SWT's messenger as contained in the Qur'an and Hadith.[22]	Article 156a letter a of 1946 KUHP	At the Banda Aceh District Court, the Public Prosecutor presented two (2) experts, namely: (1) Drs. A. Karim Syeikh, M.A., who at the time was known as a Lecturer in Da'wah Science at the Faculty of Da'wah and Communication, UIN Ar-Raniry; and (2) Prof. Eddy Purnama, who at the time was known as Professor of Constitutional Law at the Faculty of Law, Universitas Syiah Kuala. On the other hand, the defendant presented three (3) experts. First, Prof. Yusni Sabi, M.A., Ph.D., who at the time was known as Professor at UIN Ar-Raniry. Some of his testimonies that are significant to the right to FoRB include, for example, that there is no term "deviant or misleading" if there is merely a difference in understanding from others. If a group is considered "deviant," particularly when issues arise in the field of religion, many other religious institutions can provide guidance.
			Prisons are not suitable places to nurture them, because prisons contain many individuals with malicious tendencies. According to him, Gafatar believes in the oneness of Allah SWT, Muhammad as His Messenger, and holds to the Qur'an and Hadith, yet their knowledge or reasoning differs from the common understanding.[23] Second, Drs. Sofyan Saleh, S.H., M.H. Third, T. Kemal Fasya, M.A., who at the time was known as a Lecturer at Universitas Malikussaleh. Some of his testimonies significant to the right to FoRB include, for example, that it is preferable to take persuasive rather than repressive measures in addressing the Gafatar case so as to avoid conflict. According to him, in a religious context, a persuasive approach should be applied rather than declaring others as kafir. Differences in belief indeed exist and have occurred empirically.[24]

22 *Putusan Pengadilan Negeri Banda Aceh Nomor: 80/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 44–80; *Putusan Pengadilan Negeri Banda Aceh Nomor: 82/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 52–83; *Putusan Pengadilan Negeri Banda Aceh Nomor: 81/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 53–96; *Putusan Pengadilan Negeri Banda Aceh Nomor: 85/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 46–81; *Putusan Pengadilan Negeri Banda Aceh Nomor: 84/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 51–82; *Putusan Pengadilan Negeri Banda Aceh Nomor: 83/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 49–80.

23 *Putusan Pengadilan Negeri Banda Aceh Nomor: 80/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 36–39; *Putusan Pengadilan Negeri Banda Aceh Nomor: 82/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 40–43; *Putusan Pengadilan Negeri Banda Aceh Nomor: 81/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 46–49; *Putusan Pengadilan Negeri Banda Aceh Nomor: 85/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 39–42; *Putusan Pengadilan Negeri Banda Aceh Nomor: 84/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 36–39; *Putusan Pengadilan Negeri Banda Aceh Nomor: 83/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 37–40.

24 *Putusan Pengadilan Negeri Banda Aceh Nomor: 80/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 39–40; *Putusan Pengadilan Negeri Banda Aceh Nomor: 82/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 43–44; *Putusan Pengadilan Negeri Banda Aceh Nomor: 81/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 49–50; *Putusan Pengadilan Negeri Banda Aceh Nomor: 85/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 42–43; *Putusan Pengadilan Negeri Banda Aceh Nomor: 84/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 39–40; *Putusan Pengadilan Negeri Banda Aceh Nomor: 83/Pid.B/2015/PN.Bna, tanggal 15 Juni 2015*, 40–41.

Decision Number	Case Facts as Determined by Judge	Articles Applied by Judge	Trial Record Regarding Expert Testimony
Decision of PN Biak No.: 64/Pid.Sus/2021/PN Bik, dated10 November 2021, *jo* Decision of PT Jayapura No.: 115/Pid/2021/PT.Jap, dated 6 January 2022.	The defendants' acts were in stark contradiction with Christian doctrine, as they proclaimed themselves spiritual intermediaries with teachings asserting "*apus manseren kayan byak*," i.e., God descended from Papuan lineage with a child to Jesus Christ. The panel held that these acts, communicated to the public, constituted religious worship within Christianity.[25]	Article 156a letter a of 1946 KUHP	The Public Prosecutor presented three (3) experts, namely: (1) Rev. Michael M. Kapisa, S.Th., M.Si., who at the time was known as the Chairperson of the Forum for Religious Harmony (*Forum Kerukunan Umat Beragama*, FKUB) Biak; (2) Rev. Lod Benedectus H. Rumbino, S.Ag., M.Si., who at the time was known as Head of the Christian Religious Affairs Section at the Office of the Ministry of Religious Affairs of Supiori Regency; and (3) Dr. Marthinus Mambaya, S.H., M.Hum., who at the time was known as a Lecturer in Criminal Law at the Faculty of Law, Universitas Cenderawasih. On the other hand, the defendants did not present any experts at the trial..
Decision of PN Makale No.: 31/Pid.Sus/2020/PN.Mak, dated 3 June 2020.	The defendant stated that worshiping God (salat) should be performed only twice a day. However, in Islam, it is prescribed to be performed five (5) times daily. Furthermore, the defendant believed that fasting (sawm) and almsgiving (zakat) were unnecessary. In fact, fasting is obligatory for those who have reached maturity (*baligh*), and zakat must be performed by those who meet the prescribed criteria. Additionally, according to the defendant, there is no need to call out loudly in the mosque during the call to prayer (adhan). In contrast, in Islamic teaching, the adhan is to be proclaimed audibly so that it can be heard by the congregation nearby.[26]	Article 156a letter a of 1946 KUHP	The prosecutor presented expert Samauddin Tangilala. The defendant did not present expert testimony.

Source: Directory of Decisions of the Supreme Court of the Republic of Indonesia

Expert testimony has never been absent as a form of evidence in judicial practice concerning criminal acts of blasphemy in Indonesia. In all court decisions annotated in this article, the judicial panels based their conviction that a criminal act of blasphemy had occurred primarily on the expert testimony submitted by the public prosecutor. This signifies that expert testimony occupies a crucial position in determining whether or not an act of blasphemy has been committed.

Article 184 paragraph (1) letter b of the Republic of Indonesia Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) affirms that expert testimony constitutes a legitimate form of evidence in the adjudication of criminal cases. According to Article 186 KUHAP, expert testimony is defined as statements made by an expert in a court session. Article 1 point 28 KUHAP further clarifies that expert testimony refers to statements provided by an individual possessing specialized knowledge pertinent to clarifying a criminal matter for the purposes of judicial examination. In addition, Article 120 KUHAP stipulates that, besides possessing specialized knowledge in a particular field, the testimony delivered must be based on the expert's knowledge, thereby distinguishing it from witness testimony.

The concept of an expert does not necessarily refer to an individual who has obtained formal education or holds a specific degree. Under criminal procedural law, any person may be appointed as an expert provided they are deemed to possess specialized knowledge or experience concerning a particular matter, or have greater

25 *Putusan Pengadilan Negeri Biak Nomor: 64/Pid.Sus/2021/PN Bik, tanggal 10 November 2021*, 72–83.
26 *Putusan Pengadilan Negeri Makale Nomor: 31/Pid.Sus/2020/PN.Mak, tanggal 3 Juni 2020*, 13–20.

knowledge and experience in that matter than others.[27] In the annotated court decisions, the backgrounds of experts presented, whether by the public prosecutor or the defendant, were highly diverse, including officials from the MUI, Ministry of Religious Affairs personnel, university lecturers, *Nahdlatul Ulama* (NU) officials, local government officers, Christian clergy, and members of the Forum for Religious Harmony (FKUB).

According to several provisions in the KUHAP, expert testimony may be presented at different stages. First, during the investigation at the request of the investigator (Article 7 paragraph (1) letter h of KUHAP in conjunction with Article 120 of KUHAP, Article 132 paragraph (1) of KUHAP, Article 133 of KUHAP, and the Elucidation to Article 186 of KUHAP). Second, during the investigation at the request of the suspect (Article 65 of KUHAP). Third, during the trial at the request of the defendant, the public prosecutor, and/or the judge (Article 160 paragraph (4) of KUHAP in conjunction with Articles 161, 180, 186, and Article 202 paragraph (2) of KUHAP). Accordingly, expert testimony may be delivered whenever a request is made, whether by the suspect, investigator, defendant, public prosecutor, and/or judge.

The legal reasoning in the Constitutional Court Decision No. 65/PUU-VIII/2010, dated 18 August 2011, affirms that the submission of expert witnesses, which constitutes the right of a suspect or defendant, on the other hand, imposes an obligation upon investigators, public prosecutors, and judges to summon and examine such experts. This reflects the embodiment of the principles of due process of law and of equitable legal certainty within a state governed by law. Accordingly, the presence of expert witnesses presented by a suspect or defendant in a criminal proceeding does not serve to obstruct the enforcement of criminal law.[28]

Referring to Article 160 paragraph (4) of KUHAP in conjunction with Article 161 of KUHAP, Article 180 of KUHAP, Article 186 of KUHAP, and Article 202 paragraph (2) of KUHAP, as well as Constitutional Court Decision No. 65/PUU-VIII/2010 dated 18 August 2011—and in relation to the annotated court judgments discussed in this article—it should be understood that the opportunity to present expert witnesses ought also to be exercised by judges. This is intended to elucidate matters or circumstances that remain insufficiently clear.[29] However, the evidentiary value of expert testimony is discretionary (*vrij bewijskracht*), meaning that it is neither conclusive nor binding, thereby allowing judges to freely assess and determine the weight of such testimony.

Nevertheless, not all defendants in the annotated judgments were afforded the opportunity to obtain "clarification of their case" through expert testimony. Based on the analysis of court decisions in which defendants did not present expert witnesses—and by reference to Article 180 paragraph (1) of KUHAP in conjunction with the elucidation of Article 161 paragraph (2) of KUHAP and the elucidation of Article 186 of KUHAP—judges, in conducting hearings of such cases, should have proactively taken the initiative to request expert testimony. This implies that judges must not solely rely on expert witnesses presented by the public prosecutor, but may themselves request and summon experts for examination.

Such judicial initiative, as described above, is necessary to ensure balance within the criminal justice process. Moreover, the annotated judgments in this article reveal that expert testimony presented by defendants was not accorded an equitable consideration as a basis for judicial deliberation in determining whether an act of blasphemy had been proven. Furthermore, expert testimony in cases concerning criminal acts of blasphemy occupies a highly significant role in interpreting what constitutes a "religion" or a "religious teaching." The outcome of such interpretation may, in turn, give rise to discriminatory practices in the context of human rights, particularly in relation to the right to FoRB.

3.2 Analysis of the Concept of Freedom of Religion or Belief in Relation to Several Court Decisions Concerning the Crime of Blasphemy in Indonesia

Referring to the court decisions annotated in this article and in connection with the conceptual framework of the right to FoRB as examined through a review of previous studies, it is first observed that all the decisions share a common legal basis underlying the panel of judges' imposition of criminal liability, namely Article 156a letter (a) of KUHP, 1946. Article 4 of Law No. 1/PNPS/1965—which was previously known as Presidential Decree No. 1/PNPS/1965—serves as the source of the said provision's applicability. The scope of Law No. 1/

27 Effendi, *Dasar-Dasar Hukum Acara Pidana: Perkembangan dan Pembaruannya di Indonesia*, 176. Lihat juga, Adiyaryani, "Pembuktian," 788.

28 *Putusan Mahkamah Konstitusi Republik Indonesia Nomor: 65/PUU-VIII/2010, tanggal 18 Agustus 2011*, 90. Studi terhadap putusan tersebut dapat dilihat selengkapnya dalam, antara lain, Eddyono, *Kompilasi Putusan Mahkamah Konstitusi dan Perubahan Kitab Hukum Acara Pidana (KUHAP) Indonesia*, 6–9; Nurhayati dkk., *Putusan Mahkamah Konstitusi dalam Penegakan Hukum Pidana*, 29–35.

29 Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*, 305.

PNPS/1965, including criminal acts of blasphemy, is broad in dimension: it not only responds to actions that insult God but also encompasses efforts to protect religious feelings.

The rationale for the promulgation of Law No. 1/PNPS/1965 was threefold. First, it was enacted as a response to the emergence and development of various mystical or belief-based sects and organizations within society that were deemed to be in conflict with religious doctrines and laws.[30] Second, the emergence of such sects and organizations was considered to have caused legal violations, disrupted national unity,[31] misused or exploited religion, and desecrated religion itself. Third, the development of these sects and organizations was regarded as having evolved in a manner that endangered existing religions.[32]

formulation of Article 156a letter (a) of KUHP, 1946, particularly concerning the criminal act of blasphemy, is still considered ambiguous, thereby rendering it vulnerable to diverse interpretations and applications by dominant religious groups or by the state. Zainal Abidin Bagir observes that Indonesia's blasphemy law does not distinguish between deliberate acts of desecration (nor does it differentiate the object of such acts—whether they are directed at doctrines, houses of worship, or religious figures) and mere deviations (from mainstream religious understanding) or simple differences (in interpretation).[33]

Several Constitutional Court decisions reviewing the constitutionality of Article 156a letter (a) of KUHP, 1946 have maintained that the provision remains constitutional, notwithstanding that its regulatory formulation and legal norms require refinement.[34] Subsequently, Article 156a letter (a) of KUHP, 1946 was repealed through the enactment of Law of the Republic of Indonesia No. 1 of KUHP, 2023. In this reform of criminal law, the term "desecrate" (*menodai*) still appears in Article 305 paragraph (1) of KUHP 2023; however, its object is relatively more concrete—namely, buildings used for worship, religious or belief-based practices, or objects employed for religious or ceremonial purposes.

Second, differences in belief or interpretation from mainstream doctrines or interpretations may still be criminalized under the criminal justice mechanism. Yet, according to the testimony of Yusni Sabi as an expert witness in several trials whose decisions are annotated in this article, differences in understanding should not be brought before a court or result in imprisonment but rather should be addressed through constructive guidance among the concerned parties. Regarding divergent understandings, Zainal Abidin Bagir, testifying as an expert in proceedings recorded in Sampang District Court Decision No. 69/Pid.B/2012/PN.Spg, dated 12 July 2012, explained that differences in theological interpretations within Islam have existed for hundreds, even thousands, of years, and will never be entirely resolved—therefore, tolerance is essential. The nature of what constitutes "deviation" has itself been a subject of debate for millennia. In his view, differences need not be contested; what matters most is the observance of proper ethics in disagreement.

Historically, the protection of the right to FoRB constitutes the oldest of all human rights, preceding the recognition of other rights. The right to FoRB is a fundamental and paramount right, inseparable from freedom of thought and the freedom to act in accordance with one's conscience; consequently, it is classified as a *non-derogable* right.[35] FoRB is a right grounded in liberty and equal dignity—principles (that form the very foundation of human rights). The right to FoRB encompasses the liberty to choose and to adhere to religious or belief interpretations that differ from dominant or mainstream interpretations within a religion or belief system,[36] including traditional (ancestral) religions, revealed religions, new religious movements,[37] agnostic beliefs, freethought, atheism, and rationalism.[38]

The right to FoRB comprises two interdependent dimensions. First, internal freedom (*forum internum*), which refers to an individual's liberty to have, maintain, embrace, or change their religion or belief.[39] In principle, every person has the right to freedom of thought, conscience, and religion.[40] Any form of reduction or limitation—

30 See, Hefner, "Negara Mengelola Keragaman di Indonesia: Kajian Mengenai Kebebasan Beragama Sejak Masa Kemerdekaan," 32.
31 *Putusan Mahkamah Konstitusi Republik Indonesia Nomor: 140/PUU-VII/2009, tanggal 19 April 2010*, 2010, 267.
32 Isnur, *Agama, Negara dan Hak Asasi Manusia, Proses Pengujian UU 1/PNPS/1965 tentang Pencegahan, Penyalahgunaan, dan/atau Penodaan Agama di Mahkamah Konstitusi*, 6.
33 Bagir, "Resolusi Melawan Intoleransi dan Prospek untuk Merevisi Peraturan tentang Penodaan Agama," 370.
34 *Putusan Mahkamah Konstitusi Republik Indonesia Nomor: 140/PUU-VII/2009, tanggal 19 April 2010*, 2010, 298.
35 Ahmad, "Hak Beragama atau Berkeyakinan," 124.
36 Larsen, "Islam, Kebebasan Beragama atau Berkeyakinan, dan Kesetaraan Gender," 85.
37 Aisah dkk., *Standar Norma dan Pengaturan Nomor 2 tentang Hak Atas Kebebasan Beragama dan Berkeyakinan*, 12–13.
38 Bielefeldt, *Politik Kesetaraan: Dimensi-Dimensi Kebebasan Beragama atau Berkeyakinan*, 48–49; Scharffs, "Pengantar untuk Kebebasan Berpikir, Beragama, dan Berkeyakinan dalam Perspektif Hak Asasi Manusia," 377.
39 Larsen, "Islam, Kebebasan Beragama atau Berkeyakinan, dan Kesetaraan Gender," 84.
40 Wahid, "Faith in the Balance: ASEAN's Quest for Religious Freedom Amidst Cultural Diversity," 140.

on whatever grounds or under any circumstances—cannot be imposed upon this first normative core component of human rights relating to FoRB. As such, being inviolable,[41] neither the State nor non-State actors may diminish or restrict any person's *forum internum*.

Second, external freedom (*forum externum*). In principle, every person has the liberty—individually or in community with others, privately or publicly—to manifest their religion or belief in teaching, practice, and worship.[42] Restrictions upon this second normative core component of human rights related to FoRB may only be imposed by law and only insofar as they are necessary to protect public safety, public order, public health, public morals, and the fundamental rights and freedoms of others.

The constitutional guarantee of the right to FoRB in Indonesia is enshrined in Article 28E paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 (UUD NRI of 1945) and in Article 22 paragraph (1) of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (Law No. 39 of 1999). Furthermore, Article 28I paragraph (1) of the UUD NRI of 1945 stipulates that the right to FoRB is one of the rights that shall not be reduced under any circumstances and by any party (as reaffirmed in Article 4 of Law No. 39 of 1999). Indonesia has also ratified an international human rights instrument guaranteeing the right to FoRB, namely the International Covenant on Civil and Political Rights (ICCPR), through Law of the Republic of Indonesia Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (Law No. 12 of 2005).

Therefore, the law on blasphemy in Indonesia is regarded as an impediment to the right to FoRB. First, it restricts the definition of "religion," since the State determines which religions are officially recognized. Second, the State interferes with the domain of *forum internum* by assuming authority to define the essential doctrines of religion. Third, it exercises coercion toward mystical or spiritual movements (*aliran kebatinan*), as the State seeks to direct them toward "sound views" and toward belief in the Almighty God (*Ketuhanan Yang Maha Esa*). Fourth, it is discriminatory in nature, given that official recognition of a religion is required for civil registration purposes. Fifth, it criminalizes beliefs or interpretations that diverge from mainstream or dominant interpretations.[43]

The criminalization of blasphemy, first, was designed to maintain public order by prohibiting acts that offend the sentiments of adherents of particular religions. Second, it was intended to protect religions, their symbols, and sacred objects from insult or desecration. Its existence functions as a mechanism by which the State supervises public discourse and imposes restrictions on freedom of expression. This is grounded in the presumption that blasphemy constitutes a threat to public order or morality.[44] In many cases, individuals belonging to minority groups—who generally occupy the most vulnerable positions—become victims of criminalization, being prosecuted for the offense of blasphemy.[45] The criminalization of blasphemy exerts an intimidating effect upon members of minority groups, particularly religious critics and dissenters,[46] who are frequently branded as heretical or subjected to persecution by the majority or by State-supported religious institutions.[47]

41 Ringmar, "The Right to Practice Your Religion: European Legislation and the Origin of Religious Beliefs," 45.
42 Larsen, "Islam, Kebebasan Beragama atau Berkeyakinan, dan Kesetaraan Gender," 84.
43 Pultoni dkk., *Panduan Pemantauan Tindak Pidana Penodaan Agama dan Ujaran Kebencian atas Nama Agama*, 48–49.
44 Hicks, "The Public Disorder of Blasphemy Laws: a Comparative Perspective," 51.
45 Lihat, Hasan, "Islam dan HAM," 10.
46 Bielefeldt dan Wiener, *Religious Freedom Under Scrutiny*, 62. Lihat juga, Bielefeldt, *Politik Kesetaraan: Dimensi-Dimensi Kebebasan Beragama atau Berkeyakinan*, 295.
47 Hicks, "The Public Disorder of Blasphemy Laws: a Comparative Perspective," 56.

Table 2. Comparative Overview of Blasphemy Laws in Selected Countries

Pakistan	India and Bangladesh	Indonesia
The offense of blasphemy is punishable by death,[48] a sanction that appears disproportionate and unacceptable under international human rights standards.[49]	Given that blasphemy laws are remnants of colonial legislation, they have often been used to violate the right to legitimate criticism, free inquiry, or artistic expression,[50] thereby posing a clear threat to the future of human freedom.[51] In fact, blasphemy accusations have been exploited as a pretext by religious extremists to polarize society and incite public disorder.[52]	In cases occurring in Indonesia[53] such as those involving the Ahmadiyya community, human rights within the framework of blasphemy law are invoked to protect an individual's right to religious offense arising from doctrinal disagreement. In such contexts, blasphemy law has been employed by courts to restrict freedom of religion or belief and freedom of expression.[54] Accordingly, Indonesia's blasphemy law serves to protect religious orthodoxy from what is deemed heretical by religious authorities.[55] Individuals accused of blasphemy are branded as heretics for interpreting or practicing religious teachings differently from mainstream or majority interpretations and practices.[56]

Source: Processed from Several Relevant References.

From the perspective of those who support the concept embodied in blasphemy law, such prohibition is deemed necessary to protect religion.[57] Furthermore, for a number of groups, the existence of so-called "splinter groups" constitutes a threat and disturbance to the core creed or mainstream teachings, and therefore should be prohibited.[58] These threats and disturbances, in practice, offend the sensibilities of certain religious communities and may potentially trigger violence. Hence, to prevent such incidents and to preserve public order, a legitimate (legal) basis for imposing such restrictions on freedom is considered necessary. Consequently, non-mainstream, non-orthodox, or nonconformist religious groups—those who may hold interpretations differing from mainstream groups within a religion—may be accused of committing blasphemy.[59]

FoRB does not endorse anti-blasphemy laws or other restrictive measures that often curtail freedom of expression.[60] FoRB and freedom of expression move in the same direction by safeguarding the intellectual and spiritual integrity of individuals, facilitating the free exchange of ideas, accommodating diversity of belief and practice, and reinforcing the development of democratic discourse. Although, in reality, FoRB may at times generate tension—particularly with the right to freedom of expression,[61] such tension is reconcilable through narrowly tailored limitations on expression in cases amounting to incitement to hatred. Naturally, such limitations must maintain a very high threshold.[62]

48 Bielefeldt dan Wiener, *Religious Freedom Under Scrutiny*, 62. Lihat juga, Prud'homme, *Policing Belief: The Impact of Blasphemy Laws on Human Rights*, 69–76.
49 Boven, "The United Nation Commission on Human Rights and Freedom of Religion or Belief," 186.
50 Gogineni dan Gule, "Humanism and Freedom from Religion," 711.
51 Gogineni dan Gule, "Humanism and Freedom from Religion," 702.
52 Hicks, "The Public Disorder of Blasphemy Laws: a Comparative Perspective," 53.
53 Crouch, "Law Religion in Indonesia: The Constitutional Court and the Blasphemy Law."
54 Uddin, "Public (Dis)Order and Public (Im) Morality: an Introduction to the Spring 2015 Issue," 2. See also, Bagir, "Resolusi Melawan Intoleransi dan Prospek untuk Merevisi Peraturan tentang Penodaan Agama," 361 dan 369–70.
55 George, *Pelintiran Kebencian: Rekayasa Ketersinggungan Agama dan Ancamannya bagi Demokrasi*, 258. In an article written by Noorhaidi Hasan, it is stated that within an authoritarian regime, it is generally difficult to accept differences, as such a regime tends to impose uniformity in all aspects, including religious views, by enforcing orthodoxy. In light of such an attitude, legal policies are formulated to prosecute anyone deemed to endanger the construction of orthodoxy and the political establishment of those in power. See, Hasan, "Religious Diversity and Blasphemy Law: Understanding Growing Religious Conflict and Intolerance in Post-Suharto Indonesia," 105–26.
56 Ahmad, "Hak Beragama atau Berkeyakinan," 126.
57 Hicks, "The Public Disorder of Blasphemy Laws: a Comparative Perspective," 54.
58 Maufur, "Membina Tanpa Mengekang: Peran Penyuluh KUA dalam Menjamin Hak-Hak Beragama atau Berkeyakinan," 25.
59 Bagir, "Resolusi Melawan Intoleransi dan Prospek untuk Merevisi Peraturan tentang Penodaan Agama," 371.
60 Cases of blasphemy are regarded as one manifestation of the tension between the right to FoRB and the right to freedom of expression. See, Bielefeldt, "Limiting Permissible Limitations: How to Preserve the Substance of Religious Freedom," 12.
61 Salama dan Wiener, "Tailoring Peer-to-Peer Learning on 'Faith for Rights,'" 55.
62 Bielefeldt dan Wiener, *Menelisik Kebebasan Beragama: Prinsip-Prinsip dan Kontroversinya*, 136–42.

This very high threshold is derived from the findings of expert workshops initiated by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2011 and 2012, as embodied in the document known as the Rabat Plan of Action. According to the Rabat Plan of Action, a restriction maintaining such a high threshold must be assessed based on six (6) elements: (1) The social and political context; (2) The speaker: their status and influence; (3) The intent of the speech (and not mere negligence); (4) The content or form of the speech (for example, its style and degree of provocation); (5) The extent of dissemination (for instance, whether it occurred in a public setting and the size of the audience); and (6) The likelihood, including the certainty, of resulting actual harm. According to Heiner Bielefeldt and Michael Wiener, what is remarkable is that the Rabat Plan of Action and more recent international documents encourage States to repeal existing anti-blasphemy laws.[63]

Third, judges, as instruments of the State, restrict the meaning of religion through their judicial decisions. In doing so, the State effectively defines what constitutes a recognized religion, thereby intruding into the domain of the *forum internum*. This situation is further compounded by the accommodation of opinions from certain community organizations in issuing religious fatwas declaring whether a belief is "deviant or not deviant." Zainun Kamal, who provided expert testimony during the trial as recorded in the Judgment of the Sampang District Court No. 69/Pid.B/2012/PN.Spg, dated 12 July 2012, explained that a fatwa is not binding. A fatwa binds only the issuer of the fatwa and the person who requests it. Furthermore, Yusni Sabi emphasized that there is no such notion as "deviant and misleading" merely because one holds a different understanding from others.

Article 18(3) of the International Covenant on Civil and Political Rights (ICCPR) affirms that restrictions on freedom of religion or belief (FoRB) are permissible only with respect to the right to manifest religion or belief (*forum externum*), and not with regard to internal conviction (*forum internum*). Such restrictions may only be imposed on the basis of law and must be necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others. The key term that is often overlooked in the restrictive clause of Article 18(3) ICCPR is the word "only." It means that the State does not possess a general or overarching license to impose any restrictions it desires. Consequently, all limitation clauses are not intended to authorize restrictions, but rather to restrict the permissible scope of limitations by linking them to a binding set of criteria.[64]

Accordingly, the expert testimonies presented by the defendants in the trials whose judgments are annotated in this article should have served as the foundation for judges to assess whether a criminal act of blasphemy has been proven or not—rather than the reverse, which effectively forecloses dialogue. Such an approach is necessary to ensure judicial impartiality in assessing differences in the interpretation of mainstream religious teachings. From the perspective of the concept of the right to FoRB, this form of criminal adjudication ultimately undermines FoRB as a meaningful legal concept.

4 Conclusion

The practice of criminal adjudication concerning blasphemy offenses in Indonesia has effectively become a forum for criminalizing divergent interpretations of mainstream religious teachings. In contrast, the conception of the right to FoRB as recognized in international human rights law does not support the existence of blasphemy laws. The principle of impartiality, which is legitimized under criminal procedural law and regarded as an integral aspect of human rights, is disregarded by judges when they fail to provide a space for dialogue to explore expert testimony from the defendant's perspective. Based on the conception of FoRB, henceforth, differences in the interpretation of mainstream religious teachings should fall within the domain of dialogue rather than criminalization. Should criminal sanctions become necessary, the prohibited conduct should be limited to crimes of incitement to religious hatred, the adjudication of which must be conducted independently and impartially.

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63 Bielefeldt dan Wiener, *Menelisik Kebebasan Beragama: Prinsip-Prinsip dan Kontroversinya*, 143. Baca juga, Temperman, "Standar Hukum Internasional mengenai Ujaran Ekstrem terkait Agama," 392–409.

64 Bielefeldt dan Wiener, *Menelisik Kebebasan Beragama: Prinsip-Prinsip dan Kontroversinya*, 91–92.

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