

# Policing Belief



## THE IMPACT OF BLASPHEMY LAWSON HUMAN RIGHTS



A FREEDOM HOUSE SPECIAL REPORT

# Indonesia

## INTRODUCTION

Indonesia, a secular state, has developed a reputation for pluralism and moderate Islam while doing more to protect freedom of expression than many of its neighbors. With its unique political history and state ideology, the country has become a model for the successful integration of democracy and Islam. However, there are concerns that Indonesia's pluralism is declining. The past decade has featured an increase in violent attacks on religious minorities as well as governmental and judicial measures to curb freedom of religion and freedom of expression for these groups. Much of the shift appears to be driven by the application of Indonesia's criminal blasphemy provision, Article 156(A) of the Penal Code, coupled with legislation that limits the religions recognized by the government.

There have been some positive developments in the state of freedom of expression in Indonesia, most notably a December 2007 Constitutional Court decision that found Articles 154 and 155 of the Penal Code, which criminalized insults and similar offenses against the government, to be in violation of constitutional guarantees of freedom of expression.<sup>1</sup> However, there have also been some setbacks, namely an excessively broad antipornography law passed in 2008 and a Constitutional Court review that upheld the blasphemy restrictions in Article 156(A) of the Penal Code in April 2010. These measures have exacerbated the recent trend of infringements on religious freedom and helped to deepen societal discrimination and religious divides.

About 86 percent of Indonesia's 240 million people are Muslim, giving the country the world's largest Muslim population.<sup>2</sup> The next largest religious group consists of Protestant Christians, who make up 6 percent of the population. Roman Catholics account for 3 percent, and Hindus 2 percent.<sup>3</sup> The majority of Muslim Indonesians practice Sunni Islam, which the state endorses as the official form

of the religion.<sup>4</sup> According to the U.S. State Department, there are also one to three million Shiite Muslims in the country, and 400,000 adherents of the heterodox Ahmadiyya sect. Other religious minorities include smaller Christian denominations, Buddhists, practitioners of traditional indigenous religions, and Jews.<sup>5</sup>

## BACKGROUND

The Dutch East India Company began colonizing what is now Indonesia in the 17th century, gradually unifying the many existing sultanates and other territories under Dutch rule. Indonesia declared independence and adopted its first constitution in 1945, though it was not until 1949, after four years of fighting, that the country's independence was formally negotiated with the Dutch. A revised constitution was then adopted, establishing a parliamentary system of government.<sup>6</sup> However, the country's diverse array of political parties made it difficult to establish and maintain stable governing coalitions.

One of the major factors behind this discord was the debate over the role of Islam in Indonesia. The country's independence leader and first president, Sukarno, elaborated a national ideology called Pancasila that consisted of five core principles: belief in God (monotheism), humanitarianism, national unity, representative democracy by consensus, and social justice.<sup>7</sup> Conservative Islamic groups argued that Pancasila failed to specify the obligations of Muslims,<sup>8</sup> and the blasphemy laws, adopted under Sukarno in 1965, were intended as a tool to help implement the religious aspect of Pancasila.

Sukarno assumed authoritarian powers in 1957 and implemented a system of governance he labeled Guided Democracy, which "ushered the collapse of parliamentary democracy and replaced it with a system that provided no real checks on the executive presidency."<sup>9</sup> In 1965, some factions of the powerful Indonesian military, reportedly alarmed by the rise in influence of the Communist Party of Indonesia (PKI), to which Sukarno had grown close, attempted to overthrow him in a failed coup d'état.<sup>10</sup> In 1966, after suffering a drop in support and control, Sukarno handed power to General Suharto, who had not been involved in the attempted coup. Suharto then served as Indonesia's president for more than three decades. He established Golkar, a "progovernment party based on bureaucratic and military interests,"<sup>11</sup> and created a regime known as the New Order, which sought to improve Indonesia's failing economy, reestablish political order, and

promote development. Many of these policies were implemented by the military, which was given a strong political role.<sup>12</sup>

Though Pancasila was the brainchild of Sukarno, it was under Suharto's rule that the ideology became entrenched in Indonesian politics. The discourse of national unity was a core element of Suharto's regime, and has been described as a means of "maintaining control over an extremely disparate and varied society."<sup>13</sup> Suharto worked to repress certain forms of religious expression and religiously tinged politics, and indeed any mass politics that was not managed by the authorities.<sup>14</sup> According to some experts, his emphasis on national unity imposed an "artificial harmony" and a "forced pluralism" in Indonesia that has now begun to break down.<sup>15</sup> Others have argued that Pancasila contributed significantly to the development of a genuinely pluralistic and peaceful Indonesia. After Suharto resigned amid an economic crisis and social unrest in 1998, there was general agreement among political parties on retaining the state ideology as a way to continue to emphasize tolerance and acceptance in a religiously and ethnically diverse country.<sup>16</sup>

In 1999, Indonesia held its first free elections, and the Indonesian Democratic Party–Struggle (PDI-P) won the largest number of seats in parliament. The country underwent a dramatic democratization process over the next 10 years, and religiosity surged after decades of discouragement by the former regime. Signs of the Islamic revival can be seen in the increased number of women wearing the *hijab*, or Muslim headscarf, the establishment of more Islamic banks, and the growing popularity of Islamic-themed art and fiction.<sup>17</sup> However, the trend does not appear to extend to the political arena, where hard-line Islamist parties are reportedly losing support. A poll of voters taken throughout 2005 by an independent Jakarta-based polling agency showed "an unmistakable and steady decline" for the Prosperous Justice Party (PKS), Indonesia's largest Islamist party.<sup>18</sup> In 2009, the secular Democratic Party won the most seats in the lower house of parliament, taking 148, or almost triple the 55 it won in the previous elections. Golkar and the PDI-P, which placed second and third, also won more seats than any of the four Islamist parties.<sup>19</sup> The results showed a significant decline in support for three of these parties, with the PKS merely holding its ground.<sup>20</sup> The popularity of the PKS has reportedly suffered from its backing of the antipornography law enacted in October 2008.<sup>21</sup>

Despite being somewhat marginalized in elections, hard-line Islamic parties and groups have exercised influence by "pressuring government officials, judges, and politicians through private lobbying, demonstrations, threats and mob ac-

tion.”<sup>22</sup> Coupled with the general rise in piety and strengthened religious institutions, these efforts helped secure the adoption of the antipornography law and the issuing of a Joint Ministerial Decree that limited freedom of worship for Ahmadi in 2008. Some commentators have argued that the April 2010 Constitutional Court decision upholding Indonesia’s blasphemy laws is another sign of Islamist influence.<sup>23</sup>

It is also important to note that since the fall of Suharto in 1998 and the implementation of a decentralization program designed to shift more power to local governments, some parts of Indonesia have adopted ordinances that enforce aspects of Shari’a (Islamic law). At least 50 local governments have codified elements of Shari’a, mainly relating to dress codes and personal behavior. In Aceh, the provincial government has gone further by adopting a criminal statute that provides for the stoning of adulterers.<sup>24</sup>

Nevertheless, at the national level, Indonesia’s constitution guarantees fundamental freedoms. Although Article 29 affirms that the “State shall be based upon the belief in the One and Only God,” it also stipulates that everyone in Indonesia is free to choose and practice their religion, and guarantees freedom of expression under Article 28. Article 27 provides for equality and nondiscrimination for all residents of Indonesia.<sup>25</sup>

## BLASPHEMY LAWS

Indonesia’s criminal blasphemy provision, Article 156(A) of the Penal Code, is based on Law No. 1/PNPS/1965, adopted by presidential decision in 1965. Article 156(A) assigns up to five years of imprisonment for anyone who “deliberately in public gives expression to feelings or commits an act: a) which principally has the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia; or b) with the intention to prevent a person to adhere to any religion based on the belief of the almighty God.”<sup>26</sup> Article 1 of the 1965 presidential decision prohibits “every individual...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.”<sup>27</sup> It also specifies that the six recognized religions in Indonesia are Islam, Buddhism, Protestantism, Catholicism, Hinduism, and Confucianism.<sup>28</sup>

Some Indonesians have argued that the blasphemy laws, while perhaps appropriate at the time of adoption, are no longer needed.<sup>29</sup> As one observer noted, the laws were passed at a time when a number of controversial heterodox sects were emerging.<sup>30</sup>

In October 2009, the Advocacy Alliance for Freedom of Religion,<sup>31</sup> a coalition of nongovernmental organizations (NGOs) and activists, formally requested that the Constitutional Court review Law No. 1/PNPS/1965 and Article 156(A) of the Penal Code. The alliance contended that the laws should be repealed because they were discriminatory and abusive, and in violation of the constitutional rights to freedom of religion and freedom of expression.<sup>32</sup> Hard-line Islamic organizations such as the Islamic Defenders Front (FPI), which has been involved in numerous incidents of violence,<sup>33</sup> staged “vociferous demonstrations” outside the hearings, reportedly threatening the petitioners and supporters of the review.<sup>34</sup> Inside the courtroom, extremists allegedly attempted to intimidate speakers arguing for the laws’ repeal, heckling them with shouts of “infidel” and “repent” as well as religious slogans.<sup>35</sup> In addition, Indonesia’s two largest Muslim organizations, Muhammadiyah and Nahdlatul Ulama, though generally considered moderate, officially expressed their opposition to the judicial review.<sup>36</sup>

After hearing testimony from 49 experts representing a wide range of opinions,<sup>37</sup> the court upheld the blasphemy laws in April 2010. Judge Maria Farida Indrati dissented, stating that the legislation was “a product of the past,” and that “wrongful acts were being carried out against minority groups in its name.”<sup>38</sup> The majority, however, argued that it “was still needed to maintain public order among religious groups.” The judges provided some clarification on the interpretation of the laws, specifying that while Article 1 of Law No. 1/PNPS/1965 identifies the six religions recognized by the government, it also instructs the state to “leave alone” members of other religious groups, meaning the government should allow them to practice without interference.<sup>39</sup>

Human rights and freedom of expression groups around the world lamented the decision,<sup>40</sup> and many observers said it was motivated by politics and fear of an Islamist backlash.<sup>41</sup> The chairman of the National Commission on Human Rights (Komnas Ham) criticized the ruling, accusing the court of failing in its obligation to uphold constitutional protections.<sup>42</sup>

Several governmental and quasi-governmental bodies monitor compliance with Indonesia’s blasphemy laws, including the Ministry of Religious Affairs, the Indonesian Council of Ulema (MUI), and the Coordinating Board for Monitoring Mystical Beliefs in Society (Bakor PAKEM), which falls under the Attorney

General's Office.<sup>43</sup> The MUI has played a leading role in the development of state-sanctioned discrimination against Ahmadiyya. In 2005, the council issued a fatwa (religious opinion) that declared Ahmadiyya a heretical sect, citing the 1965 presidential decision and Article 165(A) of the Penal Code.<sup>44</sup> The fatwa was reportedly used by extremist Islamic groups to pressure the government to issue the 2008 Joint Ministerial Decree on Ahmadiyya,<sup>45</sup> and local MUI leaders have invoked it to persuade local governments to ban the sect.<sup>46</sup> Local MUI chapters have also been involved in individual blasphemy cases. In one case in January 2006, Muslim high school teacher Sumardi Tappaya was reportedly arrested and jailed on the island of Sulawesi for whistling during prayers.<sup>47</sup> The local MUI chapter declared the whistling to be deviant and therefore blasphemous. Sumardi was sentenced to six months' imprisonment.<sup>48</sup>

### **Incompatibility with International Law**

Indonesia's blasphemy law in Article 156(A) of the Penal Code, and the 1965 presidential decision that established it, contravene international human rights standards on freedom of expression and freedom of religion. The laws' application gives rise to a host of other human rights abuses, including the right to due process, freedom from arbitrary detention, the right to security and privacy, and freedom from discrimination. The measures lack clarity as to what acts constitute blasphemy or "religious defamation," leaving them open to further abuse.<sup>49</sup> In practice, the laws are used to target religious minorities, and particularly those who adhere to heterodox forms or interpretations of Islam that are not sanctioned by the government.<sup>50</sup>

Moreover, the blasphemy laws help to foster a climate of intolerance, and are used to justify extralegal discrimination against religious minorities. According to one Islamic scholar, the laws are problematic because "radical and literal-minded Muslims use [them] as justification to take things into their own hands."<sup>51</sup> Islamic extremist groups have mounted dozens of violent attacks on churches, Ahmadiyya mosques, and businesses that serve alcohol, claiming they were protecting Islam from insult.<sup>52</sup> In some cases police have allegedly assisted in the attacks or stood by without intervening.<sup>53</sup> The radical groups include the FPI, Hizb ut-Tahrir, Islamic Ulema Forum, Islam Troop Command, and the Anti-Apostate Movement Alliance. In addition, the laws were used to justify the 2008 Joint Ministerial Decree on Ahmadiyya, which severely restricts Ahmadis' ability to practice their faith and bans them from proselytizing. The decree effectively falls just short of an outright ban on Ahmadiyya.

In 2006, Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR). The country is also a state party to a number of other human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention Against Torture (CAT). Indonesia was elected to the UN Human Rights Council for a one-year term in 2006, and reelected for a three-year term in 2007. As a member of the council, Indonesia was expected to robustly uphold and protect human rights norms enshrined in the Universal Declaration of Human Rights,<sup>54</sup> but these rights are jeopardized by the application of Indonesia's blasphemy laws.

## IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS

### Freedom from Discrimination

Although the blasphemy laws do not specify any particular religion, in practice they have been used mostly to target blasphemy against Islam. The suspects and defendants in blasphemy cases are sometimes Christians or followers of indigenous religions,<sup>55</sup> and the climate of intolerance fostered by the laws have contributed to extralegal attacks on Christian churches, but more often the alleged blasphemers are members of minority Islamic sects that are not recognized by the government and therefore considered heretical. Indeed, the Constitutional Court's review of the blasphemy laws was requested because NGOs and supporters of pluralism found that the laws served to "discriminate against certain religious groups, specifically minority groups that have been denied their right to practice their beliefs."<sup>56</sup> As noted above, the MUI in 2005 issued a fatwa declaring Ahmadiyya to be a heretical sect and urged the government to ban the group, citing the blasphemy laws.<sup>57</sup> A similar fatwa issued in 2007 targeted other Islamic sects including Al-Qiyadah al-Islamiyah, whose founder and leader, Ahmad Moshaddeq, was arrested and jailed on blasphemy charges in October of that year.<sup>58</sup> However, Ahmadis continue to face the most consistent and severe discrimination.<sup>59</sup>

Ahmadis are considered heretical primarily because of their belief that Muhammad was not the final prophet of Islam.<sup>60</sup> In addition to the MUI's fatwas and calls for a ban on Ahmadiyya, the government-appointed Bakor PAKEM in April 2008 urged the government to disband the group on the basis of the 1965 blasphemy law,<sup>61</sup> and extremists mounted violent anti-Ahmadiyya campaigns.<sup>62</sup>



The Joint Ministerial Decree followed in June of that year, prohibiting Ahmadis from worshipping in public or proselytizing, and prescribing five years in prison for violators.<sup>63</sup>

A number of local governments, empowered by Indonesia's decentralization program, have enacted outright bans on Ahmadiyya and other sects. For example, in October 2005, the provincial Ministry of Religious Affairs in West Nusa Tenggara reportedly banned 13 "deviant" sects, including Ahmadiyya; in July and September 2005, the local regency administrations of Bogor, Kuningan, and Cianjur in West Java province banned Ahmadiyya;<sup>64</sup> and in September 2008, the provincial government in South Sumatra imposed a ban, reportedly at the request of the local MUI chapter.<sup>65</sup> The central government, which has final authority on religious affairs, has been criticized for failing to make any attempts to overturn or challenge these bans.<sup>66</sup> Though they are not always enforced, their existence contributes to the widespread discrimination faced by Ahmadis in Indonesia.

Attacks against Ahmadis have reportedly increased significantly since the 2005 MUI fatwa, and the weak police response has often allowed the perpetrators to act with impunity.<sup>67</sup> For example, according to the Asian Legal Resource Centre, in June 2007 a mosque and several Ahmadiyya followers in Tasikmalaya, West Java, were attacked by a mob made up of members of the FPI and GERAK, an anticommunist movement.<sup>68</sup> Police intervened to prevent further violence, but none of the attackers were arrested.<sup>69</sup> A renewed spate of violence accompanied the 2008 ministerial decree. The U.S. Commission on International Religious Freedom reports that since 2008, 35 Ahmadiyya mosques have been vandalized, and 21 mosques or meeting points have been forcibly closed.<sup>70</sup> In one recent incident in December 2009, a group of Ahmadis leaving a house where they had been worshipping were attacked by an angry mob. Police reportedly arrived when the situation escalated, but many Ahmadis had fled by then, six were taken to the local police station, and none of the perpetrators of the attack were arrested.<sup>71</sup> A number of Ahmadis have been forced to flee their homes and take refuge in camps for internally displaced persons. A mob attack in 2005 compelled Ahmadis in Lombok to do so, and in April 2009 the local government reportedly urged the camp residents not to return home, saying it would be unsafe.<sup>72</sup>

### **Freedom of Expression**

Indonesia's blasphemy laws violate the right to freedom of expression on a number of levels. They impede the religious expression of minority groups, particularly heterodox Muslim sects; they impose restrictions on the media; and they

force individuals to engage in self-censorship to avoid prosecution and extralegal pressure.

In October 1990, Arswendo Atmowiloto, then editor of the *Monitor* newspaper, was arrested under Article 156(A) of the Penal Code. He was reportedly responsible for publishing the results of a readers' poll on the most admired person in Indonesia, which showed that the prophet Muhammad came in 11th. The feature was met with outrage from Muslim organizations, and protesters stormed the newspaper's offices, breaking windows and destroying equipment.<sup>73</sup> The newspaper was shut down later the same month after its publication license was revoked by the government, allegedly in response to mounting pressure from extremist groups.<sup>74</sup> In April 1991, Arswendo was sentenced to five years in prison, the maximum penalty possible under Article 156(A), and he went on to serve all but six months of the term.<sup>75</sup> He later testified on behalf of the petitioners in the recent Constitutional Court review of the blasphemy laws.<sup>76</sup>

The U.S.-based magazine *Playboy* issued its first Indonesian edition in April 2006, reportedly without pictures of nude women.<sup>77</sup> Religious leaders and extremist groups nevertheless condemned the publication, and shortly after the first edition hit newsstands, an angry mob clad in white (a sign of purity in Islam) gathered in front of the magazine's offices and began pelting the building with stones. The police were present but reportedly "watched passively." A police commander then urged *Playboy* to cease publishing, and another suggested that it relocate outside Jakarta.<sup>78</sup> The magazine's publisher, Erwin Arnada, was tried for publishing indecent material but was eventually acquitted.<sup>79</sup> Though not a traditional blasphemy case, the incident is indicative of the state's attitude toward freedom of expression when it is challenged by religious extremists and threatened by restrictive laws. The *Playboy* dispute took place in the midst of negotiations over the antipornography bill that was adopted in October 2008.<sup>80</sup>

Religious expression was specifically targeted in East Java in April 2007, when 41 members of a Protestant umbrella organization, the Indonesian Students Service Agency, were arrested and detained on charges of blasphemy under Article 156(A).<sup>81</sup> The allegations stemmed from a controversial 10-minute video that reportedly depicted the Quran as the "source of all evil in Indonesia, from violence to terrorism."<sup>82</sup> In September of that year, all 41 defendants were convicted and sentenced to five years in prison.<sup>83</sup> According to the U.S. State Department, they were granted reprieves as part of Indonesian Day celebrations in August 2008.<sup>84</sup>

The blasphemy laws are also used to restrict speech by individuals. In one recent case in October 2009, 70-year-old Bakri Abdullah was arrested in eastern

Lombok on blasphemy charges. He had violated Article 156(A) of the Penal Code by claiming to be a prophet, reportedly angering some people in his village. He also claimed to have twice traveled to heaven. The arrest apparently came after Bakri was attacked by villagers and security guards intervened, handing him over to police. In May 2010, Bakri was sentenced to one year in jail for blaspheming against Islam, with the court reportedly showing lenience on account of his age.<sup>85</sup>

## Freedom of Religion

The 1965 blasphemy law's identification of six recognized religions violates religious freedom and international norms. Indonesian citizens are required to self-identify as members of one of the six faiths, and they may not profess atheism as an alternative.<sup>86</sup> The rights of atheists and unrecognized religious minorities are consequently restricted, and even members of the six recognized religions are subject to criminal penalties if their beliefs and practices diverge from the officially sanctioned versions of their faiths.

Sunni Muslims are required to practice Islam within the strict confines set by the various official religious institutions and enforced by the criminal justice system. For example, Muhammad Yusman Roy, the director of an Islamic boarding school in Malang, East Java, was arrested in May 2005 under suspicion of violating Article 156(A) by reciting and providing his students with Islamic prayers in Bahasa Indonesia, the Indonesian language. Earlier the same month, the MUI's Malang chapter had issued a fatwa banning the use of any non-Arabic language for reciting prayers. Roy was not found guilty of blasphemy, but was convicted under Article 157 of the Penal Code for "despoiling" Islam by distributing pamphlets to stir hatred.<sup>87</sup> He was sentenced to two years in prison, and his boarding school was closed.<sup>88</sup> The leaders of Indonesia's two largest Muslim organizations, Muhammadiyah and Nahdlatul Ulama, criticized the arrest and conviction, arguing that the police had gone "too far" and that while Roy had perhaps made a mistake, he had not committed a crime.<sup>89</sup>

In October 2007, as noted above, Al-Qiyadah al-Islamiyah was declared heretical by an MUI fatwa. Just days later, the West Sumatran home of the group's leader, Ahmad Moshaddeq, was raided by police, who were reportedly acting on orders from the MUI. Moshaddeq had founded the group in 2000 and eventually drew the MUI's attention by claiming to be a prophet. He was not at home when the raid took place, and he subsequently fled to avoid arrest.<sup>90</sup> At the end of the month, the Indonesian chief of police, General Sutanto, reportedly ordered all provincial police chiefs to track down, question, and detain leaders of

Al-Qiyadah al-Islamiyah.<sup>91</sup> According to the *Jakarta Post*, Sutanto said the order was necessary to “prevent the sect from spreading false teachings, and to protect sect leaders from possible attacks by Muslim groups.”<sup>92</sup> Moshaddeq and six of his followers turned themselves in to the Jakarta police on the same day the order was issued.<sup>93</sup> A broad crackdown on Al-Qiyadah al-Islamiyah took place over the next few weeks, including police raids on followers’ homes and harassment and intimidation by extremist groups like the FPI.<sup>94</sup> Moshaddeq publicly apologized to Indonesian Muslims, repenting for his “misguided” teachings and pledging to return to mainstream Islam.<sup>95</sup> Nonetheless, he was charged with blasphemy under Article 156(A) and in April 2008 was sentenced to four years in prison.<sup>96</sup>

Another sect, known as the Kingdom of Eden or Salamullah, has also faced legal trouble. The group was founded and led by Lia Aminuddin, also known as Lia Eden, who claimed to be a reincarnation of Mary, the mother of Jesus, and a messenger of the angel Gabriel—both important figures in Islam.<sup>97</sup> She was arrested on blasphemy charges in December 2005 and sentenced to two years in prison in June 2006.<sup>98</sup> Lia was arrested on blasphemy charges for a second time in December 2008, along with a colleague and follower, Wahyu Anindito.<sup>99</sup> The alleged offense was disseminating pamphlets, including to government offices, that called on the government to abolish all other religions and adhere to Salamullah. In June 2009, Lia was sentenced to two and a half years in prison, and Wahyu to two years. The judge reportedly cited Lia’s apparent lack of remorse in explaining her longer sentence.<sup>100</sup> Abdul Rachman, Lia’s deputy, claimed to be a reincarnation of the prophet Muhammad, and in 2007 he was arrested and charged with blasphemy. He was initially convicted, but the Central Jakarta District Court ruled in his favor on appeal, acquitting him of all charges.<sup>101</sup> The Jakarta prosecutor’s office challenged that ruling, and in November 2007 the Supreme Court found Abdul Rachman guilty of blasphemy and sentenced him to three years in prison.<sup>102</sup>

In May 2009, Nimrot Lasbaun, leader of the Sion City of Allah Christian sect, was arrested along with six of his followers on charges of blasphemy under Article 156(A).<sup>103</sup> The Sion City of Allah sect, which is reportedly based on the Book of Jeremiah, was found to be deviating from “correct Christian teachings,” such as attending services on Sunday and taking the Holy Communion. The leaders of the Timor Evangelical Church (GMIT), a mainstream Protestant group, objected to the arrests, arguing that they should have been consulted and insisting that they did not consider the sect to be offensive to their faith.<sup>104</sup>

In another 2009 case, Agus Imam Solichin, founder of the Satria Piningit Weteng Buwono sect, was arrested and charged with blasphemy for “spreading heretical teachings among his Muslim followers.”<sup>105</sup> Agus reportedly advised sect members to abandon traditional Islamic practices and engage in group sex.<sup>106</sup> In July 2009, he was sentenced to two and a half years in prison.<sup>107</sup>

### **Right to Due Process**

The application of Indonesia’s blasphemy laws has raised concerns about the due process and fair trial rights of alleged blasphemers, particularly in light of the MUI’s apparent influence over the criminal justice system. For example, in May 2005, the local MUI chapter in East Java issued a fatwa against the Cahaya Alam Cancer and Drug Addiction Healing Foundation, an Islamic alternative therapy clinic in Probolinggo. The MUI accused the foundation’s director, Ardhi Husain, and several of his colleagues of spreading heretical teachings in a book, reportedly including denial that Muhammad was the final prophet.<sup>108</sup> The fatwa prompted a police investigation and led a mob to attack the clinic, “vandalizing the interior and driving out patients who were waiting to be treated.”<sup>109</sup>

Husain and his colleagues were all arrested and charged with blasphemy. In September 2005, Husain was sentenced to five years in prison; five others who assisted in editing the book were sentenced to four years, and an employee who had sold the book to a neighbor was sentenced to three years. Their lawyer described the sentences as excessive and argued that they were the result of MUI pressure. During the trial, no witnesses testified that they had seen the defendants practicing their teachings, and the judge refused without explanation to hear expert testimony on their behalf.<sup>110</sup>

Accused blasphemers’ right to freedom from arbitrary arrest and detention is also abused, as the broad language in the law allows selective enforcement, and suspects are often jailed throughout the pretrial and trial periods.<sup>111</sup>

The Constitutional Court and Indonesian government officials have defended the blasphemy laws as a means of preventing interreligious violence, which they say could be triggered by deviant practices or offensive remarks.<sup>112</sup> However, mob violence in practice has often accompanied criminal blasphemy allegations, while the official recognition of only six religions has led members of other religious groups to be branded as heretics, both in the law and in society.<sup>113</sup> Indeed, Choirul Anam, who represented the petitioners in the Constitutional Court review of the blasphemy laws, asserted that they played an instrumental role in creating sectarian tensions and religious conflict rather than preventing them.<sup>114</sup> Similarly,

another critic recently argued that the blasphemy legislation, “instead of maintaining peace and harmony, has been the umbrella under which various militant groups attack, burn and destroy others.”<sup>115</sup>

Islamic extremist groups have been free to attack Ahmadiyya sites, churches, Shiite mosques, Hindu temples, bars, and nightclubs with relative impunity, because their actions are to some degree legitimized by the blasphemy law and institutions like the MUI.<sup>116</sup> Police have been known to stand by while such attacks take place, or even to participate in them, as was found in a comprehensive study of freedom of religion in 12 Indonesian provinces by the Setara Institute for Democracy and Peace.<sup>117</sup> While in some instances the government has taken a strong stand against sectarian violence, its overall response has been criticized as weak and inconsistent.<sup>118</sup> In June 2010, a group of lawmakers called on President Susilo Bambang Yudhoyono to crack down on the FPI and other hard-line Islamic groups.<sup>119</sup>

The violent attacks on religious minorities, as well as the fear of such attacks stemming from government-sanctioned impunity, give rise to violations of the right to security of the person and privacy, and in some cases may even amount to torture or cruel, inhuman, and degrading treatment. The case of Welhelmina Holle illustrates the dangers faced by accused blasphemers. In December 2008, Holle, a schoolteacher in Masohi, Central Maluku province (which has a history of religious conflict), was rumored to have insulted Islam in a private tutoring session with a student.<sup>120</sup> The Muslim student complained to his parents, who reportedly informed the local MUI chapter, which in turn submitted a complaint to the police.<sup>121</sup> Almost five days after the allegation surfaced, a group of some 500 protesters gathered outside the local education agency office, calling for Holle’s dismissal. A small clash broke out, and within an hour a full-scale riot had erupted. Dozens of houses and a church were reportedly burned, and at least six people sustained serious injuries.<sup>122</sup> The military and riot police had to be deployed to assist local police in quelling the violence.<sup>123</sup> The Masohi police faced harsh criticism for failing to take any preventive action in the days leading up to the unrest.<sup>124</sup>

## CONCLUSION

Indonesia’s blasphemy laws have given rise to violations of a range of human rights, most notably freedom of expression, freedom of religion, and freedom from discrimination. These breaches result not only from the enforcement of the

laws against individuals, but also from their use as a justification for official discrimination against religious minorities, which in turn has exacerbated religious tensions and hostility in society. The 2010 Constitutional Court review provided an opportunity to amend or repeal the laws, but they were ironically upheld on the grounds of their necessity to prevent religious conflict. Though Indonesia is a strong democracy with a robust civil society, its religious authorities and hard-line activists appear to be wielding an outsized influence on the government and legal system, pushing the country toward further intolerance and instability.

- Banned,” *San Diego Union-Tribune*, March 18, 2000.
- <sup>32</sup> International Helsinki Federation for Human Rights (IHF), *International Helsinki Federation Annual Report on Human Rights Violations 2001: Greece* (Vienna: IHF, June 2001), 149, available at <http://www.unhcr.org/refworld/docid/4692427f0.html>.
- <sup>33</sup> *Ibid.*
- <sup>34</sup> *Ibid.*
- <sup>35</sup> Sarafianos, “Blasphemy in the Greek Orthodox Legal Tradition,” 107.
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- <sup>37</sup> Elinda Labropoulou, “Curator on Trial for ‘Obscene’ Art,” *Independent* (London), June 4, 2005.
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- <sup>115</sup> “Blasphemy Law, a Shackle to the Indonesian People,” *Jakarta Post*, February 11, 2010, <http://www.thejakartapost.com/news/2010/02/11/blasphemy-law-a-shackle-indonesian-people.html>.
- <sup>116</sup> Armando Siahaan, Nurfika Osman, and Ulma Haryanto, “Caucus Tells SBY to Get Tough on Islamic Hardliners,” *Jakarta Globe*, June 28, 2010, <http://www.thejakartaglobe.com/home/caucus-tells-sby-to-get-tough-on-islamic-hard-liners/383130>.
- <sup>117</sup> According to the Setara Institute’s January 2010 report, *Condition of Religious and Faith Free-*

dom in Indonesia, 2009, there were 200 reported incidents of religiously motivated violence that year in the 12 provinces the organization monitors. Of these, 101 cases featured “active” involvement by state officials, and in 38 cases officials were guilty of standing by and taking no action. See “‘Government Complicity’ Lets Religious Conflict Go On,” *Jakarta Post*; Setara Institute for Democracy and Peace, *Condition of Religious Faith and Freedom in Indonesia, 2009*.

<sup>118</sup> USCIRF, “Indonesia,” in *Annual Report 2010*, 259.

<sup>119</sup> Siahhaan, Osman, and Haryanto, “Caucus Tells SBY to Get Tough on Islamic Hardliners.”

<sup>120</sup> “Masohi in Recovery, 2 Named Suspects,” *Jakarta Post*, December 11, 2008, <http://www.thejakartapost.com/news/2008/12/11/masohi-recovery-two-named-suspects.html>; “Freedom of Religion in Indonesia,” *Caveat*.

<sup>121</sup> Nancy-Amelia Collins, “Indonesia Sends Troops to Quell Sectarian Violence in Maluku Islands,” *Voice of America*, December 10, 2008, [http://www.51voa.com/VOA\\_Standard\\_English/VOA\\_Standard\\_English\\_26924.html](http://www.51voa.com/VOA_Standard_English/VOA_Standard_English_26924.html).

<sup>122</sup> “Church, Homes Burned in Masohi Blasphemy Riot,” *Jakarta Post*, December 10, 2008, <http://www.thejakartapost.com/news/2008/12/10/church-homes-burned-masohi-blasphemy-riot.html>.

<sup>123</sup> Collins, “Indonesia Sends Troops to Quell Sectarian Violence in Maluku Islands.”

<sup>124</sup> M. Azis Tunny, “Forum Blasts Police for Late Response in Masohi,” *Jakarta Post*, December 17, 2008, <http://www.thejakartapost.com/news/2008/12/17/forum-blasts-police-late-response-masohi.html>.

## MALAYSIA

<sup>1</sup> U.S. Department of State, “Background Note: Malaysia,” July 14, 2010, <http://www.state.gov/r/pa/ei/bgn/2777.htm>.

<sup>2</sup> *Ibid.*

<sup>3</sup> Donald L. Horowitz, “The Qur’an and the Common Law: Islamic Law Reform and the Theory of Legal Change,” *American Journal of Comparative Law* 42 (Spring 1994).

<sup>4</sup> Bureau of Democracy, Human Rights, and Labor, “Malaysia,” in *International Religious Freedom Report 2009* (Washington, DC: U.S. Department of State, 2009), <http://www.state.gov/g/drl/rls/irf/2009/127277.htm>.

<sup>5</sup> Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy and Islam* (Aldershot, UK: Ashgate, 2004), 125.

<sup>6</sup> Nurjaanah Abdullah, “Legislating Faith in Malaysia,” *Singapore Journal of Legal Studies* (December 2007): 264.

<sup>7</sup> Horowitz, “The Qur’an and the Common Law.”

<sup>8</sup> U.S. Department of State, “Background Note: Malaysia.”

<sup>9</sup> Constitution of Malaysia, Article 3 and Article 160; see Appendix A, available at <http://confinder.richmond.edu/admin/docs/malaysia.pdf>. The drafters of the constitution specified that Article 3 was not intended to declare Malaysia an Islamic state, according to the Reid Commission, the body established to facilitate the drafting process. However, UMNO politicians have opportunistically invoked the idea of Malaysia as an Islamic state over the past decade to rally support among Muslim Malay voters, exacerbating ethnic and religious tensions and bolstering identity-based politics for all constituencies. See Tommy Thomas,