

Blasphemy cases highlight legal inconsistencies

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Online influencer Lina Mukherjee has been embroiled in legal controversy since posting a video of herself eating pork on TikTok. Photo by Nova Wahyudi from Antara.

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On 15 March 2023, Indonesian social media figure Lina Mukherjee was reported to police by a cleric from Palembang for blasphemy, after a TikTok video of her eating pork went viral on social media. In the video, Lina, a Muslim, is depicted saying an Islamic prayer before eating pork, which is forbidden for Muslims.

She eventually issued a public apology and claimed the video was created spontaneously, without any intention to mock Islam, but regardless her case will likely proceed to trial for blasphemy under Article 28(2) of the Information and Electronic Transaction (ITE) Law and Article 156 of the Indonesian Criminal Code. The cleric who reported Lina is insisting on the case being brought to trial and has refused to resolve the case through mediation.

A month prior, another Muslim, Wawan Kurniawan, was arrested by authorities after forcing his way into a house where a Christian prayer group was meeting. He intentionally disrupted their prayers, justifying his entry by saying that the prayer group had no official permit. Wawan was arrested but he was not charged with blasphemy. The prosecutor

said Wawan's act of disrupting prayer did not constitute a religious offence and downgraded the charges to a lesser offence – forced entry under Articles 335 and 167 of the Indonesian Criminal Code.

The two cases highlight inconsistencies in the way Indonesian authorities enforce blasphemy laws. The existence of blasphemy laws in Indonesia, and the potential for harsh criminal punishment, may undermine human rights protections, particularly freedom of speech and freedom of religion for religious minorities.

Inconsistent Definition of Blasphemy

Inconsistent blasphemy decisions often stem from the way the laws are formulated. In Indonesia, the primary blasphemy law is Law No. 1/PNPS/1965, which inserted Articles 156 and 156a into the Indonesian Criminal Code. These provisions define blasphemy as occurring when a person in public deliberately expresses feelings or engages in actions that are hostile to, or abuses or defames, a religion embraced in Indonesia. Article 28 Section 2 of the ITE is also relevant. It applies to anyone who disseminates hatred and hostility against individuals or groups based on tribe, religion, race, or intergroup status.

The problem with these definitions is that they are not clear about when and how an offence is constituted. For instance, does the crime occur when hostilities are expressed or only when others become offended? And does the crime cover unintentional acts of carelessness, like those of Lina Mukherjee, or only intentional acts of hatred? These questions lack definitive answers, especially when we observe past cases of offline and online blasphemy where public pressure has influenced investigations.

Indonesian law has historically placed greater emphasis on religious harmony over religious freedom to promote tolerance and peace throughout Indonesia's diverse population. This has played into the hands of Indonesia's Muslim majority population and made it hard for Indonesians to express unpopular or unorthodox views, particularly for non-Muslims. Analysis of past blasphemy cases shows blasphemy laws have been applied almost exclusively to cases of offence against Islam.

The current interpretation of blasphemy laws appears to contradict Article 18 of the Covenant on Civil and Political Rights (ICCPR) – an international covenant ratified by Indonesia in 2005 – which says that an individual's freedom of religion must be protected, without interference. Furthermore, Article 27 in the ICCPR states that religious minorities should not be denied their rights, and that the non-discrimination principle should be complied with by all signatories to the ICCPR, including Indonesia.

The human rights in Articles 18 and 27 of the ICCPR are essential for religious freedom but are overlooked in both the substance and application of Indonesian blasphemy laws. While Indonesia's constitution presents no barriers to the adoption of ICCPR Articles 18 and 27, domestic laws have not been passed to reflect these principles in Indonesia's newly amended criminal code. As a result, the ICCPR protections have no legal enforceability in Indonesia.

Protecting Religious Freedoms

The cases of Lina Mukherjee and Wawan Kurniawan demonstrate the inconsistent application of blasphemy laws throughout Indonesia. First, the different legal processes applied to Lina, for offending Muslims, and Wawan, for forcibly preventing prayer by Christians, demonstrate how current interpretations of blasphemy extend a privileged position to followers of Islam and fail to offer protections to minority religious groups in Indonesia.

It is important for the law to promote religious tolerance in a religiously diverse multiethnic state like Indonesia. But religious freedoms should be upheld in a way that extends each religious group an equal moral position in society and an equal position in the eyes of the law. To achieve this, laws need to be drafted and applied in a way that is free from politicisation which benefits the majority.

Although intended to preserve religious harmony, the current definition of blasphemy has created a legal minefield that may undermine freedom of speech and actually fuel grievances between different religious and ethnic groups because of their unequal treatment under the law. Lina's actions may seem careless and offensive, but surely they do not warrant a criminal punishment in an open and pluralistic society?

Second, the contrasting experiences of Lina and Wawan demonstrate how Indonesia's Criminal Code may be at odds with Indonesia's international commitments under international law. Although Indonesia has ratified the ICCPR, these two cases show how current laws fail to protect freedom of religion and uphold a principle of non-discrimination against minorities. If Indonesia is serious about its commitments under international law, it needs to ensure the requirements of ICCPR are better reflected in its laws and criminal code.