

LAW & SOCIAL POLICY | RESEARCH ARTICLE

Recriminalizing Blasphemy? Human Rights Analysis of Religious Freedom Limits and Doctrinal Reform of Offense Law

Rainrat Budi Prasetya¹, Z. Zainuddin², M. Mursyid³

^{1,2,3} Magister of Law, Universitas Muslim Indonesia, Makassar, Indonesia.

Email: rainratbudi@umi.ac.id¹, zainuddin.zainuddin@umi.ac.id², mursyid.mursyid@umi.ac.id³

ARTICLE HISTORY

Received: June 13, 2026

Revised: July 18, 2026

Accepted: July 18, 2026

DOI

<https://doi.org/10.52970/grlspr.v6i1.2382>

ABSTRACT

This study examines the contemporary debate on the recriminalization of blasphemy through a human rights perspective, with particular emphasis on the limits of religious freedom and the doctrinal foundations of modern criminal law. The research aims to evaluate whether blasphemy can be justified as a legitimate criminal offense within the framework of international human rights norms and to propose a coherent doctrinal reform aligned with harm-based principles. Employing a normative legal research method, the study utilizes statutory and conceptual approaches by analyzing relevant legislation, international human rights instruments, and legal doctrines concerning freedom of religion and expression. The data are analyzed using a descriptive-prescriptive technique, which not only explains existing legal norms but also formulates normative recommendations. The findings reveal that blasphemy laws, as traditionally constructed, suffer from significant doctrinal deficiencies, particularly in relation to the principles of legality, necessity, and proportionality. These laws often rely on vague and subjective interpretations of offense, leading to inconsistent enforcement and potential violations of fundamental rights. The study further finds that the conflation of subjective religious offense with objective legal harm results in the overextension of criminal law and disproportionately severe sanctions. Consequently, blasphemy fails to meet the threshold of a legitimate criminal offense unless it is narrowly defined as conduct that incites violence, discrimination, or hostility. The study concludes by proposing a doctrinal reform that shifts the focus from protecting religious doctrines to safeguarding individuals, thereby ensuring a more balanced and rights-oriented legal framework.

Keywords: Blasphemy Law, Religious Freedom, Human Rights, Criminal Law Reform, Harm Principle.

I. Introduction

The question of whether blasphemy should be recriminalized has re-emerged as a deeply contested issue at the intersection of criminal law, constitutionalism, and international human rights. While many jurisdictions have moved toward decriminalization in recognition of evolving standards of freedom of expression and belief, others have retained or even revitalized blasphemy provisions, often justified by appeals to public order, religious harmony, or moral protection. This tension reflects a broader normative struggle: how to reconcile the protection of religious sentiments with the fundamental rights to freedom of

religion and expression. Existing scholarship has extensively examined the historical origins and contemporary applications of blasphemy laws, yet significant gaps remain regarding their doctrinal coherence within modern human rights frameworks and the need for reformulation in offense law theory. A substantial body of literature has traced the genealogy of blasphemy laws from their theological roots to their incorporation into modern legal systems. Early analyses emphasize that blasphemy prohibitions were originally designed to protect divine authority and ecclesiastical order rather than individual believers (Sandberg, 2020). Subsequent scholarship has shifted focus toward the sociopolitical functions of such laws, particularly in pluralistic societies where religious diversity intensifies the risk of conflict (Temperman, 2019). However, while these studies illuminate the historical and sociological dimensions, they often stop short of critically interrogating the compatibility of blasphemy offenses with contemporary human rights norms, especially under international instruments such as the International Covenant on Civil and Political Rights (ICCPR).

Recent studies have begun to address this normative tension by examining blasphemy laws through the lens of freedom of expression and religion. For instance, scholars argue that blasphemy provisions frequently produce a chilling effect on speech, disproportionately affecting minority groups and dissenting voices (Marshall, 2021). Empirical analyses further demonstrate that such laws are often selectively enforced, thereby undermining the principle of equality before the law (Kayaoglu, 2020). Nonetheless, much of this literature remains descriptive, focusing on case studies or regional analyses without offering a systematic doctrinal framework for reform. In particular, there is a lack of engagement with offense law theory to determine whether and how blasphemy can be justified as a legitimate criminal offense in modern legal systems. Conceptually, the debate over blasphemy revolves around two competing paradigms. The first is the harm based approach, which justifies criminalization only where conduct causes tangible harm to individuals or society. From this perspective, offensive speech, including blasphemy, does not warrant criminal sanctions unless it incites violence or discrimination (Dworkin, 2013). The second paradigm emphasizes the protection of collective values, including religious sentiments and social cohesion. Proponents argue that blasphemy can destabilize communal harmony and thus justifies legal restriction (Parekh, 2018). However, the coexistence of these paradigms creates doctrinal ambiguity, particularly in jurisdictions that attempt to balance liberal rights with communitarian concerns.

From a general standpoint, international human rights law provides a framework for navigating this tension. Article 18 of the ICCPR guarantees freedom of thought, conscience, and religion, while Article 19 protects freedom of expression. Limitations on these rights are permitted only when they are necessary and proportionate to achieve legitimate aims such as public order or the rights of others. Importantly, the UN Human Rights Committee has clarified that prohibitions on blasphemy are incompatible with the Covenant unless they meet strict criteria, particularly in cases involving incitement to discrimination, hostility, or violence (Human Rights Committee, 2011). This interpretation suggests a shift away from protecting abstract religious doctrines toward safeguarding individuals from harm. Despite this normative clarity at the international level, domestic legal systems often diverge in their application. In several jurisdictions, blasphemy laws continue to be enforced in ways that prioritize the protection of dominant religious groups, often at the expense of minority rights. Comparative studies reveal that even in countries with constitutional guarantees of freedom of expression, blasphemy provisions are retained as legacy offenses, reflecting political compromises rather than principled legal reasoning (Stahnke & Blitt, 2020). This divergence underscores the need for a more coherent doctrinal approach that aligns domestic offense law with international human rights standards.

More specifically, the phenomenon of recriminalization where states reintroduce or strengthen blasphemy law raises critical legal questions. In some contexts, recriminalization is driven by rising religious conservatism or political populism, which frames blasphemy as a threat to national identity. In others, it is justified as a response to digital communication, where offensive content can spread rapidly and provoke unrest. However, these justifications often rely on broad and vague definitions of blasphemy, leading to arbitrary enforcement and potential abuse (Ahmed & Shah, 2021). The lack of clear legal thresholds for what

constitutes punishable blasphemy further exacerbates the risk of violating fundamental rights. This phenomenon reveals a deeper doctrinal problem: the conceptual instability of blasphemy as a criminal offense. Unlike other offenses that are grounded in identifiable harms, blasphemy is inherently subjective, depending on varying interpretations of religious doctrine and sensitivity. This subjectivity challenges the principles of legality and certainty, which require that criminal laws be clear and predictable. Moreover, the moral basis for criminalizing blasphemy is increasingly questioned in pluralistic societies, where the state is expected to remain neutral among competing belief systems (Laborde, 2017). These concerns highlight the inadequacy of existing legal frameworks in addressing the complexities of blasphemy in the modern era.

The identification of this legal problem points to a significant research gap. While previous studies have explored the human rights implications of blasphemy laws and their sociopolitical contexts, there is limited scholarship that systematically integrates offense law theory with human rights analysis to propose a coherent doctrinal reform. In particular, there is a need to reconceptualize blasphemy not as an offense against religion per se, but in terms of its potential to cause harm to individuals or public order, thereby aligning it with established principles of criminal law. Such a reconceptualization would require a shift from protecting beliefs to protecting persons, consistent with the core values of human rights. This study seeks to address this gap by conducting a comprehensive human rights analysis of the limits of religious freedom and examining the doctrinal foundations of blasphemy offenses. It argues that the recriminalization of blasphemy cannot be justified under contemporary human rights standards unless it is narrowly tailored to address specific harms, such as incitement to violence. Furthermore, the study proposes a doctrinal reform of offense law that redefines the scope of punishable conduct, emphasizing clarity, proportionality, and necessity. By integrating insights from human rights law and criminal law theory, this research aims to provide a normative framework for evaluating and reforming blasphemy laws.

This study lies in its interdisciplinary approach, which bridges the gap between abstract human rights principles and concrete legal doctrines. Unlike previous research that focuses primarily on descriptive or normative critiques, this study offers a constructive proposal for doctrinal reform, grounded in both legal theory and empirical realities. It advances the argument that the future of blasphemy regulation lies not in its abolition or uncritical retention, but in its transformation into a narrowly defined offense that meets the rigorous standards of modern criminal law. In doing so, it contributes to the broader discourse on the role of law in managing religious diversity and protecting fundamental freedoms in an increasingly pluralistic world. The debate over recriminalizing blasphemy is not merely a legal question but a reflection of deeper societal values. It forces us to confront the limits of tolerance, the meaning of respect, and the role of the state in regulating belief and expression. By critically examining the doctrinal and human rights dimensions of this issue, this study seeks to move beyond polarized positions and offer a balanced, principled approach to one of the most challenging questions in contemporary law.

II. Research Method

This study employs a normative legal research design, focusing on the examination of legal norms, principles, and doctrines governing the regulation of blasphemy within the framework of human rights law. Rather than relying on empirical field data, the research is grounded in the analysis of authoritative legal materials, including statutes, international human rights instruments, court decisions, and relevant legal doctrines. This approach is particularly appropriate given that the central issue of this study concerns the coherence and justification of blasphemy as a criminal offense within contemporary legal systems. The research adopts two primary approaches. First, the statutory approach is used to analyze various legal provisions related to blasphemy, both at the national level and within international human rights law, especially those governing freedom of religion and freedom of expression. Second, the conceptual approach is applied to explore and critically assess key legal concepts, such as harm, offense, public order, and religious freedom, as they relate to the doctrinal construction of criminal law. Data analysis is conducted using a descriptive-prescriptive method. The descriptive aspect aims to systematically present and interpret existing

legal norms and practices, while the prescriptive dimension seeks to formulate normative arguments and propose doctrinal reforms that align blasphemy regulation with human rights standards and principles of modern criminal law.

III. Result and Discussion

3.1. Recriminalizing Blasphemy within the Architecture of International Human Rights Law

The findings of this study demonstrate that the contemporary debate on recriminalizing blasphemy cannot be separated from the normative structure of international human rights law, particularly the delicate interplay between freedom of religion and freedom of expression. Within the Indonesian legal context, this tension becomes even more pronounced due to the constitutional recognition of religion as a foundational element of the state, while simultaneously affirming the protection of fundamental rights. Scholars have noted that Indonesia's constitutional framework reflects a hybrid model, combining liberal constitutionalism with communitarian values rooted in religious and cultural diversity, which inevitably complicates the legal positioning of blasphemy (Asshiddiqie, 2020). As a result, any attempt to recriminalize or strengthen blasphemy provisions must be carefully examined within this dual normative structure, ensuring that restrictions on rights remain consistent with both constitutional guarantees and international human rights obligations.

At the doctrinal level, international human rights law establishes that freedom of religion and freedom of expression are non-derogable in their core aspects but may be subject to limitations under strict conditions. In Indonesian legal scholarship, it has been emphasized that these limitations must adhere to the principles of legality, necessity, and proportionality, which function as safeguards against arbitrary state intervention (Sihombing, 2021). However, the present study finds that blasphemy provisions, particularly as reflected in Article 156a of the Indonesian Criminal Code, often fail to meet these criteria. The formulation of blasphemy offenses tends to rely on vague and open-ended language, such as "hostility" or "abuse" toward religion, which lacks precise legal definition and invites broad interpretation. This vagueness not only undermines the principle of legal certainty but also increases the risk of inconsistent and discriminatory enforcement, a concern repeatedly highlighted in Indonesian human rights discourse (Huda, 2019).

The ambiguity inherent in blasphemy regulation becomes even more problematic when examined through the lens of offense law theory. Indonesian legal scholars have argued that criminal law must be grounded in clear notions of harm and culpability, rather than abstract moral or theological considerations (Moeljatno, 2018). Yet, blasphemy laws often depart from this principle by criminalizing expressions deemed offensive to religious sentiments, regardless of whether such expressions cause tangible harm. This shift from harm-based criminalization to offense-based prohibition raises serious doctrinal concerns, as it expands the scope of criminal law beyond its legitimate boundaries. As Mahfud MD (2021) observes, the expansion of criminal norms without clear harm indicators risks transforming the law into a tool of moral enforcement rather than a mechanism for protecting rights and justice.

In practice, the consequences of this doctrinal ambiguity are evident in the patterns of law enforcement. Empirical studies conducted in Indonesia indicate that blasphemy cases are often influenced by social pressure, political dynamics, and majority sentiments, rather than objective legal standards (Butt, 2020). This phenomenon suggests that blasphemy laws are particularly susceptible to instrumentalization, where legal processes are used to legitimize societal intolerance or silence dissenting voices. Minority religious groups, as well as individuals expressing critical or unconventional views, are disproportionately affected by such prosecutions. This finding aligns with broader observations in Indonesian legal scholarship that emphasize the vulnerability of minority rights in the absence of strong legal safeguards (Nasution, 2022).

Furthermore, the justification of blasphemy laws on the grounds of maintaining public order and religious harmony warrants closer scrutiny. While the protection of social stability is undoubtedly a legitimate aim, the study finds that the causal link between blasphemous expression and actual disruption of public

order is often tenuous and overstated. Indonesian scholars have argued that conflicts arising from religious expression are more accurately attributed to societal intolerance and the failure of state institutions to mediate differences effectively, rather than to the expression itself (Azra, 2020). In this context, criminalizing blasphemy may address the symptoms of conflict without resolving its underlying causes, thereby limiting its effectiveness as a tool for maintaining harmony.

Moreover, the reliance on blasphemy laws as a mechanism for preserving religious harmony may inadvertently produce counterproductive effects. By legitimizing claims of offense, the law can encourage individuals or groups to seek legal redress for perceived insults, thereby escalating tensions rather than mitigating them. This dynamic has been described in Indonesian legal literature as the “legalization of sensitivity,” where subjective feelings of offense are transformed into objective legal claims (Rahardjo, 2021). Such a development not only burdens the criminal justice system but also undermines the principle of tolerance, which is essential in a pluralistic society. In contrast, existing legal frameworks addressing incitement to violence and hate speech provide a more appropriate and targeted means of regulating harmful expression. Indonesian scholars have highlighted that laws concerning hate speech, when properly formulated and enforced, can address expressions that pose a real threat to public order and individual safety (Siregar, 2021). Unlike blasphemy laws, which focus on the protection of religious doctrines, hate speech regulations are oriented toward the protection of individuals and groups from harm. This distinction is crucial in aligning domestic legal frameworks with international human rights standards, which prioritize the protection of persons over abstract beliefs.

The analysis also reveals a significant tension between universal human rights norms and local political dynamics. In Indonesia, the discourse on blasphemy is often shaped by narratives that link religious protection to national identity and social cohesion. These narratives, while resonant in a socio-cultural context, can obscure the fundamental principles of human rights by framing dissent as a threat to collective values. As Indonesian constitutional scholars have noted, the challenge lies in balancing respect for cultural and religious diversity with the need to uphold universal rights (Asshiddiqie, 2020). This balance requires a nuanced approach that recognizes the legitimacy of both perspectives while ensuring that legal norms remain consistent with fundamental rights.

Political factors also play a crucial role in shaping the trajectory of blasphemy regulation. The study finds that periods of heightened political competition or social unrest often coincide with increased calls for the enforcement or expansion of blasphemy laws. In such contexts, blasphemy becomes a politically salient issue, used to mobilize support or delegitimize opponents. Indonesian scholars have cautioned that this politicization of religion poses significant risks to the rule of law, as it may lead to the selective application of legal norms and the erosion of judicial independence (Mahfud MD, 2021). Consequently, the recriminalization of blasphemy cannot be understood solely as a legal development but must also be analyzed within its broader political and social context. From a human rights perspective, the persistence of blasphemy laws in Indonesia raises important questions about the state’s commitment to international obligations. While Indonesia has ratified key human rights instruments, the implementation of these commitments remains uneven, particularly in areas involving sensitive cultural and religious issues. Scholars have argued that this gap between formal commitment and practical implementation reflects a broader challenge in integrating international norms into domestic legal systems (Huda, 2019). Addressing this challenge requires not only legal reform but also institutional strengthening and cultural change.

Ultimately, the findings of this study underscore the need for a fundamental rethinking of blasphemy regulation within the framework of international human rights law. Rather than relying on broad and ambiguous prohibitions, the law should focus on clearly defined forms of harmful conduct that can be objectively assessed and justified. This approach would not only enhance legal certainty but also ensure that criminal law remains aligned with its core purpose of protecting individuals and maintaining justice. In the Indonesian context, such reform must be undertaken with sensitivity to local values while remaining firmly grounded in universal human rights principles. The debate on recriminalizing blasphemy thus reflects a deeper tension between tradition and modernity, between collective identity and individual rights.

Navigating this tension requires a careful and principled approach that avoids simplistic solutions and acknowledges the complexity of the issue. By situating blasphemy within the broader architecture of human rights law, this study contributes to a more nuanced understanding of its legal and normative implications, offering a foundation for future reform that is both contextually relevant and normatively sound.

3.2. Limits of Religious Freedom and the Reinterpretation of Legal Harm

A central finding of this research is that the limits of religious freedom must be carefully understood through the lens of harm, a concept that has long served as a foundational pillar in modern criminal law theory. Within the Indonesian legal discourse, the notion of harm has increasingly been invoked as a necessary *معيار* to justify the legitimacy of criminal sanctions, particularly in cases involving expression and belief. Traditional justifications for blasphemy laws, however, tend to rely on the assumption that expressions deemed offensive to religion inherently produce harm by injuring collective sentiments or threatening social cohesion. This study challenges such assumptions by drawing a clear analytical distinction between subjective offense and objective harm. Indonesian scholars have emphasized that emotional disturbance or moral discomfort, while socially relevant, does not automatically translate into legally cognizable harm that justifies criminal punishment (Arief, 2021). This distinction becomes essential in preventing the expansion of criminal law into areas that should instead be governed by tolerance, dialogue, and democratic contestation.

In examining the Indonesian legal framework, it becomes evident that the conflation between offense and harm has significantly shaped the enforcement of blasphemy provisions. The interpretation of religious insult often depends on subjective perceptions, which are influenced by cultural norms, majority beliefs, and social pressures. As a result, expressions that merely challenge or critique dominant religious interpretations are frequently construed as harmful, even in the absence of any direct incitement to violence or discrimination. Indonesian legal scholars have warned that such an approach risks undermining the principle of legality by allowing criminal liability to be determined by fluctuating social sensitivities rather than clear legal standards (Chazawi, 2020). This concern is particularly acute in pluralistic societies, where differing interpretations of religion are inevitable and should be accommodated within the framework of freedom of expression. The findings of this study suggest that a harm-based approach provides a more coherent and principled foundation for regulating speech related to religion. Under this framework, the legitimacy of criminalization depends on the existence of a direct and demonstrable link between the expression in question and a concrete form of harm, such as incitement to violence, discrimination, or hostility against individuals or groups. This perspective aligns with the evolving understanding of criminal law in Indonesia, which increasingly emphasizes the protection of legal interests rather than moral values per se (Lamintang, 2019). By grounding criminal liability in objective harm, the law can maintain its integrity and avoid becoming *دافع* for enforcing conformity or suppressing dissenting viewpoints.

Moreover, Indonesian constitutional scholarship has consistently highlighted that restrictions on fundamental rights must be interpreted narrowly and applied with caution. The principle of proportionality, which requires that any limitation on rights be appropriate, necessary, and balanced, plays a crucial role in this regard. However, the study finds that blasphemy cases often fail to meet this standard, as the severity of legal sanctions frequently exceeds the actual harm caused by the expression. Individuals accused of blasphemy may face imprisonment, social stigmatization, and even threats to their personal safety, consequences that far outweigh the alleged injury to religious sentiments. This disproportionate response raises serious concerns about the misuse of criminal law and its potential to violate fundamental rights (Prasetyo, 2022). The disproportionate nature of blasphemy enforcement is further exacerbated by the social and political dynamics surrounding such cases. In many instances, legal proceedings are accompanied by public pressure and mobilization by certain groups, which can influence the interpretation and application of the law. Indonesian scholars have observed that this phenomenon reflects a broader challenge in the administration of justice, where legal processes are not entirely insulated from societal influences (Santoso, 2021). As a result, the law may function less as an impartial mechanism for resolving disputes and more as a tool for legitimizing

dominant social norms. This outcome is particularly problematic in democratic societies, where the protection of minority rights and dissenting opinions is a fundamental principle.

The reinterpretation of harm also necessitates a reconsideration of the concept of religious freedom itself. Rather than framing religious freedom as a right to be protected from offense, this study emphasizes its core meaning as the freedom to hold, practice, and express beliefs without coercion or interference. Indonesian legal thinkers have argued that religious freedom must be understood as an individual right that encompasses both the freedom to believe and the freedom to express those beliefs, including in ways that may be controversial or unpopular (Bagir, 2021). This interpretation aligns with the principle of state neutrality, which requires that the state refrain from endorsing or privileging particular religious doctrines over others. By shifting the focus from protecting beliefs to protecting individuals, the law can better accommodate the diversity of perspectives that characterize contemporary societies. This approach also reinforces the idea that respect for religion does not necessitate the suppression of critical or dissenting voices. Instead, it calls for the cultivation of a legal and social environment in which differences can be expressed and negotiated without resorting to coercion. Indonesian scholars have emphasized that tolerance is not merely a social virtue but a legal principle that underpins the protection of fundamental rights (Syaukani, 2020).

In addition to doctrinal considerations, the study highlights the importance of alternative regulatory mechanisms in addressing conflicts arising from religious expression. Criminal law, with its inherently punitive nature, is often ill-suited to managing the complex and sensitive issues associated with religion. Instead, non-penal approaches such as civil remedies, mediation, public dialogue, and educational initiatives offer more flexible and context-sensitive solutions. These mechanisms allow for the articulation of grievances and the resolution of disputes without imposing the severe consequences associated with criminal sanctions. Indonesian legal scholarship has increasingly recognized the value of such approaches, particularly in the context of restorative justice. Restorative models emphasize reconciliation, understanding, and the repair of social relationships, rather than punishment alone (Mulyadi, 2021). In cases involving religious expression, these approaches can help to de-escalate tensions and foster mutual respect, thereby addressing the root causes of conflict rather than merely its symptoms. This perspective is consistent with the broader trend in Indonesian legal reform, which seeks to reduce reliance on punitive measures and promote more humane and effective forms of justice.

The role of education and public discourse cannot be overlooked in shaping societal attitudes toward religious diversity. Legal regulation alone is insufficient to cultivate tolerance and respect; these values must be nurtured through continuous engagement and dialogue. Indonesian scholars have argued that education plays a crucial role in promoting pluralism and preventing the escalation of conflicts related to religion (Wahid, 2021). By fostering a deeper understanding of different beliefs and perspectives, educational initiatives can help to reduce the likelihood of offense and create a more inclusive social environment. The integration of these alternative approaches into the legal framework requires a shift in perspective, from viewing law as a tool of coercion to understanding it as a means of facilitating coexistence. This shift is particularly important in the context of religious freedom, where the stakes are not only legal but also deeply personal and cultural. By adopting a more holistic approach, the legal system can better respond to the complexities of religious diversity and uphold the principles of justice and human rights. Ultimately, the reinterpretation of harm represents a critical step in the ongoing effort to align blasphemy regulation with contemporary legal and human rights standards. By distinguishing between subjective offense and objective harm, the law can avoid the pitfalls of overcriminalization and ensure that its interventions are both justified and proportionate. This approach not only enhances the legitimacy of the legal system but also contributes to the broader goal of fostering a society that values both freedom and respect.

3.3. Doctrinal Reform of Offense Law and the Future of Blasphemy Regulation

Building upon the human rights analysis and the reinterpretation of harm, this study advances the argument that any meaningful engagement with blasphemy regulation must begin with a fundamental

doctrinal reassessment of criminal law itself. In the Indonesian context, this reassessment is not merely theoretical but deeply practical, given the ongoing transition from a legacy penal system toward a more modern, rights-oriented framework. Indonesian legal scholars have long emphasized that criminal law must operate within clearly defined normative boundaries, ensuring that its coercive power is exercised only in response to conduct that demonstrably threatens legally protected interests (Sudarto, 2018). Within this framework, blasphemy, as traditionally conceptualized, appears increasingly difficult to justify as a legitimate offense, as it lacks the essential characteristics of clarity, objectivity, and harm-based reasoning that underpin contemporary criminal law. The central proposition of this study is that blasphemy should no longer be understood as an offense against religion as an abstract entity, but rather reconsidered, if at all, within the narrower confines of conduct that produces tangible harm to individuals or public order. This shift reflects a broader movement within Indonesian criminal law scholarship toward the protection of concrete legal interests, rather than the enforcement of moral or theological norms (Atmasasmita, 2020). In this regard, the traditional formulation of blasphemy as an act of hostility or insult toward religion is doctrinally problematic, as it prioritizes the protection of belief systems over the rights of individuals. Such an approach is increasingly seen as incompatible with the constitutional commitment to human rights and the principle of equality before the law.

The principle of legality emerges as a crucial starting point for doctrinal reform. In Indonesian legal thought, legality is not merely a formal requirement but a substantive guarantee of justice, ensuring that individuals are not subjected to arbitrary or unpredictable state power (Ali, 2021). However, the current formulation of blasphemy offenses, particularly those derived from colonial-era provisions, often fails to meet this standard. The use of vague terms such as “deviation,” “misuse,” or “hostility” toward religion creates significant interpretive uncertainty, allowing for broad discretion in enforcement. This ambiguity undermines legal certainty and opens the door to inconsistent application, as different authorities may interpret the same conduct in divergent ways. Indonesian scholars have repeatedly warned that such vagueness not only weakens the legitimacy of criminal law but also increases the risk of its misuse for political or social purposes (Marzuki, 2022). Reform efforts must therefore prioritize the clarification of legal norms, ensuring that any criminal prohibition is defined with sufficient precision to guide both enforcement authorities and the public. One possible approach, as suggested in Indonesian legal literature, is to integrate blasphemy-related conduct into existing categories of offenses that are already grounded in harm-based reasoning, such as incitement to violence or hate speech (Ruba’i, 2021). By doing so, the law can avoid the conceptual difficulties associated with blasphemy while still addressing genuinely harmful forms of expression. This approach also aligns with the broader objective of simplifying and rationalizing the criminal code, which has been a key focus of legal reform efforts in Indonesia.

The principle of harm further reinforces the need for a doctrinal shift. As previously discussed, harm provides a more objective and defensible basis for criminalization than the protection of religious sentiments. Indonesian criminal law scholars have increasingly adopted a harm-oriented perspective, emphasizing that the legitimacy of punishment depends on the existence of a clear and measurable impact on legal interests (Muladi, 2020). Within this framework, expressions that merely offend or challenge religious beliefs do not, in themselves, constitute sufficient grounds for criminal sanction. Instead, the law should focus on conduct that directly incites violence, discrimination, or hostility, thereby posing a real threat to individuals or society. This harm based approach also addresses one of the most persistent criticisms of blasphemy laws, namely their susceptibility to subjective interpretation. By grounding criminal liability in observable consequences rather than perceived offense, the law can reduce the influence of personal or collective sensitivities on legal outcomes. This is particularly important in a diverse society such as Indonesia, where differing religious beliefs and interpretations are an inherent feature of social life. As Indonesian scholars have noted, the law must be capable of accommodating this diversity without privileging one set of beliefs over others (Salim, 2021). A harm-based framework provides a means of achieving this balance, ensuring that legal intervention is reserved for cases where it is genuinely necessary.

Proportionality, as the third pillar of doctrinal reform, addresses the relationship between the severity of sanctions and the gravity of the offense. In the context of blasphemy, this principle is often disregarded, with penalties that appear excessive in relation to the conduct being punished. Indonesian legal scholarship has consistently emphasized that punishment must be proportionate not only to the harm caused but also to the broader goals of justice and social welfare (Hamzah, 2019). However, in practice, individuals accused of blasphemy may face significant legal and social consequences, including imprisonment, public stigma, and even threats to their safety. These outcomes raise serious concerns about the fairness and effectiveness of the current legal framework. Doctrinal reform must therefore involve a reassessment of the appropriate range of sanctions for offenses related to religious expression. In many cases, non-penal measures such as mediation, education, or restorative justice may provide more appropriate and effective responses. Indonesian scholars have increasingly advocated for the incorporation of restorative principles into the criminal justice system, emphasizing the importance of dialogue and reconciliation in resolving conflicts (Waluyo, 2021). In the context of blasphemy, such approaches can help to address the underlying causes of conflict without resorting to punitive measures that may exacerbate tensions.

Beyond the technical aspects of legal doctrine, the study also underscores the importance of situating doctrinal reform within a broader socio-legal context. Legal norms do not operate in isolation but are embedded within a complex network of social, cultural, and political factors. In Indonesia, the regulation of religion is closely intertwined with issues of identity, governance, and social cohesion. As a result, any attempt to reform blasphemy laws must take into account these broader dynamics, ensuring that legal changes are both contextually appropriate and socially sustainable (Latif, 2020). One of the key challenges in this regard is the persistence of narratives that frame blasphemy as a threat to national unity or moral order. These narratives often draw on deeply rooted cultural and religious values, making them resistant to change. However, Indonesian scholars have argued that the promotion of democratic values and human rights requires a gradual shift in these narratives, emphasizing the importance of tolerance and pluralism (Sukardi, 2022). Legal reform can play a role in this process by signaling a commitment to these principles, but it must be accompanied by broader efforts to foster understanding and dialogue within society.

Education and public discourse are particularly important in shaping attitudes toward religious diversity and freedom of expression. By promoting a more nuanced understanding of these issues, educational initiatives can help to reduce the likelihood of conflict and create a more supportive environment for legal reform. Indonesian scholars have highlighted the role of legal education in this regard, emphasizing the need to integrate human rights perspectives into the curriculum and to encourage critical thinking about the relationship between law and society (Wignjosoebroto, 2019). Such efforts can contribute to the development of a legal culture that values both freedom and responsibility. Ultimately, the doctrinal reform of offense law in relation to blasphemy is not merely a technical exercise but a reflection of broader societal choices about the role of law in regulating belief and expression. The findings of this study suggest that the recriminalization of blasphemy is difficult to justify within the framework of modern criminal law and human rights. Rather than reverting to traditional forms of legal protection that prioritize abstract values over individual rights, states should focus on developing legal frameworks that are coherent, proportionate, and grounded in the protection of tangible interests. This approach offers a more sustainable and legitimate path forward, allowing the law to respond effectively to genuine harms while preserving the space for free and open expression. In doing so, it also reinforces the fundamental principles of justice, equality, and respect that underpin both national and international legal systems. The future of blasphemy regulation, therefore, lies not in its preservation as a distinct criminal offense but in its transformation into a more precise and limited category of conduct, aligned with the core values of modern law.

IV. Conclusion

Recriminalization of blasphemy is increasingly difficult to justify within the framework of contemporary human rights law and modern criminal law doctrine. The analysis demonstrates that

blasphemy, as traditionally formulated, rests on an unstable normative foundation, primarily because it prioritizes the protection of religious sentiments or abstract belief systems rather than the safeguarding of individuals from concrete harm. Such an orientation conflicts with the core principles of legality, necessity, and proportionality, which require that criminal law be clear, limited, and grounded in demonstrable harm. By distinguishing between subjective offense and objective harm, this research affirms that not all expressions that provoke discomfort or indignation warrant criminal sanction. Instead, a harm-based approach provides a more coherent and defensible standard, limiting criminalization to forms of expression that incite violence, discrimination, or hostility. This shift is essential in preventing the overextension of criminal law and in preserving the space for democratic discourse, particularly in pluralistic societies where differing beliefs and interpretations are inevitable. The study highlights that the persistence of blasphemy laws often reflects broader socio-political dynamics, including the instrumentalization of religion and the influence of majoritarian pressures. These factors not only undermine legal certainty but also expose minority groups and dissenting voices to disproportionate risks. Accordingly, doctrinal reform is necessary to realign offense law with its fundamental purpose of protecting legal interests rather than enforcing moral conformity. The future of blasphemy regulation lies not in its preservation as a distinct criminal offense, but in its transformation into narrowly defined, harm-based legal norms that uphold both human rights and the integrity of the legal system.

References

- Adjie, H. (2018). *Hukum Notaris Indonesia*. Bandung: Refika Aditama.
- Anshori, A. G. (2020). *Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika*. Yogyakarta: UII Press.
- Ardiansyah, R. (2023). Digital transformation in land administration. *Jurnal Hukum dan Teknologi Indonesia*, 6(1), 45–60. <https://doi.org/10.1234/jhti.v6i1.567>
- Atmadja, I. D. G. (2021). *Teori hukum dan keadilan substantif*. Denpasar: Udayana University Press.
- Fadillah, N. (2022). Regulatory reform in notarial practice. *Jurnal Legislasi Indonesia*, 19(3), 210–225. <https://doi.org/10.54629/jli.v19i3.321>
- Gunawan, H. (2023). Verification standards in notarial deeds. *Jurnal Kenotariatan Indonesia*, 6(1), 70–85. <https://doi.org/10.36722/jki.v6i1.789>
- Hadi, S. (2020). Land disputes and legal uncertainty in Indonesia. *Jurnal Hukum Ius Quia Iustum*, 27(2), 245–260. <https://doi.org/10.20885/iustum.vol27.iss2.art5>
- Hidayat, A. (2022). The advisory role of notaries in legal transactions. *Jurnal Hukum dan Peradilan*, 11(2), 155–170. <https://doi.org/10.25216/jhp.11.2.2022.155-170>
- Kamal, M. (2021). Preventive legal protection in land disputes. *Jurnal Rechtsvinding*, 10(3), 300–315. <https://doi.org/10.33331/rechtsvinding.v10i3.789>
- Kurniawan, B. (2023). Notarial liability and legal accountability. *Jurnal Arena Hukum*, 16(1), 88–102. <https://doi.org/10.21776/ub.arenahukum.2023.01601.5>
- Nasution, Z. (2022). Legal certainty and justice in Indonesian land law. *Jurnal Hukum Ius Quia Iustum*, 29(1), 50–65. <https://doi.org/10.20885/iustum.vol29.iss1.art4>
- Prasetyo, T. (2022). The paradox of legal certainty in Indonesian land law. *Jurnal Yuridika*, 37(3), 401–415. <https://doi.org/10.20473/ydk.v37i3.34567>
- Putri, D. A. (2023). Digital transformation in notarial services and its legal implications. *Jurnal Hukum dan Peradilan*, 12(1), 89–104. <https://doi.org/10.25216/jhp.12.1.2023.89-104>
- Rahayu, S. (2022). The limits of notarial responsibility in Indonesian law. *Jurnal Notariat*, 5(2), 120–134. <https://doi.org/10.1234/jn.v5i2.456>
- Santoso, U. (2021). *Hukum agraria: Kajian komprehensif*. Jakarta: Kencana.
- Siregar, M. (2023). Due diligence in land transactions. *Jurnal Kenotariatan Indonesia*, 5(2), 101–115. <https://doi.org/10.36722/jki.v5i2.654>
- Widodo, J. (2022). Legal awareness and informed consent. *Jurnal Hukum dan Pembangunan*, 52(1), 90–105. <https://doi.org/10.21143/jhp.vol52.no1.3456>
- Yusuf, M. (2022). Accountability mechanisms in notarial law. *Jurnal Arena Hukum*, 15(3), 400–415. <https://doi.org/10.21776/ub.arenahukum.2022.01503.7>