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The Indonesian Blasphemy Law as Legal Forum for Renegotiating Indonesian Secularity

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ABSTRACT

If secularism is described merely as the decline of religious roles in public spheres or religious privatisation, then it would be difficult to put the secular term on Indonesian history. The principle of divinity as adopted on the "*Pancasila*" as state ideology has become the basis for religionisation and rejecting any utterance of secularism at law, State institution, or other public domain. On the other hand, Indonesia, as a democratic State as well as the most populous Muslim country in the world, has never put the notion of an Islamic state or theocracy as its state model. Its modernity is developed under the Western idea of law supremacy or the rule of law to which a democratic political system is laid down. This article is intended to seek a kind of distinction on Indonesian secularity based on how its blasphemy law developed and functioned under the framework of open-ended negotiation. The first epoch, assumed as the place of negotiation on Indonesian secularity, took place during the initial stage of the State's formation around the transition era of independence in 1945. Then, there have been several renegotiations afterwards through multiple and overlapping instruments of development such as politics, economy, law, and culture. The blasphemy law as one such instrument will be used to read how the relevant actors of Indonesian history have constructed their own concept of state and religion, including its interrelationship characters as the basis for social and structural differentiation or distinction.

1. Introduction

Indonesian national consensus in the period of 1945-1950 finally agreed upon Pancasila as the State philosophy (*Weltanschauung*), Pancasila means Five Principles (*Panca* is for Five, and *Sila* is for Principle or Tenet), which consist of *Ketuhanan Yang Maha Esa* (The Supreme Divine), *Kemanusiaan yang Adil dan Beradab* (Just and Civilised Humanity), *Persatuan*

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Indonesia (Unity of Indonesia), *Kerakyatan yang Dipimpin oleh Hikmat Kebijaksanaan dalam Permusyawaratan/Perwakilan* (Democracy as Guided by Wisdom of Deliberation/Representation), *Keadilan Sosial bagi Seluruh Rakyat Indonesia* (Social Justice for All Indonesian Peoples) and constitutional principle which one of its tenets was *Ketuhanan Yang Maha Esa* (the Supreme of God) (Andriawan, 2022; Firmansyah, 2022; Kusmawati et al., 2022; Maulida et al., 2023; Pristiani et al., 2022; Windari & Aziz, 2021; Yuliana, 2021). In the legal perspective, the phrase of *Ketuhanan Yang Maha Esa* is very fundamental due to its position as the basic norm and basic law (constitution) from which the development of the national legal system is based upon (Legislative Drafting, 2011). The content of Pancasila is an indirect norm or constitutional principles which could not be implemented instantly and requires legislation to manifest the principles. The abstract and generality of Pancasila as a presupposed norm had opened wide space for further debate on the characteristic of the state-and-religion relationship among the public and state authorities in the areas of administration, legislation, and adjudication (Nail et al., 2019).

The issue on the role of Pancasila especially the tenet of *Ketuhanan Yang Maha Esa* to unity plural religious communities have escalated public debate when the criminal aspect of blasphemy law was applied to Ahok Case in 2016. Ahok was nick name of Basuki Tjahaja Purnama, a chinese christian politican, who had been the vice governor of Jakarta since 2012 and acted fully as governor from 2014 to 2017 due to the Governor of Jokowi ran for presidential candidacy in 2014. On 27 September 2016 Ahok delivered a speech before fishing community of Kepulauan Seribu District from which one of his uncomplete statement of "*...ya kan dibohongi pakai surat Al-Maidah 51...takut masuk neraka karna dibodohin...* (*...lied by using (Qur'an verses of) Al-Maidah 51...(then) fear for going to hell as result of being fooled...*)" was used by some Muslims to file allegation for blasphemy to Islam under criminal justice system (violation to Article 156a of Criminal Code) (Juwana et al., 2019; Peterson, 2020; Ropi, 2017).

The case had been concluded by the court that Ahok found guilty of insulting religion and imprisoned for 2 years. Ahok as a non-Muslim governor who was running for his second candidacy faced criminal charge for insulting religion based on his speech which said that the Qur'an's verse of Al-Maidah (51) (NU Online, 2017) might be politicised by his rival to influence audience's political choice. The trial process of the case was accompanied by a massive rally on 2 December 2016 named as "*Aksi 212*" (The Guardian, 2017), just a day after the case registered into the court, which targeted mainly on jailing Ahok and voicing religious prohibition to select a non-Muslim as a public leader (Fealy, 2017). A counteraction to "Aksi 212" had taken place also at several cities of Indonesia and abroad, called "*Aksi 1000 Lilin* (Thousand Candles Action)" (Deutsche Welle, 2017) by which supporting "*Kebhinekaan*" (Indonesian pluralism) in balance to the identity or religious politics. The public tension was finally decreased when Ahok was defeated on governor election and the court also concluded that he had conducted blasphemy, therefore, imprisoned for two years (*The Decision of Ahok Case on Blasphemy No.1537/Pid.B/2016/PN.Jkt.Utr*, 2017).

Previously there had been several blasphemy cases such as the case of HB. Jasin (literary expression), Arswendo (press pooling), Tajul Muluk's community expulsion (Shia minority), Cikeusik persecution (Ahmadiyah Muslim minority), etc. that all of them based on the application of Article 156a of the Criminal Code (hereinafter PNPS 1/65) (Sihombing et al., 2012). Every of those blasphemy cases had different background or characteristic although criminalised under the same law. The law was issued by Sukarno on 27 January 1965 with political intention to compromise the interest of Muslim nationalist after long confrontation since at the very beginning of Indonesian independence. For the first time, Soeharto applied the blasphemy law in 1968 for the case of HB. Jasin in relation to his *Cerpen* (*cerita pendek,* short story) on "*Langit Makin Mendung* (A Darkening Sky)" which personified the God and

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the Angel Gabriel and less respectful to the Prophet Muhammad as Muslim do in general (Deakin, 1976). The first blasphemy case was not in response to any religious heresy or communism but journalistic freedom in relation to religious insult. Implementation of the blasphemy law in the view of Indonesian religious pluralism had been challenged by human rights proponents in 2009 through the Constitutional Court but rejected based on the argument that the law should be existence to secure national stability and unity as well as manifestation of the principle of Ketuhanan Yang Maha Esa in Pancasila and the 1945 Constitution.

2. Research Methods

This research tries to provide further explanation on how the blasphemy law had been functioned to renegotiate Indonesian secularity by its actors in conjunction with other law and regulation. There would be an exploration of the diverse perspectives on Indonesian secularity by looking at how the blasphemy law developed and was interpreted over the course of modern Indonesian history. Indonesian secularity was first negotiated as the country moved towards independence in 1945. It has subsequently been renegotiated multiply in light of developments in politics, business, law, and culture. The blasphemy law will be used to interpret how various actors in Indonesian history have constructed their concept of state and religion and how these two notions overlap.

The development of blasphemy law was surrounded by several institutionalisations of religion into state structure. The blasphemy law historically has gone through all Indonesian regimes from Sukarno to post-reformation. There had never been any changes to its texts and remain valid fully even after constitutional tests in 2009 (*The Decision on the Judicial Review of Blasphemy Law No.140/PUU-VII/2009*, 2010) and 2012 (*The Decision on the Judicial Review of Blasphemy Law No. 84/PUU-X/2012*, 2013). Political, social, and legal impacts of Indonesian modernisation and secularisation to the existence of blasphemy law and vice versa are the main reason to use the socio-legal approach in this research (Banakar & Travers, 2005). Complex entanglement of law and secularism requires both sociological approach and empirical analysis of law. At this point, the involvement of law is not intended to provide a doctrinal prescription or to narrowly evaluate the legal validity of certain regulations related to Indonesian secularity but more precisely to provide materials for making prediction or examination on the consequences of secularisation.

Previous research on the issue of blasphemy law in Indonesia has predominantly focused on its correlation with various legal fields, including constitutional, administrative, and private laws. Scholars and analysts have explored its implications within the broader legal framework, often examining its impact on freedom of expression, religious harmony, and human rights (A'yun, 2021; Indrayanti & Saraswati, 2022; Irawan & Adnan, 2021; Lintang et al., 2021; Pertiwi, 2021; Pratiwi, 2021; Pratiwi & Sunaryo, 2021; Syahid et al., 2021; Tyson, 2021). However, this research takes a different approach by analysing blasphemy law through the lens of Indonesia's secularity. By emphasising Indonesia's status as a secular state, this study seeks to identify alternative legal forums for addressing issues related to blasphemy. Through this alternative perspective, the research aims to offer fresh insights into the complexities surrounding blasphemy law in Indonesia and potential avenues for reform that align more closely with the country's secular principles.

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3. Discussion

3.1. Blasphemy law as instrument of religious differentiation

Rather than defining religion clearly and strictly on the law, as it should be a case on a civil law system since a definition of certain terminology or text becomes central for legal application (law.berkeley.edu, 2017), the blasphemy law (here referred as PNPS) (Presidential Decree No. 1 of 1965 on the Prevention of Religious Misuse and/or Blasphemy, 1965a) takes it for granted and prefers to use the term of *Agama* (specific use of religion) as subject for legal recognition and protection from blasphemy, hostility and misuse. However, the legal terminology of *Agama* (religion) on PNPS has produced kind of religious categorisation based on sociological history claim that embraced religion in Indonesia only limited to well-recognised world religions that are Islam, Protestant, Catholic, Hindu, and Buddha (CICRED, 1974). Any other religion such as Judaism, Zoroastrian, Shinto, and Taoism which may be also embraced by a small number of peoples only enjoy to some extent of guarantee to worship freely (Presidential Decree No. 1 of 1965 on the Prevention of Religious Misuse and/or Blasphemy, 1965b). The local belief which mostly embraced by a native in wide and spread areas of Indonesian archipelago is excluded by the law from the category of recognised or protected religion, but as a belief which should be directed into the divinity of "*Ketuhanan Yang Maha Esa*" (Mulder, 1970). To this end, the PNPS has established structural differentiation as the basis for a social and legal distinction to religion which consists of recognised religion (*agama yang diakui*), unrecognised respected-religion (*agama yang dihormati tapi tidak diakui*), and local belief (*Aliran Kepercayaan*, literally *belief stream*).

The differentiation has quite significant for further civil administration. People who belong to recognised religion will be identified as religious group (*kelompok masyarakat beragama*) and fully enjoyed administrative system, for whom affiliate to respected unrecognized-religion are categorised as unrecognised religious-group (*kelompok masyarakat beragama yang tidak diakui*) and should administratively adopt any other recognised religion, and for the adherence of local belief are called as unreligious group (*kelompok masyarakat tidak beragama*) and assimilated to recognised religious group (The Act No.1 of 1974 on Marriage, President and Parliament, 1974). Internal plurality on each religion, therefore, is neglected by the blasphemy law and unified into a single category of legally recognised religion (Burhanudin & Van Dijk, 2013). This legal policy on religious categorisation may become indicator how sociological categorisation of religion must compete with the structural categorisation imposed by the legal instrument of the blasphemy law.

The legal categorisation of religion by the blasphemy law has a legal impact to the whole protective system of this law. The main concern of this law is how to protect any recognised religion from any action of religious heresy (*menyimpang dari pokok-pokok ajaran agama*)", irreligiosity (merriam-webster.com, 2017) against divinity (*untuk tidak beragama berdasarkan Ketuhanan Yang Maha Esa*), religious misuse (*penyalahgunaan agama*), religious hostility (*permusuhan terhadap agama*), and religious blasphemy (*penodaan terhadap agama*). The keyword for any prohibited conducts considered as blasphemy or religious misuse is certain action considered as "counterfeit (*menyerupai*)" to any recognised religions which elaborated into operative terms of "narrating (*menceritakan*)", "persuading (mengajurkan)", "seeking public support (*mengusahakan dukungan umum*)", and "interpreting (*menafsirkan*)".

A counterfeit as illegitimate action on the blasphemy law is different from internal religious diversity which termed, for example, as madhhab differentiation in Islam (*Islamic legal school*) or congregationalism in Christianity. The important parameter for qualifying whether any religious interpretation is justified as part of religious diversity or not will

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depend on its methodology as part of religious standardisation (Picard & Madinier, n.d.). Religious heresy as a crime in the blasphemy law therefore is limited to certain counterfeit which methodologically unacceptable based on mainstream religious school of thought or widely accepted religious jurist; however, the blasphemy law and the court decisions in dealing with this issue have not discussed further comprehensively about the margin of toleration for methodological differences in religious interpretation (*The Decision on the Judicial Review of Blasphemy Law No.140/PUU-VII/2009*, 2009a).

The basis for religionisation in the blasphemy law is the first principle of *Pancasila, Ketuhanan Yang Maha Esa* (*the Supreme of God*) and reiterated by the spirit of the Jakarta Charter (*Piagam Jakarta*) which is a political and legal artefact of the ideological battle between Islamic nationalist and secular nationalist during the adoption of state ideology and constitution right after of the state independence in 1945. The most contentious point of the Charter is the sentence of "*the Divinity of God, with the obligation to implement Islamic law for its adherences* (*Ketuhanan, dengan kewajiban menjalankan Syariah Islam bagi pemeluk-pemeluknya*"). As a legal matter, the sentence has never had any legal force under the Indonesian legal system since the beginning of its issuance positioned merely as a political issue. Therefore, the blasphemy law bases its legal normativity on the principle of *Ketuhanan Yang Maha Esa* and its legal politics clearly takes the spirit of the Jakarta Charter which emphasise the interests of Islamic group as the national majority.

The urgency *Ketuhanan Yang Maha Esa* is also perceived by the blasphemy law as the moral basis for the constitution (*ketatanegaraan*) and state administration (*pemerintahan*) as well as the foundation for the principle of national unity (*persatuan nasional berbasis pada prinsip agama*). *Agama* and *Ketuhanan Yang Maha Esa* are assumed as two sides of a coin by which recognition to any religion as generic requires the presence of *Ketuhanan Yang Maha Esa,* and vice versa. The relationship between *agama* and *Ketuhanan Yang Maha Esa* is then developed under the synonymised meaning between *Ketuhanan Yang Maha Esa* (*the Supreme Divine*) and *Tuhan* (God). The concept of *God* or *Ketuhanan Yang Maha Esa* and religion is then more exclusively determined or dominated by *Agama* (limited concept of religion) in expense of other kind of religion or non-religions (wider or generic concept of religion) especially local belief (*Aliran Kepercayaan*) in the context of Indonesia which mostly local and belongs to native's or indigenous religion (Turner, 2011).

The blasphemy law philosophically places *Agama* as the pillar for societalisation and nationalism, state foundation, and the absolute element of nation-building (Presidential Decree No. 1 of 1965 on the Prevention of Religious Misuse and/or Blasphemy, 1965b). The basic argument for such religious structural mainstreaming is the claim that there have been some *Aliran Kepercayaan* in around 1965 which violated the law, disintegrating national unity, and conducting blasphemy by which endangering and threatening the existence of religion (Presidential Decree No. 1 of 1965 on the Prevention of Religious Misuse and/or Blasphemy, 1965b). This kind of assumption then used as the basis for establishing the aims of the law that are to implement the 1945 constitution based on the Presidential Decree 5 July 1959 and took the Jakarta Charter as its spirit, to parallel the development of state administration by deepening religious involvement, to realise peace and tranquility in religious life by preventing religious heresy and blasphemy, and to guarantee the freedom of worship. The absence of clarity in the blasphemy law to define the scope of religion has produced certain exclusion and bias toward the unstandardised religion or belief. Although the historical background of religion is used by the law as the basis for recognition, the recognition limited to quantity aspect of religious adherence. The scope of history neglects the existence of native, local, or indigenous religions as the predecessor of world religions in Indonesia.

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The legal takeover of *Ketuhanan Yang Maha Esa* by *Agama* in the blasphemy law has dissociated *Aliran Kepercayaan* from the concept of God and furthermore religious institutionalisation. The God in the term of *Ketuhanan Yang Maha Esa* as part of religious institutionalisation or structural differentiation is exclusively dominated by *Agama*. It may explain why the administration of *Aliran Kepercayaan* has been always part of the Directorate General of Culture of the Ministry of National Education rather than organised by the Ministry of Religion. Therefore, *agama* in that context has been compartmentalised into the matter of divinity apart from *Aliran Kepercayaan* as the cultural one. The blasphemy law has positioned also the *Aliran Kepercayaan* as a kind of heresy (Evans, 2003) which should be therefore directed into the *Ketuhanan Yang Maha Esa*.

The elaborated categorisation or standardisation of *Agama* then going into a more practical level on what could be legally considered as religious activity (*kegiatan keagamaan*). The blasphemy law puts religious activity as a demarcation from non-religion activity to make it easier for identifying any heresy which consists of all kind of activities which have religious characteristics such as 1) naming a belief (*aliran*) as a religion, 2) using religious terminologies as manifestation of religious teaching; or 3) practising worship. The extent to which freedom of opinion on religion could be manifested orally or in writing is as far as carried out in the absence of religious hostility and insult, objective, scientific, and neutral (*zakelijk*). The competence to qualify whether certain activities are part of a religious activity or not as the basis for heretical test belongs to the Ministry of Religion which is considered have sufficient resources to do so.

3.2. Dominating Religion Into Modern Indonesia

The new State of Indonesia has been viewed by the proponent of *Agama*, not exclusively to Islam, as an opportunity for structural religionisation into national development (*politics, law, and economy*). Political rivalry pre-1965 between nationalist secular and nationalist Islam has been expanded into a legal arena where the religionist tried to compensate their ideological loss on the Jakarta Charter and the 1945 Constitution by getting privilege on the structural implementation of *Ketuhanan Yang Maha Esa.* The efforts to religionise the law and State institution generally should be read as part of the Islamisation epoch in Indonesia which is divided into three phases: 1) religious conversion of Indigenous people (1400 - early 1900), 2) religious purification (1830 - 1930), and 3) Modern period (1930 – onwards). The work of Islamisation on the modern period covers three main areas that are Islamising the State (1930-1968), Islamising social life of society (1968-1998), and Islamising both the State and Society (1998 onwards) (Salim, 2008). The blasphemy law which is issued in 1965 and still applicable until recently, therefore, has been part of the instrument to Islamise all areas of modern period that are a state, society, and both state and society.

The guiding ideas of the first modern period of Islamisation are to reassert the new state's identity of Indonesia as kind of refusal to Western colonialisation and its civilisation included any concept of state formation such as democracy, nation-state, and constitutionalism. The developmental process of state identity factually involved multi-actors who have also plural ideas on the relation between state and religion. In term of ideological rivalry, there was nationalist Muslim group who try to establish whether Islamic democratic state or religious democratic state on one hand and the nationalist secular group on the other side who prefer to adopt more nationalist secular/liberal State. The groups based on its cultural basis and political affiliation could be identified as traditional Islamist (*Partai NU/Nahdlatul Ulama Party* (Awakening of the Traditional Islamic Teachers and Scholars), modern Islamist (*Partai Masjumi* (Consultative Council of Indonesian Muslims)), Modern Christian (Partai Kristen Indonesia (Indonesia Christian Party) and Partai Katolik (Catholic Party)), Secular traditionalist (Partai PNI (*Indonesian National Party*) Traditional nominal Muslim (Partai

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PNI), Secular Modernist (Partai PKI (Indonesian Communist Party), Partai PSI (Indonesian Socialist Party)) (Hindley, 1970). The rural traditionalist as opposite to rural aristocrat or urban community who the main adherence of *Aliran Kepercayaan* (local belief) politically belonged to PNI (nationalist) or PKI (national communist) which respectively gained 22,3% (the biggest percentage) and 16,4% (the fourth percentage after PNI, Masyumi, and NU) of votes in the 1955 general elections.

The modern Islamic party of Masyumi in 1960 was suspended by the President of Sukarno due to the allegation that its elites were involved on the revolt of PRRI-Permesta (*The Revolutionary Government of the Republic of Indonesia - Universal People Struggle*) in Sumatra (Lucius, n.d.). This contentious and confrontational situation to some extent has contributed to increasing ideological distrust between nationalist secular as represented by Soekarno from which the adherence of local belief (*Aliran Kepercayaan*) exists and nationalist modern-Muslim who is politically institutionalised as Masyumi Party. As an addition that Sukarno on 5 July 1959 issued a presidential decree which dissolved the Constituent Assembly and reapplied the 1945 Constitution back in lieu of the 1950 Constitution. Based on the 1945 Constitution, the State had to follow a presidential governmental system by which Sukarno as the president then became the central figure. Although among the groups have finally concluded consensus on Pancasila as the state ideology in 1945 without formalisation of Islam as the official religion and adopted a more neutral constitution; however, it was clear that the effort for strengthening religionisation or more precisely Islamisation on the State structure to become dominant identity has been far from the end.

On 3 January 1946, about four months after the declaration of independence, the Cabinet of Sjharir II had made agreement on the proposal submitted by the Working Group of the Central Indonesian National Committee (Komite Nasional Pusat Indonesia/KNPI) (The 1945 Constitution of Indonesia (Pre-Amendment)), 1945) to establish a Ministry of Religion which in earlier suggestion named as the Ministry of Islamic Religion. This new ministry in time of its establishment consisted of several divisions that were general affair (*bagian umum*), court (*bagian mahkamah*), mosque, religious foundation, and ummah (*bagian masjid, wakaf, dan kaum*), education (*bagian Pendidikan*), religious movement (*bagian gerakan agama*), culture and publication (*bagian kebudayaan dan penerbitan*), local religious affairs (*bagian urusan agama daerah*), library (*bagian perpustakaan*), pilgrimage (bagian urusan haji), and Christian (*bagian Kristen*)(Based on the Regulation of the Minister of Religion No. 55/A Tahun 1946, 1946). The existence of the Ministry of Religion soon was used by the State to unify administration on Muslim marriage, divorce, and reconciliation in Java and Madurese Islands based on the Act No. 22/1946 which was issued on 21 November 1946 in abrogation of colonial regulations.

The fall of Sukarno and the emergence of New Order regime of Soeharto had been marked by the strict ideological slogan of "*Implementing Pancasila and the 1945 Constitution purely and consistently* (*melaksanakan Pancasila dan Undang-Undang Dasar 1945 secara murni dan konsekuen*)" as stated on the Memorandum of DPR-GR (People Representative Council – Gotong Royong) in 5 July 1966. The Memorandum was historical momentum in transferring political power from Sukarno to Soeharto which also started the political transformation from guided democracy toward Pancasila democracy where the pluralistic ideological era of *Nasakom* (*Nasionalisme, Agama, Komunis* (*Nationalism, Religion, Communist*)) was ended. Limited and strict interpretation of Pancasila as state ideology by the New Order was intended to avoid political instability and social disintegration which assumed as a hindrance for development. It was not only communism as the regime's enemy but also the strict Islamist who try to establish an Islamic state.

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The lack of ideological competition or pressure from the left had made it easier for the Ministry of Religion as part of the government to continue their agenda of Islamisation along with the need of Soeharto to get legitimacy as a religious administration (*Pancasilaist*) to neutralise image for its repressive policy to Islamist. One of the monumental victories for (Islamic) religionisation is the establishment of marriage law (The Act No.1 of 1974 on Marriage, 1974). The law provided legal basis to implement wider Islamic civil law into the State legal system formally as addition to the establishment of the Act No.19 of 1964 on the Principal Provisions on Judicial Power which recognised the existence of religious judicial system (*peradilan agama*) as part of judicial system under the authority of the Supreme Court (The Act No.19 of 1964 on Judicial Power, 1964a); however, the organisation, administration, and finance of the religious judicial system were managed by the Ministry of Religion until 2009 before being transferred to the Supreme Court (The Act No.19 of 1964 on Judicial Power, 1964b) after the collapse of Soeharto administration and as the consequence of constitutional amendment in 2001 (The Act No.19 of 1964 on Judicial Power, 1964b).

The religionisation of state institutions since the formation of the Ministry of Religion was also in line with the development of mutual support between Islamic religious leader or scholar with the New Order regime. The work areas of MUI formalised during its emergence as part of its collaboration with the government were as follow: 1) Providing guidance for *ummah* (Muslim) to develop a religious society that is blessed by Allah SWT.; 2) Providing advice and fatwa (Islamic legal opinion) on religious and social issues for people and government; 3) Increasing activities which support islamic brotherhood and inter-religious harmony to strengthen national unity and integration; 4) Becoming intermediator between ulama and *umara* (government) and interpreter on interrelationship between government and *ummah* to succeed national development; 5) Increasing interrelationship and cooperation with Islamic organisation and Muslim intellectual; 6) Representing Muslim or *ummah* in connection and consultion with other religions; 7) Other fields as in line with the aim of organisation. It was clear that the scope of such work areas very similar to the content of Soeharto speech during the opening ceremony. Although MUI is non-State organisation; however, it was not quite an independent Islamic social organisation and even well controlled by Soeharto. In relation to the application of blasphemy law, MUI has a central role in assessing allegation of misuse, heresy, or insulting to Islam.

It should not be too easy based on the MUI procedures to declare heresy and had to take account of every information or refutation provided by alleged person or group. The check-and-balance system of MUI seemed to be an effort to differentiate between illegitimate religious heresy and legitimate religious diversity in Islam. The former was assumed as the source of social conflict and the latter as inherent part of the Islamic community of Indonesia. Standardisation on heresy by MUI had filled the gap on the blasphemy law which lacked certain religious standard as a reference to assess alleged sect as deviance. Although the fatwa of MUI has no legal force, it had a very strategic position for trial process due to its strong legitimation socially and politically. Most of the judicial practices in adjudicating blasphemy cases or administrative decrees by the government in addressing alleged deviant group had referred to the fatwa of MUI (*The Decision of Disctrict Court of Sampang on Tajul Muluk Case July 11, 2012), 2012*). There had been differentiation on institutional roles between state authorities (government and judiciary) and MUI when dealing with the case of heresy where the authorities of the criminal justice system and the government would function as an enforcer of state law, i.e. criminal law and administrative law, and MUI would contribute to determining its theological fitness.

Article 2 of the blasphemy law assigned the Ministry of Religion, the Ministry of Home Affairs, and the Attorney General (public prosecutor) as state authorities to prevent the

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occurrence of religious misuse, insult, and heresy. The Ministry of Religion since 1946 through its General Secretary had already supervised religions and other faiths under the Section of Politics and Other Religions and Spiritual Movement (*Bagian Politik dan Bagian Urusan Agama-agama Lain dan Gerakan/Aliran Kerohanian*). In 1967 the Section was changed into Research Agency and Spirituality (*Dinas Penelitian dan Aliran Kerohanian/Dinas Penegak*), Spiritual/Religious Sect Body (*Lembaga Aliran Kerohanian/Keagamaan (Lemrohag)*) in 1969, and Center for Research and Development for Religious Life (*Pulitbang Kehidupan Beragama*) in 1975. The main tasks of all these organs were to observe the dynamic of politics and society in relation to religion/faith and all other matters related to *aliran kepercayaan* (local belief). For local belief or mystical belief, *Lemrohag* specifically had a duty to supervise them, to uplift and guide them into the main religion (*agama induk*), and to research on mystical belief/religious sect (Tim Ditjenbud, 2000). Additionally, a body called PAKEM (Pengawas Aliran Kepercayaan Masyarakat: *Supervisor for Mystical Belief in Society*) had been also created in 1954 by the Ministry of Justice in collaboration with the Ministry of Religion (Waardenburg, 1999). To this end, the measurement standard on blasphemy case had been influenced and determined by multiple actors that should be part of power game. The intense involvement of state actors structurally on managing religious contention had reflected continuous religionisation on governmental institutions lead by the Ministry of Religion since 1946 and strongly supported by the blasphemy law started from 1965.

3.3. Human rights' roles to renegotiate Indonesian secularity

Domestication and socialisation (Risse, Ropp & Sikkink, 2007) of international human rights norm had challenged the meaning of *Agama* and its practical aspects (legislation, administration, judiciary). Article 18 of Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) both provide every individual citizen a set of rights which much more liberal than those regulated under Indonesian legal system such as the right to believe for no religion or God (non-theistic or atheistic)(General Comment of the Human Rights Committee, 1993). Indonesia legally accepted all the norms enunciated under ICCPR without any declaration (state exempted itself from the certain obligation of a treaty during its ratification) except to Article 1 in relation to the right to self-determination. Furthermore, the principle of non-discrimination which has been an integral part of international human rights law strengthen the promotion of equality among adherences of any religion or belief in Indonesia. New articles of 28I on amended constitution had also categorised the right to religion (*hak beragama*) as non-derogable right. Interestingly, Article 28E (2) of the 1945 Constitution entitles everyone the right to believe any kind of faith (*Setiap orang berhak atas kebebasan meyakini kepercayaan…*) as separated provision from Article 28E (1) which constitutes the right to freedom of religion (*Setiap orang bebas memeluk agama…*). This means that the Constitution has made a differentiation between religion (*agama*) and faith/belief (*kepercayaan*), therefore, extends the scope and meaning of *Ketuhanan Yang Maha Esa* (the Supreme Divinity) as stipulated under Article 29 (1). Article 13 of the Human Rights Charter of 1998 (Article 13 of The Decree of the People's Consultative Assembly No. XVII/1998 on Human Rights, 1998) and Article 4 and 22 of the Act No.9 of 1999 on Human Rights (Article 4 of The Act No.39 of 1999 on Human Rights, 1999) also strengthen the right to religion or belief in alike wording.

On 28 October 2009, the fourth President of Indonesia, Abdurrahman Wahid, and other civil societies and human rights activists filed the blasphemy law to the Constitutional Court for judicial review or constitutional test. Development of the 1945 Constitution had provided opportunities to evaluate the existence of blasphemy law based on summarised arguments as follow: 1) the state must allow religious diversity, 2) protecting religion does not mean criminalising minority group, 3) there should be separation between state and religion, and

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4) the state's policies on religion must be clear and unambiguous. On the other hand, the argument of the blasphemy law's supporters during constitutional review were developed under the following opinions: 1) state policy on religion must uphold the *Pancasila*, 2) the State must distinguish between religion and mystical belief, 3) the state must regulate religion to protect national harmony, 4) the state may limit religious freedom, and 5) the state must distinguish between deviancy and school of law (Crouch, 2012).

The Constitutional Court in its decision on 12 April 2010 finally rejected to revoke the blasphemy law in line with the argument of its defenders. The judges perceived the decision as kind of *"jalan tengah"* (middle way or moderation) (Paragraph (3.71) of The Decision on the Judicial Review of Blasphemy Law No.140/PUU-VII/2009,305, 2009) as agree to expert witnesses of Jalaluddin Rakhmat and Yusril Ihza Mahendra who proposed to maintain the blasphemy law but with certain notices, that were: 1) the meaning of blasphemy should be interpreted as similar to the maning of contemptious, reviling, scurrilous, ludicrous, and vilification as applied in Pakistan and Australia (no further explanation on the Decision to this reference); 2) Maintaining the blasphemy law at the same time should also accommodate the interest of injured party by the law; 3) Allowing any new interpretations of religion as long as provide legitimate basis which still sources to religion; 4) Preventing the blasphemy law was intended to avoid social conflict and disintegration, accommodation to religious plurality, state protection to religion, and state assistance to religious activities since impossible to carry out by individual or individual group alone, e.g. pilgrimage fro Muslim; and 5) the blasphemy law as moderation effort to avoid establishment neither Islamic state nor secular state. The court as addition to its refusal to nullify the blasphemy on the other hand also recognised the demand for revision to the law both formally and substantially by national legislature as political domain due to the fact of problematic application of the law. The existence of local belief (*Kepercayaan*) and its equality on constitutional rights and obligations are also recognised by the Court according to Article 28E (2) of the 1945 Constitution. The position of Constitutional Court remained the same to uphold the blasphemy law, especially on its criminal aspect as regulated under Article 4 when another judicial review was filed in 2012 by Tajul Muluk as a victim of the violent social conflict between his Shia community and other local communities in Sampang, Madurese Island in the period 2006-2011(*"Joint Report on the Assault of Syiah Community in Sampang, Madura,"* 2013).

The Constitutional Court emphasised that the main concern of the blasphemy law is not about the exercise of religious freedom but on the protection of that right (*The Decision on the Judicial Review of Blasphemy Law No.140/PUU-VII/2009*, 2009b). The subject of protection firstly focuses on the prevention of heresy (Article 1) by implementing administrative procedure (Article 2) which backed up by the maximum criminal sanction of 5 years in prison for its violation (Article 3). The second protection is provided by Article 4 (Article 156a of the Criminal Code) which included a prohibition to any kind of insult, misuse, and hostility to religion and also an expression to persuade for atheism. To this end, the blasphemy law seems to provide more protection for mainstream religions in expenses of freedom of expression and non-standardised belief.

While religious freedom has enjoyed legal protection since the establishment of blasphemy law; however, the constitutional review had also recognised certain legal limitations on the external aspect of religious expression (*forum externum*). The judges, as well as the related parties who support the law, argue that such limitation is needed to protect public order or to prevent social conflict emerged from contentious, invalid or unacceptable interpretation on religious teachings or simply as a heresy which invites reaction from other religious community. The plaintiff although recognised on rights limitation but required very

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exceptional situation and must avoid majority domination on the religious interpretation which was generated from interpretation on Article 28J (2) of the 1945 Constitution that allows a religious basis for limiting any human rights. A little bit different from the plaintiff, and followed by the court, the Islamic Party of PPP (Partai Persatuan Pembangunan/United Development Party) as a supporter of the blasphemy law accepted to the application of Article 28J (2) of the 1945 Constitution fully without any notices. Both the Court and plaintiff were aware and accepted the existence and application of international standard on rights limitation as enunciated under Article 18 of the ICCPR.

This convergent position on right limitation has provided public sphere which might be exempt from religion. The public or private sphere which could be subject to non-religious occupation based on human rights standard consist of public order, public health, public morals, public security, public safety, and national security under the framework of toleration, democratic society, and rule of law (Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (Commission on Human Rights, United Nations Economic and Social Council, 41st Session, Document No. E/CN .4/1985/4, 1984). Even though legitimate limitation which applied to blasphemy law is framed under its function to prevent religious misuse, heresy, insult, hostility, and persuading atheism nevertheless all stakeholders made no refusal on the general application of such limitation on the right to freedom of religion or belief. Example of limitation on the right to freedom of religion is the dissolution of Islamic organisation of HTI (Hizbut Tahrir Indonesia) on 19 July 2017 by the government based on the reason of guarding national integrity and ideology of Pancasila (Sekretariat Kabinet Republik Indonesia, 2017). The government has the possibility now to take administrative sanction for a community organisation alleged for threatening Pancasila without a prior court rule (The Governmental Regulation in Lieu of the Act No. 2 of 2017 on the Amendment of the Act No. 17 of 2013 on Community Organization, 2017). Eradication on terrorism, acceptance on woman role in the public sphere, no sanction for apostasy, supervision, and inspection on the animal slaughter of religious sacrifice, etc. are among other examples of how non-religious policy, law, and regulation could be implemented along with the religionised State system.

The development of human rights system and its socialisation had encouraged the government to strengthen further legal and administrative position of local belief (*Kepercayaan*) in the fields of organisational administration, funeral, and worship place (*sasana sarasehan*)(The Ministerial Joint Decree No. 43/41 of 2009 on the Service Guidelines for the Believer of Kepercayaan to the Supreme God, n.d.-a). The Government then defines also the meaning of *Kepercayaan* as "*Proclamation and implementation of relationship between individual and the Supreme God (Tuhan Yang Maha Esa) based on faith which actualised through pious behavior and worship to the Supreme God (Tuhan Yang Maha Esa) and application of nobility which its values sourced from Indonesian local wisdom*"(The Ministerial Joint Decree No. 43/41 of 2009 on the Service Guidelines for the Believer of Kepercayaan to the Supreme God, n.d.-b). This definition on *Kepercayaan* is substantially not far different from *Agama* as cited by the Constitutional Court in its decision that "*Agama, based on Encylopedia of Philosophy is a belief (kepercayaan) to the always living God (Tuhan yang selalu hidup), to the spirit and the will of the God that manage the universe and has moral relationship to human being. Agama (religion) in accordance to the Oxford English Dictionary is "(1) the belief in and worship of a superhuman controlling power, especially personal God or Gods (2) a particular system of faith and worship (3) a pursuit or interest followed with devotion"*(*The Decision on the Judicial Review of Blasphemy Law No.140/PUU-VII/2009*, 2009b). Compared to the Court definition, the emphasise of *Kepercayaan* is on its locality ("*bersumber dari kearifan lokal bangsa Indonesia*/sourced from the local wisdom of Indonesia") from which the phrase of *local belief* is rooted.

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On 19 June 2013, the Minister of Education and Culture issued a Ministerial Regulation No.77 of 2013 on the Guidelines of Institutional Development of *Kepercayaan* and *Adat* (*Pedoman Pembinaan Lembaga Kepercayaan terhadap Tuhan Yang Maha Esa dan Lembaga Adat*) which tried to empower the roles of local government in assessing local belief and *Adat* community (The Regulation of the Minister of Education and Culture No.77 of 2013 on the Guidelines of Institutional Development of Kepercayaan and Adat Community, 2013a). The advancement of *Kepercayaan* and *Adat* community by regional government (provincial and district level) is aimed to the preservation of genuine ethos of Indonesia called as nilai-*nilai luhur* (noble values) of national culture, harmonising plural society, facilitating on organisational development in line with law and regulation, and to assist overcoming any problem of *Kepercayaan* and *Adat* community(The Regulation of the Minister of Education and Culture No.77 of 2013 on the Guidelines of Institutional Development of Kepercayaan and Adat Community, 2013b). Religious teaching or principles termed as "*Ajaran Kepercayaan*" has been also defined by this Ministerial Regulation as *"All teaching materials in any kind of education (pendidikan), guidance (tuntunan), advice (nasehat), wisdom (petuah), and direction (petunjuk) in relation to the belief (Kepercayaan) to the Supreme God (Tuhan Yang Maha Esa), both in the written or unwritten forms*"(The Regulation of the Minister of Education and Culture No.77 of 2013 on the Guidelines of Institutional Development of Kepercayaan and Adat Community, 2013b). The works of local government to support *Kepercayaan* community include principal activities of inventory and documentation, protection, empowerment, and capacity building, and advocacy(The Regulation of the Minister of Education and Culture No.77 of 2013 on the Guidelines of Institutional Development of Kepercayaan and Adat Community, 2013b). In education, the Ministry of Education and Culture on 22 July 2016 had established also a Ministerial Regulation No. 27 of 2016 on Educational Service for *Kepercayaan* on Formal Education (*Layanan Pendidikan Kepercayaan Terhadap Tuhan Yang Maha Esa pada Satuan Pendidikan*).

The regulation encourages cooperation between local government and association of *Kepercayaan* to provide religious education for the student as a member of *Kepercayaan* in public school (The Regulation of the Minister of Education and Culture No. 27 of 2016 on Educational Service for Kepercayaan on Formal Education, 2016). For such cooperation, the regulation introduces a federation for Kepercayaan organisation called as *Majelis Luhur Kepercayaan terhadap Tuhan Yang Maha Esa* (Noble Assembly for *Kepercayaan*). As result, in 2017 the Directorate of *Kepercayaan* and Tradition, Directorate General of Culture, the Ministry of Education and Culture published an Implementation Guideline for *Kepercayaan* Educational Service on Formal Education which technically very detail as teaching guideline in term of its learning objectives and method. Additionally, the Guidelines was accompanied by three modules of 1) *Kemahaesaan Tuhan* (the Supreme God) which covered materials on the nature and concept of God and the basis for *Kepercayaan*; 2) *Budi Pekerti* (character) that provide materials on how an individual should make relation to the self, social community, and environment and human rights; and 3) the history of *Kepercayaan* in Indonesia.

Some adherence of *Kepercayaan* on 28 September 2016 from the provinces of Nusa Tenggara Timur, Sumatra Utara, and Jawa Tengah filed judicial review on the Act No. 23 of 2006 on Population Administration (as changed by the Act No. 24 of 2013) before the Constitutional Court. Their violated constitutional rights as outcome from the implementation of the Act were closely related to the exclusion of *Kepercayaan* from civil registration (legally become non-religion person) which impact in serious aspects of their life such as difficulties on registering their marriage, getting birth certificate and suitable identity card, applying for a job, getting appropriate religious education for the children, and conducting funeral(*The Decision on the Judicial Review on the Law of Population Administration in regard to the Legal Identity of Aliran Kepercayaan*, 2017a). They didn't rely

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on the argument of constitutional rights violation in relation to their religiosity (Article 28E, 28I (1), and 29 of the 1945 Constitution) but rather on the issues of the rule of law (Article 1(3), equality before the law and public service (Article 27 (1) and 28D (1)), and non-discrimination principle (Article 28I (2)) (The Decision on the Judicial Review on the Law of Population Administration in regard to the Legal Identity of Aliran Kepercayaan, 2017b).

The avoidance on the use of religious-rights basis directly might be inspired by the court decision on the blasphemy law in 2010 and 2012 which had disadvantaged their position although they were closely related. Citizen rights on public service seemed to be less sensitive and safer for the judge to make justification from public pressure and controversy although rights discussion during the trial was still possible to be present (The Decision on the Judicial Review on the Law of Population Administration in regard to the Legal Identity of Aliran Kepercayaan, 2017b). Interestingly, the government during the trial provide strong recognition to the existence and right of *Kepercayaan* without making an explicit objection to the argument of the plaintiff (*Kepercayaan* adherence) and all the evidence. The Parliament on the other side expected that the court disapprove to the appeal due to its political background on how the Act was established as result of constitutional interpretation in relation to the position of *Agama* (religion) and *Kepercayaan* and also the need for modernising population administration which based on legal certainty where there were only 6 recognised religion in Indonesia (The Decision on the Judicial Review on the Law of Population Administration in regard to the Legal Identity of Aliran Kepercayaan, 2017b). Finally, the Court decided to revoke all articles in the Population Administration Act which excluded *Kepercayaan* from the scope of *Agama* (religion) as required for civil registration due to its unconstitutionality in line with the argument of plaintiffs and their expert witnesses (The Decision on the Judicial Review on the Law of Population Administration in regard to the Legal Identity of Aliran Kepercayaan, 2017b).

Although the Decision on recognition of *Kepercayaan* in civil registration as equal to *Agama* had no direct relation to blasphemy law nevertheless its output may contest existing category of religion provided by blasphemy law included the result of its judicial review on 2010 and 2012. Implementation of the blasphemy law as a general protection to adherence of *Ketuhanan Yang Maha Esa* then should cover the existence of *Kepercayaan* as well as *Agama* even if its effectiveness will depend on non-legal factors such as power relation and cultural setting like in the case of Tajul Muluk (2012) and Ahok (2017). The growing development on social differentiation and distinction on *Kepercayaan* both by their internal institution or State regulations might help them avoid the risk of religious tension or clash with *Agama* due to sharing common terms which could lead to heresy allegation. This situation had challenged *Kepercayaan* to transform themselves from traditional nature to more standardised teaching and community like existing *Agama* communities.

4. Conclusion

Blasphemy law had both integrated and differentiated the role of State and religious community to function its protection to religious rights whether under criminal justice system or administrative procedure. State authorities in that context stand for supervisory body and formal adjudicator to represent public interest based on state law while religious community provides for theological legitimacy as required by law and regulation. However, such collaboration had to some extent produced inequality of protection toward individual member or organisation of *Kepercayaan* (local belief or mystical belief) or another religious minority group by the name of public peace and order, national integrity, and social harmony. Modernisation of Indonesian legal system has not been capable to avoid religious entanglement as result of its negotiation in the very beginning processes of state

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establishment right after colonialisation era. Even structural religionisation was prolonged until recently but the role of domestic actors and international communities had influenced its pattern and direction. The massive socialisation of international human rights norm had widened space for claiming equal treatment among the adherence of *Ketuhanan Yang Maha Esa*, i.e. *Agama* and *Kepercayaan*, as a possibility to renegotiate Indonesian secularity for the disadvantaged party. Constitutional setting on the rule of law as a basic concept for State creation has built a foundation to secularise public sphere based on civil right equally among the citizen.

When the State tries to limit religious freedom in favour of national security or ideology of *Pancasila* like the dissolution of HTI (*Hizb ut Tahrir Indonesia*) (2017), there was no any unruly mob following the decision. This policy had less public controversy compared to blasphemy case, therefore, more proof from politicisation. The intention of HTI to establish world Islamic State (*Khilafah*) was considered by the authority as undermining *Pancasila* as a state ideology, a symbol of unity, and the ultimate source of Indonesian law. Pancasila on that case, therefore, had been capable to be used as instrument of secularisation which functions its first tenet of *Ketuhanan Yang Maha Esa* (the Supreme Divine) as 1) the common ideological platform which prevents the use of religion to become State ideology, basic law, or official State religion, therefore, make it possible to implement public policy and law in accordance with democracy and the rule of law in plural religious society; 2) the shared room for Islam and other religions included *Kepercayaan* to negotiate their primordial values in establishing State and its public spheres as consensus; 3) the basis for more neutral religious bureaucratisation as part of state responsibilities to administrate and modernise public services to its plural religious citizen.

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