Abstract: Blasphemy law (BL) has become a central issue for the international community in various parts of the world in the last three decades. In almost every case involving the BL, especially in Muslim countries, such as Pakistan, Malaysia, and Indonesia, they are always responded with violence or threats of attack that cause many victims, loss of homes, damage to places of worship, evictions, stigma of being heretical, severe punishments, or extra-judicial killings. When international human rights law (IHLR) and declaration of the right to peace are adopted by the international community, at the same time, the number of violence related to the application of BL continues to increase. This paper aims to examine the ambiguity of the concept of the BL in Pakistan, Indonesia, and Malaysia, and how its lead to the weak of enforcement that creates social injustice and inequality. Then, referring to Galtung’s theory of structural violence and other experts of peace studies, this paper argues that blasphemy law should be included as a form of structural violence. Therefore its challenges these States to reform their BL in which its provisions accommodate the state’s neutrality and content high legal standards. Thus, through guarantee the fully enjoyment of human rights for everyone may support the States to achieve sustainable peace.

Keywords: structural violence, peace building, blasphemy law, social injustice, discrimination against minority groups of religion
1 Introduction

In the past three decades, blasphemy laws (BL) have become a central issue for the international community in many parts of the world. Many peoples who publicly accused as blasphemer were criminalized under the BLs regime and eventually sentenced to criminal punishment, even faced an extrajudicial killing. At the same time, their families also facing various forms of violence, stigmatization, discrimination, threats of attack, such as being expelled, exiled by followers of a cult, having their places of worship destroyed, and various other physical assaults.

One of the controversial cases was in 1988, Salman Rushdie, a British India writer who wrote a novel “The Satanic Verses”, received positive reviews and won awards in the UK (Horton 1993, p. 104). Meanwhile, the Iranian government has accused him as a blasphemer for mocking the Muslim Prophet and provoked public anger in many parts of the Muslim world. This outrage culminated in the death threat against him issued by Ayatollah Ruhollah Khomeini, Iran’s Supreme Leader, on February 14, 1989 and incitement to kill him. To save his life, since 2000, Rushdie has mostly lived in New York City (Tsagarousianou 2016). Since then, new controversy arose after the Danish newspaper Jyllands-Posten published 12 editorial cartoons on September 30, 2005, most of which depicted Muhammad. The Muslim community, again, is outraged that this act is blasphemous in most Islamic traditions to portray Muhammad visually (Rynning and Schmidt 2006). From the description of these cases, the blasphemy law intends to protect the holiness of the Prophet Muhammad as a role model for Muslims. The Prophet Muhammad is not just a symbol for Muslims in the world, but it is also forbidden for a Muslim to draw a picture of him for a fear that the picture only makes him looks worse than the reality. This religious belief is of course a fundamental right for Muslims that must be respected by everyone, even if the right to freedom of expression is being exercised. Continuing to ignore this universal Muslims’ belief is as brutal as the spread of hatred against Muslims. Unfortunately, the blasphemy laws do not protect someone like Salman Rushdie who is the target of hate speech and death threats, even though no court has ruled him guilty. It turns out that the blasphemy law also imposes other restrictions that are excessive and lead to religious coercion.

In its development, the BL did not only protect the Muslims’ belief of the sacredness of the Prophet. In various Muslim countries, namely in Pakistan,
Malaysia, and Indonesia, which will become the focus discussion of this paper, the BLs are collections of vague legal provisions that don’t have a solid benchmark. There are two paradoxical things resulting from the implementation of BL. First, at a time when the international community is trying to improve its national development and to optimize the protection of human rights, BL tends to violate human rights law, particularly freedom of religion or belief (FoRB) and freedom of expression (FoE) (Butt 2010; Crouch 2012; Pratiwi 2019; Temperman 2011). Second, when the declaration of the right to peace was adopted by the international community, unfortunately the application of BL cause structural violence done by various States continued to increase. BL is not only ordering a severe punishment for someone who insults the Prophet but also for someone who criticizes Islamic teachings, or believes in teachings that are considered deviates from the orthodox Islamic teachings. BL has even been used as a justification for the mob protest to commit extrajudicial killing against law enforcement officers. In addition to the conceptually blasphemy law being very ambiguous, in practice its law enforcement often transforms into structural violence legalized by the state.

Therefore, this paper intends to examine two aspects that are the conceptual problem of blasphemy law and its application in three Muslim countries, namely Pakistan, Malaysia, and Indonesia. These countries are three among 71 countries that still maintaining the BL in their legal system. Indonesia and Pakistan are participating countries of the International Covenant on Civil and Political Rights 1966 (hereinafter the ICCPR). Malaysia has not yet ratified the ICCPR, but this should not be used as an excuse for Malaysia to neglect the civil and political rights of its citizens. Referring to various experts of peace studies, such as Galtung (1969) and many others and experts of international human rights law (IHRL), such as Temperman (2011) and An-Na’im (2008), as well as referring to various IHRL standards, this paper argues, first, that the ambiguity of the BL legal concept is against the principles of legality and justice, because its purpose is mainly to protect the state religion. The BL becomes a means of legitimacy for discriminatory action against religious minorities. Second, that the BL is a tool of state legitimacy that allows the unnecessary death of its citizens, or as a tool to justify other human rights violations. Ultimately, this study challenges countries to reform their blasphemy laws following high standards and removing disproportionate

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2 The Declaration on the Right to Peace proposed by the Human Rights Council in Resolution 32/28, of 1 July 2016 was adopted by the United Nations General Assembly through Resolution 71/189 on 19 December 2016.

3 Data presented by the Pew Forum on Religion and Public Life 2012 stated that there are 18 out of 20 or 90% in Middle Eastern and North African countries criminalizing defamation of religions in all regions, blasphemy laws can be found in all regions of Asia Pacific and sub-Saharan Africa including Europe in 16% of countries and America (29%).
punishments, unnecessary deaths, and ending discriminatory practices toward religious minorities through full protection of human rights.

2 Blasphemy Laws: A Bias Concept of Law Creates Inequality in Society

The BL has no single definitions and its concept are varies from countries to countries with mostly have no solid benchmark, contrary to the principle of legality, with the primary aim of protecting the state religion, and disproportionate sentencing (Fiss and Kestenbaum 2017). The BLs in various countries were inherited from their past colonial era (Durham and Scharffs 2010: p. 223), and they were embedded into national law using concordance principle (Octora 2016: p. 369) and remain in force today. As an outdated legal concept, this law is maintained and strengthened by various regulations in a country, either in national or local level. For instance, in order to facilitate its application, there are several executive policies have been released by the government of Indonesia, such as a letter of Join Decision of Ministers, or decision by the

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4 The BLs were initially introduced in 1860 under colonial rule incorporated in criminal law inherited from England.

5 According to Merriam Webster Dictionary, an Act is a statute, a formal product made by legislative body. While, a constitution is “the basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it” (see https://www.merriam-webster.com/dictionary/constitution).

6 See the Blasphemy Law of Indonesia regulates under the Law Number 1/PNPS/1965, and Art. 156 and Art. 157 of Indonesia Penal Code and the Information of Electronic Transaction (IET) Law Year 2008 particularly in Art. 27 and 28. In Malaysia, the blasphemy laws can be found in Art. 298 of the Act of Anti Sedition 1948 and Amended in 2015 (Section 3 and 4) and Art. 2333 of Deed of Communication and Multimedia 1998. In Philippines, the blasphemy law can be found in Art. 132 and 133 of Philippine Revised Penal Code; In Singapore, the Bl regulates under Art. 298 Chapter XV of the Singapore Penal Code (Cap 224).

7 See the Joint Decree of the Minister of Religion Affairs, the Minister/Attorney General and the Minister for Home Affairs No. Kep-043/A/JA/02/2016 and No. 223–865 Year 2016 that bans the activity of Gerakan Fajar Nusantara (Gafatar) after the Gafatar is considered as deviant from Islam. See also the Joint Decree of the Minister of Religion Affairs, the Minister/Attorney General and the Minister for Home Affairs No. 3 Year 2008; No. Kep-033/A/JA/6/2008; No. 1999 Year 2008 respectively concerning “Warnings and orders to followers, members, and/or members of the conversion of Indonesia Ahmadiyya (JAI) and Public Citizens”. This letter gives warnings and instructs community members not to hell, encourage or seek public support to make interpretations of religion that is held in Indonesia or conduct religious activities resembles the religious activities of the religion that deviates from main points of the religious teachings.
The types of acts that are prohibited by BLs are ambiguous or have many interpretations and differ from one country to another. For instance, in Indonesia, according to the law no. 1/PNPS/1965, blasphemy law prohibits any person to expressing any criticism or hatred in a speech or written form toward any “recognized religions” or persuading the religious believer to leave their religion and to make them abandoned any religions. While in Pakistan, the BL has a wide range of interpretations. It is not only prohibiting for blasphemous act toward God but also symbols of religion, Prophets and any objects that considered as a sacred object. With this broad and variety concepts, the BL is characterized as bias norms, such as the use of the word “insult”, or “criticism” or “blasphemous” that has no single legal interpretations and merely based on the feelings of the certain community. The law is mainly purposed to protecting an abstract thing, such as religious system, religious artefacts, religious symbols, or religious teachings, rather than protecting individual (Nash and Bakalis 2007). Unfortunately, the words religions are mostly translated into “certain religions that recognized by the state”.

After seven decades, the adoption of Universal Declaration of Human Rights (UDHR) and the ratification of its subsequent covenant, the ICCPR, by the international communities aim to protect individual rights from abuse of power done by States (Neumayer 2006). Regrettably, the BL create inequality in society, since it aims to protect established religious systems or religious feelings instead of protecting the right of the individual. While there is no such provision in the IHRL aims to protect religious system or personal feelings. Resonance to Jeroen Temperman, a Professor of Law and Human Rights expert from the University, argues that combating defamation of religion approach would not comply with the principle of human right since its focus on protecting of religious system or personal feelings on religion (Temperman 2011). Meanwhile, in Article 18 (3) and the General Comment No. 22 of the ICCPR, the State parties of the covenant may enforced their national law to limit the right to freedom of religions or belief if only the limitation is particularly addressed to the forum-externum, such as procedures for establishing

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8 Ulama Assembly of Indonesia released a fatwa No. 05/Kep/Munas/II/MUI/1980 date of June 1st, 1980 and strengthened by National Conference on 29 July 2005 declared that Ahmadiyya is a deviant of Islam, misguided and misleading. See also the Ulama Assembly of Indonesia, Yogyakarta Branch No. B-154/MUI-DIY/IX/2007.

9 According to Article 18 (1) of the ICCPR, the right to freedom of religions or beliefs is divided into two dimensions. One dimension is related to the right to hold and change the religion. This right is also known as the forum-internum, in which no one or no state can interfere with the liberty of any person to hold or choose the religions or beliefs. The second dimension is the right to manifest the religions or beliefs known as forum-externum. For example, everyone has the right to practice, worship, teaching, observe the religions or beliefs, either alone or in society, either in private or public area and could be a subject of such limitation under Art. 18 (3).
places of worship, collection of public funds, religious announcements. Under Article 20 (2) of the ICCPR, the state is also allowed to apply its national law to limit a person’s freedom of expression if the expression contains hate speech with intention to “discrimination, hostility or violence”.\textsuperscript{10} Though, these restrictions should be exercised carefully and in a strict manner. Therefore, prosecution of a person because of his or her religion or belief is deemed deviant as stipulated in the BL, violates a person’s religious rights, especially the forum-internum guaranteed by Article 18 of the ICCPR. This is an excessive restriction of the right to religious freedom and violates Article 18 (3) of the ICCPR.\textsuperscript{11} The right of a person to manifest religions or express religious thought may subject to such limitation under Article 18 (3) or 19 (3). But, it is unnecessary for the State to criminalize the person, except the expression falls into Article 20 (2) and constitutes incitement to discrimination, hostility or violence.\textsuperscript{12} Thus, instead of targeting the minority groups of religion, the BL should protect peoples from being targeted by a person who expresses incitement speech that discriminate against them. For instance, in \textit{Otto Preminger v. Austria}, the European Court of Human Rights\textsuperscript{13} punished \textit{Otto} and concluded that the state is permissible to intervene in the right to freedom of expression if such expression is

\textbf{10} Article 20 (2) states that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

\textbf{11} Art.18 (1) states that every person has the right to embrace religion according to their beliefs. This article is broadly interpreted to include the right to determine a religion, the right to leave a particular religion, or convert to a religion, or not even have a religion. While Heiner Belfield, a Special Rapporteur on FoRB cite the rights stipulated in Article 18 paragraph 1 as an internal forum which functions absolutely, meaning that it cannot be limited by the state. The principle of religion without coercion is at the core of Article 18 (1). Article 4 UDHR. “No deduction from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 can be made based on this provision.” Therefore, every member of the state has an obligation to respect and protect those rights in all its territories under its jurisdiction.

\textbf{12} Art. 20 (2) states that: “(1) Any propaganda for war shall be prohibited by law. (2). Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” In GC No. 22 and Syracuse Principles states “No limitation referred to in the Covenant shall be applied for any purpose other than for which it has been prescribed”. In most Western countries such as in Canada, according to the Canadian Charter of Rights and Freedom section 2(b), the violation of the right to FoE usually submitted to the civil court rather than to the criminal court. See Also GC No. 22 and Syracuse principles and Art. 4 of CERD. Art. 4 of CERD states that “States shall declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof” (Stressing added).

\textbf{13} ECtHR stands for European Court of Human Rights.
intended against the religious feelings of others (p. 14). In this sense, the Otto Preminger case is considered incompatible with Art. 19 (3) and 20 (2) of the ICCPR because Otto was not intended to incitement of hatred. He was just exercising his freedom of expression. Therefore the perpetrator should not be punished (Kuznetsov 2012, p. 84; Temperman 2011).

Meanwhile, following the case of the circulation of 12 cartoons of the Prophet Muhammad that recirculate many times in several European countries from 2005, 2006, to most recently 2020, in France. These cases are certainly not sufficient to be viewed from the perspective of freedom of expression or criticism of radical Muslims whose opposed democracy (Westergaard 2009). However, cartoons depicting the Prophet, long understood by people of all religions in the world that Muslims have the belief not to portray the Prophet Muhammad, have hurt the feelings of Muslims in the world. The evidence is very visible from the rapid reaction in the form of demonstrations in Denmark and Copenhagen (2005), London (2006), and criticism from many Islamic countries (2020). In fact, these cases prompted other brutal acts when demands for an apology or withdrawal of cartoons from the writers and disseminators were not immediately made. However, the important point why many scholars have included this case different from other satirical cartoons or other cases of blasphemy, is not without reason. The portrayal of Muhammad as a terrorist is a form of hate speech targeting Muslim minorities in Europe, an appeal to the public to be anti-Islamic (Bleich 2012: pp. 180–189; Hervik 2012: p. 35; Khory 2012; Modood et al. 2006: p. 4). Hatred against Muslim minorities in Europe is discriminatory and can create a sense of fear that prevents Muslims from enjoying other rights as citizens. Where hate speech against religious minorities or racial minority groups is an act that has long been prohibited in domestic law in various countries in Europe such as Germany, Austria, France, and many others (Puddington 2007: p. 125–137). This is as forbidden as saying that the Holocaust never existed (see David Irving v Penguin Books and Lipstadt). Thus, propaganda of anti-Islamic, anti-Semitic, anti-Christian must be categorized as an expression of hatred under Article 20 (2) or (3) of the ICCPR, and Article 4 of the CERD.

These cases are different from various cases of blasphemy in several Islamic countries. In Indonesia, the trend shows that the Blasphemy Law of Indonesia, so called the Law Number 1/PNPS/1965 is widely used to limit religious expression of minority religious groups which are considered tarnished the purity of state-recognized orthodox religion (Crouch 2012; Menchik 2016; Pratiwi 2019). As consequently other minority groups of religions or the new religions movements which are not recognized yet by the government would become a target of such laws. Although many governments claimed that the purpose of blasphemy prohibition is to be necessary for maintaining and protecting public order, public safety, or national
security. But sometimes, these necessity aspects to punish perpetrators are rarely proven by the court. For instance, in the case of Ahmadiyya, the Indonesia government used the Law No. 1/PNPS/1965 (the BL of Indonesia) to prosecute the leader of Ahmadiyya and banned the Ahmadiyya to share their teaching because the court found that Ahmadiyya was considered as a deviant of Islamic majority that protected under the BL (Colbran 2010). In this sense, the BL is not only limit the right of Ahmadiyya to express their religious teaching but also violate the right of Ahmadiyya followers to have and practice their own religion that differs from the Islamic majority. Thus, the ambiguity of blasphemy laws has been misused by certain people who hold the power to treat others differently particularly to discriminate against minority groups of people who have less power and marginalized such as Ahmadiyya, Shia, Gafatar which known as a new religious movements. The PEW Research Centre indicates that the BLs become controversial because it only targeting minority group of religions and it has been used as a discriminative tool against the groups so they can’t exercise the right to practice their religion freely (Pew Forum on Religion and Public Life 2012). In this sense, the use of BL ultimately threatens religious diversity (Graham 2009).

In Pakistan, the BL were an inheritance from British legal rules when Pakistan became a British colony. They were introduced in South Asia including in the Indian Penal Code Act of XLV of 1860 and present Section 295 and 298. Then, these two sections were adopted into the Pakistan Penal Code (1861). The aim was to preventing acts of violence on religious grounds by enforcing punishment for acts of violence toward religious groups. Even in subsequent developments, the two sections were modified and amended so that the law enforcement on blasphemy become stronger. But, they only protected the State’s religion, namely Islam. In 1980, an Amendment was made to Section 298 by adding Section 298A

14 Section 295 of the Indian Penal Code Act of XLV of 1860 regulated that “Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment … for a term which may extend to two years, or with fine, or with both” (Indian Penal Code 1860). See Fanny Maza, Blasphemy Laws In The 21st Century: A Violation Of Human Rights In Pakistan (Jan 2017). Retrieved at https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=2067&context=gs_rp.

which contained the punishment against perpetrators who were deemed insulting to Islam, and Section 298B which contains punishment for insulting the Quran. In 1984 Section 298C was added by including clauses specifically addressed to the Ahmadis and forbidding them to claim themselves as a Muslim and to use Muslim practices in their worship or in the propagation of their faith, any offense being punishable with up to three years’ imprisonment and a fine. In subsequent developments, Section 298C was amended in 1986 by increasing the threat of punishment from life sentences (1990–1993) into a death sentence (1991). The BL in Pakistan only provides special protection for Islam, does not provide the equal protection for other religions. Unfortunately, it has a provision that legalize the discrimination toward Ahmadiyya. Breaking of religious beliefs or teachings which previously constituted as the scope of individual responsibility to his God, has been taken over by the State. As consequences, the State has the authority to impose penalties to its citizens who are considered violating the teachings of Islam with punishment. The provisions of Section 298C contradict with the principle of the rule of law and the duty of the State to protect all rights of citizens laid down on Article 4 and 7 of the Pakistan’s Constitution.

Article 4 of the Constitution of Pakistan provides the basis of the rule of law and says that a person has the right to enjoy legal and constitutional protection also guarantees, no one can be violated or revoked rights and freedoms except by what is stated by applicable law. Someone may not violate applicable law or be forced to do something that is not required by law. Article 7 of the Pakistan Constitution also emphasizes the obligation of the state to ensure that justice for every citizen must be obtained easily. In Article 26, 27, 28 the Constitution guarantees respect and protection for every citizen for the right to freedom of religion and belief. In the case of the right to religious freedom expressly stated in Al-Baqarah (2: 256) that “There should be no compulsion in religion.” But the existence of the blasphemy law in the Pakistan Penal Code which gives the threat of punishment to the schools that are considered contrary to Islamic teachings, is certainly a form of coercion to a particular religion or belief. Penalties for the adherent of Ahmadiyya or other minorities religions are a form of denial of the rule of law principles contained in Article 4 and Article 7. The provisions of Article 4 and Article 7 seem to guarantee the protection of law and human rights for every citizen. However, this is not strong enough to guarantee the protection

16 See Article 289A of the Pakistan Penal Code.
17 See Article 298A of the Pakistan Penal Code.
18 UN, E/CN.4/1996/95/Add.1. Id. p. 5.
19 Under Prime Minister Nawaz Sharif (1990–1993), section 295 C of the Penal Code concerning blasphemy against the name of the prophet Mohammed was amended on 29 July 1991 as a result of the entry into force of the 1991 Shariah Act (Islamic law). Id.
of human rights in the State of Pakistan. Pakistan’s ratification of the ICCPR has not been optimally implemented by the Pakistani government, especially in terms of protecting the right to religious freedom.

The Pakistani State should provide guarantees for the protection of the rights to FoRB, instead of imposing some restrictions to intervene, control and suppress minority religions or minority belief groups. These oppressions are certainly contradicted to the principle of the right to FoRB as protected under Article 18 of the UDHR and ICCPR, as well as in Article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief in which Pakistan is the member States of such agreements. As an Islamic state based on the Quran, Pakistan’s BL also contradict to Al-Baqarah verse (2:256): “There should be no compulsion in religion. Surely, the right way has become distinct from error”. The State also acknowledge respect and honor among others: Prophet Muhammad holds the utmost respect, prestige, and dignity amongst the Muslim Ummah and possess the highest rank and status compared to all Creatures shaped by Allah Almighty, even the Messengers of Allah who came before him. To sum up, in Pakistan, the aim of maintaining the BL was changed from preventing acts of violence on religious grounds into protecting State’s official religion, Islam. The swift through amendment of the BL make it more repressive law than before. Similar to in Indonesia, the character of BL in Pakistan after the amendment is more benefit to be used for the authority holder to repress their political opponent and get sympathy from the majority.

In Malaysia, the BL were also inherited from a British rule of law during the colonial period. Malaysia is also a multi-ethnic country likes in Indonesia.\textsuperscript{20} The BL is maintained by the Federal Government after its independence to maintain interfaith stability. The BL in Malaysia were inserted in Section 295 to 298A of Chapter XV of the Malaysia Penal Code.\textsuperscript{21} The Malaysian Constitution explicitly states that “Malaysia is an Islamic state” (Article 3). However, the BL in Malaysia articulate that all religions are protected by the Statute (Article 11 [1]). But, in its implementation, only Islam is well protected (Article 11 [5]).\textsuperscript{22} Muslims in Malaysia belong to the Sunni Sect. The Sunni sect recognizes only the teachings of four

\textsuperscript{20} See Table 1, point 1 and 3 above. \textit{Id.}
\textsuperscript{22} See Article 11 (5) Malaysia Constitution states that the protection of religious freedom in Malaysia should be in accordance with Islamic Law.
specified schools of thought and regards others’ school of thought as being contrary to true Islamic religion. Therefore, according to Article 11(4), the right to propagate any religious doctrine or belief among persons professing the religion of Islam may be controlled or restricted by State law and Federal law.  

No matter when Art. 3 (1) of the Malay Constitution states that “… other religions may be practiced in peace and harmony … ”, in fact the blasphemy law threatens other religions in-equalities. Because under the blasphemy law, first, the government has the authority to ban the religions that considered deviant of Islam such as Ahmadiyya, Islamailiah, Shia, Baha’I, Qadiani, and others. Second, the government may arrest and detain members of deviant groups and order them for rehabilitation to the path of Islam, and third, the government may control the activities of minority religions.

For instance, in the case of Mohd. Ezra, the extended regulation of BL that enacted by the State of Selangor Shariah Law Enactment 1995 under Section 16 in conformity to the Federal Constitution of Malaysia allow Muslims in the country to be governed by Islamic Law. For instance, publishing any book or document or any form of a record containing anything which is contrary to Islamic law is prohibited and could be punished under the State Islamic Law. It is interesting that, first, the fact Ezra is not a writer of the book, and second, the one who published the book is his company, Zi Publications Sdn Bhd, a non-Muslim. However, he was criminalized under the Law and the book was banned under gazettes of Home Minister on May 24, 2012. It is no doubt that the Selangor State Legislative Assembly (SSLA) has the authority to make the State Law that should be obeyed by their citizens. However, the Enactment 1995 (Section 16) made by the SSLA could be considered ultra vires or unconstitutional since it provision is overruling of what already guaranteed by the Federal Constitution.


24 The Department of Islamic Development Malaysia (JAKIM) established the federal guidelines concerning what constitutes as deviant behavior or belief.


26 Section 16 of the Syariah Criminal Offense was enacted in 1995 which criminalizes the publishing of books opposing Islamic Law.

27 The Judge Datuk Kamaludin Md Said stated that the Shariah provision of Selangor used to prosecute Ezra was constitutional. See Ida Lim, id.

28 Id.

29 Ultra vires doctrine is Latin for “beyond powers”, or an act is ultra vires if it is beyond the legal powers of the person doing it. In other words, ultra vires means unconstitutional.
Under Article 10 (1) (a) and Article 8 (1), the Federal Constitution of Malaysia guaranteed the right to freedom of expression and equality before the law. The limitation of such rights shall be applied only when it necessary to protect either public order, national security, or the reputation of others as mentioned in Article 3 and 11 of the Constitution. However, in the case of Ezra, none of its purpose was applied. The Lower Syariah Court in 2013 banned his book because it is considered deemed of Islamic Law. The Sharia Court’s decision was based on a recommendation made by the Selangor Islamic Religious Council (JAIS) which concluded that Mohd Ezra’s book was deemed offensive to Islam. Because of this verdict, Mohd Ezra was subjected to unfair treatment, suffered mental stress, suffering and torture during the process of his arrest. Finally, on September 5, 2013, the Court of Appeal repeals the previous court decision and says that Bahasa Malaysia (BM) book version no proof of public disorder. Mohd Ezra’s case illustrates how the blasphemy law with the concept of ambiguity provides ample space for state officials to interpret the word “insulting Islam” subjectively, so that blasphemy law tends to be used as a tool to suppress someone, limit a person’s freedom of expression, and threaten him with punishment.

To summarize, the BL in Pakistan, Malaysia, or in Indonesia is not the original law of the land but the legacy of colonialism. The law becomes stronger and enforced by the government mostly against minority religions. After Pakistan acting on behalf of Muslim countries who are the member of the Organization of Islam Corporation (OIC) at the UN Commission on Human Rights in 1999. The adoption of Resolution 1999/82 on “Defamation of Religion” was introduced to combat Islamophobia against Islam, this Resolution encourages other States to “take all appropriate measures to combat hatred, discrimination, intolerance, and acts of violence, intimidation, and coercion motivated by religious intolerance, including attacks on religious places, and to encourage understanding, tolerance, and respect in matters relating of religion of belief within their domestic law. This resolution should serve as a guide for OIC member countries, including Pakistan, Malaysia, and Indonesia, to align their blasphemy laws with acts of hate speech and Judicial Review, https://thefreelibrary.com, See also Specter v. Garret, 995 F.2d 404, 408 (3d Cir. 1993).

30 See the Federal Constitution of Malaysia.
32 See Ida Lim, Id.
that contain violence or discriminatory acts, instead of to punish critics or those with different teachings.

The application of BL for reasons of religious intolerance that often changes forms of censorship laws to restraint critics is a threat to democratization that upholds freedom of conscience, expression, and the right to dissent from the mainstream majority of religious or political groups (Berman 2011; Marshall and Shea 2011). The United Nations (UN) Special Rapporteur on Freedom of Religions or Beliefs and the UN Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, A/HRC/2/3, 20 September 2006, para 37 states that “the expression defame other religions may hurt feelings of others but it does not directly result in a violation of their rights to freedom of religion”. This general comment emphasizes what Temperman (2011) argues that everyone’s right of expression is human rights and protected by Art. 19, but the right not to be hurt or not to be insult is not protected under the ICCPR. Thus, the BLs are not only conceptually problematic, but its aims are also contradicted with IHRL, especially articles 18, 19, and 20 of the ICCPR. Subsequently, BLs are often used as a legitimate tool for certain majority religion groups to push the government to punish perpetrators who are mostly the followers of minority religion groups as what had happened in Malaysia, Pakistan, and Indonesia. The existence of the BLs causes the fundamental rights of freedom of religion to be ignored by the state, where the neglect of one right causes the neglect of other basic rights such as the right to freedom of expression or the right to be treated equally. Blasphemy law fosters state favoritism in official religions and orthodox but ignores new religious or non-religious groups so that their freedom to believe and worship of their religion and beliefs is hindered. They also suffer from punishments based on ambiguous concepts and contrary to human rights standards. Following this conceptual problem then in the next section the impacts of the BL’s enforcement on the occurrence of structural violence is discussed in the next paragraph.

Since most of the BLs are enforced by majority predominant Muslim countries, some experts thought that the restriction of the FoRB exist because of the strong relationship between state and religion. This section examine whether the idea of a separation between state and religion is likely to happened particularly in predominant Muslim countries. The idea of secularism to reduce state control over religion is widely offered, one of which is by Professor An-Na’im, an expert of Islamic law and human rights.

An-Na’im argues that “I need a secular state in order to live in accordance with Sharia out of my genuine conviction and free choice [...] which is the only valid and legitimate way of being Muslim” (p. 268). An-Na’im (2011) convinces that Shariah compliant countries to consider switching to a secular state on the grounds that
only secularism can flourish Sharia from now and make it survived in the future. Secularism allows one to choose his religion freely without state pressure and in accordance with his beliefs. An-Na’im’s critical thinking claims that the Islamic states tend to enforce Sharia Law to all citizens in which contradictory with the principle of “no coercion in religion” as stated in Art. 18 of the ICCPR and the principle of “no-compulsion in religion” that explicitly recognized by the Qur’an. Therefore, An-Na’im’s (2011) convinced that the idea of a separation between Islamic and the state or a secular state in which the state is neutral regarding religious doctrines and public policies as well as promotes religious observance, but the state may regulate the relationship between Islam and politics (An-Na’im 2011). Report from the Special Rapporteur on freedom of religion or belief Ahmed Shaheed.34 In the report, the Special Rapporteur analyses the relationships between State and religion and their impact on freedom of religion or belief and sent country visit requests to several countries35 including Indonesia, Malaysia, and Pakistan with the recommendation that a model ensures “that the State does not resort to religious exclusivity or bias in culture, identity, schooling, or even symbolism for short-term ends and for vested interests, but will continually strive to create spaces of inclusiveness for all as an active and ongoing endeavor”.36

### 3 Blasphemy Law as a Structural Violence

The term structural violence was first, introduced by Johan Galtung in 1969 in his article entitled “Violence, Peace, and Peace Research” (1969). At least there are several important points in understanding structural violence, namely from its source of violence, its form of action, and its impact. Structural violence originating from social structures or institutions that have an impact on the loss or failure to fulfill one’s fundamental rights, even though this loss can actually be

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35 The Special Rapporteur on freedom of religion or belief Ahmed Shaheed sent country visit requests to Armenia, Egypt, Indonesia, Malaysia, Nepal, the Netherlands, Pakistan, Saudi Arabia, South Africa, and Tunisia. His requests to visit Tunisia and the Netherlands were accepted. See Human Rights Council, A/HRC/37/49, Id.

36 See Bielefeld, Ghanea and Wiener, Freedom of Religion or Belief (footnote 15), pp. 355–359.
avoided. Therefore, it is also called as non-physical violence. Silence from the
government or the government’s failure to prevent the death of its population,
such as from deadly diseases, even though vaccinations are already available, are
examples of structural violence. Galtung and Höivik (1971) provide an example of
structural violence in a case that the number of slowly death occurred in the
community, because the government provide medical and sanitary items prioritize
for the rich people. In fact, the death does not need to occur or “can be avoided”, if
social institutions such as the government make maximum efforts to do vaccina-
tions. Structural violence can also take the form of social injustice, because in fact
this violence depends on decisions or policies of power, can be prevented or
avoided, because it is not something natural. Therefore, Galtung also included
police or state violence as a form of structural violence. Siniša Malešević empha-
sized that the power structure can create opportunities and progress to protect the
interests of mankind, but can also be used to carry out actions that are detrimental
to humanity, such as dominating, killing, or enslaving other groups. In this case,
discriminative laws, as a product of legislative institutions, can be categorized as
structural violence (Malešević 2010).

Referring to Pool and Geissler that structural violence can take the form of
institutionalized inequality aimed at certain excluded groups, for example women,
the poor, or those with different skin colors (Pool and Geissler 2005, p. 63).
According to Benson (2008), this inequality of treatment raises the legitimacy of
the practice of structured violence, or acts of exclusivity towards certain groups,
stigmatization, and discrimination. So Benson emphasized that structural legiti-
macy in the form of unfair laws or policies can affect negative beliefs, attitudes,
and behavior of society in general towards marginalized groups that are targeted.

Galtung (1969) once interpreted that violence to arise at a time “when the
potential is higher than the actual [it] is by definition avoidable and when it is
avoidable, then violence is present” (p. 169). In other words, when the violence
arises because it is impossible to be avoided, then violence is not present. When the
violence possible to be avoided but it still happened, then violence is occurred.
Galtung gives an example when a person who suffered and died from tuberculosis
in the 18th century was not considered a form of violence, but if someone who lives
today died because of tuberculosis where medical science have been advanced in
which very likely to be avoided, then it can be categorized as violence (p. 168).
Furthermore, Galtung (1990) classifies three types of violence i.e., personal, cul-
tural, and structural. The personal violence is a direct violence toward a person
and the effect is noticeable immediately (p. 173). The structural violence is also
indirect violence, and the effect is not immediate. He explains that the structural
violence may happen when an avoidable violence is adopted in governmental
structure or legal system and created a restrictive or repressive framework for the
governmental bodies that would result in unfair treatment such as giving authority for the government to do unlawful duty and pressing their political agenda or ideology to the public. While the cultural violence is a cultural justification for the direct or structural violence using nationalism, racism, sexism, and other forms of discrimination and prejudice.

Implying the theory of Galtung (1969), Pool and Geissler (2005, p. 63), Benson (2008), and Malešević (2010), violence occurs when the Blasphemy laws are enforced and strengthened as a means of state legitimacy to punish certain religious groups that are considered injuring the majority of religious groups. BLs create a legal system that treats a certain group of citizens differently and contradictory with the principle of equality before the law. For example, countries that maintain repressive and discriminatory laws, such as the Blasphemy Law continually cause individuals, especially minority religious groups, to be targeted by unfair sentences from the State in the form of prisons, fines, or capital punishment. The research done by Pratiwi (2019), the case of BL in Indonesia between 1995 and 2018, from the total of 62 cases, 80% of the total the perpetrators were punished and put imprison for above six months until 10 years and only 20% they were found not guilty (p. 27). This punishment has caused individuals from religious minorities unable to exercise the right to freedom of religion. Even in social life they are commonly being targeted by vigilante groups of such violence as burning down their homes, or places of worship, being driven out of their villages where hundreds of innocent people such as children or women were suffered. For instance, many of the Ahmadiyya followers have been receiving religious persecution and discrimination since 1885 in many Islamic countries, and their teachings have been prohibited and defined as heretics, their adherents have been subjected to attacks and often systematic oppression (Burhani 2014; Khan 2003). This part examines to what extent the blasphemy law can be considered as a form of structural violence. In Ahmadiyya case in Indonesia, when the Ahmadiyya followers were suffering from the avoidable acts of brutality of the mob because failure of the police to prevent the violence. In various cases the leader of Ahmadiyya were convicted as blasphemer and punished with severe punishment. i.e., serving more than one year or more than four years in prison. It is unfair when the court punished the Ahmadiyya leader with imprisonment for four years, and it is also unfair to force someone to change his belief. The Ahmadiyya organization is also frozen by the Government, while his followers were expelled from their hometown.

Another example of blasphemy case is the case of Asia Bibi, a Christian woman in Pakistan which has a small argumentation with her neighbors (Muslim women) that turned into a massive mob violence from a Moslem community in Pakistan because Bibi’s words toward her neighbor were considered as blasphemous
toward the Prophet. However, her neighbor who also insults Bibi’s religion never convicted under the same law. The local court of justice sentenced her with death penalty that was not balanced with the mistakes she made. Though, she finally acquitted by the supreme court of Pakistan after serving 10 years in prison.\footnote{See the Supreme Court of Pakistan CRIMINAL APPEAL NO.39-L OF 2015 (Against the judgment dated 16.10.2014 of the Lahore High Court, Lahore passed in Crl.A.No.2509/2010 and M.R.No.614/2010). See also the case of Gafatar in Indonesia, the case of Otto Preminger v. Austria, and many others.} This unequal treatment has discriminated Asia Bibi’s religion. The death penalty from first degree court’s judges for Asia Bibi is also incompatible with Article 3 of the UDHR and Article 6 of the ICCPR which have been ratified by Pakistan government. It is unfair when in an exchange of arguments where both parties mocked one another’s religion, but the court then only imposed severe penalties on those from minority groups. Later, Asia Bibi had to flee away from Pakistan for her safety. This example shows that the BL is only protecting majority groups of recognized religion and ignoring the right of minority groups of religion. This circumstance shows that the practice of blasphemy law resulted in creating hatred, hostility, and fear that is a part of cultural and structural violence as indicated by Galtung (1969). In this sense it leads to the direct violence to the victims who are commonly the adherents of the minority religion in such a country. While, in the case of Ezra in Malaysia, he was fined RM 10,000 much higher than what was stipulated on Section 19 (1) with maximum fine is RM 3000. The punishment was disproportionate and not in line to the Law.

In the case of Asia Bibi in Pakistan, the Ahmadiyya in Indonesia, and the case of Ezra in Malaysia, law enforcement and the court have ignored the principle of due process of law. Asia Bibi did not get special protection even though the death threat was aimed at her. First-degree court judges did not really check for violations of legal procedures carried out by Prosecutors because this case should not be processed because it was expired. The condition of the trial which was not conducive has prevented Asia Bibi not to be free in giving testimony before the court. Meanwhile, in the case of Ezra, the law enforcement has searched and seized the book that produced by the Ezra’s company before the final decision of the court broke the right of the Defendant of a fair trial and due process of law that are protected under the Malaysian Constitution.

In many cases, the application of blasphemy laws has triggered even greater human rights violations, leeway of law violation by law enforcement. Law enforcers are not neutral by giving leeway to vigilante acts as in the case of Ahmadiyya in Indonesia or Asia Bibi in Pakistan fearing of public anger, while
those who dare to express their support toward this minority group, their lives are threatened because they are considered defending religious deviant such as the assassinations of Pakistani Governor Salmaan Taseer on January 4, 2011, and Minority Affairs Minister Shahbaz Bhatti on March 2, 2011, because they spoke out in favor of reforming abusive blasphemy laws and specifically against the proposed death sentence of Asia Bibi. Extra-judicial killings also occurred in the Ahmadiyya case, where three people died by being stabbed by demonstrators, unfortunately law enforcers are only silent or witnessing the brutality committed by the mob. Therefore, by looking at the blasphemy laws in Pakistan and Malaysia where the capital punishment such as the death penalty or in imprisonment for a life to the blasphemy accused should be considered irrelevant to the modern society.38

The law of blasphemy that is discriminatory does not only fail to prevent intolerant actions as the main purpose of this law is made, but it actually triggers widespread and greater conflict in both religious groups and other religions which creates other human rights violations. Various violence and brutal acts in Indonesia, for example in the Ahmadi case, the harmonious relationship between Sunni and Ahmadi Islam which previously lived in harmony with each other, has attacked each other in the form of burning houses of worship when state intervention gave the stigma of “heresy” to Ahmadi groups. In Pakistan, the threat of the death penalty to Asia Bibi, which caused her to seek an asylum for protection from other countries, has usurped the right to security and was free from discriminatory actions.

Discriminatory blasphemy laws, such as in Pakistan, Indonesia, and Malaysia, should be immediately reviewed for revision or cancellation. The serious debate concerning the murder to Asia Bibi had called to reform Pakistan’s blasphemy laws has been largely stifled. Religious groups and political parties pressured the government to withdraw the bill proposing amendments to the blasphemy law. Following the arrest of Governor Taseer’s murderer, police officers investigating the case were threatened—as were lawyers representing the state. Justice Pervaiz Shah, who presided over the murder trial, was forced to go on leave for an indefinite period after receiving death threats 3. Those who hoped to organize public events to honor Salmaan Taseer were discouraged, and decrees were issued against offering funeral prayers. Efforts made by the Government of Indonesia with a judicial review of the Blasphemy Law are best

practices that can be considered by other countries such as Pakistan and Malaysia.

But if the criticism of the religion does not cause violence or danger, then the criticism in question is not a crime, so blasphemy law cannot be used because the right to freedom of expression is also protected by international human rights law. Criticism can only be responded to by criticism, not by punishing the perpetrator. However, it would be ironic if the BL which initially intended to prevent acts of intolerance towards Islam was actually used by Islamic groups to be intolerant towards other religious groups, especially minorities. The existence of the Anti-Defamation Declaration of the UN 16/18 has led to criticism among experts in international human rights law, so that a Declaration was issued.

Pakistan is a Muslim country that applies blasphemy laws that are discriminatory in character and cause the largest number of deaths, namely at least 75 people death that should not have occurred, and can be prevented by the government. Although among 1500 defendants of blasphemy cases, none of them have been sentenced to death by the court, however Pakistan’s blasphemy law legitimizes the brutal killings of society because blasphemy acts under the law are punishable by death. In general, those accused were minority groups, both of different religions and fellow Muslims but adhering to different sects. Discriminative treatment as a result of the implementation of the blasphemy law is not only in the form of extra judicial killing, but also in other forms, such as stigmatization, violence, expulsion, and others. To sum up, the BL in Indonesia and Pakistan has a very low standard, and not following the permissible scope of legal limitations under Article 18 (3) of the ICCPR. in which everyone could be convicted for some acts that could be unintentionally did, done in a private sphere, but punished in a very long time in prison or a life or by death penalty. This character of law could be used for the authoritarian regime to oppress their political opponents and make the democracy system in danger.

Second, in the era of democratic society, the existence of BL should be avoided because the law is irrelevant and outdated. Why the BL has become irrelevant and should be repealed or amended this day? Because in a modern era of democracy, States are characterized by the rule of law and the equal protection of human rights, civil rights, civil liberties, and political freedoms for all people (Waldron 2008). In many countries that still have BL in their legal system have ratified the International Covenant on Civil and Political Rights (ICCPR). They obliged to protect and respect FoE guaranteed in Art. 19. However, it doesn’t mean that countries which are not ratified the ICCPR such as Malaysia, Singapore, Myanmar are allowed to ignore Art. 19.39 Because the ICCPR is elucidation of the Universal

39 These countries also have blasphemy laws in their legal system.
Declaration of Human Right that has been accepted as a common standard of achievement of human rights protection around the world. Also, the ICCPR is not only a multilateral agreement but has already transformed into customary international law since it has been ratified by 165 countries and it is already put in an application for seven decades without any objection. It is the obligation of the state as the duty bearer to protect, honor and fulfill the human rights and adjusting their regulation to comply with the IHRL.

The Rabat Plan of Action recommends the States members to abolish the BL. However, many governments insist to keep the law that lead much violence. For example, in various countries, the BLs have been used to prosecute many people. Indonesia, the Amnesty International in 2005 noted that there is 106 persons have been prosecuted under blasphemy law. While in Pakistan, according to the Center for Social Justice the number of persons who charged under blasphemy law between 1987 and 2016 are around 1,472. In Saudi Arabia, Raif Badawi who advocated secular reforms between religion and states authorities has been prosecuted and considered as “insulting Islam” and sentenced with 10 years imprisonments, a 10 years travel band and 1000 lashes. This shows that in practice, blasphemy law is not only a tool for the government’s legitimacy to punish those deemed to be deviant from state-recognized religions, this law also triggers mass violence, and hate speech that discriminate against religious minority groups. The application of BL is often combined with hate speech law and sometimes the boundary between them is unclear and this confusion creates a loose interpretation during the court judgment. As an old law inherited from the past administration, the BL usually don’t get any update or get amended. The difference is only in the usage intensity between the countries. There are some countries such as the United States of America that almost never use the BL anymore, even they haven’t repealed it (Freedman 2009). But there are some other countries that use the BL for charging a death penalty such as Pakistan. While in Indonesia and Malaysia the intensity of the enforcement increased sharply (Crouch 2011). Other countries in Europe starting to follow trends for repealing the BL. Although many publications addressing the BL

40 See the Appendix “Individuals Convicted in Blasphemy Cases in Indonesia Between 2005 and 2014”. See Amnesty International 2014. Prosecuting Beliefs Indonesia’s Blasphemy Laws, Index. ASA 21/018/2014. See also (Pratiwi 2019) states that the number of blasphemy cases increase until 2018.
43 Blasphemy law still exists in several states such as in Massachusetts, Michigan, Oklahoma, South Carolina, Wyoming, and Pennsylvania.
in Moslem majority countries but the similar cases also happened in non-Moslem majority countries such as in Philippine, Singapore, Canada, Germany, etc. Search, seizure, detention, punishment of the author or publisher is not infrequently carried out arbitrarily. The condition that allows an avoidable violence to occur meets Galtung’s definition of a structural violence (Galtung 1969).

Moreover, Galtung (1969) mentioned that structural violence can be characterized by inequality of access to public resources such as politic, education, health, or equality before the law. We can find a structural violence in uneven support to education or in inhumane treatment for undocumented workers. That social unfairness is the form of structural violence. Hansman and Quigley (1982) argue that structural violence could lead into direct violence like harmful attack using a weapon against an innocent person. Then, following the adoption of IHRL after World War II, Fischer (2007) considering the failure to fulfill basic human rights within a nation as an act of violence. Galtung (1993) also mentioning similar premise that “avoidable impairment of fundamental human needs or “[…] the impairment of human life, which lowers the actual degree to which someone is able to meet their needs of that which would otherwise be possible” (p. 106; Farmer et al. 2006). The basic rights according to Fischer (2007) are including survival, economic well-being, freedom and identity. Fischer also distinguished structural violence into two groups. The first group consists of any unfulfilled basic rights such as famine in a group of society because their government doesn’t provide enough food for them. The second group consists of any kind of basic right removal such as banning the right to vote, right to participate on governmental affair for a certain group of people and also any kind of discrimination such as racism, sexism, etc. In the case of blasphemy law, referring from Fischer (2007) a structural violence occurs when minority religious groups are treated arbitrarily, punished, ostracized, expelled from their own land for their beliefs. They suffer because they are forced to leave their religion. When their houses of worship were burned down because their religion was considered heretical, they lost their homes. When they were expelled from their hometowns, they had to evacuate and lost their jobs. Children also become victims because they can no longer get proper education. The failure of the state to be neutral in protecting all religions both established and new religions by maintaining discriminatory laws will make structural violence continue. Moreover, Blasphemy’s law can be

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44 Monitoring of blasphemy laws by the United States Commission on International Religious Freedom (USCIRF) reported that across the globe, many nations still implement and enforce blasphemy laws in various level, but only a few countries repeal them (USCIRF 2017). The repeal of the laws against blasphemy in many western countries such Norway in 2015, Iceland in 2017, Denmark in 2017, Canada in 2018 were influenced by improving global understanding on respecting human rights and fundamental freedom values.
categorized as a violence as indicated by Fischer (2007) or Farmer et al. (2006) since the law damages the basic rights of someone who embraces a new religion like Ahmadiyya, because they are seen as humans who have lower dignity than those who embrace established religions.

Third, as Galtung explains that structural violence is an indirect form of violence while the personal violence has a direct effect. It means that the perpetrator of structural violence doesn’t always directly acting or present on the event of violence (1969, p. 170). Indeed, the application of BL does not make the government as a perpetrator of violence, but through the application of such law encourages other groups to attack certain people or groups of peoples that are considered as blasphemous. The BL that positioned a minority group of religion lower than the majority group of recognized religions creates inequality before the law. As consequences, the lower position group received less protection for their rights as Galtung (1969) indicates that “[structural] violence is built into the structure and shows up as unequal power and consequently as unequal life chances.” Using the BL, the government has indirectly targeted certain minority group of religion with an arbitrary penalty when their expression deemed hurting the “religious feeling” of a member of a majority group of religions. Galtung argues that an unequal treatment that creates inequality before the law would end in social injustice. For instance, in Indonesia, the case of Gafatar, a group of people that promote a new belief\(^{45}\) has been judged by the Indonesian Ulama Council as a deviate group and forbidden to continue their activities. The impact of this judgment for the Gafatar members were devastating such as parents lost their farmlands, houses, jobs because of anger mob who assumed that Gafatar was hurting Islam burned down their property and the children couldn’t go to school because the school expelled them. The government didn’t take enough action to prevent the violence toward Gafatar followers and their families. This condition according to Galtung is a structural violence causing direct and physical violence and according to Fischer (2007) the structural violence that doesn’t immediately showing the impact but in the longer term the negative effects such as poverty on the group will slowly appear and hurt the follower of Gafatar.

However, there is a counterargument explains that the root of structural violence is not the blasphemy law but the act of blasphemy toward religion. Baumgartner (2013) who said that blasphemous act is hurting the feeling of religion’s member just like intolerance act or phycological attack toward religion. In his article, he suggested categorizing defamation as violence\(^{46}\) because this action caused various types of

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\(^{45}\) Gafatar combines the teachings of Islamic, Jews, and Christianity.

\(^{46}\) Baumgartner refers to Galtung (1969) who distinguishes violence into six dimensions, namely (1) physical and psychological, (2) negative and positive, (3) objects injured or not, (4) subjects
injuries, namely indirect intersubjective violence, and psychological violence. Conditions that make it possible to understand defamation as indirect violence and psychological violence, where believers who are offended by blasphemy are ‘backward’ and ‘not enlightened’ are not enough to explain the condition of humiliation felt by others. However, Baumgartner is not sure when classifying blasphemy as physical violence because it depends on the perception of each religion. We can see also in Otto Priminger v. Austria, The European Court of Justice charged Otto because he produced a movie that hurt the Moslem feelings (Kuznetsov 2012, p. 84; Temperman 2011). Other example is in Ahok\textsuperscript{47} case in Indonesia was charged with jail penalty because his speech was deemed as blasphemous and hurt the Moslem feeling. In Pakistan, Asia Bibie was charged with death penalty because her argumentation with her neighbor was deemed blasphemous and hurt Moslem feeling.\textsuperscript{48}

The thesis above, however, has weaknesses. First, the court’s conclusions for those cases get criticized by many human rights experts because it protects “religious feelings” rather than protect the right of the individual. Critics other religious teachings should be considered as a form of freedom of expression that protected under the ICCPR (Art. 19) rather than as form of violence. Second, in most blasphemy cases, the culprits were rarely intended to discriminate others. If blasphemous are intended to incitement hatred that discriminate then it can be considered as indirect violence or structural violence and the perpetrators are punishable under Art. 20 of the ICCPR. For example, in the case of David Irving v Penguin Books and Lipstadt, David Irving was charged because of his expressions that deny Holocaust. Denial Holocaust was considered racism toward Jews (Cohen-Almagor 2009).\textsuperscript{49} Therefore, Irving was found guilty of hate speech. Baumgartner’s

\begin{itemize}
\item acting or not, (5) intentional or not, and (6) real and latent (169–172). Where Baumgartner focuses on blasphemy as a form of psychological violence.
\end{itemize}

\textsuperscript{47} Ahok is a governor of Jakarta who has been considered as blasphemous after insult the Verse Al-Maida of Al-Qur’an and punished two years imprisonments. Retrieved at https://www.thejakartapost.com/news/2018/02/26/judges-made-mistake-in-ahoks-case-lawyer.html.


\textsuperscript{49} See also the case of Norwood v UK (2004), an extreme right wing party of BNP member was displaying poster with words “Islam out of Britain – Protect the British People” was considered by ECtHR as anti-Muslim hate speech (Cannie and Voorhoof 2011; Vrielink 2014; Weinstein 2017). This hate speech expression discriminate Muslim as minority groups of people in the U.K. to become a target of hatred. In the case M’Bala M’Bala v France (2015), the comedian for anti-Semitic insulted a certain race against Jews. This provocative expression also discriminated Jews people in France (Gliszczynska-Grabias 2017; Uddin 2015). In this sense, the enforcement of BL focus on protecting minority groups regarding their racial or religion from any discrimination against them is
opinion on Salman Rushdie case and Muhammad cartoon case saying that both involve on initiating indirect intersubjective violence (p. 48). Through indicating that both cases considered attacking reputation of Islam and it is equal with anti Moslem racism, actually this opinion has no strong argument. Unquestionable that those two cases created disagreements and conflicts in society, but Galtung explains that conflict doesn’t always mean a violence. \[50\] Conflicts is inevitable in a modern democratic society, and argumentation should be protected as a form of FoE. Third, putting the blasphemy as part of psychologic violence or indirect violence toward religion believes is actually contradicted to the purpose of protection to the FoE as a fundamental right (Prud’homme 2010). Blasphemy should be considered a protected expression. Criticism toward religion should not be made illegal, because only through criticism a religion will be developing and growing further. Without protection to FoE people would not be freely expressing their ideas or getting new information that may be the truth. ICCPR explicitly protects the right to freedom of expression but not protecting their feeling from getting hurt or attacked (Temperman 2011). Therefore, placing “blasphemy” as part of structural violence that stated by Baumgartner above (2013) would be counterproductive with the effort of international society that wanted to abolish the blasphemy law.

Universal Declaration of Human Rights 1948 together with ICCPR 1966 and ICESCR 1966 are regarded as the minimum standard achievement of human right protection. Fulfilling the human rights means that everyone received equal treatment and they can exercise their rights without fear. Violating human rights means abandon fundamental rights of citizen such as genocide, war crime, ethnic cleansing, slavery, torture, discrimination against the right of minorities including coercion in religion. Consulting to Chapman’s opinion, human right violations can be characterized into three forms, first, the existence of such actions and policies on the part of governments that result violations; This type of violation refrain from infringing on rights. The second, the actions that result discrimination; and third, violations related to a state’s failure to fulfill the minimum core obligations of enumerated rights (Chapman 1996; p. 43). So, referring to Chapman, the BL meets the first characteristic since they are public policies ruled by the government that compatible with Art. 19 (3) and Art. 20 (3) of the ICCPR in which the perpetrator should be punished.

\[50\] Conflict means a serious disagreement argument or according to the Black Law Dictionary conflict mean “friction that happens when incompatible parties or difference”, while violence means “physical force” or behavior involving physical force intended to hurt, damage, or kill someone or something. Retrieved at http://thelawdictionary.org/violence. Galtung argues that an act of violence indicated by the use of force. He divided violence into three type namely structural violence, direct violence, and cultural violence (Galtung 1990).
cause the violation of FoRB and FoE. Moreover, borrowing the idea of Fischer (2007) who claims that the violation of basic human rights as an act of violence, BL can be grouped as structural violence level 2 which means this regulation will bring forth discrimination based on racism, religion, or other social status. Evident shows that BL actively discriminates minority groups of religion such as Shia, Ahmadiyya, Gafatar in Indonesia (Crouch 2012; Pratiwi 2019), or Christianity in Pakistan, or Islam in Myanmar dan India, or non-Catholic in Philippines. BL has made the States unfairly treated minority groups and not neutral in their relationships towards religions. Even though FoE is not an absolute right and permissible to be limited, but it is not for discriminating particular group (ICCPR art 27). The protection for religion could become imbalanced because of blasphemy law, while the state should be maintaining the same distance toward all religions whether it is recognized or not (art 18[1]). According to General Comment no 22 and Resolution 16/18 freedom of religion means freedom to adopt a religion, to leave or not to adopt any religions which include any theism, atheism or non-theistic. To ensure that all people have the same protection to freedom of religion, the state has to stay neutral toward any religion and even for a group of people that don’t adopt any religion.

Furthermore, the government action usually biased when deal with blasphemy case because of the lack of judicial independency and the absent of the fair trial. In Asia Bibi case in Pakistan, a former mayor got assassinated because he was supporting Bibie and justice member received assassination threat. Therefore, following Galtung (1969, 1990), the idea that BL has met the criteria of structural violence because it creates discrimination against minority groups of religions, prevent them to enjoy their basic needs (Galtung 1969) and cause what Fischer called “social injustice” (2007). This law has violated FoE and FoRB. Rabat Plan of Action’s recommendation to abolish the BL should be implemented immediately. The States should change the BL into anti-hate speech law in according to Art. 20 of the ICCPR to prevent incitement of hatred that advocating violence or discriminative toward minority groups or indirect violence or psychology violence towards minority groups of religion or race in order to avoid genocide or ethnic cleansing. Advocated hatred that would turn into a bigger violence can be seen in many cases such as in Hutu and Tutsi conflict, Moslem Bosnia conflict, Moslem in Uighur, and even Nazi Germany in the past.

4 A Challenge for Maintaining Sustainable Peace: Shifting from Traditional Approach into Human Rights Approach

Johan Galtung (1969) in Grewal (2003) divided peace into two meanings, negative peace and positive peace. The negative peace means “the absent of violence, the absent of war”, while positive peace means “the integration of human society” (p. 2). The “negative peace” focused on the absent of violence or war in all time, such as ending the war, promoting anti-war or anti-nuclear weapon. To reach the absent of war, negative peace using curative approach and pessimist framework while the positive peace is more ideal because using a preventive and optimist approach where peace should be reached using peaceful means. Therefore, when tension happened, the positive peace approach would try to communicate it in order to avoid violence through civilization, development, or peace and conflict resolution. The political will of the state to review, or revoke blasphemy laws is a global demand may create positive peace by optimizing the protection of religious freedom and freedom of expression without discriminating against religious minorities.

Declaration on the Right of Peoples to Peace of 1984 in Art. 3 states that in order to guarantee the right of people to peace recalls the States to follow the United Nations Charter such as eliminate the threat of war, prevent the use of force in international relations and solve the international dispute in peaceful means.\footnote{Approved by General Assembly resolution 39/11 of 12 November 1984.} The “negative peace” approach prioritize the action on preventing a nation attacking another nation or a war between nations. However, the nation cannot oblivious to any potential of violence within their territory and also violence in the form of ignorance or unfulfilling the human rights. The “negative peace” approach is less relevance for human right violation in a domestic setting. Even though countries that apply BLs are not in a state of war against other countries, structural violence caused by the application of BLs at home will also threaten peace, especially among religious adherents. Neglecting the obligations of the state in realizing human rights fully will trigger a repetition of violence targeting religious minority groups. If this is allowed then social injustice, as Fischer said, as a form of structural violence will continue to be repeated.

In 2016, the Human Rights Council adopted Declaration on the Right to Peace and recalls Governments, non-governmental organizations to disseminate the Declaration and to promote universal respect and understanding thereof based
on the UN Charter and all instruments of human rights. In the Annex of the Declaration states that “peace is not only the absence of conflict but also requires a positive, dynamic participatory process where dialog is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, and socioeconomic development is ensured.” This approach is aimed for “positive peace”. The right to peace should be included into human rights and this approach is called the “positive approach” where there is no limitation to exercise human rights (Art. 2). “Everyone has the right to enjoy peace such that all human rights are promoted, protected and development is fully realized” (Art. 1 of the Declaration). In Article 2 The Right to Peace through full realization of human rights, the State oblige to full realization of human rights through development, that rare focus on protecting vulnerable groups of people (equality and non-discrimination) (p. 4); respect, implement and promoting justice and the rule of law and respect, implement and promoting freedom from fear and want. To apply this approach to the State, the UN system and other relevant International Organization need to support and assist through programs and education, such as Promotion of a culture of peace through education at all levels.

According to UDHR “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized” (Art. 28 of the UDHR). Arvana, a Professor from the University of Peace Study, said that “Without peace there is no right”. Without peace there is no development”. Galtung made that observation back in 1969 in ‘Violence, Peace, Peace Research’, well before the formulation of the right to develop. In the 1986 Declaration on the Right to Development, Article 4.2 addresses what Galtung called a ‘deficiency.’ It states that sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with

53 Recalling Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Vienna Declaration and Programme of Action, Recalling also the Declaration on the Right to Development, the United Nations Millennium Declaration, including the Sustainable Development Goals, and the 2005 World Summit Outcome, Recalling further the Declaration on the Preparation of Societies for Life in Peace, the Declaration on the Right of Peoples to Peace and the Declaration and Programme of Action on a Culture of Peace, and other international instruments relevant to the subject of the present declaration.

54 Emotional speech by Dr. Francisco Rojas Aravena, at the High Level Forum on Culture of Peace at the United Nations On September first 2017, the V High Level Forum of the United Nations Culture of Peace was held in New York in the framework of the 70th session of the General Assembly of the United Nations in which the Rector of the University for Peace, Dr. Francisco Rojas Aravena presented his speech calling for global awareness, integration of peoples and non-radicalization.
appropriate means and facilities to foster their comprehensive development.\textsuperscript{55} The state should not turn a blind eye to the views of the international community about the dark side of the application of the Blasphemy Law for human dignity. Various recommendations from the international community towards the Universal Periodic Review on the need to revoke the Blasphemy Law should be considered. Various educations about peace can be used as national action plans to strengthen and support the idea that the right to peace is a fundamental part of human rights.

5 Concluding Remarks

The concept of BL’s ambiguity in Pakistan, Malaysia, and Indonesia creates injustice and inequality in society. When the states do not have a neutral position, their treatment to the groups of the established religions, the non-recognized religions and the non-believers are different. States favoritism towards the established religions groups demand the BL is primarily applied to protect them. While other group members were subjected of such punishment. The BLs considered as a form of structural violence because of two reasons. First, the BL as a legal system has a repressive character. It over limits to the right to freedom of expression and create violence targeted an accused with various punishments including long time of imprisonment, fine, and death penalty. Although UDHR and its covenants are accepted as the general standard for achievement of human rights, the violence caused by unjust and discriminatory laws such as BLs should be avoided. States neutrality is needed to guarantee that all religions are protected equally. Conversely, since the BLs continues to be maintained and strengthen in many countries, they create many kinds of violence such as imposing severe punishment, banning to exercise one’s rights, expelling persons from their own land, burning their house of worship. In this sense according to Galtung (1969) the violence be apparent. Ideally, BL is expected to increase tolerance among fellow believers. But then in practice BL incarnates to only converges on protecting the religious system religious feelings of the established religion but oppresses either the adherents of the minority groups of religion or the non-believers. This conclusion challenges Baumgartner (2013) who argues that the act of blasphemy is a form of psychological violence. Baumgartner argues that blasphemy act makes people feel offended as a backward or unenlightened group. But Baumgartner forgets that the law does not protect abstract things like feelings. The law should protect the right of the individual in concrete meaning such as one’s soul, body or property of the individual. If the law is based on feelings, then the question is

\textsuperscript{55} See General Assembly Resolution 41/128, 4 Dec. 1986.
whose feelings will be used as parameter and how the court can justify a common feeling. This confirms of what was proposed by Temperman (2011) that BL should protect individual rights instead of religious feelings.

Second, the BLs cause indirect violence that creates social injustice. Many people or a group of persons who stigmatized as perpetrators of blasphemy experienced unfair treatment such as being driven out of their hometowns, burned down in their homes and places of worship, ostracized because they are considered as heretical groups. Religious minorities have failed to enjoy their freedom of their own religious identity as a basic human need as a result of the application of Blasphemy’s law, fulfilling Fischer’s opinion (2007) about what is categorized as structural violence. Thus, the blasphemy law has become a disturbance for the fulfillment of the basic rights of followers of unrecognized religions, which according to Farmer et al. (2006) this disorder will put humans one degree lower than other humans. Whereas followers of religious minorities are also citizens who have the same position before the law and their constitutional rights are guaranteed.

This problem challenges the national community in maintaining sustainable peace through positive peace (Galtung 1964) encouraging the States to end the blasphemy laws through the fulfillment of human rights protection, particularly how to make a balance between protecting the right to freedom of religion and the right to freedom of expression. An-Na’im’s idea that the state is neutral regarding religious doctrine and public policy by continuing to promote religious observance needs to be considered. Maintaining the blasphemy law to maintain religious tolerance could be supported if the blasphemy law was revised to use high legal standards. Furthermore, promoting a culture of tolerance and peace through education at all levels and respect the diversity of religions and beliefs through education is also important for building a sustainable peace. Hence, the States as a part of international community has the duty to maintain peace through the positive attitude such as willingness to open dialog and cooperate with civil societies for a better realization of human rights protection.

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**International, Regional, National Instruments and other resources**


The UN General Comment No. 34, Article 19, Freedoms of opinion and expression.

The UN General Comment No. 22 of the International Covenant on Civil and Political Rights.


The UN Human Right Council, 2011. Resolution 16/18 on Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against persons based on religion or beliefs.


The Law No. 1/PNPS/1965 on the Preventing of “Religious Abuse and/or Defamation”.

