



CIVIC VERSUS THEOLOGICAL LIMITATIONS TO FREEDOM OF RELIGION

PETITIONING FOR A CONSTITUTIONAL REVIEW OF THE LAW
ON DEFAMATION OF RELIGION

SOURCE

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CONTEXT & BACKGROUND:

WHICH ISSUE IS BEING ADDRESSED?

The *Indonesian Legal Resource Center* (ILRC) tries to raise awareness about intolerance towards religious groups. In Indonesia, there are many instances of violence, expulsion and discrimination of religious minorities. According to ILRC, one of the roots of this intolerance is a law on defamation of religion. It prohibits interpretations and activities that deviate from the basic teaching of the six state-recognised religions. This law affects sects within the recognised religions which are defined as 'deviant' by the religious organisation. Many of them are prohibited or restricted, like the Ahmadiyah. The law also affects those religions which are not officially recognised, namely, other world religions and indigenous religions. They suffer discriminatory treatment.

STRATEGY AND ACTIVITIES: HOW ARE YOU TRYING TO CHANGE THIS SITUATION?

ILRC aims to reform the blasphemy law. In order to achieve this, ILRC filed a petition with six other human rights and pluralism groups and individuals, requesting the Constitutional Court to review the law on defamation of religion. Ten years were taken to collect evidence for the argument that the law on defamation of religion violates the human and constitutional right to freedom of religion and non-discrimination. This attempt to cause legal reform through constitutional review failed. The Court argued that the law is not unconstitutional.

Now ILRC is trying to change the law by political means. The Court agreed to a revision of the law but said that only Parliament and the government have the authority to propose or revise laws. ILRC seeks cooperation with senators and members of Parliament to revise the law and present a bill to the Parliament and Congress. The involvement of Civil Society Organizations (CSOs), religious minorities, other religious groups and academics is needed at all levels for the revision.

SUCCESSSES AND CHALLENGES: WHAT HAVE YOU ENCOUNTERED ALONG THE WAY?

“Indonesia ratified the International Covenant on Civil and Political Rights (the ICCPR). But the Indonesian Constitution mentions different limitations to freedom of religion than the ICCPR. According to the Constitution, freedom of religion can be limited by religious values. The Court interprets this as the religious values of the recognised religions. That is why the Court reasons that the law on defamation of religion is a constitutionally justified limitation to religious freedom”

Trying to revise the law on defamation of religion is a highly sensitive issue that evokes social pressure. It may be difficult to maintain the independence of the trial within this context. Polarised political views will also make it difficult to create consensus on the Bill in Parliament. *“Abolishment of the law will not be accepted by the majority. But a compromising decision could entail a revision of the law that shifts the focus from a prohibition on defamation of religion to a prohibition on hate speech.”*

CIVIC REASON: IN WHAT WAYS COULD THIS EXAMPLE BE RELATED TO CIVIC REASON?

According to An-Na'im, the state's role is to protect every citizen's space to represent and debate public issues without charges of apostasy. The state itself should not be involved in theological discourse, but remain neutral towards religion. The aim to abolish prohibitions on defamation of religion at the state level could be understood as a contribution toward the objective of civic reason: it would open up free spaces for different practices and interpretations of religions.

Shifting the focus from defamation of religion to hate speech can be seen as an attempt to replace limitations to religious freedom based on theology with limitations based on civic reasons. Hate speech moves away from theological discourse. Effectively, a limitation to the right of freedom of religion might be accepted by all citizens, regardless of their religious background.

SUGGESTIONS FOR DISCUSSION

- In this example, ILRC focuses on legal reform as strategy to counter intolerance and discrimination of religious minorities. What do you think of this strategy?
- According to An-Na'im, the state should be the guardian of spaces for civic reason. Civic reason should also be safeguarded by constitutionalism, human rights and citizenship. In the trial on blasphemy law, the state appeared to be unable or unwilling to protect spaces for civic reason. Also, constitutionalism appeared to be an insufficient safeguard. If the state and constitutionalism fail to protect the space for civic reason, what else could be done?
- An-Na'im suggests that change can only be possible and sustainable if it has value and relevance for local cultural or religious communities. Do you think that human rights organisations, like ILRC, should try to stimulate cultural legitimacy through the reform of the law on defamation of religion? What are some arguments in favour and against?

