

## IMPLEMENTATION OF EQUALITY BEFORE THE LAW PRINCIPLES TO HANDLING CASES OF RELIGION BLASPHEMY IN JUSTICE PERSPECTIVE

Nadya Waliyyatun Nisa  
Dauri

### ABSTRACT

*The enforcement of criminal law against perpetrators of criminal acts of blasphemy as stipulated in Article 156a of the Criminal Code, cannot be separated from the implementation of the principle of equality before the law which protects the rights of every criminal. The principle of equality before the law is embodied in the criminal justice system, but the facts show that many legal problems have begun to undermine these principles so that the law enforcement process begins to run ineffectively. The difference in treatment by the court (judge) on the form of detention for the defendant is evidence of the principle of equality before the law is no longer a guardian of the criminal justice system to enforce the law. The problem that will be studied in this research is how to implement the principle of equality before the law in handling cases of blasphemy in Indonesia. Whether the implementation of the principle of equality before the law in cases of blasphemy is in accordance with the values of justice. The method used in this research is normative legal research and empirical legal research. The results of this study indicate that the implementation of the principle of equality before the law on the handling of blasphemy cases in Indonesia, in principle, judges in practice always prioritize this principle by treating every citizen who has problems with the law, still being treated the same regardless of race, ethnicity or religion, or In other words, the existence of the judiciary in Indonesia continues to prioritize Equality before the law, which is exclusively against offenses or criminal acts of blasphemy, they will still get the same legal protection and will be treated the same without any differences. In law enforcement is not in accordance with the principle of independence, this is due to the political element so that the judge's decision is not fair. The judge's decision must consider juridical, philosophical, and sociological aspects to realize justice that is oriented towards legal justice, moral justice, and social justice. Legal justice is only obtained from the law as a consequence of the juridical aspect of the judge's decision. The principle of Equality Before the Law in handling cases of blasphemy based on the values of justice that are legal in nature and sociological to realize justice oriented to legal justice, moral justice, and social justice. Legal justice is only obtained from the law as a consequence of the juridical aspect of the judge's decision. The principle of Equality Before the Law in handling cases of blasphemy based on the values of justice that are legal in nature. and sociological to realize justice oriented to legal justice, moral justice, and social justice. Legal justice is only obtained from the law as a consequence of the juridical aspect of the judge's decision. The principle of Equality Before the Law in handling cases of blasphemy based on the values of justice that are legal in nature.*

**Keywords:** Equality Before the Law, Blasphemy, Justice.

### INTRODUCTION

Law enforcement has a big role in organizing the life of the nation and state to ensure the interests of the majority of the community or citizens (Maroni and Nenny Dwi Ariani: 2018). Guaranteeing legal certainty so that various criminal behavior (hereinafter referred to as criminal acts) and arbitrary actions by community members against other community members will be avoided, this is in line with the opinion of Robert M. Unger (2007). In the enforcement of criminal law, it cannot be separated from the principle of equality before the law. The principle of equality before the law according to the provisions of Article 27 Paragraph (1) of the 1945 Constitution is that all citizens have the same position in law and government and are obliged to uphold the law and government without exception.

The theory and concept of equality before the law as espoused by Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is the basis for protection for citizens so that they are treated equally before the law and the government. This means, that everyone is treated equally before the law, this can be seen in the writings of Abul Selamat Nazar (2012). Equality before the law in the simple sense that everyone is equal before the law. Equality before the law or equality before the law is one of the most important principles in modern law. This principle is one of the joints of the Rule of Law doctrine which also spreads to developing countries such as Indonesia, Sentot Yusuf Patrikha (2015). Law has an important function in social life as a tool to create justice, order, peace and order. but also to ensure legal certainty (Andi Hamzah: 2005). At the next level, law is directed as a means of progress and community welfare which is formed on the desire and awareness of each individual in society, with the intention that the law can run as aspired by the community (Teuku Aliyul Imam: 2018).

The main principle of the rule of law is the existence of an independent and impartial judiciary. Article 24 Paragraph (1) of the 1945 Constitution states that "Judicial power is an independent power to administer justice to uphold law and justice". Judicial power includes matters relating to law enforcement and justice in the administration of the criminal justice system, so that the nature of judicial independence covers the entire process of the criminal justice system starting from the investigation, investigation, prosecution, trial process, to the imposition and execution of sentences. The principle of equality before the law is embodied in the criminal justice system, but the facts show that many legal problems have begun to undermine these principles so that the law enforcement process begins to run ineffectively, this is in line with the results of research by Julita Melissa Waluko (2013). The difference in treatment by the court (judge) on the form of detention for the defendant is evidence of the principle of equality before the law is no longer a guardian of the criminal justice system to enforce the law. Erdianyah M. Fadhlil Ariwibow (2015). In accordance with the principle of equality before the law, judges must act in a balanced manner in leading trials in court

and with consideration of this principle, the principle of equality before the law will immediately be fulfilled, how the position of all legal subjects gets equal treatment without any discrimination.

The existence of various legal problems that regulate blasphemy will certainly have an impact on the process of resolving blasphemy itself. Based on several blasphemy decisions, currently there have been several shifts in the settlement of blasphemy, for example the perpetrators of blasphemy are tried directly and decided based on Article 156 of the Criminal Code without any prior advice and warning as regulated in the PNPS Law Number 1 of 1965. Thus it can be seen that between Law no. 1 PNPS 1965 and Article 156a of the Criminal Code have asynchronous arrangements. Supposedly, these two arrangements are complementary and interconnected because they both regulate religious blasphemy. Various legal problems in the settlement of blasphemy can cause various pro and con reactions from the Indonesian people. The settlement of acts of blasphemy often lead to actions, whether peaceful or violent. Based on the Research Report on Patterns of Religious Conflict in Indonesia (1990-2008) found as many as 832 incidents of religious conflict that occurred in Indonesia in the period from January 1990 to August 2008, Fauzi (2008).

One example of the settlement of a blasphemy case that led to violent actions is the case of Ahok or Basuki Tjahaja Purnama which led to a peaceful protest in the settlement of blasphemy, namely in 2016. Ahok or Basuki Tjahaja Purnama was charged with blasphemy against Islam, the case developed to give rise to several actions. Peace Defending Islam in various regions. These actions include Action 14 October 2016, Action 411, and Action 212. These actions basically demand the same thing, namely the fair enforcement of the law against Ahok who is considered to have committed blasphemy. Furthermore, the Meiliana case, which was sentenced to 1 year and 6 months, was considered blasphemy for asking to reduce the sound of the call to prayer because she felt disturbed. There were also other cases of blasphemy, such as Aking Saputra being sentenced to 1 year and 6 months and Gafatar being sentenced to 5 years for creating a new sect within a religion. blasphemy case that occurred in Sampang Madura Regency which has received a decision from the Sampang District Court judge in case Number: 69/Pid.B/2012/PN.Spg with the Defendant Tajul Muluk Alias H. Ali Murtadha (2 years sentence), with an example case Another blasphemy that has received a verdict from the judge is the decision with case number No.69/Pid.B/2012/PN.Spg, No.81/Pid.B/2015/PN Bna on behalf of Ahok or Basuki Tjahaja Purnama (the sentence is 1 Year 4 Months). Regarding examples of non-mass actions in the form of lawsuits, namely the case of Law no. 1/PNPS/1965 concerning the Prevention of the Abuse and/or Blasphemy of Religion. See for example, Mudzakkir, "Law No. 1/PNPS/1965 concerning Prevention of Abuse and/or Blasphemy of Religion Overview of the Aspects of Criminal Law,"

Law enforcement must be based on the theory of justice as a direction in realizing legal policies, Maroni.at.all (2019). The theory of justice referred to in relation to the crime of blasphemy is legal justice, namely the relationship of justice between citizens and the state and in this case it is the citizens who are obliged to fulfill justice in the form of obeying the laws and regulations in force in the country. This also agrees with the explanation of Aristotle who divides justice into 2, namely distributive justice and commutative justice. Therefore, the perpetrators of the criminal act of blasphemy can get the threat of punishment in accordance with the provisions of the legislation in force and based on justice, in order to guarantee the rights of every perpetrator of a crime. The case should be in deciding a case of a criminal act of blasphemy, must apply the principle of equality before the law, so that in the application of the judge's decision can provide equal justice between ordinary people and public officials who commit crimes of blasphemy. Therefore, this study will examine the implementation of the principle of equality before the law against perpetrators of blasphemy based on court decisions. Apart from that, this research will also map the forms of blasphemy related to when a person can be said to cause hatred towards religion, blasphemy against religion and incitement not to follow any religion. So that in the application of the judge's decision it can provide equal justice between ordinary people and public officials who commit crimes of blasphemy. Therefore, this study will examine the implementation of the principle of equality before the law against perpetrators of blasphemy based on court decisions. Apart from that, this research will also map the forms of blasphemy related to when a person can be said to cause hatred towards religion, blasphemy against religion and incitement not to follow any religion. So that in the application of the judge's decision it can provide equal justice between ordinary people and public officials who commit crimes of blasphemy. Therefore, this study will examine the implementation of the principle of equality before the law against perpetrators of blasphemy based on court decisions. Apart from that, this research will also map the forms of blasphemy related to when a person can be said to cause hatred towards religion, blasphemy against religion and incitement not to follow any religion.

Based on the description above, this research will examine the problem of blasphemy cases which in principle cannot be separated from the implementation of the principle of equality before the law. Therefore, in this research, the mapping of the problems are: (1) how is the implementation of the principle of equality before the law in handling cases of blasphemy in Indonesia? (2) is the implementation of the principle of equality before the law in cases of blasphemy in accordance with the values of justice?

## **TYPES AND RESEARCH METHOD**

According to Sorejono Soekanto (2004), that legal research is a scientific activity based on systematic methods and thinking to study legal phenomena that occur. The legal phenomenon in question is the application of the principle of equality before the law to cases of blasphemy in Indonesia. Therefore, the methods used in this research are empirical legal research and normative legal research. Normative legal research is based on library materials such as laws, judges' decisions, journals, books and other documents related to research problems. While empirical legal research is legal research based on an interview approach or a field approach based on interview results and field data.

The data that has been compiled and then analyzed qualitatively is a research procedure that produces descriptive data, namely what is stated by the resource person in writing or verbally and real behavior. While what is meant by qualitative analysis is to

describe quality in the form of sentences that are regular, logical and effective so as to facilitate data interpretation and understanding of the results of the analysis in order to answer existing problems. The method used in drawing conclusions is deductively inductive.

## RESULTS AND DISCUSSION

### Application of the Principle of Equality Before the Law to the Handling of Blasphemy Cases in Indonesia

Blasphemy cases are not a significant number of cases in Indonesia. But every time there is an incident that is considered a blasphemy of religion, controversy is bound to spread in the community. This is understandable considering its substance is related to personal beliefs, making it seem as if everyone has an interest in the incident. Controversy related to blasphemy are always sensitive, and often build polarization in society that can lead to division. Courts are expected to be a pendulum that balances social life, Apeldorn (2000). Maintaining order and security on the one hand, while maintaining and protecting the human rights of all groups of citizens on the other. The application of criminal articles on blasphemy has always been complex. This is not only faced by law enforcers in Indonesia, but also in other countries, as the researchers in this study found. Law enforcers always have to deal with contestations between principles and concepts that, at first glance, contradict each other. For example, the right to freedom of expression and belief with reasons justifying its limitations, which is also known in the guidelines for the application of human rights principles, Martiman Prodjohamidjojo (1994).

Law Number 1/PNPS/1965, there is a fact that these acts are basically the spread of deviant/deviant teachings/schools, then the acts mentioned above should not be processed under Article 156a of the Criminal Code or Article 4 of Law Number 1/PNPS/1965, but with a legal mechanism for the spread of heretical or deviant sects, as regulated in Articles 1, 2, and 3 of Law no. 1/PNPS/1965. Article 2 paragraph (1) of Law Number 1/PNPS/1965 essentially stipulates that people who are judged to be spreading deviant or deviant sects will be given orders and stern warnings to stop their actions through a joint decision of the Minister of Religion, Minister/Prosecutor General and Minister of Home Affairs. If you still spread the teachings, then in accordance with Article 3 of Law Number 1/PNPS/1965,

For judges, challenges from outside also arise in the form of pressure from the majority group and the limited security facilities provided by the state. Meanwhile, from the inside, the Judge must struggle with himself to be free from his personal values and beliefs so that he can be neutral and give the fairest decision. In recent years there has been a serious setback in the aspect of protection of freedom of religion and expression in Indonesia, marked by the narrowing of space for freedom and diversity of religion and belief. The articles on blasphemy, or generally referred to as blasphemy, are often used to indict and criminalize members of minority religious groups and beliefs based on tradition. Amnesty International's report shows that during 2005-2014, 39 people were convicted of blasphemy cases in Indonesia with prison terms ranging from 5 months to 6 years. In many cases of blasphemy, the legal arguments used are generally inadequate. The articles indicted have been interpreted inconsistently, and have not reflected the principles of the constitution and related laws or the comprehensive application of human rights norms. In addition, according to the records of the Setara Institute, the majority of blasphemy cases are characterized by high public attention and pressure. and has not reflected the principles of the constitution and related laws or the application of human rights norms in a comprehensive manner. In addition, according to the records of the Setara Institute, the majority of blasphemy cases are characterized by high public attention and pressure. and has not reflected the principles of the constitution and related laws or the application of human rights norms in a comprehensive manner. In addition, according to the records of the Setara Institute, the majority of blasphemy cases are characterized by high public attention and pressure.

Based on the text provisions in Law No.1/PNPS/1965 or Article 156a of the Criminal Code and its Elucidation, the elements of a criminal offense contained in the article at least include: (i) anyone, which can be interpreted as anyone; (ii) intentionally; (iii) in public; (iv) express feelings or perform actions; (v) which are essentially; (vi) hostility, abuse or blasphemy against a religion professed in Indonesia. Meanwhile, for Article 156a letter b of the Criminal Code, the criminal elements include: (i) anyone, which can be interpreted as anyone; (ii) intentionally; (iii) publicly express feelings or perform actions; (iv) with intent; (v) so that people do not follow any religion, which is based on the belief in the One Godhead. Based on the explanation of the interpretation of the elements of blasphemy, that any perpetrator who desecrates religion or harasses religion must be given strict sanctions. The provision of these sanctions is an implementation of law enforcement carried out by law enforcers in maintaining the unity and integrity of the nation. Therefore, law enforcement in handling cases of blasphemy cannot be separated from law enforcers who are professional and impartial to certain groups who are dealing with the law.

In principle, law enforcement is a system that involves a harmonization between values and rules as well as real human behavior. These rules then become guidelines or benchmarks for behavior or actions that are considered appropriate or should, the behavior or attitude of the act aims to create, maintain and maintain peace. Disturbance to law enforcement may occur if there is a mismatch between values, rules and behavior patterns. These disturbances arise when there is a discrepancy between paired values, which are manifested in confusing rules and undirected behavior patterns that disturb the peace of social life. Law enforcement is an apparatus carried out to ensure legal certainty, order and legal protection in the current era of modernization and globalization can be implemented, if the various dimensions of legal life always maintain harmony and harmony between civil moralization which is based on actual values in civilized society. As a process of activity that includes various parties including the community in the framework of achieving goals, it is imperative to see criminal law enforcement as a criminal justice system.

Based on the results of research in the field that in the implementation of law enforcement against perpetrators of criminal acts of blasphemy committed by perpetrators in principle have been carried out in accordance with the provisions of Article 156a of the Criminal Code, which in principle if the perpetrators have fulfilled the elements contained in the provisions of the article, they will be given punishment in the form of sanctions. Thus, basically in this interpretation, the perpetrators of the crime of blasphemy have been given strict sanctions, but in the existing implementation, the treatment that occurs against the application of sanctions in the same case is considered different.

Thus, in law enforcement that is applied to perpetrators of criminal acts of blasphemy, they should apply the principle of justice before the law which shows the similarity of behavior, attitudes and ways of handling cases against perpetrators of criminal acts. Because these rights cannot be separated from the existence of criminal acts committed against the perpetrators of criminal acts. In principle, the imposition of a criminal is a suffering or sorrow given to a person who violates an act that is prohibited and formulated by law. The criminal order is also related to the criminal system, the criminal system is part of the penitent law which contains the types of crime, the limits of criminal penalties, the method of imposing a crime, how and where to carry it out, as well as regarding the reduction, addition,

The blasphemy that occurs is closely related to the number of religious adherents or the majority of religions adhered to in an area. This makes a case of blasphemy committed by the perpetrator will have an impact on the loss of dignity or followers of the religion feel harassed. The consequences arising from cases of blasphemy committed by perpetrators cause various kinds of problems as well as the application of criminal sanctions against perpetrators and law enforcement. The problem that often occurs in the implementation of the principle of equality before the law is the occurrence of an element of interest in judges and perpetrators of criminal acts of blasphemy cases. These elements in law enforcement must be avoided, so that law enforcement does not make distinctions that seem disparate towards the giving and implementation of judge's decisions.

Based on the results of the interview with Erna Dewi, it was confirmed that the settlement of blasphemy cases in Indonesia in her view was not appropriate. This is because law enforcement is not yet independent and seems subjective. This means that in the implementation of law enforcement carried out by law enforcers, they have not reflected the principle of equality before the law, and are still making differences, seeing that the punishment for the community and public officials is different. So that the judge's decision is influenced by political elements and is not independent. The following is a table regarding the conduct of blasphemy cases that have occurred in Indonesia, as well as the application of sanctions given through permanent judges' decisions. The verdict that was charged to the perpetrators of the blasphemy case, the article that became the judge's reference was Article 156a of the Criminal Code,

No	Suspect	Blasphemy Cases	Application of Criminal Sanctions
1.	HB. Jassin (1968)	Making the essay calm The sky is getting cloudy, which in essence tells the story of the Prophet Muhammad who came down to earth.	In that case, the indictment imposed on the perpetrator is Article 156a of the Criminal Code, the sanction given is imprisonment for one year.
2	Arswendo Atmowikoto (1990)	The posis case is the distribution of the Prophet Muhammad's questionnaire in the monitor magazine in 1990.	In that case, the judge charged the perpetrator with Article 156a letter a, with a criminal sanction of 5 (five) years.
3	Muhammad Saleh (1996)	The case of his position is that the perpetrator gives a statement that Allah SWT is an ordinary creature who does not deserve to be worshiped.	In that case, the judge charged the perpetrator with Article 156a letter a of the Criminal Code, with a criminal sanction in the form of imprisonment for 5 (five) years.
4	Mangapin Sibuea (2004)	Rekeman says Christian priests are false prophets whose place is in hell.	The indictment is Article 156a letter a of the Criminal Code, 2 years imprisonment.
5	Yusman Roy (2005)	Bilingual Prayer	The indictment Article 157 of the Criminal Code is 2 years imprisonment
6	Lia Aminuddin (2006)	The formation of the Salamullah group and the recognition of himself as the incarnation of Jibril	The indictment is Article 156a letter a of the Criminal Code, Article 157 paragraph (1) of the Criminal Code and 335 of the Criminal Code with a prison sentence of 2 years.
7	Djoko Widodo dan Nur Imam (2007)	An insult to the Al-Quran	The indictment is Article 156a letter a of the Criminal Code, 3 years imprisonment.
8	Wilhelmina Holle (2009)	Insulting Islam and the Prophet Muhammad in front of his students, while giving private lessons.	Indictment Article 156a letter a of the Criminal Code, imprisonment for one year.
9	Oben Serbeni (2011)	Deviations from Islamic teachings	Indictment Article 156a letter a of the Criminal Code, imprisonment of 4 years.

10	Tajul Muluk (2012)	Deviations from Islamic teachings	The indictment Article 156a letter a of the Criminal Code is sentenced to 2 years in prison at the district court, and 4 years in prison at the High Court
11	Alexander Aan (2012)	Atheist Account Ownership	Indictment Article 156a letter a of the Criminal Code, imprisonment of 2 years 6 months
12	Reza Hazuen (2017)	Through his social media accounts, insulting the Prophet Muhammad and insulting Muslims when saying takbir	The indictment is Article 156a letter a of the Criminal Code, imprisonment for 4 years.
13	Basuki Tjahja Purnama/ Ahok (2017)	Insulting the holy verse of the Qur'an	Indictment Article 156a letter a of the Criminal Code, imprisonment for 2 years.
14	Siti Aisyah (2017)	Spreading Islamic teachings that are not in accordance with general understanding in Indonesia and insulting scholars who disagree with them.	The indictment of Article 156 and Article 156a letter a of the Criminal Code, imprisonment of 2 years 6 months
15	Meliana	The volume of the call to prayer is too loud	Indictment Article 156 of the Criminal Code, imprisonment for 18 months.

Source: Data that has been processed by the author

Based on the table above, in principle the judge's decision in indicting the perpetrators of the criminal act of blasphemy is based on Article 156, Article 156a letter a, Article 157 of the KHUP. This shows that prison sanctions are important in providing a deterrent effect on perpetrators of crime, but do not change human behavior or values to the community. Thus the state of criminal sanctions in the form of imprisonment for perpetrators of criminal blasphemy is considered ineffective, so changes must be made to the application of these criminal sanctions. In realizing the criminal justice system in Indonesia, especially against perpetrators of criminal acts of blasphemy, imprisonment should not be the most important thing. This means that the application of criminal sanctions against perpetrators of blasphemy is imposed with sanctions that can provide a more deterrent effect and can treat feelings of resentment in religious people who feel harassed or insulted. Therefore, the enforcement of criminal acts of blasphemy needs to be reconstructed in order to provide a deterrent effect but not imprisonment.

Based on the results of an interview with the Judge of the Tanjungkarang High Court, Mr. Majedi Hendi Siswara explained that in its implementation Equality before the law has been stated in the provisions of Law Number 48 of 2009 concerning Judicial Power in Article 4 paragraph (1) which provides the basis "The court judges according to law with does not discriminate against people." Thus the judiciary in Indonesia, in practice, always puts forward the principle of treating every citizen who is in trouble with the law, still being treated the same regardless of race, ethnicity or religion, or in other words the existence of the judiciary in Indonesia still prioritizes Equality before the law, which is exclusively against offenses or criminal acts of blasphemy, they will still get the same legal protection and will be treated the same without any difference between one crime and another. Handling religious issues in the country is very complicated and complicated, so there needs to be handling and prudence in solving them. a precise and accurate formula is needed, because if it is not handled properly, it will lead to national disintegration. Conflicts that occur in the country originating from ethnic, religious and racial groups (SARA) still dominate in Indonesia, this group is suspected to be an intolerant group in society, On the other hand, we see a lot of criminalization of the views and beliefs of certain individuals from religious minorities (religious minorities) by prosecuting these beliefs often ending in conviction or imprisonment. In Indonesia, caution is needed in dealing with these conditions, because we should not be misled between the act of judging beliefs and blasphemy. We need an attitude of caution in handling these cases, in order to avoid freedom of religion and belief which are basic human rights.

### The Principle of Equality Before the Law in Handling Blasphemy Cases Based on the Values of Justice

Indonesia is a state of law. This is reflected in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which expressly states that "the State of Indonesia is a state of law". As a state of law, all aspects of society, nationality, and statehood, including government, must always be based on law. Historically, the concept of the rule of law appeared in various models, including the rule of law according to the Islamic religion, the rule of law according to the Continental European concept called *rechstaat*, the rule of law according to the Anglo Saxon concept (rule of law), the concept of socialist legality, and the concept of a state of law Pancasila. , John Rawls (2011). According to Aristotle, the state must stand on the law that guarantees justice for its citizens. Justice is a condition for achieving happiness in life for its citizens, and as a basis for justice it is necessary to teach morals to every human being in order to become a good citizen. In a state that governs is not a real human being, but a just mind, while the real ruler is only the holder of law and balance.

Equality Before the Law is a very universal (applicable anywhere) and textual concept for law. Universally, Equality Before the Law has become a law and state principle that requires the existence of a law and applies it to everyone. Whereas textual, Equality Before the Law is written in a legal document which is the parent of the rule of law which confirms that the rule of law applies to everyone where the law applies. On the other hand, from a legal perspective, it can be seen that the law does not allow itself to only benefit a number of parties without a valid reason before the law. If there are exceptions then it betrays the concept of law.

Equality Before the Law is one of the concepts to fight discrimination, as illustrated above. Efforts against this practice are also part of the responsibility of the State. The explanation is, firstly, every state or authority must base its power and regulation based on law. For Indonesia, this can be seen from Article 1 paragraph 3 of the 1945 Constitution, which states that 'The State of Indonesia is a State of Law'. Second, the law must apply to everyone, not just citizens. Article 28D states that 'Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law'.

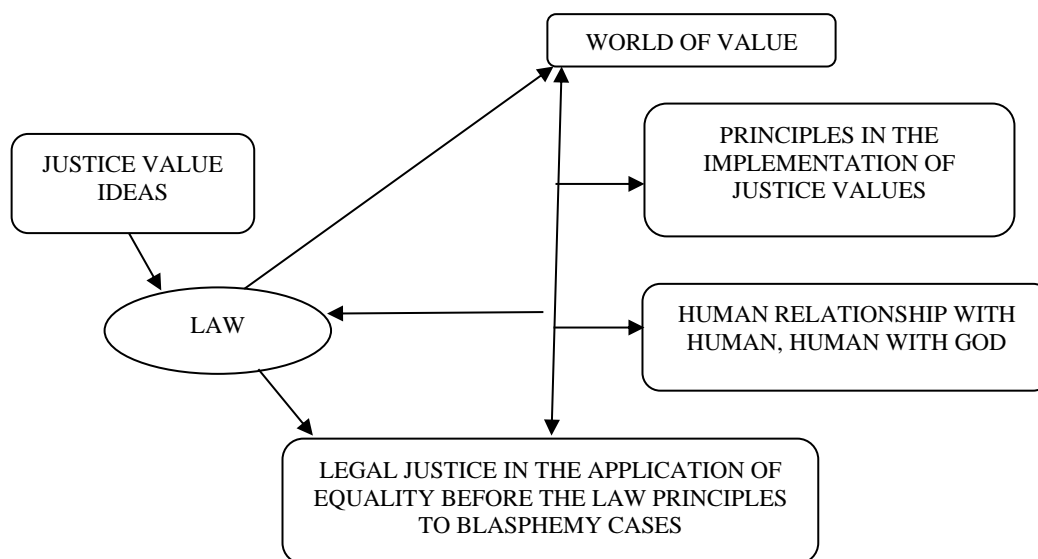
The principle of before the law in handling cases of blasphemy cannot be separated from the values of Pancasila, this is because the values of Pancasila are the guidelines for the State and Society. First, Pancasila was born in an atmosphere of mysticism to fight colonialism and imperialism, so that unity and brotherhood are needed among the components of the nation. The first precept in the Pancasila "Belief in One Supreme God" is an important factor to strengthen unity and brotherhood, because the history of the Indonesian nation is full of respect for the values of "Belief in One God." Secondly that the precepts of "Belief in the One Supreme God" are the first cause or *causa prima* and the precepts of "People led by wisdom in deliberation/representation" are the power of the people in the life of the nation and state to carry out the mandate of the state from the people, the state for the people, and the state by the people. This means, "God Almighty" must be the basis in carrying out the management of the state by the people, the state for the people, and the state by the people. Third, that the precepts of "Belief in the One Supreme God" must be read as a unit with other precepts in Pancasila as a whole. Fourth, "The State is based on the One Godhead" must also be interpreted as that the state prohibits teachings or ideas that openly reject the One Supreme Godhead, such as communism and atheism. Because of that, MPRS Decree No. XXV of 1966 concerning the Prohibition of Any Activities to Spread or Develop Communist/Marxist/Leninist understandings or teachings are still relevant and contextual. Article 29 paragraph 2 of the Constitution that "The State guarantees the independence of each population to embrace their respective religions" means that the state only guarantees the freedom of religion. On the other hand, the state does not guarantee the freedom to have no religion (atheist). The word "no guarantee" is very close to the meaning of "not allowed", especially if atheism is not only not embraced personally, but also preached to others. Article 29 paragraph 2 of the Constitution that "The State guarantees the independence of each population to embrace their own religion" means that the state only guarantees the freedom to have religion. On the other hand, the state does not guarantee the freedom to have no religion (atheist). The word "no guarantee" is very close to the meaning of "not allowed", especially if atheism is not only not embraced personally, but also preached to others. Article 29 paragraph 2 of the Constitution that "The State guarantees the independence of each population to embrace their respective religions" means that the state only guarantees the freedom of religion. On the other hand, the state does not guarantee the freedom to have no religion (atheist). The word "not guarantee" is very close to the meaning of "not allowed", especially if atheism is not only not embraced personally, but also preached to others.

The main purpose of the existence of Equality before the law is to uphold justice where equality of position means that the law as an entity does not discriminate against anyone who asks for justice. The only difference is that the function is that the government functions to regulate and the people who are regulated, both those who regulate and those whose guidelines are regulated by one, namely the law, if there is no legal equality then people who have power will feel immune from the law. Based on the results of the interview with Mr. Majedi that a value of justice cannot be defined because the value of justice is different for everyone. This is because fairness in the view of one person with another cannot be equated, so the definition of justice given by the judge is an acknowledgment and balanced treatment of rights and obligations. So that in principle the justice that is distributed is a balance and harmony between the demands of the rights and obligations of each person in this case the defendant and the suspect.

In the application of the values of justice carried out on the implementation of the principle of equality before the law, the judge's decision should prioritize a sense of tolerance and unity for the nation. According to Erna Dewi, the values of justice that can be used in the settlement of cases of blasphemy are non-discriminatory, which means that there is no difference between one decision and another, or there is a gap so that the judge's judgment is impressed by disparity. Criminal disparity can be interpreted as the imposition of unequal punishments on convicts in the same case or cases with almost the same level of crime, whether they are carried out jointly or not without a justifiable basis for unclear reasons. The criminal disparity that occurs has deep consequences, especially for convicts, namely the loss of the convict's sense of justice. In the professional field of judges in making decisions, disparity is the freedom given by law to judges to decide cases in accordance with the provisions even though the decisions may differ from one case to another. Freedom is given to judges because the facts of the trial of one case are different from other cases.

According to Nikmah Rosidah, in implementing the judge's decision on the case of blasphemy, if there is a different decision, it is basically something that is academically unacceptable. This is because the case is the same and the case is the same, the threats are different and not done by many people, the verdict should be the same. Therefore, it cannot be justified if in the case of blasphemy there is a problem with a different decision. The judge's decision given to the perpetrators of the criminal act of blasphemy must be the same and the other elements. In principle, judges who decide cases in the trial process are humans, not robots or machines, because their decisions cannot be separated from human subjectivity. In his capacity as such a bio-psychic entity, the decision making is also determined by the physiological and psychological conditions. A judge, for example, needs to have mental health, so that his decision is really made by a person who is spiritually healthy. Consideration of the juridical aspect in the judge's decision is the main aspect, considering that in deciding the case the judge will be based on the applicable law. This is based on the positivism paradigm. This paradigm dominates so strongly in legal thought in Indonesia. Law here is seen more as a mere normative building. In law enforcement, this paradigm gives birth to a flow of legism that places judges as mouthpieces of the law. The implication is that entering the legal world is no longer a field for seeking justice, but is entering the jungle of regulations, procedures and administration. Regarding the philosophical aspect, it is an aspect that is cored in truth and justice. While the sociological aspect, considers the cultural values that live in society. Philosophical and sociological aspects, its application really requires extensive experience and knowledge as well as wisdom that is able to follow the values in a neglected society. Obviously its application is very difficult because it does not follow the principle of legality and is not tied to the system. The inclusion of these three elements is nothing but so that the decision is considered fair and accepted by the community.

The judge's decision must consider juridical, philosophical, and sociological aspects to realize justice that is oriented towards legal justice, moral justice, and social justice. Legal justice is only obtained from the law as a consequence of the juridical aspect of the judge's decision. Meanwhile, moral justice and social justice are based on the provisions of Article 5 paragraph (1) of Law no. 48 of 2009. From the three orientations of justice above, justice which is then better known in the context of court decisions is procedural justice and substantive justice. Procedural justice is justice that comes from laws and regulations alone, while substantive justice is justice based on values born from legal sources that live in society. Court decisions are not sufficiently stated to be fair in giving treatment, but the process and mechanism must be correct. Truth and justice have a high degree of dependence. The position of justice lies in the sense, while the truth lies in the rules and mechanisms that have been mutually agreed upon. The truth and justice in question are not absolute truth and justice in accordance with God's teachings, but the truth and justice of court decisions based on ratio or logic. Judges in deciding cases are always related to legal objectives. The purpose of this law can be studied from three points of view, namely: From the point of view of positive normative or juridical dogmatic science, the purpose of law is emphasized in terms of legal certainty; From the point of view of legal philosophy, the purpose of law is emphasized in terms of justice; From the point of view of the sociology of law, the purpose of law is emphasized in terms of expediency. The facts above show that law moves between two different worlds, both the world of values and the world of everyday life (social reality). As a result, tensions are often encountered when the law is applied. When the law which is full of values is to be realized, it must deal with various factors that influence the social environment.



The concrete problem is how abstract justice can be used as a guide in its application, especially in the implementation of the principle of equality before the law. The work to realize the ideas and concepts of justice into concrete forms so that they are accepted by the community is the work of law enforcers, especially judges. In this case the judge is expected to have the ability to translate the values of justice through his decisions. However, problems will still arise regarding justice because law is a symbolic meaning that requires further interpretation. Finally, the sense of justice of the judge's decision can be realized in procedural justice as well as in substantial justice. In procedural justice, justice based on law has been fulfilled. In this justice can contain real justice (substantial) or not contain substantial justice. In the latter case, it means that substantial justice is marginalized by procedural justice.

## CONCLUSIONS AND SUGGESTIONS

The implementation of the Equality Before the Law Principle on the Handling of Blasphemy Cases in Indonesia, in principle, judges in practice always prioritize this principle by treating every citizen who has problems with the law, still being treated the same regardless of race, ethnicity or religion. Theoretically, the source of the law in Indonesia is wrong, namely the judge's decision. This means that the judge in deciding a case can see the previous judge's decisions. However, in practice the previous decision was not used as the basis for the decision on the same blasphemy case, namely Article 156a of the Criminal Code. Therefore, on the application of sanctions for the same case of blasphemy, the decisions are different. The judge's decision must consider aspects that are juridical, philosophical, and sociological to realize justice oriented to legal justice, moral justice, and social justice. Legal justice is only obtained from the law as a consequence of the juridical aspect of the judge's decision. The principle of Equality Before the Law in handling Blasphemy Cases Based on Justice Values which is legal justice.

## REFERENCES

- Maroni and Nenny Dwi Ariani, "Humanistic Criminal Law Enforcement to Achieve Spiritual Justice," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 2 (2018): 1–4.
- Roberto M. Unger, *Critical Legal Theory (Legal Position in Modern Society)*, (Bandung, Nusa media, 2007), p. 235.
- Abdul Selamat Nazar, "Application of the Principle of Equality Before The Law in the Crime of Corruption (Study on the Form of Detention at the Corruption Court)," *Journal of Nestro Magister Hukum* 1 (2012): 1–24.

- Sentot Yusuf Patrikha, "Forced Efforts in the Criminal Justice System That Requires Presidential Permission," *Maksigama* 9, no. 1 (2015): 80–90, <https://doi.org/10.37303/v9i1.7>.
- Andi Hamzah, *Eradication of Corruption Through National and International Criminal Law*, Raja Grafindo Persada, Jakarta, 2005, p. 4.
- TEUKU ALIYUL IMAM, *Principles of Equality before the Law in Positive Law Reviewed according to Islamic Criminal Law*, 2018.
- Julita Melissa Walukow, "The Embodiment of the Principles of Equality Before The Law for Prisoners in Correctional Institutions in Indonesia," *Lex Et Societatis* 1, No. 1 (2013): 163–72.
- Erdianyah M. Fadhli Ariwibow, Messasai Indra, "Application of the Principle of Equality Before The Law Against Perpetrators of Criminal Acts of Corruption in the Legal Area of the Court of Corruption Crime at the Pekanbaru District Court," *JOM Faculty of Law* 2, No. 1 (2015): 1–15.
- Fauzi, Ihsan Ali et al. "Patterns of Religious Conflict in Indonesia (1990-2008), <http://www.google.co.id/search?client=firefox-a&rls=org.mozilla%3AenUS%3Aofficial&channel=s&hl=id&source=hp&q=type+conflict+religion&meta=&btnG=Search+Google>, February 21, 2021.
- Maroni, Sopian Sitepu, and Nenny Dwi Ariani, "Humanistic Law Enforcement as the Application of the Value of Justice, Expediency and Legal Certainty Based on Pancasila," *Journal of Legal, Ethical and Regulatory Issues* 22, no. 4 (2019): 1–6.

Nadya Waliyyatun Nisa  
*Master of Law, Faculty of Law, University of Lampung*  
*Jln. Prof. Dr. Ir. Soematri Brojonegoro, No. 1,*  
*Bandar Lampung, Indonesia*  
*E-mail: waliyyatun72@gmail.com*

Dauri  
*Master of Law, Faculty of Law, University of Lampung*  
*Jln. Prof. Dr. Ir. Soematri Brojonegoro, No. 1,*  
*Bandar Lampung, Indonesia*  
*E-mail: dauri170996@gmail.com*