



CREEPING CRIMINALISATION

**Mapping of Indonesia's National Laws and Regional Regulations
That Violate Human Rights of Women and LGBTIQ People**

Written By Nursyahbani Katjasungkana and Saskia E. Wieringa

Edited By Grace Poore



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Every day around the world, LGBTIQ people's human rights and dignity are abused in ways that shock the conscience. The stories of their struggles and their resilience are astounding, yet remain unknown—or willfully ignored—by those with the power to make change. OutRight Action International, founded in 1990 as the International Gay and Lesbian Human Rights Commission, works alongside LGBTIQ people in the Global South, with offices in six countries, to help identify community-focused solutions to promote policy for lasting change. We vigilantly monitor and document human rights abuses to spur action when they occur. We train partners to expose abuses and advocate for themselves. Headquartered in New York City, OutRight is the only global LGBTIQ-specific organization with a permanent presence at the United Nations in New York that advocates for human rights progress for LGBTIQ people.

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Executive Summary

Creeping Criminalisation: Mapping of Indonesia's National Laws And Regional Regulations That Violate Human Rights of Women and LGBTIQ People is a report by OutRight Action International.

It maps the legal framework in which lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) rights and women's rights in Indonesia are curtailed. Except when quoting or referencing a source, OutRight uses "LGBTIQ" to cover a broader spectrum of non heteronormative sexualities and genders. We acknowledge that some terms in Indonesia's national language as well as in languages used by different communities at the regional level may be more nuanced in conveying fluidity of gender and sexual orientation.

In this report we examine national laws and laws in eight provinces, called regional regulations that are passed by provincial legislatures or local governments in order to understand the commonalities and

specificities of the impact of these national laws and regional regulations on LGBTIQ rights and women's rights.

The purpose of this report is to be an advocacy tool for Indonesian activists and allies for human rights, women's rights and LGBTIQ rights. It is laid out to give specific legal information and analysis regarding national and regional level laws and regulations. It provides general historic background of Indonesia's legal processes as context for understanding the proliferation of regional regulations. Information on international human rights law is also provided since Indonesia has ratified several international human rights treaties.



In setting the context for the report, it is important to note that debates on gender and sexuality issues, including on LGBTIQ issues have increased in Indonesia. Over the last decade the LGBTIQ movement has become more visible, exposing the stigma, discrimination and violence that LGBTIQ people experience. At the same time, conservative actors in Indonesia have also become more vocal. Several hard-line Muslim militias have gained notoriety for interfering with LGBTIQ gatherings and for committing other acts of violence against LGBTIQ individuals. Prominent political and religious leaders have also made homophobic statements. The Ministry of Women's Empowerment, after a progressive start on sexual rights in the late 1990s, has become increasingly conservative.

The purpose of this report is to be an advocacy tool for Indonesian activists and allies for human rights, women's rights and LGBTIQ rights.

Annual reports of the National Commission on Violence Against Women (Komnas Perempuan) indicate that violence against women including lesbian, bisexual and transgender (LBT) women is rampant and, regional regulations in the provinces are having adverse impact on gender based violence.

For the purpose of understanding Indonesia's legislative processes, it is important to distinguish that the Central government of Indonesia granted regional autonomy to principal governments of provinces as part of the Reformation Era, which began in 1998. As a result, lawmakers at the

provincial level seized the opportunity to draft conservative regional regulations. For example, Muslim dress codes are imposed at regional levels, while they are not at the national level. Meanwhile, to date, there is no national anti-discrimination law that comprehensively covers internationally recognized grounds of discrimination, including sexual orientation and gender identity (SOGI). There is also no SOGI-specific law or a law that specifically protects women from gender based discrimination.

Overview of Findings

For this report, we analysed regional regulations that discriminate on the basis of gender and sexual orientation in eight provinces: Aceh, DKI Jakarta, East Kalimantan, Lampung, North Sumatera, South Sulawesi, South Sumatera and Yogyakarta. The analysis demonstrates that though there is much overlap among the provinces, there are also significant regional variations.

Creeping Criminalisation highlights that the regional regulations (at province, district and city levels) examined for this report do not fall in line with national laws, contravene the Indonesian Constitution, and ignore the Pancasila—the five pillars that are the foundational principles of Indonesia. It is observed that when reference is made to the Pancasila as justification for the construction of conservative laws, only the first sila (Belief In One God) is quoted and a narrow, more extremist, interpretation of Islamic law is pushed onto all Indonesians, regardless of the religious, ethnic, and cultural diversity of Indonesian society and in contrast to the moderate interpretation of Islam practiced by most Indonesians.

The first key finding of the legal mapping is that the growing influence of fundamentalist interpretations of Islam affects the understanding of the relationship between the Indonesian State and religion. Human rights are increasingly seen as a Western concept, although the Pancasila contains pillars that stress human rights. Homosexuality is seen as a disease to be cured by religious counselling and rehabilitation, and also as a crime to be punished. Women's subordination to men and the prohibition of homosexuality are central tenets, affecting formulation of the regional regulations.

A second key finding is that violence and discrimination against women (including LBT women and also gay and transgender men) are not considered crimes. A number of the discriminatory regional regulations contain specific references to the responsibility of 'the society' to report conceived violations. This mobilisation of homophobic and misogynist sentiments has led to the establishment of a 'moral police' (such as in Aceh). The appeals of the morality police to members of the community to take the law into their own hands potentially contribute to mob violence.

A third key finding is that most of the regional lawmakers do not have the technical skills to draft laws and regulations. They do not understand national versus district level jurisdiction. Many of them do not grasp the concept of gender equality; they do not understand key principles of the Constitution. Most regional regulations explicitly state that their goal is to free the region from immoral acts and to assert norms of decency based on religion and culture. However, they seldom spell out

which 'tradition' or 'culture' since Indonesia has many different cultural traditions, which religion and religious interpretation is being followed, what particular religious texts are being used, and what exactly the religious teachings say about what is being claimed in the regional regulations. Human rights-based interpretations of Islam are not favoured.

Most of the regional lawmakers do not have the technical skills to draft laws and regulations.

Regional legislators are often motivated by local politics and play to the religious sentiments of voters to maintain their power and position. In this discourse of tradition and morality, various regional regulations are not based on the rule of law but on vague and undefined or ill-defined notions of culture, respectability, or national identity. There is often a conflation of indecency, sex work, pedophilia and homosexuality.

Escalation of Anti-LGBT Sentiments

While research for this report was underway, several disturbing developments took place which impact the rights of Indonesian LGBTIQ citizens: the country became engulfed in a vitriolic media campaign in which LGBTIQ groups and individuals were vilified and several national political parties are currently discussing anti-LGBT legislation in Parliament. See Annexes I and II to this report.

During the national furore against LGBTIQ groups in the first months of 2016, conversion therapy was widely advocated for the

'rehabilitation' of homosexual people despite scientific evidence that such therapy does not work and has been proved to be a harmful practice with long-term consequences.¹ The Minister of Social Affairs, Khofifah Indar Parawansa in fact promoted the Emotional, Spiritual Quotient (ESQ) method so LGBTIQ people could become 'normal' again.² The push for conversion therapy continues to the present time.

In March and April, and again in August 2016, a national anti-LGBT law was proposed for Indonesia by parliamentarians from conservative parties.³ If such a law passes, Indonesia will join other countries in the region who have British colonial laws that criminalise same sex relations. In the midst of the homophobic campaign a survey was conducted which indicated that LGBT people were the most disliked group in Indonesia, even more so than communists.⁴

A petition was also filed by Aliansi Cinta Keluarga (Family Love Alliance) with the Constitutional Court for judicial review of several articles of the Criminal Code, which, if accepted by the court, would make consensual same-sex behaviour and any sexual activities outside of legal marriages punishable.⁵ Not only LGBTIQ people, but all Indonesians will be affected as both rights to privacy and non-discrimination will be threatened. At the time of finalizing this report it is not yet clear how the Court will rule. The petitioners argued that homosexuality is 'contagious' and

they want Indonesia to have clearer norms and regulations 'stipulating that anyone having casual sex is committing adultery'. They asked the court to change the terms 'adults' and 'minors' in Article 292 to 'people', which would criminalise adult consensual same sex relations. The petitioners also want to annul Article 284 on adultery and Article 285 on rape in an attempt to make any sexual relations between unmarried persons a crime.⁶ If the Constitutional Court agrees, many of the discriminatory regional regulations discussed in this report would suddenly all be in line with the Criminal Code.

Recommendations Include:

At the district level:

- Increase the capacity and technical skill sets of legislators to draft comprehensive laws, which uphold human rights, women's rights and LGBTIQ rights. In each district, the relevant regional bylaws/regulations need to be analysed, using a women's rights, LGBTIQ rights and human rights framework. The bylaws need to be adapted to national and international laws and standards.

At the national level:

- The government of Indonesia must ensure that the national Constitution, laws and policies do not discriminate, are in line with the country's international obligations, and are consistent with

¹ <http://www.abualbanicentre.com/rehabilitasi-kelainan-orientasi-sexual>

² <https://m.tempo.co/read/new/2016/02/28/173749009/menteri-khofifah-lgbt-bisa-semuh>

³ <http://www.thejakartapost.com/news/2016/04/15/ppp-to-propose-anti-lgbt-propaganda-bill-1460698417.html> and <http://www.thejakartapost.com/news/2016/03/05/hanura-calls-law-against-lgbt-people.html> and <http://www.thejakartapost.com/news/2016/08/03/gay-sex-may-be-outlawed.html>

⁴ <http://www.thejakartapost.com/news/2016/08/01/lgbt-community-most-disliked-by-indonesian-muslims-survey.html>

⁵ <http://www.thejakartapost.com/news/2016/08/03/gay-sex-may-be-outlawed.html>

⁶ <http://www.thejakartapost.com/news/2016/08/03/gay-sex-may-be-outlawed.html>

each other. Discriminatory provisions of national laws (for example the Anti-Pornography Law), which infringe on basic rights enshrined in the Constitution, must be amended or removed. Lawmakers should not draft legislation that breach existing rights enshrined in the Constitution.

- The government of Indonesia must exercise its power to revoke regional bylaws/regulations that infringe upon the human rights of Indonesian citizens, including LGBTIQ people, as enshrined in the Constitution and national laws. Such a revocation would be in line with the national Law on Regional Autonomy and the mandate on the hierarchy of laws.
- The government of Indonesia must adopt necessary measures to prevent, reduce and eliminate the conditions and attitudes that cause or perpetuate discrimination against women and LGBTIQ communities. This includes applying the principles of equality and non discrimination in the international human rights treaties that Indonesia is party to—including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), International Covenant on Civil and Political Rights (ICCPR), International Convention on Rights of the Child (CRC). This also includes implementing the Yogyakarta Principles to combat LGBTIQ discrimination.
- Civil society groups must initiate debates on human rights, LGBTIQ rights and women's rights in relation to cultural and religious diversity.

At the international level:

- Indonesia has ratified at least six UN human rights treaties. It must accept the Concluding Observations of treaty bodies and take measures to implement Recommendations, including any relating to gender and sexual orientation, i.e., LGBTIQ issues.
- Indonesia must implement the Conclusions and Recommendations of the Report of the UN High Commissioner for Human Rights on discriminatory laws and practices against groups and individuals on grounds of gender and sexual orientation.
- LGBTIQ groups must seize the opportunity to make presentations on the conditions of Indonesian LGBTIQ people to the newly created position of UN Independent Expert on Sexual Orientation and Gender Identity.
- LGBTIQ groups must actively participate in UN processes (Universal Periodic Review, treaty body reviews) to highlight concerns impacting LGBTIQ communities. Other human rights groups, including women's rights and child rights groups must amplify the voices of LGBTIQ groups in these international spaces—their recommendations to the UN must be comprehensive to improve conditions for all marginalized communities, including LGBTIQ.

Glossary & Acronyms

<i>Adat</i>	local customs
<i>Amah</i>	particular form of Islamic worship
AMM	Aceh Monitoring Mission
AMN	Aceh Monitoring Network
<i>Aqidah</i>	<i>fiqh</i> -based regulations, related to practices assumed to belong to the Prophet
Arus Pelangi	literally, Rainbow Stream, a national LGBTI association in Indonesia
<i>Aurat</i>	part of the body that has to be covered in public according to Islam (different for men and women)
<i>Banci</i>	transgender person
Beijing PFA	Platform for Action (of the 1995 Beijing Fourth World Conference on Women)
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIL	Compilation of Islamic Law
CRC	Convention on the Rights of the Child
<i>Dangdut</i>	popular romantic style of music
<i>Fatwa</i>	Muslim advice or decision, usually issued by the MUI
FGD	Focus Group Discussion
<i>Fiqh</i>	Islamic jurisprudence
FJI	<i>Front Jihad Islam</i>
FPI	<i>Front Pembela Islam</i> , Islam Defenders' Front
FTM	Female To Male
FUI	<i>Forum Umat Islam</i> , Forum of the Muslim community
GAM	<i>Gerakan Aceh Merdeka</i> , Free Aceh Movement
<i>Gemblak</i>	young effeminate boys who are helpers of the warok
GOI	Government of Indonesia
<i>Halal</i>	acceptable according to Islam (for instance food)
<i>Haram</i>	forbidden according to Islam
<i>Hijab</i>	Muslim dress for women, intended to cover their <i>aurat</i>
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HTI	<i>Hizbut Tahrir Indonesia</i>
HRC	Human Rights Committee
<i>Ibadah</i>	Religious obligations, such as <i>sholat</i> (prescribed prayers) and fasting
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICPD	International Conference on Population and Development



IS	Islamic State
<i>Jilbab</i>	headdress for Muslim women
<i>Jin</i>	(evil) spirit
<i>Jinayah</i>	criminal law
<i>Kabupaten</i>	district (headed by a bupati)
<i>Kerudung</i>	loose scarf worn by women
<i>Kesusilaan</i>	public morality
<i>Khalwat</i>	immoral conduct
<i>Khamar</i>	drinking alcohol
Komnas HAM	<i>Komisi Nasional Hak Asasi Manusia</i> , National Human Rights Commission
Komnas Perempuan	<i>Komisi Nasional anti Kekerasan terhadap Perempuan</i> , National Commission on Violence Against Women
KPI	<i>Komisi Penyiaran Indonesia</i> , Indonesian Broadcasting Commission
KUHAP	<i>Kitab Undang-Undang Hukum Acara Pidana</i> , Law of Criminal Procedures
KUHP	<i>Kitab Undang-Undang Hukum Pidana</i> , Penal Code
LBH	<i>Lembaga Bantuan Hukum</i> , Institution for Legal Aid
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer
<i>Liwath</i>	sodomy
<i>Ludruk</i>	popular form of theatre
<i>Mahdah</i>	particular form of Islamic worship
<i>Mahram</i>	(also spelled <i>muhrim</i>), relatives
<i>Mairil</i>	young male student in pesantren, used for sexual gratification by one or more of his religious teachers
<i>Maisir</i>	(<i>main</i>) gambling
<i>Maksiat</i>	sin (refers to individual sin)
<i>Mesum</i>	immoral conduct
Ministry of WECP	Women's Empowerment and Child Protection
MoU	Memorandum of Understanding
MPR	<i>Majelis Permusyawaratan Rakyat</i> , People's Consultative Council
MUI	<i>Majelis Ulama Indonesia</i> , Council of Indonesian Islamic Scholars
<i>Musahaqah</i>	consensual lesbian sex
NU	<i>Nahdlatul Ulama</i> , Islamic scholars
OIC	Organisation of Islamic Cooperation
PBNU	<i>Pengurus Besar Nahdlatul Ulama</i> , Governing Board of the Nahdlatul Ulama
<i>Pelacuran</i>	prostitution
<i>Persenggamaan menyimpang</i>	deviant sexual relations
<i>Pesantren</i>	Islamic boarding school
PKB	<i>Partai Kebangkitan Bangsa Nasional</i> , National Awakening Party
PKI	<i>Partai Komunis Indonesia</i> , Indonesian Communist Party
PKS	<i>Partai Keadilan Sejahtera</i> , Prosperous Justice Party
POA	Programme of Action (of the 1994 ICPD Conference)

PP	<i>Peraturan Pemerintah</i> , Government Regulation
PPUU	<i>Peraturan Perundang-undangan</i> , the Process and Procedure for making Regulations
<i>Preman</i>	thug
PSK	<i>Pekerja Seks Komersial</i> , commercial sex worker
<i>Qanun</i>	regulation
RA	<i>Raden Adjeng</i> (princess)
<i>Santri</i>	(former) student of pesantren
SGRC UI	Support Group and Resource Centre on Sexuality Studies at the Universitas Indonesia in Jakarta
<i>Sholat</i>	prescribed Muslim prayers
<i>Sihaq</i>	rubbing of body parts (in same sex relationships between women)
<i>Sirri</i>	religious marriage, marriage that's not legally registered
<i>Syair</i>	teaching public awareness of Islam
UDHR	Universal Declaration of Human Rights
<i>Ulama</i>	religious leader
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNDIP	Universitas Diponegoro (in Semarang)
UNILA	University of Lampung
<i>Waria</i>	male to female (MTF) transgender
<i>Warok</i>	male dancer with magical power in the reyog tradition, his helpers are <i>gemblak</i> , young effeminate boys
WH	<i>Wilayahul Hisbah</i> – Aceh Sharia police
WTS	<i>Wanita Tuna Susila</i> , woman without morals
<i>Wayang</i>	a form of theatrical performance
<i>Zina</i>	adultery

Introduction

This report by OutRight Action International, *Creeping Criminalisation: Mapping of Indonesia's National Laws And Regional Regulations That Violate Human Rights of Women and LGBTIQ People* maps the impact of discriminatory legislation on the rights of LGBTIQ people and women in Indonesia.

Fundamentally, all people—women, lesbian, gay, bisexual, transgender and intersex people—should enjoy full human rights without discrimination. Inalienable human rights and the principle of non-discrimination are enshrined in countless international instruments, providing for a wide scope in application. Human rights principles in Indonesia are embedded at the national level in the 1945 Constitution, especially in Section X on human rights in the Law on Human Rights No. 39/1999. However, in a patriarchal heteronormative society such as in Indonesia, women and people who live non-normative lives continue to be discriminated against and their rights restricted.

At the national level homosexuality is not overtly criminalised, however laws exist that infringe on the rights of LGBTIQ Indonesians. The Anti-Pornography Law

of 2008 became the first national law to contain specific discriminatory language against homosexuality and lesbianism. Several laws such as the Health and the Marriage law in particular contain discriminatory passages to women and do not recognize the needs and rights of LGBTI people.⁷ There are currently no laws that support the rights of LGBTIQ people and no laws that specifically prohibit the discrimination of women and LGBTIQ people.

An assessment by Arus Pelangi, a leading national LGBTI organization in Indonesia, revealed that discrimination and gender based violence, especially against LGBTIQ people, is rampant and impacts many aspects of LGBTIQ people's lives.⁸ Arus Pelangi notes that a biased, patriarchal understanding of culture and religion, strengthened by a discourse heavily influenced by religious

⁷ For the Marriage and Health laws see Nursyahbani Katjasungkana and Saskia E. Wieringa, 2003, Sexual Politics and Reproductive Rights in Indonesia, in Development, Society for International Development Vol 46, no. 2, 63 – 67.

⁸ The association Arus Pelangi was set up in 2006; it is one of the largest LGBTI organisations in Indonesia.

conservatives, influences the drafting and codification of discriminatory national laws and regional bylaws/regulations.

Annual reports of the National Commission on Violence Against Women (*Komnas Perempuan*) also indicate that violence against women in Indonesia is rampant and recent legislation adversely affects women's rights.

There are currently no laws that support the rights of LGBTIQ people and no laws that specifically prohibit the discrimination of women and LGBTIQ people.

In *Creeping Criminalisation: Mapping of Indonesia's National Laws And Regional Regulations That Violate Human Rights of Women and LGBTIQ People* we outline the commonalities and specificities of violations of the rights of LGBTIQ groups and women. We show how discrimination against women is intricately interwoven with discrimination on the basis of non-conforming sexual orientation, gender identity and gender expression (SOGIE).

Methodology

This report is built on case material collected by *Arus Pelangi* and Komnas Perempuan, and supported by materials from Ardhanary Institute, Indonesian Women's Association for Justice (*Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan*), LBH APIK (a national network of women's legal aid bureaus), OurVoice, and LBH Jakarta.⁹

During the period of writing *Creeping Criminalisation* two Focus Group Discussions (FGDs) were convened in Jakarta for lawyers, law professors, activists, human rights commissioners and women's rights commissioners. In the first FGD, in December 2015, the legal mapping draft framework was outlined. In the second, in February 2016, the legal analysis of the report was discussed and recommendations for stakeholders were drawn. A third FGD will be held in Indonesia to share results of the published report.

Interviews with key informants were not held as this report focuses on legal analysis and not on social attitudes. An intersectional approach was taken in the analysis of this report. Women's rights, LBT and gay and trans men's rights were seen as overlapping and complexly interwoven. No other intersectional factors were analysed. Important elements such as class and religion are only referred to where relevant.

While a few case studies are highlighted as illustrations, this report does not cover the overall conditions contributing to violence and inequalities for Indonesian LGBTI people and women in general.

Foundational Material and Findings

Since 2010, Komnas Perempuan (National Commission on Violence Against Women) has compiled a list of national laws and regional regulations that discriminate against women on the basis of sex. In its 2015 Fact Sheet, the Commission focuses on the effects of discriminatory regional regulations.

We found that 318 of the 389 discriminatory regional regulations identified by Komnas Perempuan that curtail the rights of women also negatively impact transgender persons—waria, cross-dressers, transgender (male to

⁹ Ardhanary Institute is an organization of lesbian and FTM persons; Our Voice is an LGBTI organization.

female) women, and transgender (female to male) men. These regulations infringe on freedom of movement, impose night curfews, and also regulate the clothes that transgender people wear and the spaces they can occupy.

For this report we focused on the discriminatory regional regulations that relate to eight provinces: Aceh, DKI Jakarta, East Kalimantan, Lampung, North Sumatera, South Sulawesi, South Sumatera, and Yogyakarta. Since many of the regulations we examined are wholly or partly copy-pasted from region to region across Indonesia, our findings and analysis in this report are valid in other regions of the country beyond the focus of this report.

Legal Framework

In this report, *Creeping Criminalisation*, we assess the legality of the regional regulations of eight regions, based on Law No. 10/2004 (replaced by Law No. 12/2011) on the Process and Procedure for making Regulations (Peraturan Perundang-undangan/PPUU).

According to Article 9 of Law No. 12/2011, the hierarchy of legal instruments in Indonesia is as follows:

1. The 1945 Constitution
2. The People Consultative Decrees
3. Laws or Government Regulations that replace laws
4. Government Regulations
5. Presidential Regulations
6. Provincial Regional Regulations
7. District Regional Regulations

By law, the regional regulations at the bottom of this hierarchy cannot contradict laws and regulations higher up in the hierarchy.

Three principles of authority can be established in assessing the legality of Articles of regional regulations:

1. Higher laws take precedence over lower regulations.
2. Later laws take precedence over earlier ones.
3. Specific laws take precedence over general laws.

If a law is suspected of conflicting with the 1945 Constitution, it shall be reviewed by the Constitutional Court. If a regulation below a law is suspected of conflicting with national laws, it shall be reviewed by the Supreme Court.

A policy is discriminatory if its contents or implementation entails containment, distinction, elimination or indifference both directly and indirectly, based on differences between human beings on whatever grounds, including religion, ethnicity, race, social or economic status, sex or gender including gender identity and gender expression, sexual orientation, language, or political conviction, which results in the reduction, divergence or abolition of the recognition, implementation or enjoyment of human rights and the basic freedoms in the lives of individuals or the society in the fields of politics, economy, law, social relations, culture or other aspects of life.¹⁰

¹⁰ Adapted from the definition used by Komnas Perempuan (2015).

Country Context

Regional Autonomy

Indonesia has 34 provinces, five of which have special status, including Aceh, Jakarta and Yogyakarta and hundreds of districts (*kabupaten*, the number is growing), which are asserting themselves by claiming autonomy and issuing their own regional regulations. Law No. 22/1999 allowed for the decentralization of power. This policy became effective on January 1, 2001.

This section provides historical context for the proliferation of regional regulations at the province, district, and city levels in Indonesia. The section expands on the juxtaposition of regional level bylaws, which are often drafted to reflect the religiously conservative and populist values of provincial voters, with Indonesian national laws, which are grounded in a secular Constitution. The report finds that provincial level politicians draft or support more conservative and religiously influenced laws, in an effort to gain popularity with conservative voters, who make up the majority of all voters, and to remain in office. The report argues that since regional

level regulations and bylaws currently stand in contradiction to the principles of Indonesia's secular Constitution, the Supreme Court should step in and address the inconsistencies in regional laws to align with national laws.

Most of these populist-inspired regulations are based on patriarchal and fundamentalist (Wahabist Islamic) appeals to 'tradition, culture and religion,' which subordinate women and LGBTIQ people. As such, regional regulations do not protect women and LGBTIQ people from SOGI-based and gender-based violations. In such an environment, violence and discrimination against women (including LBT women and gay and transgender men) are not considered crimes, rather violence is often seen as corrective action and discrimination is seen as deserving, as victims are usually considered to be offenders of religious and cultural norms.

While the Indonesian Constitution is founded on secular principles, Indonesian politics is often influenced by religion. This is because



the State is not only based on the foundation of a secular constitution, but also on the *Pancasila*, the philosophical foundation of the Indonesian state, where the first *sila* (pillar) relates to the Belief in One God. These contradicting values have an impact on legislation, and have allowed for the passing of laws that are in fact biased by religion. The concrete consequences are that the drafters of the regional regulations prioritize their own religious values and fail to protect rights of non-Muslim and secular Indonesian religious minorities. This has led to the codification of hundreds of discriminatory regulations and policies, criminalizing and controlling the lives of LGBTI people, women and religious minorities.

Political History and the Impact of Regional Autonomy

Indonesia is a large, ethnically and religiously diverse archipelago, where centrifugal tendencies have threatened the harmony of the state. An explanation of this is that Indonesia, as we know it, is the amalgamation of territories, which were forcibly united by Dutch colonization. Disparate ideologies have materialized into civil discontent with the state at various points in Indonesian history. Government leaders have deployed a range of efforts to contain civil discontent; most notable is former Indonesian President General Suharto, whose thirty-two year authoritarian reign saw the restriction of civil liberties and massive violations of human rights against civilians.

The abrupt departure of President Suharto in 1998 was a critical moment in Indonesian history. Notably, by the end of the 1990s

corruption and civil discontent had risen to an all time high. President Suharto's successor, Habibie, inherited a volatile nation. He was acutely aware of the extent of regional discontent. He sought to contain the possible outbreak of regional conflict by granting administrative autonomy to provinces and districts that had their own governing bodies.

By November 1998 the Special Session of the People's Consultative Assembly (MPR) adopted a decree for the implementation of regional autonomy. The Ministry of Home Affairs drafted Law No. 22/1999, adopted in May of 1999, which was eventually replaced by Law No. 32/2004. This allowed for the transfer of authority from the Central government to the district level. The drafters of Law No. 22/1999 assumed that regional level laws would fall within the framework of the national laws. On the basis of this assumption, they neglected to explicitly state in that law (No. 22/1999) that regional regulations must align with and not contradict the Constitution and national laws. This oversight was corrected in 2011, where Law No. 32/2004 explicitly stipulates this requirement.

The granting of regional autonomy on specific grounds (such as public work, health, education and culture and economic sectors such as forestry) had two intended effects. Firstly, it answered the call for more democracy in the regions removing potential reasons for regional unrest. Secondly, in bypassing the provinces generally large enough to become independent entities, it encouraged collaboration among small districts and ultimately increased the ties of these districts with the national level.

There were also many unintended effects to granting regional autonomy. When the

Law on Regional Governance came into effect on January 1, 2001, the national legal framework within which regional autonomy could happen was far from ready. Ambiguities and conflicts of authority arose between district and provincial councils, and between national bodies and district level authorities.¹¹ Consequently, while this Law (No. 32/2004) granted more authority to the provinces, the proliferation of laws created at so many different levels—province, district, city—contributed to legal confusion, or as some called it, ‘legal disorder’.¹²

Indonesia, as we know it, is the amalgamation of territories, which were forcibly united by Dutch colonization.

Recognizing the inconsistencies of regional laws with the Constitution and national regulations, the Minister of Home Affairs again changed the Law on Regional Governance in 2014 (No. 23/2014). In paragraph 251- 2e this law explicitly states that: ‘regional policies are not allowed to contradict higher level regulations and common interests nor can they be allowed to discriminate on the basis of ethnicity, religion, belief, race, gender and relations among groups’. As sexual orientation, gender identity and gender expression (SOGIE) are not mentioned it is implied that these are acceptable grounds for discrimination.

This new law mentions that the revocation of regional regulations at the level of a district or city is delegated to the governor as the representative of the central government and that the governor can issue a Decision of the Governor in that respect. However if the governor fails to revoke such regional regulation at the district or city level, the Minister of Home Affairs can do so. In other words, regional regulations must fall within the national legal framework; the Ministry of Home Affairs and the Provincial Governors have the power to annul elements of the regulations, which are not in line with the Constitution or other national laws. To date, this has not happened. The Supreme Court, with the power to revoke regional regulations that are not in line with the Constitution, has not done so since the Court can only give decisions based on case examination, unlike the Minister of Home Affairs or Governors.

¹¹ There are many studies on the politics of regional autonomy in Indonesia. One of the best studies is Harold Crouch. 2010. *Political Reform in Indonesia after Soeharto*. Singapore: ISEAS.

¹² See Simon Butt. 2010. Regional Autonomy and Legal Disorder: the proliferation of local laws in Indonesia. *Sydney Law Review* vol. 32. pp 176-192 for a discussion of this legal disorder. After analysing the decisions of the Supreme Court he concluded that only in case of illegal taxation of user charges the judicial review process was successful.

Human Rights Overview

This section discusses human rights in the context of Indonesia: firstly, gender diversity in Indonesia and postcolonial amnesia, and secondly human rights and Islam. This contextual information should supplement the outline and mapping of Indonesia's national and regional laws as well as shed light on social attitudes, which impact laws and regulations.

Human Rights and Indonesia

In Indonesia, it is important to recognize that human rights are not only associated with a secular lifestyle, but also with communism. This became clear in the latter half of 2015, around the public hearings of the International People's Tribunal on the 1965 massacre (November 10-13, 2015), and other events commemorating the 50 years of silence and impunity after October 1, 1965, which was the start of the mass murder in the country.¹³ In anti-communist

propaganda, sexual slander of communist-affiliated women and girls were employed and accusations that the Partai Komunis Indonesia (PKI, Indonesian Communist Party) was anti-religion and anti-Pancasila. Religion was seen as an antidote to communism. This rhetoric still holds today and accompanies religious intolerance, where people who advocate a liberal, pluralist, human rights based interpretation of Islam, are associated with apostasy. Their interpretation of Islam is seen as an attack on Islam as religion, stifling internal Muslim debates.

¹³ See Final Report on the hearings at www.tribunal1965.org

It has to be stressed that the first pillar of the *Pancasila* (Belief in One God) and the Article in the Constitution regarding religious freedom (Article 29) should not erase other freedoms, which are guaranteed in the Constitution. The right to gender expression should not be bridled in the name of Belief in One God and Article 29 because rights that are guaranteed in the Constitution cannot be erased, not even by other constitutional provisions.

Indonesia has ratified the major international human rights conventions and is bound by international human rights law, which elaborate rights and freedoms that all human beings are entitled to, including the rights to freedom from discrimination, equality before the law and equal protection of the law.

Recently the General Chair of the *Muhammadiyah* (the second largest Muslim mass organization in Indonesia), Haedar Nashir, was quoted in an interview in the conservative Muslim journal *Republika*. This interview indicates that influential, conservative Indonesians feel that though Indonesia is not formally a religious state, neither is it secular, and that human rights have no place in the country. In Haedar's view,

lesbian and gay people are overwhelming the university campuses, 'Particularly if these lesbian and gay people have already formed a social movement, which is constructed as a pretext of human rights'. Haedar stressed that lesbian and gay people are not accepted in Indonesia as Indonesia is not a secular country, but a country that is based on the *Pancasila*, particularly the first sila, which stresses Belief in One God.¹⁴

That the *Pancasila*¹⁵ also contains pillars that stress human rights ('just and civilized humanity'), democracy and social justice are ignored by this religious leader. He also ignores the fact that Indonesia has a secular Constitution. Nor does he consider that Indonesia has ratified the major international human rights conventions and is bound by international human rights law, which elaborate rights and freedoms that all human beings are entitled to, including the rights to freedom from discrimination, equality before the law and equal protection of the law, which constitute basic and general principles for protection of human rights.

Thus the opinion of Haedar Nashir and many other leaders in the community do not stand in line with the viewpoint of the Constitution.

Human Rights and Islam

Conservative interpretations of Islam such as those by the Majelis Ulama Indonesia (MUI, Indonesian Council of Islamic Scholars), the

¹⁴ <http://www.republika.co.id/berita/nasional/umum/16/01/26/01ji4w365-muhammadiyah-pastikan-lgbt-tak-dibenarkan-ada-di-indonesia>

¹⁵ The *Pancasila* is the official state ideology, formulated by the nation's founders. It consists of 5 principles. 1. Belief in the one and only God (in Indonesian, *Ketuhanan Yang Maha Esa*). 2. Just and civilised humanity (in Indonesian, *Kemanusiaan Yang Adil dan Beradab*). 3. The unity of Indonesia (in Indonesian, *Persatuan Indonesia*). 4. Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives (in Indonesian, *Kerakyatan Yang Dipimpin oleh Hikmat Kebijaksanaan, Dalam Permusyawaratan dan Perwakilan*). 5. Social justice for all of the people of Indonesia (in Indonesian, *Keadilan Sosial bagi seluruh Rakyat Indonesia*).

Nahdlatul Ulama (NU, Islamic Scholars), the Muhammadiyah and neo-Salafist groups in Indonesia, stress women's subordination to men and the prohibition of homosexuality as central tenets of that religion.¹⁶ Yet feminist Muslim scholars such as Fatima Mernissi and Musdah Mulia stress the sex-affirmative statements in the Qur'an, a sign of God's mercy and generosity towards humanity, characterised by such valued qualities as love and beauty.¹⁷ Based on similar interpretations of the Qur'an several scholars stress there is no incompatibility between human and sexual rights and Islam.¹⁸ In their interpretation, the story of the prophet Luth, always cited as evidence of the Islamic and Christian God's condemnation of homosexuality, is related to sexual violence and disobedience and not as many classical religious scholars state, is God's prohibition of homosexuality. Mernissi, Mulia and other Muslim scholars maintain that the punishment for the followers of the prophet Luth was due to aggressive behaviour towards their guests, in this case, adultery and rape.

Hard-liner Muslims insist that homosexuality is prohibited in Islam, however the word 'homosexuality' does not exist in classical Arabic. What does exist is *liwath*, sodomy, which itself does not mean homosexuality, as it includes heterosexual anal intercourse and excludes lesbianism. The word associated with lesbianism is *sihaq*, rubbing, and there is no punishment associated with *sihaq*. The only punishment stipulated in classical

Islamic law (*fiqih*) is for adultery, *zina*, which carries the death sentence. *Liwath* carries an unspecified sentence because although it is considered a sin it does not involve penile vaginal penetration and there is no danger of pregnancy. Proving *liwath* and *zina* is difficult since four live witnesses must testify. If someone denounces another person for *zina* or *liwath* and proof is insufficient, he or she can get 80 lashes with the whip.

So homosexual orientation and relationships as such are not prohibited in Islam, only anal sex (based on the interpretation of Al Baqarah 222-223), which is considered forbidden (*haram*) and is prohibited in both homosexual and heterosexual contexts. Sexual orientation itself is not discussed in *fiqih*. Furthermore, while religious hard-liners call homosexuality a sin, many religious conservatives proclaim homosexuality is an illness. The Quran does not consider sicknesses as sin, and thus it should not be considered as such.¹⁹

The conservative MUI has issued several religious edicts (*fatwa*) declaring that homosexuality is *haram*. In 2014 the MUI issued *fatwa* (57/2014), which declared LGBT communities to be 'religiously, culturally and morally deviant'. In March 2015 a warning was issued that LGBT people should get the death sentence. In 2016 a new *fatwa* was issued to ban Muslims from joining any groups promoting LGBT rights in Indonesia. In February 2016 the MUI called upon the government to draft a bill prohibiting LGBT

16 The NU and the Muhammadiyah are both Islamic mass organisations with millions of members. The NU is more traditional and is considered to be more tolerant than the modernist Muhammadiyah.

17 See Fatima Mernissi, 1985, *Beyond the Veil; Male-Female Dynamics in Modern Muslim Society*. London: Saki 1985. Musdah Mulia. 2005. *Muslimah Reformis, Perempuan Pembaru Keagamaan*. Bandung: Mizan. Wieringa 2015.

18 See for instance Mahnaz Afkhani ed.1995. *Faith & Freedom; Women's Human Rights in the Muslim World*. London: Tauris. Musdah Mulia. 2012. *Contesting Fundamentalism: Humanizing Women* in Nursyahbani Katjasungkana and Saskia E. Wieringa eds *The Future of Asian Feminisms; Confronting Fundamentalism, Conflicts and Neo-liberalism*. Newcastle-upon-Thyme Cambridge Scholars Publ. pp 284-300.

19 For a further discussion on homosexuality and *fiqih* see <https://azisaf.wordpress.com/2016/02/18/homoseksualitas-dan-fikih/>

activities.²⁰ Although the MUI is not an authoritative body, its *fatwas*, which are not binding, are influential. Hard-liner groups justify their violence by quoting these *fatwas*. Not all religious scholars are so aggressive. An advisor at the MUI, Din Syamsuddin, said that though same sex relationships violate the human right to reproduce and thus were *haram*, Muslims should not show hatred for the LGBT community.²¹

Culturally, the existence of gender ambiguous individuals plays an important role in some ethnic groups in Indonesia, as indeed in various places in Asia.

Hate mongering has led to contradictory understandings of homosexuality. On the one hand homosexuality is seen as a disease, to be cured by religious counselling and rehabilitation—for instance by reciting the Qur'an close to and over the head of LGBTIQ persons in the expectation that the nerves will change.²² On the other hand, LGBTIQ persons who seek religion are denied that right. In February 2016, the one religious school in the world for *waria* and FTM transgender people in Yogyakarta was forced to close its doors following protests from an organization that calls itself the Islamic Jihad Front. There were about 40 *waria* enrolled in the school, which opened in 2008. (See profile in this report about the closing of this school).

Gender Diversity in Indonesia and Post Colonial Amnesia

Culturally, the existence of gender ambiguous individuals plays an important role in some ethnic groups in Indonesia, as indeed in various places in Asia. In several ethnic communities in present-day Indonesia there are traces of gender pluralism and diversity. The Hindu deity *Ardhanarishvara* (or Ardhanary) after which the Indonesian lesbian support group, the Ardhanary Institute is named, is an example. This popular god in Hindu times combines the female and male principles (Durga and Shiva, respectively). There are also several examples of transgender healers, who were considered to be able to mediate between the world of the gods and that of humans, just as they transcend femininity and masculinity.²³ A well-known example of gender pluralism is the five-gender system of the Bugis people of Sulawesi island.²⁴

Male-bodied individuals dressing in women's clothing and intersex persons were seen to be powerful spirit mediators. The anthropologist Van der Kroef describes transvestite traditions among the indigenous Ngaju Dayak (*basir*) of Kalimantan in the southern part of Borneo island, the Bare'e Toraja of Central Sulawesi province in Eastern Indonesia, and the Makassarese of South Sulawesi province on Sulawesi island. The Bare'e Toraja recognized male status based

20 See for instance <http://www.thejakartapost.com/news/2016/02/17/indonesian-clerics-declare-lgbt-groups-haram.html>

21 <https://m.tempo.co/read/news/2016/03/05/173750992/din-syamsuddin-lgbt-jangan-dimusuhi>

22 <http://www.abualbanicentre.com/rehabilitasi-kelainan-orientasi-sexual>

23 See Wieringa 2015, *Heteronormativity, Passionate Aesthetics and Symbolic Subversion in Asia*. Eastbourne: Sussex Academic Publishers and Evelyn Blackwood 2005 *Gender Transgression in Colonial and Postcolonial Indonesia in the Journal of Asian Studies* 64/4 pp 849-879.

24 See for instance Sharyn Graham Davies, 2010, *Gender Diversity in Indonesia; Sexuality, Islam and Queer Selves*. London and New York: Routledge. Lily Sugianto, 2015, *Eksistensi Calalai Dalam Budaya Sulawesi Selatan*. Jakarta: Ardhanary Institute.

on participation in warfare. Men who refused to engage in warfare were labeled as *bujasa* and encouraged to take on an alternative role as a gender ambiguous shaman. The transgender *manang bali* among the Iban people of Kalimantan wore women's clothes and took husbands.²⁵

Individuals expressing ambiguous gender often play a central role even today in ritual performances such as the traditional theatrical performances of *warok-gemblak* of East Java and *ludruk* of Central and East Java.²⁶ In Bali, it is common to find cross gender role-playing in traditional performances. For instance, in the Arja Balinese dance drama, men act as female impersonators, and more recently, women have taken part as male impersonators.²⁷ In the *wayang* theatre of Java, often male characters are played by female actresses or vice versa.

There is no indication that same sex relations and gender variance were ever criminalised in the various ethnic groups of which the pre-colonial archipelago consisted.

Women's position has varied in diverse kinship systems. In some groups such as the bilinear majority Javanese, women enjoyed various economic and some political rights.

This did not apply to upper class women who were kept in a 'golden cage' (see writings of RA Kartini).²⁸ These assignments were however not respected under Dutch law. In 1915 the Dutch imposed the Concord Principle on Indonesia in which women's legal dependence on their husbands was formalised for the first time.²⁹ The Dutch also introduced ethnic-religious legislation with different legal regimes for European, indigenous (*pribumi*) people and 'other Orientals'. This opened up the way for Sharia law to be adopted by Muslim communities.³⁰ The legal confusion created by having different legal systems, particularly with regard to marriage and inheritance laws has still not been cleared up. There is no secular law that gives women and men equal inheritance rights and make it difficult for parents to disinherit children. An example of the pitfalls of not having equivalent secular laws is that parents can disinherit their LGBTIQ children at will and they can discriminate against their daughters when it comes to inheritance.

Individuals expressing ambiguous gender often play a central role even today in ritual performances such as the traditional theatrical performances.

- 25 Cited in Richard Howard., 1996. *Falling Into the Gay World: Manhood, Marriage and Family in Indonesia*. PhD thesis, University of Illinois, Urbana-Champaign pp 339-341. See also Leonard Y Andaya, 2000, *The Bissu: Study of a Third Gender in Indonesia*. In: Barbara Watson Andaya ed. *Other Pasts, Women, Gender and History in Early Modern Southeast Asia*. Manoa: University of Hawai'i. pp 27-47. There is a wide literature on this, see for instance Dede Oetomo. 1996. *Gender and Sexual Orientation in Indonesia* in Laurie Sears ed *Fantasizing The Feminine in Indonesia*. Durham: Duke University Press, pp 259-269. Dede Oetomo, 2001, *Memberi Suara Kepada yang Bisu*. Yogyakarta: Galang Press. James Peacock, 1967. *Javanese Clown and Transvestite Songs: Some Relations Between 'Primitive Classification' and 'Communicative Events'*. June Helm, ed. *Essays on the Verbal and Visual Arts: Proceedings of the 1966 Spring Meeting*, American Ethnological Society. Seattle.
- Tom Boellstorff, 2005, *The Gay Archipelago; Sexuality and Nation in Indonesia*. Princeton: Princeton University Press. Michael G. Peletz, 2009, *Gender Pluralism; Southeast Asia since Early Modern Times*. New York and London: Routledge., Ian Douglas Wilson. 2008. *As Long as It's Halal; Islamic Preman in Jakarta*. In Greg Fealy and Sally White eds: *Expressing Islam; Religious Life and Politics in Indonesia*. Singapore: ISEAS. pp 192-211.
- 27 I Wayan Dibia. 2005. *Silang Gender dalam Dramatari Arja di Bali*. Didik Nini Thowok ed. *Cross Gender*. Malang: Sava Media. pp 77-88.
- 28 See RA Kartini 1987 *Brieven aan Mevrouw R.M. Abendanon-Mandri en haar Echtgenoot met andere Documenten*, bezorgd door F.G.P. Jaquet. Dordrecht: Foris.
- 29 See Saskia E. Wieringa, 2015, *Heteronormativity, Passionate Aesthetics and Symbolic Subversion in Asia*. Brighton: Sussex Academic Press. pp 75. a.f.
- 30 Katjasungkana 2012, *The Grip of Fundamentalism and the Indonesia Legal System in The Future of Asian Feminisms: Confronting Fundamentalisms, Conflicts and neo-Liberalism*, Cambridge Scholarly Publishing pp 320-347.

The introduction of Islam and Christianity brought with it notions of sin, guilt and normative heterosexuality, which transposed transgender patterns and same sex behaviours into the realm of the moral. Yet,

tolerance of particular transgender practices (for instance, non-conforming gender expression and social interactions) have remained until recently. The following is an example of a good practice:

In 1973 Iwan Robbyanto Iskandar (originally Khan Kok Hian), born in a male body, was the first person to legally change his identity. Since he was five years old Iwan knew he was actually a girl. In 1973 he decided to have gender reassignment surgery in the University Hospital in Singapore. When he came back to Jakarta he submitted a request to the State Court of West Jakarta to change his gender status on his legal documents and be registered as a woman by the name of Vivian Rubianti Iskandar. LBH (Legal Aid Foundation) Jakarta helped him. His lawyer, Adnan Buyung Nasution, was accused of blasphemy by Muslim groups who called Adnan an apostate. There was much social unrest in regards to his case. Yet the court granted Vivian her wish, with decision 546/Pdt.P/1973. The judges reasoned that this decision was necessary in order to be able to arrange matters related to marriage, inheritance or labour contracts, or even to deal with judicial matters since the law only recognized a man or a woman. Although at that time the law did not yet accommodate sex changes, Iwan was able to change his name because of Article 5a-12 in the Civil Code juncto Law No. 4/1961 on Name Changes. After this case other courts in Indonesia (Surabaya in 1998 and Batan in 2009) also granted requests for changed gender status.³¹ In 1975 a film was made, titled 'I am Vivian', directed by M. Endraatmadja. In 1998 Vivian married Felix Rumayar.

³¹ Rentang Jejak LBH Jakarta; Kisah-kisah Penanganan Kasus. Jakarta: LBH Jakarta, 2015: pp. 22-23.

In contrast to Vivian's case, the more recent case of Karla and Dumani, as discussed below, shows a more negative side of attitudes towards the LGBTIQ community. This is perhaps due to the proliferation of anti-LGBT regional regulations that criminalise them and invite the public to take the law into their own hands, resulting in violence against LGBTIQ people and rejection of various forms

of gender that in the past were accepted. For instance the terms *banci* and *waria* have taken on negative connotations in the media and are used to stigmatize transgender persons. These words are originally Javanese terms that were used to describe both male-to-female and female-to-male transgender people, with a neutral connotation.

In early October 2015, Ratu Airin (Karla), who was born male, and Dumani, decided to hold a thanksgiving ceremony for their union of seven years. They had met in Aceh, where they were both working after the tsunami of 2004. When they came back to their village in Boyolali they set up a successful food stall. They staged their thanksgiving as a wedding, with Karla in traditional woman's dress with a knot decorated with jasmine flowers while Dumani was dressed in the traditional men's jacket and Muslim cap. He also sported a wreath of jasmine flowers around his shoulders. However as Karla was born male, the couple had not applied for a wedding permit. Yet villagers came to their wedding ceremony and even village officials made their appearance. All went well, gifts were exchanged and food was shared. Unfortunately a media uproar followed, bringing the wedding to the attention of the chair of the fatwa council of Boyolali, Habib Ihsanuddin, who condemned it as a homosexual relationship. In reaction, Karla and Dumani were harassed by 300 members of a religious fundamentalist group, Forum Umat Islam Boyolali (FUIB) who pressured the police to force the couple to sign a statement saying that they would not live together in the same house. About two weeks later, on October 16, their food stall was demolished, their source of livelihood destroyed. Dumani was recorded asking forgiveness from the people of the village for disturbing the security of the people.³²

It was the Dutch colonizers who considered transgender practices and the autonomy that women in general enjoyed as 'proof' of the moral degradation of the indigenous population and thus legitimizing their 'civilizing mission'. Postcolonial leaders of Indonesia while denouncing colonialism have accepted many moral injunctions originating from the colonial power holders. In a

process of 'postcolonial amnesia' they ignore transgender practices and women's autonomy where it existed and posit an 'always-already' patriarchal and heteronormative past.³³

³² <http://indoprogress.com/2015/12/darino-dumani-kisah-cinta-yang-dibunuh/> Accessed January 24, 2016.

³³ Saskia E. Wieringa 2009 Postcolonial Amnesia: Sexual Moral Panics, Memory and Imperial Power. In: Gilbert Herdt, ed. *Moral Panics, Sex Panics, Fear and the Fight over Sexual Rights*. New York: New York University Press. pp 205-234.

International Laws



This section contains assessments of international treaties and legal instruments such as the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women, which articulate the fundamental rights of all human beings, which includes women and LGBTIQ people. These are the laws that Indonesia’s national level laws must abide by, and in turn Indonesia’s regional laws.

Mapping of International Legal Instruments to Advance Women’s and LGBTIQ Rights

International legal instruments outline Indonesia’s obligation to respect all citizens’ rights free from discrimination and to promote equality before the law and equal protection of the law. The prohibited grounds for discrimination include ‘sex’ and ‘other status’.³⁴

The principle of non-discrimination is recognised in the Universal Declaration of

Human Rights (UDHR), the ICCPR, CEDAW and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Rights of the Child, (CRC), and the Convention Against Torture (CAT)—all of which are ratified by the government of Indonesia.

The related rights to equality before the law and to equal protection of the law without discrimination are also recognised in the UDHR and the ICCPR (Article 26). Discrimination is understood as any distinction, exclusion, restriction or preference, based on a long list of proscribed

³⁴ See for a fuller discussion the report by the Asia Pacific Forum 2010.

grounds, for the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.³⁵ The

ICCPR guarantees freedom of movement and of location, privacy, freedom of expression and religion, of association, of marrying and forming a family and of political participation.

The following list identifies major Articles that guarantee equal rights of all citizens and the obligation of states to prevent discrimination.

Article 26 and Articles 2, 3, 7, 9, 14, 17, 18, 19, 22, 24, 26 of ICCPR (1966)

Article 2 of CRC (1989)

Article 1 of CAT (1984)

Articles 2,10, 11, 12, 13 of CEDAW (1979)

Articles 2, 3, 7, 12, 13, 14 of ICESCR (1966)

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD 1965)

The 1994 Cairo Plan of Action (ICPD-POA) and the 1995 Beijing Platform for Action (PFA, Fourth World Conference on Women) are international consensus documents, which Indonesia has adopted. The Cairo Plan of Action includes women's right to self-determination (over their body and sexuality) and stipulates that all human beings should be able to lead a satisfying and safe sex life; this includes LGBTIQ people. This is the most progressive definition on sexuality in any international document. The Beijing Platform for Action contains more conservative language on women's sexuality following bitter struggles and interventions by a conservative coalition led by the Vatican and the Organization for Islamic Conference (OIC, currently known as Organization for Islamic Cooperation). Although the term 'sexual orientation' was removed from the

PFA, Paragraph 96 of the PFA acknowledges sexuality is basic to the enjoyment of women's rights and women (including lesbians and bisexual women) have the right to have control over and decide freely and responsibly on matters related to their sexuality without coercion, discrimination and violence.

In order for a State to guarantee rights without discrimination of any kind the State must first ensure that its Constitution, laws and policy documents do not discriminate on prohibited grounds. Secondly, a State must adopt necessary measures to prevent, diminish and eliminate the conditions and attitudes, which cause or perpetuate discrimination. A State may adopt special measures to attenuate or suppress conditions that perpetuate discrimination.³⁶

³⁵ Human Rights Committee, General Comment No. 18: Non-discrimination, (Article 7). APF.

Specifically, the UN Human Rights Committee (HRC) charged with interpreting the ICCPR states that the right to equality prohibits discrimination in law or in fact in any field regulated and protected by public authorities, and that the State shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In addition, the State may also be held to have violated rights where it fails to prevent, punish, investigate or redress harm caused by private persons or entities.³⁷

In September 2015 twelve United Nations entities called on States to act urgently to end violence and discrimination against LGBT people. The statement notes that failure to uphold the human rights of LGBT people and to protect them against abuses such as violence and discriminatory laws and practices, constitute serious violations of international human rights law and have a far-reaching impact on society—contributing to increased vulnerability to ill health including HIV infection, social and economic exclusion, putting strain on families and communities, and impacting negatively on economic growth, decent work and progress towards achievement of the future Sustainable Development Goals. The signatories include the United Nations Population Fund (UNFPA). In contradiction to this statement the UNFPA is supporting the Indonesian Ministry of Women's Empowerment and Child Protection, contributing to its heteronormative and gender-discriminatory programme of gender harmony. See Annex 1 on stakeholders.³⁸

36 Human Rights Committee, General Comment No. 18. Human Rights Committee, General Comment No. 31. Committee on Economic, Social and Cultural Rights, General Comment No. 20.

37 Human Rights Committee, General Comment No. 18: Non-discrimination, (Article 12). See also report of the Asia Pacific Forum, 2010.

38 See Saskia E. Wieringa 2015b Gender harmony and the happy family; Islam, gender and sexuality in post-reformasi Indonesia. *Journal of South East Asian Research*. Vol. 23 nr 1 pp 5-27.

National Laws

In this section the Indonesian national legal framework on women's and LGBTIQ rights, gender identity and sexual orientation, will be presented such as the Constitution, the Criminal Code, the Civil Code, the 1974 Marriage Law, the 2008 Anti Pornography Law, the 2006 Population Administration Law, the 2009 Health Law and relevant national regulations, such as on adoption (No. 54/2007), civil registration (No. 25/2008), psychological health and well being, including the 2013 regulation on the employment of civil servants (Pengadilan-001/C.4/Cp2/09/2013).

While an exhaustive analysis of all laws and regulations at the national level in relation to gender, sex and sexuality is beyond the scope of this report, below are most important points of reference for the analysis of the regional regulations in the provinces that are the focus of this report. It is important to recognize that all regional level laws should be in compliance with national laws, and

should in no way contradict these laws. It is the obligation of the Constitutional Court and Indonesia's government leaders to ensure that regional level laws are in line with national laws, and where they are not, they must be challenged and amended to meet the standards of Indonesia's Constitution and Civil and Criminal Codes.

The Indonesian Constitution³⁹

The 1945 Indonesian Constitution consists of 16 chapters and 37 Articles of which there is one chapter on human rights that has 40 provisions. The Indonesian Constitution is the standard to which national and regional laws must comply. The most important of these that concern LGBTIQ and women are the following.

Article 27: all citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions; every citizen shall have the right to work and to earn a humane livelihood; and each citizen shall have the right and duty to participate in the effort of defending the state.

Article 28B: every person shall have the right to establish a family and to procreate based upon lawful marriage; and every child shall have the right to live, to grow and to develop, and as well as the right to protection protection from violence and discrimination.

Article 28C: every person shall have the right to develop himself through the fulfillment of his/her basic needs, the right to get education and to benefit from science and technology, arts and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race; and every person shall have the right to improve him/ herself through collective struggle for his/her rights to develop his/her society, nation and state.

Article 28D: every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law; every person shall have the right to work and to receive a fair and proper compensation and treatment in employment; every citizen shall have the right to obtain equal opportunities in government; and every person shall have the right to citizenship status.

Article 28H: every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care; every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness; every person shall have the right to social security in order to develop oneself fully as a dignified human being; and every person shall have the right to own personal property, and such property may not be unjustly held in possession by any other party.

The Indonesian Constitution is the standard to which national and regional laws must comply.

Thus the Indonesian Constitution stipulates that people have the rights to live, work and form a family. Children must grow up without violence and discrimination. People should be able to enjoy the benefits of health, education, technology and culture. Freedom of expression and association are guaranteed,

³⁹ The Indonesian language does not indicate gender in relation to pronouns. In this English version we generally refer to a single person with he-his, unless it is clear that a woman is meant. To stress the gender neutrality of certain regulations or Articles we sometimes use s/he, and him/herself.

including the rights to disseminate and receive information, to develop the self and social environment. Citizens have the right to choose their domicile and should be safe from torture or humiliating treatment.

Most basic rights stipulated in the international human rights treaties listed above are also stipulated in the 1945 Constitution. In practice however heterosexually married men are better able to access these rights than heterosexually married women and people living non-normative lives.

Also problematic is the limitation clause on rights in Article 28 (J) (2), which states.

In exercising his/(her) rights and liberties, each person has the duty to accept the limitations determined by law for the sole purposes of guaranteeing the recognition and respect of the rights and liberties of other people and of satisfying society's just demands based on consideration of morality, religious values, security, and public order.

This clause is often used to justify anti-LGBTIQ regional regulations or policies invoking the need to protect 'religious or moral values'.

Law No. 39 /1999 on Human Rights

The human rights guaranteed in the Constitution are also contained in the Human Rights Law No. 1999/39. In this law the following are non derogable rights: the right to live, to not be tortured, freedom of thought and conscience, and of religion.

This law defines human rights as: '*...a set of rights that is attached to the essence and condition of humanity as creatures of the Almighty God and it constitutes His/(her) gift which should be honoured and highly respected and protected by the state, the law the government and all people for the honour and protection of the dignity and values of humanity (Article 1 (1)).*'

The most important principle in relation to women and LGBTIQ groups is Article 3, which states: '*All persons have the right to the protection of their human rights and to the basic human freedoms, without discrimination.*'

Neither in the 1945 Constitution nor in Law No. 39/1999 on Human Rights is there specific mention of the prohibition of gender-based discrimination including gender identity, gender expression and sexual orientation. The drafting team of this amendment to the Constitution refused to include these categories although they were proposed by Koalisi Perempuan Indonesia untuk Keadilan dan Demokrasi (National Women's Coalition for Justice and Democracy). The drafters argued that categories for protection might continue to increase and the Constitution could not be continually amended.

The Indonesian Criminal and Civil Codes

These codes are built on the model of heterosexual marriage as the only legally recognised form of partnership. Yet consensual same sex relations were never prohibited until the 2008 Anti Pornography Law was adopted.

The Indonesian Criminal Code goes back to the Dutch Wetboek van Strafrecht (Criminal Code) of 1881, adopted in the Dutch East Indies in 1915 (based on Koninklijk Besluit No. 33, Staatsblad No.732) and validated from January 1, 1918). This Code was re-adopted after national independence as Law No. 1/1946. Until now the text has remained unchanged; however special laws have been adopted on topics, such as the Anti Pornography Law, the Domestic Violence Law, the Anti Trafficking Law and the anti-abortion provision in the Health Law.

This Criminal Code reflects the patriarchal climate in The Netherlands at the time and was intended to strengthen colonial power. It has never been adapted to the various international human rights regulations, which have since developed and been ratified by Indonesia. Ironically, though the colonial period is seen as a dark period in the history of the archipelago, its laws are still largely intact.

The Dutch Civil Code of 1848 similarly was the basis for the Indonesian Civil Code that came into effect in the Dutch East Indies in 1916. In this code men are the heads of the household, control women's property and represent women legally (Article 105). Morality is very vaguely defined and thus open to various interpretations. Sexual violence such as rape, sexual harassment and trafficking are defined in terms of culture and tradition rather than as violence against women or LGBTIQ persons. Nowhere are women, regardless of their sexual orientation, defined as having autonomy over their own bodies. Marital rape by definition does not exist in these codes. In general it can be said that the Civil Code does not prohibit adult consensual homosexual relations. On the other hand it contains

no specific provisions protecting women and LGBTIQ people from discrimination.

Sexual violence such as rape, sexual harassment and trafficking are defined in terms of culture and tradition rather than as violence against women or LGBTIQ persons.

Neither the Criminal nor Civil Codes contain clauses on bodily integrity, personhood, gender equality, and gender and sexual diversity. As such, they are not in line with the internationally accepted principles of women's rights, sexual rights and human rights.

Though revisions to the Criminal Code have been debated in Parliament, the new bill of the Criminal Code replicates the concepts of morality adopted from the colonial period. It strengthens the concept of immoral behaviour as justification to criminalise sexual relations outside of marriage, both by married and unmarried couples (Article 419 and 420). In Article 422, co-habitation outside of marriage is prohibited. This effectively brings issues thus far considered private into the public realm. In Article 420 and 422 of the bill it is stipulated that the only legal form of sexuality is within a heterosexual marriage. This concept is based on paragraph 1 of the 1974 Marriage Law that says that marriage is a complete bond between a man and a woman based on God.

Before laws addressing domestic violence and anti trafficking were enacted, women could only resort to the Criminal Code for offenses committed against them by

their husbands such as physical injuries or attempted or frustrated parricide. Only physical injuries were considered, such as attempted or frustrated homicide. Other forms of violence, e.g., verbal, emotional, psychological, or economic abuse were not punishable under the Criminal Code before the Domestic Violence Law of 2004 was passed. LGBTI children or adults were not protected from family or partner violence and even today it is still difficult for them to claim justice for this kind of violence.

In general it can be said that the Civil Code does not prohibit adult consensual homosexual relations.

Rape was classified as a 'crime against decency' and limited to penile vaginal penetration. This classification reflected bias against women, including lesbians, bisexual women, transgender men and transgender women and created a space for multiple interpretations of the law where public morality was prioritized over safety and justice for victims.

In line with the Dutch Criminal Code at the time, homosexual relations were only penalized (Article 292) when one of the partners was a minor (defined as 15 years).⁴⁰ Presently there is no prohibition of sexual relations of adult persons, heterosexual or homosexual, if they are carried out with the full consent of both persons. There

is also no prohibition of sex work and no criminalisation of sex workers, but pimps are criminalised (Articles 296 and 506). However, Article 281 on offenses against public morality and public decency⁴¹ can be used to criminalise sex work and LGBTIQ people. Furthermore, the way morality is defined and the emphasis on heterosexual marriage as the only legal form of sexuality are used as the basis of discriminatory bylaws and regional regulations to criminalise same sex partnerships and same sex practices as adultery, 'porno action', sexual harassment or prostitution, all of which are punishable under different regional regulations.

In 2014 the President of Indonesia submitted the new draft of the Criminal Code to Parliament. This draft has been revised⁴² and continuously adapted since 1968 according to the strength of lobbying efforts of religious hard-liner groups who want to insert Articles of Islamic criminal law and criminalise LGBTIQ people.

In 2015, Parliament began discussing a new Criminal Code Bill. Below we mention the major new elements of the Criminal Code being debated. Some of the proposed changes are positive and others are of concern.

In Article 292 on indecent same sex acts with a child, the age is raised to 18 years to bring it in line with the International Convention on the Rights of The Child and Indonesia's 2014 Law on Child Protection. Meanwhile, the

⁴⁰ LBH APIK Semarang once defended an adult woman who had sexual relations with a woman a few years younger than she was, and still under age. The parents of the girl reported the older woman to the police and she was detained and experienced severe physical and psychological violence by police. She was viewed as violating the law and also social morality. The under-aged girlfriend, a daughter of a medical doctor, was sent to a church to be 'cleansed'.

⁴¹ Punishment is a maximum of two years and eight months or a maximum fine of three thousand rupiah—first for any person who with deliberate intent publicly offends against decency; secondly, the person who with deliberate intent offends against decency whereby another person is present in spite of himself.

⁴² https://id.wikipedia.org/wiki/Kitab_Undang-undang_Hukum_Pidana

national legal marriage age for women is still 16 years, according to the 1974 Marriage Law.

The definition of rape is also being broadened and is no longer limited to penile vaginal penetration but includes other body parts (oral sex, anal sex, sex with objects, etc).

In Article 288, which regulates marital rape and statutory rape, a husband who knowingly has sexual relations with an under-aged wife, which hurts her or which ends in her death can be punished with a prison sentence of four to twelve years. This provision aims to prevent early and forced marriage.

Chapter XIV on Crimes Against Decency, starting from Articles 281-303, regulates various acts from crimes against public indecency to pornography as well as abortion, gambling and cruelty against animals. To be noted, the terminology used in the Criminal Code, '*kesusilaan*' refers to public order, public morality or public decency while many regional regulations use '*maksiat*', which refers to individual sin and any behaviours deemed sinful and therefore considered indecent.

Most criticism of this chapter on Crimes Against Decency is directed against the positioning of gender based crimes in the public realm. Most violence against heterosexual women and LGBTIQ people, particularly youth, does not take place in the public realm but in the private realm. Also the violence is not only physical but often psychological and tends to be directed against the bodily integrity and bodily

autonomy of women and LGBTIQ people. The Criminal Code does not address violence in the private sphere or non-physical violence that is just as harmful and injurious.

Law No. 23/2004 on Domestic Violence

There are various progressive points in this law as compared to the Criminal Code. For the first time in Indonesian legal regulations there is language (Article 3) that is based on the following principles: (1) respect for human rights; (2) gender justice and equality; (3) the principle of non-discrimination and (4) the protection of victims.⁴³

The Domestic Violence Law has gender neutral language so that in principle the law can also apply to victims who are men and boys (including those who are gay) and to transgender male to female (*waria*) and female to male/FTM persons.

The law uses a family approach, with a broad definition of 'household'. The law extends to the marriage bond as well as the bond between an employer and his/her employee(s) in a household, for instance to domestic workers, both women and men. Non-registered marriage relations are also included in the definition of household. Marital rape is included as an offence and the victims are seen as the major witnesses so that only one other piece of evidence is needed to prove domestic violence occurred.

The definition of violence in the Domestic Violence Law includes verbal, physical,

⁴³ For a further discussion on the Domestic Violence Law 23/2004 and the 1974 Marriage Law see Nursyahbani Katjasungkana 2013. *The Indonesian Family as a Contested Site of Women's Rights: Implementation of the Domestic Violence Act* in Maznah Muhammad and Saskia E. Wieringa eds: *Family Ambiguity and Domestic Violence in Asia: Concept, Law and Process*, Sussex Academic Press. pp 169-192.

psychological and economic violence (including not giving money for the household or prohibiting the wife to work). Domestic Violence victims are considered key witnesses when they report the violence they experienced so that only one other piece of evidence is needed to prove domestic violence occurred. Marital rape, though not mentioned explicitly, can be seen to be included as an offence under 'physical violence'. However, in reality due to social pressure on women to always 'serve' their husbands, few women report marital rape.

In principle LGBTIQ people can also use the Domestic Violence Law when they experience family violence. Young girls who are forced into marriage or raped by family members to 'straighten them out' are also technically protected by this law. The same goes for boys who are punished for not following the accepted gender codes.

The definition of violence in the Domestic Violence Law includes verbal, physical, psychological and economic violence (including not giving money for the household or prohibiting the wife to work).

In reality, however, it is almost impossible for children to expose such violence. Shame and guilt, as well as strong family pressure stand in their way. Likewise, in principle, the Domestic Violence Law applies to violence in same sex relationships but shame prevents LGBTIQ people from reporting violence they experience from their same sex partners.

Law No. 44/2008 Against Pornography

The 2008 Anti-Pornography Law is the first Indonesian law to contain an Article criminalizing same sex practices. A regulation on the prohibition of pornography already appears in the chapter on Crimes Against Decency (Articles 282 and 283). These were elaborated in the Anti-Pornography law No. 44/2008. This bill was passed in Parliament after lengthy debates and amidst great public concern. Article 1 states that 'pornography is pictures, sketches, illustrations, photos, writing, voice, sound, moving pictures, animation, cartoons, conversations, movements of the body, or other forms through a variety of communication media and/or performances in public, which contain obscenity or sexual exploitation, which violates the moral norms in society'. This definition is vague and so broad that it may lead to widely divergent interpretations, creating legal uncertainty. The law also prohibits the 'creation, dissemination or broadcasting of pornography containing deviant sexual intercourse' the definition of which incorporates lesbian and gay sex. Particularly troubling is that 'members of the community' are invited to play a role in enforcing the law. This is an open invitation to mob violence by rightwing vigilante groups.

For the first time the term 'deviant sexual relations' (*persenggamaan menyimpang*) is used in Article 4. This refers to homosexual relations. Article 4 states: everybody is prohibited to produce, make, reproduce, multiply, spread, broadcast, import, export, offer, sell, rent or make available pornography; sexual violence; masturbation or any nakedness or that gives the impression of nakedness, genitals; or child pornography.

The elucidation of Article 4 says: ‘what is meant by ‘deviant sexual relations’ includes sexual relations or other sexual activities with a corpse, an animal, oral sex, anal sex and lesbian and homosexual sex.’

The definition of Pornography in the Anti-Pornography law No. 44/2008 is vague and so broad that it may lead to widely divergent interpretations, creating legal uncertainty.

In 2009 the Constitutional Court ruled on a request for judicial review filed by many women’s and human rights organisations (including LBH APIK) as well as religious and community-based groups, supported by a great many activists (including LGBTIQ activists) and artists. It was argued that the Anti Pornography Law did not honour the wide diversity of Indonesia’s cultural, religious and social customs, including dance and theatre, poetry and customs such as men and women bathing together, and that it violated the freedom of expression and other constitutional rights, such as the right to earn a living (as artists, dancers, etc.). Among the arguments used in favour of the law was that youth committed indecent acts (including heterosexual rape and sodomy) after watching videos with content considered pornographic.

Ultimately the Court rejected the request for judicial review of the law. This law is an example of the manipulation and reinvention of culture in the name of narrowly defined Muslim ethics, creating opportunities for harassing heterosexual women and non-heteronormative persons.

Marriage Law No. 1/1974

When this law was enacted in 1974 it was seen as a milestone in the protection of women’s rights for it changed women’s status as regulated in the Civil Code and provided a new interpretation of Muslim teachings. Marriage is only considered legally valid when it is registered (Article 2). This was strengthened in the Compilation of Islamic Law (CIL) of 1981 (Article 6), which added that the marriage book is the only legally acceptable proof of marriage. A shortcoming of the law is that it does not specifically allow marriage between partners of different religions. In Article 2(1) it is stipulated that people can marry according to their own religion. In Islam women are prohibited from marrying a partner with a different religion, while Muslim men are allowed to do so.

Another shortcoming of the Marriage Law is that same sex marriage is not allowed. This is reiterated in Law No. 23/2006 on Civil Administration, which states that same sex partnership is not allowed, nor is transgender status recognised.

A marriage is also seen as the means for procreation. Article 10 of the Human Rights Law No. 39/1999 states: “every person has the right to form a family and procreate via a legally valid marriage.”

Government Regulation on Adoption (No. 54/2007), and the Later Law on Child Protection No. 35/2014

Single parent adoption is not allowed. Permission from the religious court is always required since in Islamic teachings an adopted child is not recognized. In Article 13 of the Regulation several conditions are spelled out that prospective parents have to fulfill. They need to be healthy and economically able to support a child and they need to be legally married for minimum five years. Adoption is expressly prohibited to same sex couples.

Compilation of Islamic Law (CIL)

For Muslims, issues related to marriage and inheritance are dealt with in the religious courts. Thus for the Muslim population the Marriage Law No. 1/1974 and the Compilation of Islamic Law both apply. Non-Muslims are subjected to general courts. The CIL also regulates inheritance. Article 176 states: 'if there is only one daughter she gets half of the inheritance, when there are two or more daughters together they get two-third of the inheritance. When there are both daughters and sons the share of the son is twice that of the daughter. It is also possible to come to a different agreement on the inheritance (for instance equal shares), provided all parties agree' (Article 183). There are no provisions in the CIL to prevent disinheritance of LGBTIQ daughters and sons.

Health Law No. 36/2009

The 2009 Health Law is a major step forward from its predecessor, Health Law No. 23/1992, in devoting a full chapter to reproductive health. However it follows the Criminal Code in that abortion is still prohibited, except when there is a medical indication that the health of the mother or the child is endangered or in the case of rape (Article 75). This change forms an important improvement after the MUI issued its fatwa No. 4/2005 on abortion requiring legal proof that rape actually occurred to allow the termination of a pregnancy.

There are other discriminatory clauses: A pregnant woman who needs an abortion on medical grounds requires the permission of her husband, and the pregnancy cannot be further than six weeks. Article 77 states: 'the government is obliged to protect women and to prevent abortion Article 75 (2 and 3), when the performance of abortion is of a low quality, not safe, not responsible and contradicts religious norms and legal stipulations'.

In line with Article 28B (1) of the 1945 Constitution, which states that 'every person has the right to form a family and to produce offspring via a legal marriage', the Health Law No. 36/2009 explicitly states that a healthy, reproductive and sexual life may only be enjoyed with a 'lawful partner' and without 'violating religious values'. Heteronormativity is thus enshrined in this law and religion is introduced in matters of health and reproduction. Additionally, according to this law there are no sexual health or reproductive health services available to couples, including couples with children, if they are not officially married.

LGBTIQ people are also affected by the discriminatory provisions of the Health Law as most of them are not in legally recognized heterosexual marriages. Further, sexual health services are limited to heterosexual and not same sex activities, thus denying access to LGBTIQ adults, LGBTIQ youth as well as unmarried heterosexual people. Lesbians and bisexual women who are raped and experience forced pregnancies or who are forced into heterosexual marriages that involve marital rape resulting in forced pregnancies are also negatively impacted because of the heteronormative elements of the Health Law including the restrictive provisions on abortion. Further, in the absence of LBT sensitive healthcare or sexual health services, LBT teenagers as well as adults may not even have the opportunity to consult healthcare professionals including counselors about their options to deal with sexual health concerns, unwanted pregnancies, or sexual violence.

Sexual health services are limited to heterosexual and not same sex activities, thus denying access to LGBTIQ adults, LGBTIQ youth as well as unmarried heterosexual people.

According to Articles 72 and 78 of the Health Law, access to sexual and reproductive services is only provided to legal couples and couples of 'fertile age'. In practice this means that only legally married couples can access reproductive health services or family planning clinics. This issue is strengthened in the Law on Population Growth and Family Building No. 52/2009, which states that reproductive rights and the decisions on

family planning are intended for couples who are legally married. It means that marriage is the only way to get legal offspring (Article 42 of 1974 Marriage Law). These provisions can be and are used as tools for anti-LGBTIQ initiatives and campaigns.

A 2014 published policy document (PP 61/2014), defined healthy sexual relations as: a) free from sexual infections, b) free from dysfunction and disturbance of sexual orientation ...and e) in line with ethics and morality (Article 26-2b). The range of this government regulation on reproductive health is limited to the health of the mother, emergency medical indications and rape, in relation to exceptions on the prohibition of abortion (Article 2).

These stipulations ignore the fact that there may be health risks involved in unwanted pregnancies of women who are not legally married. These risks may lead to a range of other risks, such as stigma on the mothers and also on the children of such pregnancies. It may even lead to the death of mother and/or child, because of the absence of medical services for them. The high number of unsafe abortions of girls contributes to the high level of maternal mortality in Indonesia (SDKI 2012, 359/100.000). These statistics do not disaggregate for lesbians, bisexual and transgender FTM youth so we do not know how many girls who are lesbian, bisexual, transgender and intersex have had unsafe abortions and/or lost their lives as a result of them.

The restriction on the provision of access to sexual and reproductive health services only to legally married couples implies that both Article 28 of the Constitution and the two laws analysed in this section discriminate

on the basis of gender and marital status and thus violate several international human rights covenants signed by or ratified by Indonesia, such as CEDAW, the ICCPR, the ICESCR and the ICPD POA as well as the Beijing PFA.

In addressing these pressing issues LBH APIK and Amnesty International made a joint statement on February 25, 2010, on the discriminatory provisions in the Health Law. Amnesty International also produced a report on reproductive health, pointing out the issues referred to above.⁴⁴

2013 Regulation on the Employment of Civil Servants (Peng-001/C.4/Cp2/09/2013)

This discriminatory national regulation spells out the following criteria for civil service employees: they cannot be disabled, nor be mentally deficient, which is defined as to include same sex orientation and transgender.

Assessment of Regional Bylaws/Regulations that Hinder Women's and LGBTIQ Rights

For thirteen years provinces and lower levels of government were allowed to promulgate their own bylaws. If these bylaws were discriminatory and not in line with the Constitution or the nation's

international obligations, the central government could revoke them. However, the central government never revoked or ordered redrafting of a regional regulation when it was not in line with national and international laws.

In 2014 a new law was passed (No. 23/2014), which restricts the broad autonomy that local governments enjoyed. Through this law the central government reasserted its authority. It reconfirmed the hierarchical relationship between central and regional administrations, reinstating Jakarta as a source of authority that at times can impose its will and even recall the autonomy local governments enjoy—action taken as a result of the proliferation of discriminatory local legislation. In principle the central government thus has sufficient power to revoke discriminatory bylaws.

In June 2016, President Jokowi announced a large-scale reassessment of discriminatory bylaws, mainly to stimulate the economy. At the time of finalizing this report it is unclear whether the regional regulations that discriminate against women and for that matter against LGBTIQ people will be included in this reassessment.

⁴⁴ Letter to Ministry of Health AI Index ASA21/001/2010. *Report Amnesty International: Left without a Choice*. ASA 21/024/2010.

Regional Regulations

The following section contains detailed highlights and an analysis of regional bylaws and regulations. As mentioned earlier in the report, this refers to legislation at the province, district and city levels that encroach on the rights of women and LGBTIQ people by region and hinder the advancement of women's rights and rights of LGBTIQ people (which is the focus of this report).

Overview

Hundreds of regional bylaws/regulations, which discriminate on the basis of sex, gender and sexual orientation, have been promulgated all over the Indonesian archipelago since the Law on Regional Governance (Pemerintahan Daerah) No. 32/2004 was enacted. It is likely that many of them contain some of the discriminatory provisions and definitions that were found in the regional regulations of the eight regions assessed for this report. The proliferation of discriminatory regional regulations is part of the response to the growing dominance of Wahabi Islam exported from Saudi Arabia to Indonesia, and this proliferation

has resulted in creeping criminalisation of LGBTIQ communities and groups in Indonesia. Though at the national level LGBTIQ behaviour is only criminalised in the Anti-Pornography Law, several prominent politicians and lawmakers have started advocating for a national anti-LGBT law.

Almost all discriminatory regional regulations were issued after the Reformasi of 1998, especially after regional autonomy was promulgated in 2000. It seems as if the regions compete with each other to showcase their specialness after 32 years of highly centralized control under former President Suharto's New Order regime. One reason for this—the strong sense of entitlement to

regional autonomy. Again and again regions cite regional autonomy as their justification for developing and enforcing their regional regulations.

There is no overarching regional legislative project that can function as the yardstick for measuring and monitoring the creating of regional legislation. In the Law on Regional Government it is stated that a budgetary commission and an oversight commission can be set up to monitor the development of bylaws. But this is not compulsory. Regional governments can form their own legislative commissions. They do not have to rely on the central government for developing and enacting their regional bylaws/regulations. Just as the National Legislative Council does before drafting laws and regulations, a regional legislative council can also visit other regions or even go abroad to conduct a comparative study of laws and regulations—in this instance to regulate bodily autonomy, morality, sexuality, and so on.

There was much overlap in the regional regulations of the eight regions that were assessed. One explanation is that regulation drafters copy-pasted definitions of prohibited acts and perpetrators from other districts. This means that incorrect definitions, drafters' prejudices and other legal irregularities are repeated all over the archipelago. A second explanation is the drafters' lack of the necessary technical skills and knowledge about international human rights law regarding women's rights, human rights and LGBTIQ rights. They also lack knowledge about Indonesian national laws regarding gender equality, which is anchored in Law No. 7/1984 (ratification of CEDAW), and the principles of the Constitution. They have not grasped the importance of aligning

regional regulations with the higher-level laws. For instance, the city of Palembang made no reference at all to the provincial-level regulation; its regional regulation formulates its own prohibited acts. As with the other regions, although Palembang's regional regulation points to the national Constitution and national laws for its legal basis, the regulation itself does not adhere to the higher laws. This is the case for most of the regional regulations—their definitions of and sanctions for prohibited acts deviate from national standards.

... drafters and implementers of regional regulations base their regional regulations on notions of glorious ideals, tradition, morality and patriarchal interpretations of religion.

From the regional regulations that were researched, it is also evident that neither the members of the Regional Council, nor the governors, regents (*bupati*) or mayors tasked with overseeing implementation of the regional regulations, recognize that regional regulations must be based on rule of law. Instead drafters and implementers of regional regulations base their regional regulations on notions of glorious ideals, tradition, morality and patriarchal interpretations of religion; they blur the distinction between the legislative and executive realms; they confuse law enforcers with moral police; and they use legislation to impose their own interpretation of Islam on people who are already practicing Muslims or people from other religions and belief systems.

Regional regulation drafters also refer to apparently endangered social foundations without spelling out what they mean. For instance, most of the regional regulations we assessed explicitly state that the purpose of the regulations is to rid the district or city or province of immoral acts and to assert norms of religion, decency and culture. However, the regulations seldom spell out what the religious teaching is exactly, which concept of culture is being used, or which religious interpretation is being followed in the regulations. None of the regional regulations favour human rights-based interpretations of Islam.

Due to a process of postcolonial amnesia about women's autonomy and power before the Dutch colonizers came, about styles of dressing for women and men that pre-date the arrival of Islam, and about socially accepted transgender practices and diverse forms of gender expression, these instances in Indonesia's past are erased from memory. The drafters of the regional regulations seem to posit that Indonesia as a whole, and their particular district or city or province, 'had always' practiced a form of Wahabi Islam, which is in fact ahistorical. These bylaws/regional regulations often rely on commonly held contemporary notions of what is considered inappropriate behaviour or they rely on the interpretations of hard-liner Muslim groups of what is religion and culture (*adat istiadat*).

An example is the criminalisation of adultery, prostitution and same sex relations in several of the regional regulations. In the national Criminal Code only pimping is criminalised not sex work. Until the Anti Pornography Law in 2008 there was no prohibition of homosexuality at the national

level. However, in most of the regions we assessed, adult consensual sexual relations outside of legal marriage are criminalised as sex work even if the sexual relationships are non transactional. In some regions, adult consensual same sex relations are criminalised as adultery and/or prostitution.

None of the regional regulations favour human rights-based interpretations of Islam.

Definitions used for prohibited acts in the regional regulations are also not in line with the Constitution and/or the Criminal Code. They are often very broad, unclear, arbitrary and can be interpreted in different ways, thus legitimising raids, arrests, detention, and abuse by moral police or public order police that functions as militias. The use of terminology is also important. The Criminal Code censures acts against public morality (*kesusilaan*) while many bylaws/regional regulations censure individual sin and indecency (*maksiat*) – thus expanding the list of behaviours that can be criminalized even if they do not break national laws.

In more than one of the districts assessed for the report, having a Muslim dress code is seen as a guard against western influence. Magical powers are attributed to clothing and a certain kind of Muslim dress code is assumed to stimulate 'noble piety' and in general benefit society, regardless of the presence of diverse ethnic, indigenous and religious groups, and regardless of the pre-existing traditional styles of dressing of women in a particular region. The imposition of a dress code infringes on individuals' rights to privacy and also on other areas of their lives–

the right to work. For instance, enforcing Muslim dress hinders certain categories of entertainers such as *dangdut* singers from working in this profession and thus safely earn their incomes without harassment, coercion or violence. Dress codes not only disproportionately target women who are heterosexual, bisexual and lesbian but also FTM transgender persons and *waria*. Men may also be subjected to harassment for violating the Muslim dress code, as demonstrated on 18 April 2016 in Aceh, when 23 men wearing short pants and 30 women wearing tight clothing were picked up by the moral police in a raid.⁴⁵

In most of the regions we assessed, adult consensual sexual relations outside of legal marriage are criminalised as sex work even if the sexual relationships are non transactional.

Various regional regulations have provisions that invite mob prosecution. Those who respond to this invitation to ‘judge’ the conduct of their neighbours are not trained in rule of (national) law. In such a climate, there are flagrant violations of the rights to freedom of speech, freedom of expression, freedom of association, and the rights to privacy and bodily integrity.

The justification to impose Islamic regulations on everyone in the country regardless of their religion is frequently based on the state philosophy of *Pancasila*, five foundational principles, of which the first is belief in one

God. The other principles (*silas*), which talk about social justice and human rights are ignored. The first principle of the *Pancasila* is used by those who want to Islamise the country to disregard the right to freedom of expression protected by the Constitution. It is up to the State to ensure that the principle of non-discrimination is upheld in national laws and regional regulations.

Outline of Regional Regulations

Following the outline of regional level laws, case studies highlighting the tangible impact of these laws are provided. This is followed by recommendations for changes to address the concerns highlighted in the report. Two annexes are also presented: Annex I draws a picture of stakeholder attitudes reflected in their public positions about LGBTIQ people. The stakeholders are both state and non-state representatives. Annex II shows the role and use of media to spread vitriolic statements about LGBTIQ communities during the campaign of homophobia between January and April in 2016.

Various regional regulations have provisions that invite mob prosecution. Those who respond to this invitation to ‘judge’ the conduct of their neighbours are not trained in rule of (national) law.

⁴⁵ <http://www.merdeka.com/peristiwa/bercelana-pendek-24-lelaki-terjaring-razia-polisi-syariat-di-aceh.html>

ACEH SPECIAL REGION (DAERAH ISTIMEWA ACEH)



The province of Aceh was granted special autonomy in 2005 following a peace agreement with the separatist Gerakan Aceh Merdeka (Free Aceh Movement, GAM). Aceh is the only province that has such special privileges and this wide range of autonomy to govern itself within Indonesia. The special privileges relate to education, culture, religion and the role of religious leaders (*ulamas*) as stated in Law No. 44/1999 on the Implementation of the Specialty of the Special Province of Aceh.

Based on Law No. 44 /1999, Aceh is allowed to implement Law No. 11/2006 on Self Government for Aceh, also known as Law on Governing Aceh (LOGA) where the regional government of Aceh was allowed to implement Sharia (Islamic law) on all aspects of the lives of Acehnese people who are Muslim. In Article 128 of the LOGA, it is stated that Sharia law is to be implemented within the framework of the Indonesian national legal system.

Article 125 of LOGA governs how to worship, family life, cultural practices, and rendering

criminal justice (Article 125). Under LOGA, Sharia law is the basis for implementing traditional norms and culture (*adat*), economic relations, trade and banking practices as well as social and political issues. The education system (curriculum, policies, teaching methods) includes elements of Sharia. Muslim religious leaders (*ulamas*) are given a role in policy making—a board of religious leaders was created with substantial powers. LOGA comprises several regulations or bylaws (*qanun*). LOGA at the time was intended only for Muslims living in Aceh. Non-Muslim people in the province were not allowed to access Sharia.

LOGA was followed by Law No. 18/2001 on Special Autonomy for the Special Province of Aceh Darussalam, which governs issues related to revenue sharing and the establishment of all political and non-political institutions to unify the people of Aceh and provide guidance on traditional norms and culture (*Wali Nangroe*).

In the Memorandum of Understanding (MOU) between the government of Indonesia and the Free Aceh Movement it is stated that the *Qanun* (regulation) of Aceh will re-establish respect for historical traditions and customs of the Aceh people. (Article 1.1.6). However, what is called a ‘historical tradition’ is a matter for debate since Aceh’s history includes powerful queens and women generals as well as powerful men who demanded sexual services from youth, especially dancing boys from Nias.⁴⁶

⁴⁶ The enslaved children forced to perform sexual services were between eight and twelve years of age. Many Aceh men preferred to have sex with teenage boys than with their female concubines. See William G. Clarence-Smith, 2012. *Same-sex Relations and Transgender Identities in Islamic Southeast Asia from the Fifteenth Century*, in Raquel A.Gg Reyes and William G. Clarence-Smith eds. *Sexual Diversity in Asia*, c.600 – 1950 New York and London: Routledge, p.74. See further Michael G. Peletz in *Gender Pluralism; Southeast Asia since Early Modern Times*, New York and London: Routledge, p.34 also noted that male teenager dancers are called ‘*sadati*’ and they recite Quranic phrases during religious dance performances.

Article 1.4.2 of this MOU states that the legal code for Aceh will be based on the universal principles of human rights as provided in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This commitment is repeated in Article 2.1 of the MOU, which states that a Human Rights Court will be established. The Aceh Monitoring Mission (AMM) was set up to monitor the human rights situation (Article 5.2.d). Unfortunately the AMM is invested with few powers, other than the right to carry out its operations under conditions of security.

The following bylaws/regulations (*qanun*) in Aceh are relevant for this report:

Qanun No. 11/2002

Qanun No. 11/2002 governs creed (*aqidah*) and understanding of Islam (*fiqih*-based regulations related to practices assumed to belong to the Prophet Muhammad) including dress codes, worship practices (*ibadah*) such as how to pray (*sholat*) and fasting. This bylaw also governs teaching public awareness of Islam (*syiar Islam*), as well as procedures for implementing this *Qanun*. In practice, *Qanun* No. 11/2002 has gradually restricted the rights of women and LGBTIQ people.

For instance, Article 13 stipulates that all Muslims must wear 'Muslim dress' and that all directors of government institutions, schools, business enterprises and non governmental organizations (NGOs) are obliged to promote the culture of wearing Muslim dress. However there is no explanation of what is actually meant by 'Muslim dress'. The assumption is that 'Muslim dress' for women means the

full head scarf (*hijab*), which covers hair, neck and shoulders. This form of dressing is not a traditional custom for women in Aceh. Yet, women regardless of gender expression (tomboys, masculine women) as well as female to male (FTM) transgender persons have to comply with this dress code. Women regardless of their sexual orientation are also prohibited from wearing jeans that are too tight, and are detained on the subjective interpretation of Sharia police (Wilayahul Hisbah) of what constitutes 'tight' or 'too tight'. At the same time, male to female (MTF, *waria*) transgender persons are not allowed to wear the *hijab*, loose long skirts or loose trousers. LGBTIQ persons and women are the groups most targeted for non compliance with Law No. 11/2002. Religious minority women, especially Christian women who are not required under the bylaw to wear head scarves (*hijab* or *jilbab*) are ridiculed by Muslims, and hence are under social pressure to also follow the bylaw.

The Aceh Monitoring Network (Jaringan Pemantau Aceh 231) in its 2013-2014 report on violence against women in Aceh, noted that although Article 231 of the Law 11/2006 reads that the national government, the government of Aceh and the local governments are obliged to promote and protect the rights of women and children and to stimulate their 'honourable (*bermartabat*) empowerment',⁴⁷ in practice, according to the report of the Aceh Monitoring Network, women are often blamed when they experience sexual violence and accused of not wearing proper Muslim dress. Dress raids are conducted where women are beaten on the head and sometimes arrested if viewed as improperly

47 The Aceh Monitoring Network is formed by 12 women's organisations in Aceh in 2011. See <http://www.weldd.org/our-voices/women-aceh-are-still-victims-violence>

dressed as they are perceived to be sex workers or engaged in immoral conduct.⁴⁸

Qanun No. 14/2013 on the Prohibition of Immoral Conduct

In the introduction to this Qanun, Aceh's obligations are spelled out in accordance with Sharia law and 'traditional customs'. The community is called upon to participate in the process of prohibiting any immoral conduct (*mesum*); they are obliged to report such acts (Article 8). Immorality is vaguely defined as 'any act that leads to adultery' such as dating or physical proximity between unmarried persons (*khalwat*) (Article 2). The Sharia police are tasked with guarding morality by reporting immoral acts, investigating them, and arresting those caught in the act (Article 17). Those convicted of immoral conduct can be punished by caning, fines and/or prison terms. LGBTIQ people are also detained, questioned and some have been arrested by Sharia police if seen displaying same sex affection.⁴⁹

Qanun No. 6/2014 on Criminal Offences (*Jinayah*)

This 2014 regional bylaw/regulation was enacted on 23 October 2015. It governs drinking alcohol, gambling and a range of human interactions such as physically close body contact outside marriage (cuddling, kissing, caressing) or physical proximity in quiet secluded or public places between men and women who are not married or related to each other (*khalwat*, *ikhthilath*). This conduct is perceived as leading to adulterous sexual intercourse (*zina*). In April 2015, unmarried

men and women were banned from riding together on a motorbike.

While this regional bylaw criminalises rape (anal, vaginal, oral), it also criminalises consensual anal sex (*liwath*), and consensual lesbian sex (*musahaqah*). Punishments include 100 lashes with a whip, fines or prison for persons convicted of *musahaqah* or *liwath* on grounds that these acts constitute adultery. The formulation of lesbian conduct is 'consensual behaviour between two or more women in which they rub each other's body parts or vaginas to get sexual stimulation.' A similar graphic definition is given for *liwath*, sodomy ('penis entering anus'). For these acts to be punished they should have been witnessed by two people—for heterosexual adultery, the bylaw requires four witnesses. Witnesses are not allowed to gratuitously spy on such acts.⁵⁰

On June 4, 2015 a directive came into force, banning women from being out after eleven at night if they are not accompanied by their husbands or a male family member. According to the mayor of Banda Aceh, the directive would 'protect female employees'. In practice, the ban affects women travelling to or from work at night and leaving entertainment venues, hence restricting women's mobility and right to work.⁵¹ The curfew on women in this province also curtails the rights of lesbians and bisexual women, including their mobility at night, and their right to hold jobs that require them to work late, attend meetings that end late, or do night shift work.

48 <http://www.thejakartapost.com/news/2016/05/26/dozens-of-women-stopped-in-aceh-for-straddling-motorcycles.htm>

49 See for instance <http://www.thejakartapost.com/news/2016/03/15/aceh-clamps-down-lgbt-people-threatens-caning.html>

50 <http://www.benarnews.org/indonesia/berita/Qanun-11102015145139.html>

51 <http://www.abc.net.au/news/2015-06-09/indonesias-aceh-province-introduces-curfew-for-women/6533862>

As mentioned earlier, Aceh is the province with the highest level of regional autonomy. In the MOU with the government of Indonesia it is explicitly stated that the *Qanun* in Aceh must be in line with the major international human rights law such as the ICCPR but this is clearly not the case. The various bylaws mentioned above are in flagrant contradiction with the ICCPR.

The discriminatory regional bylaws/regulations impact the discriminatory behaviour of the officials in charge of security and public order. *Wilayahul Hisbah* (Sharia Police) have even more opportunities to harass women, transgender women (*waria*), visibly gender non-conforming lesbians, and female to male (FTM) individuals. Regular police take advantage of ordinances that prohibit 'seclusion' and impose Sharia dress codes to harass, admonish, arrest or even rape the women and LGBTIQ persons they detain.⁵² Cases of mob violence by neighbours or other members of the community, which have been reported are also an example of the arbitrary implementation of discriminatory regulations/bylaws.

Dress raids and raids on private premises conducted by Sharia police have resulted in a migration of lesbian women out of the capital of Aceh to other provinces and cities. Lesbians fear that if they are caught they may be sent to rehabilitation centres.⁵³

According to the *Qanun Jinayah* there must be proof of same sex conduct and, for that matter, adultery. Yet who is a lesbian or gay man is not always clear and sometimes two

women are picked up for questioning or detained simply because of the way they are dressed (women without Muslim dress) or because one of the women is assumed to be a man and they are sitting 'too' close together in a public place. The difficulty to prove adultery or same sex practices apparently do not prevent the Sharia police from conducting dress raids, arrests, or arbitrary questioning.

According to Muhammad Nasir Djamil, an Acehnese member of the national parliament who belongs to the hard-liner Partai Keadilan Sejahtera (PKS, Prosperous Justice Party), the raids of the moral police have been successful in showing 'there are illnesses in the society'. He said that the raids revealed there are hundreds of lesbians in the capital, 'some of whom are apparently now on the run'.⁵⁴

EAST KALIMANTAN



East Kalimantan is divided into six regencies and three cities. It is one of the least populated provinces in Indonesia. Its economy depends on oil, gas and (illegal) logging. It is home to the oldest Hindu kingdom in the archipelago, Kutai, and to the Dayak people. Along the coast frequent clashes have broken out with newcomers such as the Madurese. The Dayak have

⁵² Human Rights Watch 2010. Policing Morality abuses in the application of Sharia in Aceh, Indonesia. New York.

⁵³ <http://www.thejakartapost.com/news/2015/10/03/-2-suspected-lesbians-in-indonesia-to-undergo-rehabilitation>

⁵⁴ <http://m.hidayatullah.com/berita/nasional/read/2015/12/1285228-dirazia-ketat/para-lesbi-mulai-keluar-dari-Banda-Aceh>

their own religion (*Kaharingan*), and their traditional healers include transgender persons. Dayaks are under great pressure to leave their religion and choose one of the officially recognized religions in Indonesia, Islam or Christianity. Most Dayaks become Christians. The Muslim population along the coast is very conservative.

There are eight regional regulations in East Kalimantan of which four are relevant for the present report.

Regional Regulation No. 2/2007 of Kabupaten Berau on the Prohibition of Prostitution

The regional regulation of Kabupaten Berau governs pimping, prostitution and trafficking as well as what in Aceh is called *khalwat*, where a man and a woman who are not married are in close physical proximity in a secluded space or where the public can see them. Every member of the community is obliged to report to the police when they suspect people of violating this regional regulation.

Of note are the following definitions in the general provision of this bylaw: a sex worker (*pelacur*) is defined as a person, either a man or a woman who sells him/herself in public for sexual relations outside marriage. Such sexual relations are defined as sex between people of different sex or the same sex. In this regional regulation, heterosexual and homosexual or lesbian sex for the purpose of financial rewards is criminalised.

Regional Regulation No. 21/2000 of Tarakan on Indecent Acts

This regional regulation defines indecent acts as acts carried out or facilitated by men or women that ‘conflict with decency’.

Conflicting with decency is broadly defined as ‘conflicting with religion, customs (*adat*), public order or noble values’.

The definition of indecent acts in this Regional Regulation of Tarakan is very broad and its definition of ‘violating decency’ does not align with the definitions used in Articles 281 and 282 of the national Criminal Code. The elastic definitions are open to multiple interpretations. Consensual same sex relations are potentially prohibited under this regional regulation as implementation of this regional regulation depends very much on the subjective interpretation of law enforcers.

This regional regulation not only gives broad powers to law enforcers but also to vigilante groups to harass people who do not abide by strict religiously inspired and heteronormative rules of behaviour.

Prohibition of indecent acts extends to any individual or group who intentionally use a place to carry out ‘indecent acts’, including ‘guests’ who are defined as ‘a person who arrives in a certain place, either men or women, and who is met or comes together with others with the purpose to carry out indecent acts’. Law enforcers are permitted to arrest and detain any person, investigate any institution (group, organization), confiscate books, notes, documents and other material to obtain information or find proof of indecent acts. They are also permitted to prevent people who are detained from leaving while the investigation is in progress.

Regional Regulation No. 10/2010 of Penajam Paser Utara on the Curbing And Eradication of Commercial Sex Work and Regional Regulation No. 9/2004 of Paser on the Prevention of Indecency

Both these regional regulations govern commercial sex work, pimping and adultery. There is confusion in the definition of commercial sex work, which is seen from the perspective of morality and 'glorious ideals' (of a singular national, cultural, religious identity) without defining what these terms mean. Furthermore, since intimate and sexual relations outside marriage (adultery) is in conflict with religious and social norms and therefore punishable as indecency, it would not matter whether sexual relations outside marriage are for material or non material gain or for self or another person. The imprecise definitions mean that LGBTIQ people can also be criminalised for sex outside marriage.

The formulation of these regulations legitimatises raids not only by law enforcers but also by vigilante groups. State funds are allocated for moral policing.

DKI JAKARTA



DKI Jakarta is a special region due to its position as capital of the Indonesian Republic; it has its own Governor. The region consists of five municipalities (East, West, North,

South and Central Jakarta). Their leaders function as assistants to the Governor. The five regions adhere to the regulations made by the government of the region of DKI Jakarta and do not have their own regional councils to draft regulations related to public issues. The only regional regulation in DKI Jakarta deals with public order.

Regional Regulation No. 8/2007 on Public Order

This Regional Regulation was enacted to 'create an orderly, peaceful, comfortable, clean and beautiful Jakarta'. It is based on 24 laws and government and regional regulations including Law No. 39/1999 on Human Rights, Law No. 23/2006 on Population Administration, and Law No. 10/2004 on Lawmaking Process and Procedure. The Jakarta Regional Regulation governs various issues: roads, public spaces, public transportation, parks, green areas, beggars, street vendors, street singers, prostitution, pimping, the environment, buildings, persons who are mentally ill or who have leprosy, gambling, drinking and immoral acts or indecency.

Article 42 of this regulation prohibits persons from doing sex work and engaging commercial sex services. Article 43 prohibits use of private and public premises such as a house, building or other sites for indecent acts.

In the General Elucidation of Article 42 it is stated:

What is meant by committing indecent acts is a form of behaviour that offends the feelings of decency in relation to norms, which govern society, for instance soliciting, smooching, kissing and other sexual activities... somebody who orders, facilitates, deceives or forces somebody

else to become a commercial sex worker is called a pimp (germo). In general commercial sex activities are carried out by people who are engaged in indecent acts, both those who originate from the nation itself as those who come from abroad. Society mostly knows them as female prostitutes (wanita tuna susila, WTS) or male prostitutes (gigolo) or waria (MTF transgender) prostitutes who engage in sexual relations outside of marriage in order to get both material and immaterial favours.

Article 42 of the Regional Regulation of Jakarta is problematic for several reasons. Firstly ‘indecent’ and pimping are already regulated in Articles 281 (indecent) and 296 (pimping) of the national Criminal Code. Secondly, the definitions of sex worker and immoral act are unclear. Article 42 is used as justification for criminalizing individuals working in the informal sector, such as waria who are sex workers. Even waria who are just walking on the street can be stopped or detained on the presumption that they are sex workers. Article 42 is thus on the one hand redundant and on the other hand not in line with the national Criminal Code because it criminalises sex workers, when sex work is not criminalised in the national Criminal Code. In its implementation, Article 42 also carries a class bias as it deprives particularly poorer women and *waria* of the right to street work by subjecting them to arrest.

In their analysis of Jakarta’s Regional Regulation No. 8/2007, Komnas HAM and the Legal Aid Foundation (LBH) Jakarta conclude

that this bylaw contradicts the Constitution and national legislation especially the Law on Procedures of Legal Drafting, particularly in relation to the definitions used.⁵⁵

LAMPUNG



Lampung is a province on the island of Sumatra, and a long time area of transmigration. Many poor Javanese, Madurese and to a lesser extent Balinese people have come to live here, outnumbering the original population of Lampung. The virulently homophobic Hizbut Tahrir Indonesia (HTI) is the most influential hard-liner Muslim group. HTI does not recognise the nation state and strives towards an Islamic caliphate and is in many ways similar to Islamic State, though not engaging in open acts of terrorism.⁵⁶

Lampung consists of nine districts with two major cities (Bandar Lampung and Metro). In this report we analyse the regional regulations of Bandar Lampung (Lampung City) and the districts of Way Kanan, South Lampung and Tulang Bawang Barat.

⁵⁵ Kajian Komnas HAM terhadap Peraturan daerah DKI Jakarta no.8 tahun 2007 tentang Ketertiban Umum (Komisi Nasional Hak Asasi Manusia, 2009). See also Alghiffari Aqsa: <https://alghif.wordpress.com/2012/03/31/peraturan-daerah-dki-jakarta-tentang-ketertiban-umum/>

⁵⁶ See <https://globecco.org/hizb-ut-tahrir-the-new-islamic-state>

Regional Regulation No. 15/2002 of Bandar Lampung on the Prohibition of Prostitution and Immoral Acts

This regional regulation resembles the regulation of Way Kanan analysed below. The Bandar Lampung Regulation was enacted one year after the Way Kanan Regulation and both contain similar inconsistencies with the national Criminal Code in the way 'immoral' is defined. The major difference between the regional regulation of Bandar Lampung and that of Way Kanan is that Bandar Lampung does not include same sex relations in the definition of 'immoral'. In both regulations prostitution explicitly refers to both men and women.

Regional Regulation No. 7/2001 of Way Kanan on the Prohibition of Prostitution and Immoral Acts

In the Way Kanan regulation it is stated that the legal basis for this bylaw is the 1945 Constitution of Indonesia, Law No. 6/1974 on Social Welfare and Law No. 4/1979 on Child Welfare.

In Articles 1 and 2 of this Regional Regulation of Way Kanan definitions are provided for the prohibited acts of prostitution and immoral acts. Prostitution (*pelacuran*) is defined as 'acts carried out by both men and women who offer themselves or others to the public for sex work, either for favours or not'. The definition of prostitution is also applied to men and women who have sex with someone of the other sex outside of marriage for the purpose of getting sexual pleasure or material goods for themselves or others.

The term 'immoral (*tuna susila*) acts' is used for women or men who 'have sex with people of the other sex or the same sex or with

multiple partners, outside of marriage in order to get money, material goods or favours'. So this definition is broader in its application.

A pimp (*germo or mucikari*) is a man or a woman who provides a house or other premises to maintain female sex workers. It can be implied that male sex workers are not seen as having or needing pimps as the definition does not include this group.

The interpretation and implementation of Article 2 of the Way Kanan regulation is broad. On one hand it defines that not only are all people and organizations prohibited from doing sex work or committing immoral acts, but any person in Way Kanan district whose behaviour can be thought to allude to prostitution or immoral acts, and any person who is either alone or in a group intentionally provides premises for sex work or immoral acts. Additionally, any person or organization who facilitates or acts as a go between or procures people for sex work or immoral acts are all punishable under this regional regulation. Who is defined or perceived as a sex worker or targeted for being alone is often at the discretion of law enforcers.

According to Article 5 persons who are arrested for prostitution and immoral acts are returned to their parents if they are below the national legal age of consent, which is 18 years. The court can also send under-aged persons for religious counselling or to a government-appointed social rehabilitation centre. Forced rehabilitation of children is not in line with Indonesia's Constitution or national laws.

There is a distinction between prostitution (*pelacuran*) and acts that are immoral (*tuna susila*) according to the Way Kanan regulation.

The definition of immoral acts includes sexual relations outside marriage between gender normative men and women and also same sex sexual relations in return for money, material gains, or other favours. It is unclear whether same sex practices that do not involve the exchange of money, material or nonmaterial gains are also considered immoral and are thus criminal.

The definition of immoral (*tuna susila*) in this regional regulation is not in line with the national Criminal Code, which prohibits acts that 'violate public morality' (*perbuatan melanggar kesusilaan di muka umum*). Additionally, the regional regulation's inclusion of the phrase that anybody 'whose behaviour may be thought to give rise to prostitution or immoral acts' may spur on religious hard-liner groups and individuals to denounce people purely on supposition and without needing to provide proof to the authorities that a crime was committed.

The Way Kanan regulation's definition of prostitution (*pelacuran*) not only includes transactional sex but also sexual pleasure. This is a form of criminalisation of consensual sexual relations. Justification for criminalising sexual pleasure outside marriage is that it is promiscuous, which means that consensual adult same sex relationships are criminalised solely on the basis that they are outside legally recognised marriage. Further, the definition of prostitution in this regulation not only stipulates sex for monetary reward but also for non monetary and non material favours, which also implicates LGBTIQ relationships.

The national Criminal Code Against Crimes of Indecency does not prohibit consensual sex between adults. Only sexual relations with children and statutory rape are criminalised

(Article 287). It considers adultery a criminal offence only when reported to the police by an aggrieved wife or husband, and divorce is demanded. In this way the Way Kanan regulation, like the Bandar Lampung regulation, is inconsistent with national laws.

The implementation of the regional regulation is also not consistent with its own definition of prostitution. In practice, when raids are conducted, male clients are not arrested for using the services of sex workers. Only sex workers themselves are arrested. Most arrests are of female sex workers and of waria. Waria and male sex workers are not included in the definition of sex work but they are commonly presumed to engage in 'indecent practices'.

Regional Regulation No. 11/2012 of Tulang Bawang Barat on the Prohibition of Immoral Acts, Prostitution and Immorality

The definitions in the regional regulation of Tulang Bawang Barat are similar to those of Way Kanan but like Lampung the Tulang Bawang Barat regulation does not include same sex relations. However there is a difference in the introduction explaining the word 'prostitution'. In this regional regulation, the meaning derives from the Latin word *pro-stituare*, literally meaning 'standing in on behalf of' (meaning a prostitute stands in on behalf of an unavailable or undesirable wife or lover). This explanation is based on the understanding that prostitution is adultery because it involves sexual relations with someone who is not a marital partner. Sex workers are defined as women engaged in prostitution (*pelacur*) and women without morality (*Wanita Tuna Susila*, WTS). Prostitution is thus not only sexual relations in exchange for monetary and non monetary gains but also adultery and promiscuity.

The introduction in the Tulang Bawang Barat regulation further explains that the factors driving people to become sex workers are economic, sociological, and psychological, including the difficulties to find employment. It is then argued that a protective regional regulation is needed to penalize people who engage in prostitution and who use the services of sex workers. In practice, clients of sex workers are hardly ever punished and despite the recognition in the introduction of this regional regulation that there are economic factors that drive people to do sex work, it is the sex workers who are criminalised.

Regional Regulation No. 4/2004 of Lampung Selatan on the Prohibition of Prostitution, Immoral Acts and Gambling and the Prevention of Sinful Acts

The justification for this regional regulation states that prostitution, immoral acts, gambling and sinful acts ‘contradict religious teachings, culture and the values of the Pancasila as the basis of national development’ and therefore, ‘must be prevented as they disturb the public order, security, the health and the moral values of the present day society’.

As with the other regional regulations in this province it is stated that the legal basis for Lampung Selatan’s regulation is the national Criminal Code as well as the national Law on Social Welfare, the national Law on Child Welfare, the national Law on Health, and the national Law on Regional Autonomy.

The definitions in the Lampung Selatan regulation of prostitution, sex worker, and pimp are the same as definitions used in the Way Kanan regulation. Similar to Way Kanan district, Lampung Selatan also criminalises homosexuality.

Lampung Selatan expands the definition of prostitution to include adultery—a ‘sexual relationship outside of marriage both because of sexual pleasure with or without rewards or the promise of rewards’.

Unlike the other districts in Lampung Province, Lampung Selatan also mentions pornography in its regulation. Porno poster and pornography are defined as ‘a picture or painting that shows a sensitive part of the body that can provoke lust that is shown or broadcast via print or electronic media and which conflicts with religious teachings, legal and moral norms and culture’. Porno action is defined as ‘an act that can provoke lust and shows a sensitive part of the body that is deliberately displayed or shown to a person or a group of persons’. These activities are criminalised on the belief that they are sinful—‘every act that destroys the foundations of social life and breaks the religious, moral and legal norms and culture’.

Lampung Selatan’s regulation on pornography and porno action was issued in 2004 prior to the passage of the national Anti-Pornography Law (No. 44/2008). In its definition of pornography it is closer to Article 282 of the national Criminal Code, although the Criminal Code does not yet mention electronic media.⁵⁷

⁵⁷ This Article 282 of the Criminal Code says: Whoever distributes, shows or pastes in the public realm a painting, a drawing of a shape that is known to have a content that disturbs morality or whoever has the intention to distribute, show or paste in the public realm or make a painting, a drawing or such a shape, imports it into the country, preserve it or exports from the country, or is prepared to do so, or whoever openly or distribute a letter without permit, offering it or showing it as if it can be prosecuted or can be sentenced to prison with a maximum of one year and six months or can be fined to the maximum of 4,500 rupiah.

In Lampung Selatan's regulation, the criminalisation of same sex relations as prostitution is unclear because of the convoluted definition for prostitution (*pelacuran*), which is: sex with someone of the other, or the same sex, or with multiple partners, outside of marriage in order to get money, material goods or favours. Thus same sex relations that are not transactional may not be criminalised. However, the inclusion of sex outside of marriage with the purpose of getting sexual pleasure does implicate LGBTIQ relationships.

In general the definitions in this regional regulation are too broad, ambiguous and can lead to subjective interpretation and implementation by law enforcers. They also pave the way for vigilante groups to use the regional regulation against LGBTIQ people

As with the other regional regulations, Lampung Selatan's regulation uses a definition for immoral acts that is not consistent with the national Criminal Code.

Regional Regulation of No. 7/2006 of Lampung Utara

This regional regulation is the same as that of Lampung Selatan. The North Lampung district copied and pasted the text of Lampung Selatan's Regional Regulation into its own bylaw.

NORTH SUMATERA



North Sumatra is a volatile, multi-ethnic province. Malays and Batak are the largest indigenous groups. The Malay community and some Batak communities are staunch Muslims. Other Batak communities adhere to Christianity. The presence of large palm oil and rubber plantations has attracted large numbers of Javanese migrants to this province. The ethnic mix is a polarizing factor and the different communities are deeply divided, resulting in frequent clashes among them. The crime rate is high as is the level of corruption. In this report we review the regional regulations of Mandailing Natal, Labuhanbatu and Serdang Bedagai.

Regional Regulation No. 7/2003 of Mandailing Natal on the Prevention and Eradication of Societal Diseases *Juncto* (in Relation to) Regional Regulation No. 32/2007 with the Same Title

In the justification for Regional Regulation No. 7/2003 it is stated that several events have occurred that constitute a 'disturbing societal illness' but for which no legal remedies have been taken in the form of laws to prevent and eradicate 'societal diseases'. Thus to create a Mandailing Natal that is 'orderly, safe and healthy, and in which the society is strong in culture and religion', this regional regulation was enacted in 2003.

Among the national laws that are taken as the legal basis for No. 7/2003 and 32/2007 are the Criminal Code and the Health Law.

Mandailing Natal's regional regulation is intended to 'protect society, support the maintenance of law and to increase the role of society in preventing and eradicating the occurrence and spread of acts that are associated with indecency'.

The definition of societal disease in this regional regulation is 'events or acts that happen in society that are not pleasing, or disturb society and are not in line with religion, culture and the etiquette of politeness'. The principle of '*ombar do adat dohot agama*' prevails, which means culture and religion walk together.

The definition of indecency (*maksiat*) is 'the attitude and steps that destroy the foundations of social life and violate the norms of law and culture both those that are already regulated by law and that are not yet regulated'. Acts of indecency include all forms of adultery and actions that may lead to adultery such as gambling, drinking and use of drugs. Adultery is defined as consensual sexual relations outside of marriage as well as sexual relations carried out by force by a certain party, in which gifts are exchanged or promised. The definition of adultery covers sexual relations that are between persons of opposite sex as well as persons of same sex.

Pornography is also included in this regional regulation and is defined as publishing and broadcasting materials that lead people to carry out indecent acts.

The current regional regulation has not yet spelled out consequences for perpetrators of 'societal illnesses,' but it states that punishments and sentencing guidelines must adhere to the higher laws. However there is no national law that refers to 'societal illness'.

This term is not found in Indonesian law, but rather is a sociologically constructed term that relates to commonly held values by members in society of what is permissible conduct. 'Permissible conduct' is relative and may vary with time and the makeup of society. The result of this formulation in Mandailing Natal's regional regulation is lack of clarity and failure to meet the requirement of legal drafting. It is unclear what the formal offence is, what aspects of society are being disturbed, how society is being displeased, or what bad results need to occur in order for acts to be considered societal diseases. There is also no clarity on which rules of religion and culture are being violated by acts that are considered societal diseases.

Given that the Sumateran island has different ethnic groups with different cultural rules, the formulations that follow from the regional regulation become even more confusing. For instance the old Javanese philosophy on what is considered vice—the five Ms that destroy society—gambling (*main*), stealing (*maling*), drugs/opium (*madat*), drinking alcohol (*minum*) and womanizing (*madon*)—has been adopted in various parts of Indonesia and believed to be religious Islamic teaching. It can be argued that it is Javanese norms of societal etiquette that are being used as a measure for the Regional Regulation 7/2003.

Additionally, the largest ethnic group of Mandailing Natal, who are ethnically Batak and used to be animists, have a saying that is reflected in the regional regulation '*ombar do adat dohot agama*', (culture and religion walk together or culture determines religion). Contrary to popular assumption that this cultural code is from Islamic teaching, it was in fact practiced by Bataks before they embraced Islam. We point this out to show

that it is unclear what cultural or religious rules will be used to determine 'societal illness' under the regional regulation, thus leaving room for multiple interpretations and possibly misinterpretation.

As for the regional regulation's stipulation that punishments and sentencing for perpetrators will adhere to higher laws (taken to mean national laws), we mentioned earlier that no national laws refer to the term 'societal illness'. The impression is that the understanding of indecency as listed in the regional regulation will adopt punishments taken from national laws even if they do not share the definitions used in the national laws for the acts warranting punishment. Some examples of this contradiction in understanding: illegal drug use is dealt with in the Law on Psychotropic and Narcotics and gambling is dealt with in a Government Regulation and in Article 303 of the Criminal Code. The Criminal Code covers crimes that violate morality, various sexual crimes, prohibition of gambling (Article 303), selling intoxicating drinks, and being drunk in public (Articles 492 and 536 respectively), selling alcohol to children (Article 538), providing alcohol at public parties or performances, (Article 539, pornography (Article 282), and adultery.

The definition of adultery in the Criminal Code is a sexual relationship between two people one of whom is legally married to someone else. However in the Regional Regulation of Mandailing Natal, adultery includes consensual sexual relationship of two unmarried persons (which, in the Criminal Code, is not a crime), same sex relationships

(which are also not criminalised in the Criminal Code), and sexual relationships outside of legally registered marriages. This regional regulation however does recognize sexual relationships in contract marriages (*nikah mut'ah*), which are not legal according to the national Marriage Law, as they are not legally registered. *Mut'ah* marriage, which is legal according to Islam, is contracted for a short or specific period of time, for instance between Indonesian women and Arab men.⁵⁸ But it is also common among Indonesians.⁵⁹ Sexual relationships in *mut'ah* arrangements are not considered adultery in the Mandailing Natal Regional Regulation No. 7/2003.

This regional regulation also conflates consensual adult same sex relationships with rape/sexual relations involving the use of force and also classifies same sex relationships as adultery, thus punishable. No sanctions are indicated in the regional regulation and there is no national level regulation or law that criminalises homosexuality or lesbianism.

Regional Regulation No. 6/2003 of Mandailing Natal on Clothing for Muslim Men and Women

The justification of this regional regulation states that it is based on Article 29/2 of the 1945 Constitution where the State guarantees freedom of all religions to worship according to their religious belief. Furthermore this regional regulation maintains that in implementing the teachings of Islam, the daily form of clothing and style of dressing must mirror an individual's religiosity—for instance covering parts of the body (*aurat*)

⁵⁸ <http://www.merdeka.com/peristiwa/para-suami-di-puncak-rela-istri-kawin-kontrak-dengan-orang-arab.html>

⁵⁹ See Wieringa 2015a.

is obligatory for worship, (both *amah* and *mahdah*).⁶⁰ On these bases, it was concluded that a regulation should be established on how Muslim men and women must dress in order to ‘create a social life that reflects the pious individuality of Muslim men and women and attempts to create a society that is devout and pious’ in Mandailing Natal.

The legal basis for this bylaw is found in various laws that establish Regional Autonomy and the Law on Criminal Procedures (KUHAP) No. 8/1981.

Article 3 of this regional regulation covers the objective of Muslim clothing, namely to form an attitude of Muslim men and women that speaks of ‘a good and noble character’. Therefore women and men must make it a habit to use Muslim clothing for women and men both in the household and in the wider society. In this way, the bylaw states, the ‘function of culture in Mandailing Natal society will be preserved’. Great powers are attributed to the wearing of Muslim attire, for, the bylaw assures, the function of Muslim clothing for men and women is to ‘guard respect and self esteem’ and to prevent the possibility that ‘a threat or a disturbance occurs from other sides’ (Article 4).

The regulation also specifies what has to be covered, namely that which is considered aurat. Women have to wear a veil that covers their hair, ears, throat, neck and breast, while men have to wear long pants and a shirt with long sleeves. Women have to wear a long tunic that covers their hips or a long dress over trousers that extend to their feet (Article 3). This kind of clothing is obligatory both for students and for civil servants (Article 9).

It also has to be worn on official occasions ‘in line with the kind of function and the stipulations that are valid at the place’.

Article 11 of the bylaw specifies the kind of sanctions against civil servants, teachers and students who do not conform to the Muslim dress code. For students, sanctions include, reporting to the parents, suspension from classes or school expulsion. If organizers of official events/functions do not specifically mention that the Muslim dress code must be followed, they will be admonished. The expense of implementing this regional regulation is covered by the regional budget, parents of students who did not comply with the regulation, and by citizens of this region as ‘other legally valid aid’ (Article 12). Oversight of implementation is handled by the regent or officials appointed by community and religious leaders of Mandailing Natal (Article 13).

This regional regulation is applicable only to Muslims who live or work in Mandailing Natal. It is expected that non Muslim civil servants, pupils and students as well as other members of society have to adjust their clothing according to the stipulations of their respective religions. It is unclear however what kind of dress codes these other religions should impose on their members.

Mandailing Natal’s Regulation No. 6/2003 effectively prohibits LGBTIQ people from expressing their chosen gender. It also infringes on the rights of men in general who want to wear shorts, or women who want to wear different length skirts, or women who do not want to wear the full tightly-wrapped head scarf (*jilbab*) but may prefer the loose

⁶⁰ Arabic terms that refer to certain forms of Muslim religious practices.

scarf (*kerudung*) that was traditionally worn by women in this region until the beginning of the 20th century, before the introduction of Islam to the region. Also problematic is that religious officials are given the authority to control the implementation of the regulation, which can lead to arbitrary decisions, particularly if there is heavy influence or pressure from ultra conservative religious leaders or the moral police such as those based in nearby Aceh.

Regional Regulation No. 32 /2008 seri C No. 2 of Labuhanbatu on the Prohibition of Immoral Acts, Vagrancy and Beggars

This regional regulation is justified with arguments that there is an ‘increase of immoral practices in public places, such as salons, cafes, hostels, hotels and other places, which are against religious norms and morality, and threaten and endanger the life of youth, and become the source of spreading HIV/AIDS and other illnesses’. The drafters of this regional regulation want to prevent vagrants and beggars in Labuhanbatu from public begging as this is viewed as ‘a mental illness and a laziness that is not in line with religious norms’. They want to make Labuhanbatu a ‘prosperous district based on devotion and noble piety’, which they feel can only be achieved when it is governed by ‘a clean and prestigious government’ that works to ‘prevent, stem, and clean immoral practices, vagrancy and begging altogether’.

The legal basis of this bylaw is stated as the Law on Regional Autonomy and several national laws including the Law on Health, Law of Criminal Procedures, Law on Human Rights, Law on Child Protection, Labour Law, as well as the Government Regulation on Vagrancy and Begging.

According to this regional regulation: immoral is defined as a sexual relationship outside of marriage in order to get financial or material gratification for oneself or others, and practices that are in conflict with social, moral and religious norms. A new term is introduced in this regulation—‘gigolo’ who is defined as a man who has a sexual relationship outside of marriage in order to get financial or material gratification for oneself or others, and engages in a practice, which is in conflict with social, moral and religious norms. By this definition of ‘immoral’, the regional regulation applies to both women and men. The definitions that are used in this regional regulation are more or less in line with the definitions in other regional regulations on immoral acts or prostitution. There is no indication whether ‘immoral’ sexual relationships outside of marriage refers only to heterosexual or also to same sex relationships.

Waria are also seen as immoral and defined as: men who look like women both physically and in their behaviour and attitude, and have a sexual relationships outside of marriage in order to get financial or material gratification for oneself or others, and engage in a practice that is in conflict with social, moral and religious norms. It seems that while sexual activity by *waria* is considered an offence, being a *waria* or expressing non-sexual transgender behaviour is not prohibited.

The definition for vagrants is people who live under conditions that are not in line with the current norms of Labuhanbatu and who have no dwelling or regular employment in this district, and live by wandering around in public places. Beggars are defined as people who get their income by begging or by using a physical or mental disability to manipulate

people into giving them money by arousing pity. They may do this as individuals or in an organized group.

This Regional Regulation of Labuhanbatu conflicts with Article 34 of the 1945 Constitution, which states that poor people (*fakir*) and deserted children should be looked after by the State. However, it is consistent with articles in the Criminal Code that call for six weeks in prison for begging in public and Article No. 505/1 that stipulates a maximum of three months in prison for vagrancy.

Given Indonesia's high unemployment rate and the number of people who live below the poverty line, this regional regulation will adversely affect many poor people and also be misused for the harassment and/or arrest of *waria* and women who are street sex workers.

Regional Regulation No. 25/2007 of Serdang Bedagai on the Prohibition of Immoral Acts, Vagrants and Beggars

As with the justification in Labuhanbatu's Regulation, the Regional Regulation of Serdang Bedagai argues the need to 'stem the practices of immorality, vagrancy and begging' in order to 'prevent spreading of HIV/AIDS and other diseases', and to ensure that Serdang Bedagai's residents conform to religious, cultural and social norms. It is also stated that the district government of Serdang Bedagai wants its society to 'adhere to the Pancasila' and be 'religious, modern and competitive'. Similar to the Regulation of Labuhanbatu the drafters of the Sedang Bedagai Regulation maintain that the purpose of the bylaw is 'to guard against the growth of the number of vagrants and beggars who carry out their begging activities on streets, in the yards of mosques, at restaurants, and at

traffic lights'. The drafters associate vagrancy and begging with mental illness and laziness, which they state 'is not in line with the teachings of religion or society's norms'.

The definitions in this regulation are more specific than in the Regulation of Labuhanbatu as they include lists of criteria.

An immoral person is defined as somebody who has a sexual relationship outside of marriage with another person from the other or same sex for the purpose of getting financial or material gratification for self or for other persons. Persons listed under this classification are women without morals (*wanita tuna susila*, WTS), prostitutes, pimps and gigolos (those who engage in transactional sex) and *waria*—who have the following criteria: 19 years of age or older; work in public places, prostitution areas or brothels and immoral places such as seedy food stalls, hotels, shopping malls or discotheques/clubs.

Immoral places are defined as places that are used to 'conduct a transaction or to receive rewards for sex, and premises where temporary or permanent prostitution is carried out'.

Vagrants are defined as people living in the district under conditions that are not in line with current societal norms—i.e., are homeless, jobless, wander about in public spaces, and have the following criteria: no clear, fixed place of residence, have moved from place to place from childhood to adulthood, do not have an identity card, behave 'in a free/wild way, removed from general social norms'; do not have regular employment, beg for a living, and scavenge for leftover food or used things. A child is defined

as being below the age of 21 years and never married. This is not in line with national laws.

Beggars are defined as people who 'make their living by begging in public' and have the following criteria: are of any age between 2 and 60 years, beg at people's houses, shops, at traffic light crossings, markets, places of worship and other public places; and 'arouse pity by pretending to be ill, moaning, sometimes praying or reading holy verses'. Though they do this silently it is clear that their prayers are intended to assist their begging efforts.

Although the Serdang Bedagai Regulation no. 25/2007 mentions that its legal basis is the national Government Regulation No. 31/1980 on Vagrancy, there is a shift in meaning. The intent of the national Government Regulation is not to criminalise beggars and vagrants but rehabilitate them, either by placing them in social institutions, sending them back to their parents or their neighborhoods, and providing jobs and empowering them economically. However, the Regional Regulation of Serdang Bedagai labels vagrants and beggars as lazy people who are violating religious and other social norms. The intent of this regional regulation is punitive with heavy fines from one to ten million Indonesian rupiah or a prison sentence of 15 days to three months (Article 3).

In this regard, the regional regulation is not legally based on Government Regulation No. 31/1980 on Vagrancy but on Article 4 of the Constitution and the national Law on Social Welfare No. 6/1974 (which was replaced by Law No. 11/2009). But it also contradicts this law, which obliges the government to socially empower, not to criminalise people who experience social problems, such as poverty,

those with socially 'deviant behaviours', or victims of natural disasters, violence, exploitation and discrimination. These people, according to the national law, should be given social empowerment, services, protection and rehabilitation (paragraph 6). The Serdang Bedagai Regional Regulation 25/2007 violates the very national laws it claims to be based on.

The danger of this regional regulation for LGBTIQ communities is that it criminalises poor children, including LGBTIQ youth who may have been thrown out of their homes by family members and are living on the streets and/or doing sex work to survive. This regional regulation does not provide them with the support they need and are entitled to according to the national law.

As with many of the other regional regulations, this regulation also criminalises adult consensual same sex and heterosexual sexual relations as prostitution. In this regard, the regional regulation is not in line with national laws. The Criminal Code only punishes the pimps and not the sex workers.

Although this regional regulation refers to law No. 10/2004 on Criminal Procedures, the drafting of this regional regulation is very much below the standard of legal drafting. There are many shifts in definitions, which seem to be based more on the personal biases of the drafters than on definitions agreed on in national laws and regulations.

SOUTH SULAWESI



The economy of this province is booming so much so that its government proclaims the region to be the Centre Point of Indonesia. However, particularly in the capital city of Makassar, the poverty level is high and there is a high incidence of crime, including gang related crimes. Islam is strong, and there are several Muslim hard-liner groups also present in this region—such as the HTI and the FPI.

South Sulawesi has four large ethnic groups: Makassar, Bugis, Mandar and Toraja, who belong to different religions. The Bugis community has a system of five genders. Transgender and intersex priests were known as *bissu*. During a rebellion by fundamentalist Muslim groups in 1959 to make Indonesia a Muslim state, transgender people from the Bugis community had to change their gender identities and conform to the heteronormative gender binary.⁶¹ *Bissu* and other transgender communities became more accepted after the fall of President Suharto in 1998 (*reformasi*).

Regional Regulations on Muslim Clothing No. 5/2003 of Bulukumba and No. 16/2005 of Maros

The rationale used for these regional regulations is that Article 29/2 of the 1945 Constitution of Indonesia guarantees freedom

of worship and religion, therefore justifying the implementation of Islamic practices in the Bulukumba and Maros regencies of South Sulawesi province.

The legal basis for the two regulations is found in various laws on regional autonomy and in Law No. 2/89 on a National Education System, as well as the Presidential Decision No. 44/199 on the technique of drafting legal regulations.

Article 2 of the Bulukumba Regulation requires that Muslim men and women wear Muslim dress to ‘portray a person or the society as devout and pious in relation to God and to put the religion of Islam into practice’ (Article 2). Also, that the people must wear Muslim clothing in daily life, both at home and in public, and cover parts of the body (*aurat*) during the *mahdah* and *amah* worship, and during leisure and official events. Lastly, this Article strives to ‘create a society that is strict in practicing its religion’. Wearing Muslim clothing is also required for Muslim men and women as proof of their identity as Muslims and meant to prevent the possibility of threats and harassment from other non-Muslim communities. In the Maros Regional Regulation, wearing of Muslim clothing is also expected to increase self esteem and prevent slander against Muslims.

Article 5 of the Bulukumba Regulation requires all employees, students, and pupils of Islamic lower and upper middle technical schools, as well as of religious schools to wear Muslim dress in government offices, state and private schools, other educational institutions, as well as inside and outside

61 DI/TII (Darul Islam, Tentara Islam Indonesia) was an uprising of fundamentalist Muslim groups who wanted Indonesia to become a Muslim state. They were particularly strong in South Sulawesi and in West Java.

school premises and at official events. Muslim dress is obligatory for entertainers/singers to cover their *aurat*.

In both Bulumkumba and Maros, the definition of Muslim dress for men is long trousers, short trousers that are knee length, and shirts with long sleeves. Women have to wear long tunics that cover their hips, dresses or trousers that cover the legs up to the ankles, and veils that cover the hair, ears, throat, neck and breasts. Women's clothing must not be transparent or tight.

Compliance with the Muslim dress code is monitored by the regent and/or other officials that he appoints, leaders of society, and religious leaders.

The drafters of the regional regulations on Muslim Clothing have expressed fear of globalisation, and maintain that the people of South Sulawesi 'have to fortify ourselves and the coming generations so that we don't slide towards a culture that is not in line with the teachings of our religion and culture'. The fear is that via globalization clothing is introduced as a 'form of cultural oppression'.

In Bulukumba and Maros as in many other parts of Indonesia, women generally only wore a loose scarf (*kerudung*) and not a scarf that covers the hair, ears and neck (*jilbab*). The *jilbab* comes from Arab culture and thus is a foreign element in Indonesia.

Women in general, but particularly those whose profession is singing, for instance when they are *dangdut*⁶² singers, are adversely affected by the regional regulations

on Muslim Clothing. Their job requires use of facial make up and sometimes slightly revealing clothing. According to the Regulation even singers must adapt their clothing style to comply with regulations. This is clearly a form of discrimination as it reduces women's economic opportunities—they cannot be *dangdut* singers or perform traditional erotic dances such as *Tayub* in traditional Muslim clothing.

The implications of these regional regulations on LGBTIQ people is multifold, notably, LGBTIQ people are perceived as bringing contagious illness and coming from a foreign culture, violent vigilante confrontations against LGBTIQ persons is 'legalized' and non compliance with Muslim clothing, which brings unwanted attention to LGBTIQ people, compels particularly MTF and FTM transgender people, to comply with the heteronormative gender binary dress code.

Regional Regulation No. 9/2004 of Luwu Timur on Public Order

In the regency of Luwu Timur, 'immoral' is defined in line with public opinion as a 'sexual relationship outside of marriage in exchange for monetary reward or favours and disturbing public order'. Although the Regulation does not explicitly mention same sex relationships, just being in a same sex relationship could be interpreted as 'disturbing public order' and punishable because it involves sex outside marriage.

⁶² Popular, slightly erotic singing and dancing style.

SOUTH SUMATERA



South Sumatra is a mainly agricultural province that is also rich in natural resources such as oil. It was home to the Hindu Sriwijaya kingdom. In the 15th century Palembang, its capital, became a sultanate. It comprises 17 districts, many of which have drawn up discriminatory regional regulations. For this report we discuss the province level regulation and several lower level regional regulations of Lahat, Palembang, Ogan Komering and Muara Enim.

Regional Regulation No. 13/2002 of the Province of South Sumatera on the Eradication of Immoral Acts

This regional regulation governs prostitution, adultery, homosexuality, lesbianism, sodomy, rape, sexual harassment, porno action, gambling, pornography, drinking/selling alcohol and narcotics (Article 5). The goal of the regional regulation, based on the framework of regional autonomy, is to 'build a social life that is clean from various immoral acts'. Under this Regulation, 'social relations that lead to and contain immoral acts that are very unsettling, disturb order and destroy the foundations of social life in South Sumatera and thus have to be eradicated'. The legal basis of this regional regulation includes the national Criminal Code, the Health Law No. 23/1999, Law No. 5/1997 on Psychotropy, Law No. 39/1999 on Human Rights, Government Regulation No. 9/1985 on the Control of Gambling as well as the Press Law.

The definitions of what is prohibited include the following:

- *Maksiat*—immoral acts: any act by a member of the society that destroys the foundations of social life and violates the norms of religion, morality, culture and valid laws;
- Prostitution is sexual relations outside of marriage (*nikah*) and or outside of legal marriage (*perkawinan sah*), which is based on a promise to benefit one another between the practitioners;
- Adultery is sexual (*senggama*, coitus) relations outside of the marriage ties between one or more men and one or more women;
- Rape is sexual relations carried out with violence or under the threat of violence carried out by a man or a woman outside of marriage;
- Sexual harassment is an act that reduces the standard and the prestige of a person, both a man or a woman by a person or a group of other persons, which has a sexual connotation, and which does not please the other person;
- A porno activity is any kind of deed or performance that arouses the sexual lust of another person;
- Pornography, includes homosexuality and lesbianism;
- Indecent act (*tuna susila*) is the act of any person who is available for a sexual relationship for gratification.

Article 4 of the South Sumatera Regional Regulation No. 13/2002 further mentions that it is prohibited for print and electronic media to produce and/or disseminate stories, pictures and writings, which can stimulate immoral acts. Also prohibited are homosexuality, lesbianism and sodomy.

Article 5 reads that it is prohibited for women to wear clothes that do not cover the body parts from neck to breast, and clothing that is transparent and shows body parts in public.

It is also prohibited for people to be in places where ‘immoral acts are carried out except for official purposes’.

There are many problems with the above listed definitions. As with bylaws of other provinces discussed in this report, the South Sumatera Regulation is not in line with the Criminal Code. The drafters of this regional regulation produced their own definitions for prohibited acts, which, in practice, are open to a wide interpretation. This is especially obvious for the definition of pornography, which covers acts that are not prohibited in the national Criminal Code such as homosexuality and lesbianism. The definitions of adultery and prostitution in the regional regulation are used to criminalise LGBTIQ people on the basis that they are engaging in sexual relations outside marriage and/or engaging in prostitution. The Criminal Code does not prohibit homosexuality or lesbianism. The definition of ‘immoral act’ is that the act causes social disorder and societal breakdown. Criminalizing people for allegedly destroying the social foundation of society when there is no proof that the consequences of the acts will have this effect, means that any woman who is perceived to be a lesbian and is perceived to be having same sex relations is automatically seen to be destroying the morality of society.

It is clear that the inclusion of lesbianism and homosexuality as immoral acts in this regional regulation is influenced by the norms of religion regarding decency and by interpretations of religious texts that are

patriarchal and heteronormative. LGBTIQ people are not permitted to elucidate their own lives.

As with other regions covered in this report, the South Sumatera regulation is used by police to target people from the lower economic strata, including *waria*, whether they are simply walking on the street or working on the street. Sex workers who work in luxury hotels, or their clients, are not affected by this Regional Regulation. In addition to the police, the power to enforce the regulation is given to members of the public, which invites community and religious vigilantism, and also to the military police who can use Law No. 6/1950 on Military Jurisdictions as justification for taking action. In fact the use of military police as law enforcers is in conflict with the national Law on Criminal Jurisdiction No. 8/1981.

Although in its introduction this regional regulation mentions the Human Rights Law No. 39/1999 there is no indication of any Article of the Human Rights Law in the regional regulation. To the contrary the South Sumatera regulation contains statements that are in conflict with the national Human Rights Law, particularly the right to freedom of expression.

The provincial-level regulation is supposed to function as an umbrella for the entire province of South Sumatera and is higher up on the hierarchy of regional regulations compared to regulations at the district, regency, or city levels. But this is not the case with the lower level regional regulations of the regency of Lahat and the city of Palembang, which came into effect much later than the province level regulation

of South Sumatera; they have even more discriminatory language on prostitution and indecent acts than the higher level South Sumatera regulation.

Regional Regulation No. 3/2003 of Lahat on the Prohibition of Prostitution and Indecent Acts

This Regional Regulation of Lahat stipulates that marriage is a bond of body and soul (*lahir batin*) between a man and a woman. Sex is only legal between men and women, which means that same sex relations are considered indecent acts and/or prostitution (*pelacuran*).

Article 1 of this Regional Regulation defines prostitution as follows:

- Prostitution and indecent acts refer to men and women having a sexual relationship with someone of the other sex outside of marriage or with a partner of the same sex with the purpose of getting sexual pleasure and/or to get material or immaterial gratification for themselves or for others;
- Prostitution is an act or attitude or steps taken by both women and men, including exploiting themselves or making themselves available to other people to have a sexual relationship outside of marriage or to carry out any other lewd (*cabul*) act with the purpose of getting material or immaterial gratification for themselves or for others.

In this regulation the sanctions for prostitution are lighter than those in the national Criminal Code for Crimes Against Decency. Article 5 of the Lahat Regional Regulation No. 3/2003 stipulates a minimum sentence of three and maximum sentence of six months or a fine of two and half million

to five million rupiah. Another difference is that this bylaw classifies pimping as a 'misdemeanour' and uses a different definition of pimp, namely 'a man or woman who makes available a place, arranges, or becomes an in between and protects a prostitute'.

Lahat's Regional Regulation criminalises pimps and sex workers. In addition it broadens the definition of prostitution to same sex relations for material or non-material gain.

Under the national Criminal Code, pimps and not sex workers are penalized for the crime of prostitution and trafficking. Pimping is also treated as a criminal offence. Article 296 reads that 'whoever on purpose causes or facilitates someone to commit lewd acts with one or more other persons and does this to get remuneration or to make a living, can be sentenced to one year four months in prison or be fined a maximum of 15 thousand rupiah'. Article 506 in the Criminal Code on pimping states: Whoever as a pimp profits from a woman prostitute will be sentenced to one year in prison.

Regional Regulation of the City of Palembang No. 2/2004 on the Eradication of Prostitution

This Regional Regulation of Palembang governs prostitution, which is defined as including homosexuality, lesbianism, sodomy and pornography. The stated goal of this bylaw is to eradicate prostitution in all its forms in order to 'create a society that is clean, orderly, of high morals and ethics and of a noble character'. The legal basis of this bylaw is said to be the national Criminal Code, the Health Law No 23/1999, and the Human Rights Law No. 39/1999.

Article 8 of Palembang's Regional Regulation defines prostitution as an act 'committed on purpose by any individual or a group with the intention to seek sexual pleasure (*syahwat*) outside legal marriage with or without receiving gratification, either in the form of money or in other forms'. The act of prostitution includes: homosexuality, lesbianism, sodomy, sexual harassment, and other pornographic acts.

Even though this bylaw is based on the Regulation of South Sumatera No.13/2002, it deviates from the higher level provincial regulation in several ways. Most striking is the definition of sexual pleasure (*syahwat*) outside of marriage, which in the Regional Regulation of Palembang, is considered prostitution. It also lists sexual orientation (homosexuality, lesbianism) as a punishable offence like prostitution, sexual harassment and pornographic acts. Prohibited in this regulation are: becoming a prostitute, visiting a prostitute, organizing prostitution, protecting a prostitute, and allowing prostitution. All of these definitions are potentially applicable to people whose sexual orientation is lesbian, gay or bisexual.

For the reasons stated above, the Regional Regulation of Palembang also conflicts with the existing national Criminal Code and other national laws.

Regional Regulation No. 23/2006 of Ogan Komering on the Eradication of Immorality

This regulation copy pastes the provisions of the South Sumatera province level regulation No. 13/2002.

Regional Regulation of Muara Enim No. 3/2005 juncto (in relation to) Regional Regulation No. 13A/1989 and Regional Regulation No. 14/1993 on the Prevention of Immoral Acts

The terminology used for immoral (*tuna susila*) mirrors the views of Indonesian society when prostitution (*pelacuran*) was redefined under the New Order as immoral women (*Wanita Tuna Susila*, WTS).

An immoral act is defined as 'a sexual relationship outside of marriage or any other lewd (*cabul*) act carried out by women or men who walk the streets with the intention of earning an income from sex work or who get others to carry out these acts for the purpose of getting financial reward for themselves or for others'. This definition has a class bias because it targets poor people doing street sex work.

Although this regional regulation applies to both men and women, in the implementation only women and *waria* are arrested for 'immoral acts'.

Of note, the definition of prostitution in this regulation does not include same sex relations, homosexuality, lesbianism or anal sex unlike other regional regulations discussed in this report.

YOGYAKARTA/ JOGJAKARTA



The Special Region of Yogyakarta is a province named after the city Yogyakarta, a vibrant tourist city and a centre of learning with many universities and Muslim student organizations that range from progressive to fundamentalist. It has many NGOs, including some women's and LGBTIQ groups. Yogyakarta is ruled by Sultan Hamengku Buwono. Historically, the province practiced the syncretist Muslim-Javanese religion (*kejawen*).

In recent years Muhammadiyah and other fundamentalist Muslim groups have been more active, including militant groups such as the Islamic Defenders Front (FPI) and Islamic Community Forum (FUI). Levels of intolerance are increasing. Moral police ride around on motorcycles, threatening everyone they dislike.

Waria used to be very visible in the city centre as entertainers and sex workers and although they were always subject to social disapproval, now they are increasingly policed even for just walking on the streets. Until the beginning of 2016, there was a religious school for *waria* (*pesantren*) in the historic neighborhood of Kota Gede but it was forced to close and several *waria* were arrested and sent to a 'rehabilitation' camp. (See profile later in this report.) An area where sex workers used to work is also closed. For this

report we discuss a regional regulation drawn up by the local government of Bantul district.

Regional Regulation No. 5/ 2007 of Bantul on the Prohibition of Prostitution

As in several of the other regional regulations that view prostitution as immoral, Bantul's Regional Regulation states that sex work is seen to 'reduce a person's honour and to conflict with religion, the ideology of the *Pancasila* and with public morality'. It further states that sex work 'disturbs the people's health, security, and public order and creates disturbance in the community, so that it has to be prohibited in the whole region of Bantul'.

The definition of prostitution in this regional regulation is that sex work is 'a collection of practices carried out by a person or an organization that involve flattery and seduction with words, gestures, signs, or other acts to carry out indecent acts with or without a reward'. This definition is both broad and vague and the regulation is not limited to sexual relationships that are transactional but also to those that do not involve material or non material gains. The legal basis for this Regulation is said to be the national Criminal Code and the national Health Law No. 6/1974. In fact, the Bantul definition of prostitution differs from the Criminal Code.

Persons who are directly criminalised under this regional regulation are sex workers and pimps but the broad definition of 'indecent acts' potentially gives members of the public and police officers the power to interpret the regulation with far reaching consequences. Especially with rising levels of homophobia in Yogyakarta any

consensual sexual acts, including between same sex partners, may be considered 'sex work' and a punishable offence.

The Criminal Code has a different definition of indecent acts (*perbuatan cabul*). Article 289 discusses indecent acts in the context of violence while Article 290 deals with indecent acts involving people who are unconscious or children below the age of 15. Article 292 criminalises sex with a same sex partner who is not yet an adult and Article 293 criminalises anybody who leads a child below the age of consent to engage in sex or allows this to happen. Further Article 294 criminalises sex between someone with more power and authority and someone without similar power and authority—such as between a parent and child, a prison guard and prisoner, a teacher and pupil, boarding house officials and boarders, or a doctor and patient. The definition of indecent used in the Regional Regulation of Bantul is not derived from the Criminal Code and thus is not in line with the Criminal Code.

Article 8 of the Bantul Regional Regulation spells out that the role of the public is to watch out for 'indecent acts' and report them to local law enforcers such as the moral police and the regional police who must take further steps. This stipulation in the regional regulation has legitimised raids by hard-liner groups such as the FPI and the FUI who parade people naked in public as punishment.

Case Studies

This section profiles recent key examples of present day homophobia, transphobia and moral panic. It highlights the tangible impact of regional regulations on Indonesian LGBTIQ communities as well as the unlawful practices of public policing against the community. It also shows how arbitrarily “public morality” laws are being used to target LGBTIQ people and how Muslim fundamentalist groups, which have great influence on the provincial population, are using their power to marginalize and punish LGBTIQ people.

Historic Waria Institution Shut Down

The Al Fatah *pesantren* (Muslim religious school) in the Norovadan neighborhood of Yogyakarta conducted Quran reading lessons twice a week for *waria*, MTF transgender people. On Monday and Wednesday evenings a teacher (*ustadz*) came to the school to help the 25 *waria* students recite the holy verses. The students dressed in women’s prayer robes (*mukenah*).

The school was established in 2008 by a *waria*, named Maryani, after the devastating

earthquake in 2006. She had organized a prayer meeting attended by about 200 *waria* in Yogyakarta. Many of the *waria* subsequently offered free hairdressing services to people who were displaced by the earthquake and living in refugee camps. She ran her own hairdressing salon and marriage makeup business from her rented house. She decided to set up a separate space in the house for the religious school. Her religious teacher at the time agreed to teach a small group of *waria santri*.

The *waria* religious school drew many visitors because it was a unique phenomenon.

Maryani earned wide respect for her efforts. In 2014 she received a grant from the social ministry of Yogyakarta to teach *waria* job skills that would help them find other work besides sex work. Maryani felt that *waria* should strive for social respect. In 2014, Maryani went on a pilgrimage to Mecca, her long-held wish. She passed away that same year.

By then, students at the *pesantren* were learning about issues related to transgender and Islam, in addition to reading the Quran and reciting prayers.⁶³

A month after Maryani's death the school changed hands. Shinta Ratri, an LGBTIQ activist set up the school in her house in the Kota Gede neighbourhood in Yogyakarta. As one of the students said: 'these religious studies can strengthen our will to face the hardships of life'.⁶⁴

On 19 February 2016 this unique learning place for *waria*, a symbol of religious tolerance, was disrupted by a hard-liner Islamic group, Front Jihad Islam (FJI), who entered the school and aggressively ordered that *waria* stop reciting the Quran and instead repent their sinful ways. They said the space could no longer be used to study Islamic jurisprudence of *waria* (*fiqh waria*) although the *waria* asserted that transgenderism is not prohibited in the Quran or the *fiqh*, and explained that having the school boosted their self esteem. The FJI declared that *waria* are people who contravene *Sharia* (Islamic

law), or at least, the FJI's interpretation of *Sharia*. The police who were present stood firmly in support of the *waria*. The local police chief declared that police would protect the school for as long as needed.⁶⁵

However, a few days later, on 24 February the FJI succeeded in forcing the school to close its doors. During a meeting between *waria* from the school and the FJI, *waria* were shouted down by members of FJI and not permitted to explain the purpose of their school. This meeting took place in the presence of the civil administration, police and military who were not able to prevent FJI from carrying out its own rules which clearly violated Yogyakarta's laws. FJI then warned that they planned to prevent any future LGBTIQ events in Yogyakarta.⁶⁶ The *waria* school, which once had been widely recognized, was unable to keep going in the face of FPI's hostility and threats. Even the Sultan of Yogyakarta who said that LGBTIQ people should not be persecuted, however, went on to add that they should not be conspicuous or 'arrogant'—meaning, they should not publicly advocate and fight for their rights.

One young *waria*, who attended the school, had been thrown out of *Quran* classes in school for being a *waria*. She had dropped out of school, received no support from her parents, and ended up living on the streets for a few years, experiencing great hardship and stigma. Reciting the *Quran* made her feel deserving of respect again.⁶⁷

63 <https://gaya.tempo.co/read/news/2013/11/24/205532048/pesantren-waria-yogyakarta-satu-satunya-di-dunia>

64 <http://www.thejakartapost.com/news/2014/04/21/transgender-islamic-school-reopened.html>

65 <http://www.rappler.com/indonesia/123070-pondok-pesantren-waria-yogyakarta-ancaman-penyegelan>

66 <http://www.rappler.com/indonesia/123665-ponpes-waria-yogyakarta-resmi-ditutup>

67 Interview Saskia Wieringa, October 2010.

This school is an important and visible sign of co-existence, where *waria* are part of the community and were allowed to access religious education and the right to congregate and associate as a group. Shutting it down is a sign of heightened tensions between hard-line extremist religion and local traditions which were much more tolerant—a sign that violent rejection of non-conformity is much more condoned. At the time of writing this report, there is no indication if the *waria* school will re-open again.

Therapy to Force LGBTIQ Conversion

Between 23 January and late April 2016, prominent political and religious leaders in Jakarta and elsewhere in Indonesia verbally attacked LGBTIQ people, calling them vectors of contagious disease. The Indonesian national association of psychiatrists proclaimed (against all scientifically proven evidence) that homosexuality is a mental disorder. In this kind of climate, conversion therapy quacks saw business opportunities.⁶⁸ One of them was the Abu Albani Centre. They claimed that same sex desire is the result of being possessed by an evil spirit (*jin*). The Centre advertised their services with stories of people they claimed to have healed from having same sex attraction.

One of the Centre's clients was a masculine lesbian woman. While being interrogated by the Centre, she told 'therapists' that she had been sexually abused by several village

leaders as well as her own uncle, from the age of five until primary school, and consequently was disgusted by men. The Centre diagnosed her as mentally ill, which, according to them, facilitated possession by the *jin*. The Centre told her that God was testing her and the only way for her to enter heaven was to forgive her rapists. Then she would be forgiven for her 'lesbian ways'.

The Centre used a 'spiritual healing' technique called '*ruqyah*' where verses from the Quran were read over her head (incantation) so that the *jin* would be exorcised. The goal was to get her to say that she forgave her assailants. When she did not, the diagnosis was that the *jin* was preventing her. So verses from the Quran were read until she 'vomited out that *jin*', while praying to God to forgive her addiction (enslavement) to lesbianism. The Centre considered treatment as successful if the woman hated being a lesbian and went back to the 'normal' desire for a man.⁶⁹

The Centre also claimed to have 'cured' a *waria*. Exorcism of the *jin* was again attempted by *ruqyah*. Quranic verses were incanted over the *waria*'s head to stimulate the nerves in the brain so she would become gender normative and heterosexual. The *ruqyah* was augmented with acupuncture (through cupping method), hypnosis, religious spiritual training, and physical exercises.⁷⁰

68 <http://www.theguardian.com/society/2016/feb/22/transgenderism-mental-health-disorder-says-indonesian-psychiatric-association-lgbt>

69 <http://www.abualbanicentre.com/rehabilitasi-kelainan-orientasi-sexual>, accessed 25 February 2016

70 Ibid.

Activist and Family Targeted for Homophobic Attacks

Hartoyo founded Suara Kita, Our Voice after he experienced horrific community and police violence in his home province of Aceh in 2007. He was attacked by neighbours, reported to the police who arrested and then tortured him. He is the only member of his family with a university degree and is a great source of pride to the family. He financially supports his younger siblings and cousins so they can attend school.

During the campaign of homophobia that began in January 2016, Hartoyo appeared on national television twice. Both times he fiercely debated with homophobic psychiatrists such as Firdyansiah and Elly Risman.⁷¹ Elly Risman blamed Hartoyo's upbringing, telling the Indonesian audience that Hartoyo must have become gay because he was brought up by older siblings after his mother passed away and his father remarried. After these television talk shows Hartoyo's family was ridiculed and verbally humiliated by neighbours. His older sister, who had a small shop selling plants and fertilizer lost all her customers. His older brothers no longer dared to drink coffee at the neighbourhood stall for fear of being ridiculed. The family felt fearful when death and abduction threats were made against Hartoyo on Facebook.

Hartoyo had campaigned hard for Joko Widodo when he was running for president in 2014. When the hostilities against LGBTIQ people took place in 2016, Jokowi was largely silent although he promised to uphold the

human rights of minority groups during his election campaign. On 16 February 2016 Hartoyo wrote to President Jokowi, asking for protection. Hartoyo stated that if the homophobic groups spreading hatred towards LGBTIQ people are not curbed, 'violence, discrimination even killing of LGBTIQ people can happen all over Indonesia'.

In July of 2016 Hartoyo was reported to the police by a homophobic woman senator, Fahira Idris, who accused him of defamation because he had written on his Facebook page that Fahira Idris spread intolerance, which is the seed of terrorism. According to the senator this was a violation of the Law on Information and Electronic Transaction. Fahira Idris had earlier threatened the LBT organization, Ardhany Institute and actively joined the anti-LGBTIQ campaign in 2016.

The mobilisation of homophobic and misogynist sentiments by politicians, political parties and religious leaders has led to increased moral policing with virulence. What happened to Hartoyo in 2007 in his home province of Aceh province is taking place in many parts of the country. Creeping criminalisation as evident in regional regulations appeal to members of the community to inform the authorities where "criminalised" behaviour is noted. The compounded impact of hatred and intolerance, as seen in Hartoyo's situation, does not end with one perpetrator or one incident of violence but is multiplied and affects not only LGBTIQ individuals but also their families.

⁷¹ See for instance <http://www.whaleoil.co.nz/2016/03/islamic-intolerance-in-indonesia-causes-fear-in-lgbt-community/> and Asosiasi Psikiater Amerika menyurati Asosiasi Psikiater Indonesia terkait LGBT. Posted by Kabar LGBT, March 16, 2016.

Postscript

Impact of Future Developments

Since at the time of writing this report, the legal landscape for LGBTIQ communities is still in flux, we have reserved final conclusions and instead draw on some of the political developments in Indonesia and their future impact. This is followed by recommendations for change to address the concerns highlighted in the report.

These are some major political developments in Indonesia that must be watched carefully as they have far reaching consequences for Indonesian women and LGBTIQ communities.

In March and April, and again in August 2016, a national anti-LGBT law was proposed for Indonesia by parliamentarians from conservative parties.⁷² If such a law passes, Indonesia will join other countries in the region who have British colonial laws that criminalise same sex relations. In the midst of the homophobic campaign a survey was conducted which indicated that LGBTIQ

people were the most disliked group in Indonesia, even more than communists.⁷³

A national furore broke out against LGBTIQ groups in the first few months of 2016 and resumed in August. During this campaign of homophobia, conversion therapy was widely advocated for the ‘rehabilitation’ of homosexual people despite scientific evidence that such therapy does not work and has been proved to be a harmful practice with long-term consequences.⁷⁴ The Minister of Social Affairs, Khofifah Indar Parawansa in fact promoted the Emotional, Spritual Quotient

72 <http://www.thejakartapost.com/news/2016/04/15/ppp-to-propose-anti-lgbt-propaganda-bill-1460698417.html> and <http://www.thejakartapost.com/news/2016/03/05/hanura-calls-law-against-lgbt-people.html> and <http://www.thejakartapost.com/news/2016/08/03/gay-sex-may-be-outlawed.html>

73 <http://www.thejakartapost.com/news/2016/08/01/lgbt-community-most-disliked-by-indonesian-muslims-survey.html>

74 <http://www.abualbanicentre.com/rehabilitasi-kelainan-orientasi-sexual>

(ESQ) method so LGBT people could become 'normal' again.⁷⁵ The push for conversion therapy continues to the present time.

Another worrying development is the case brought before the Constitutional Court by Aliansi Cinta Keluarga (Family Love Alliance), asking for a judicial review of several articles of the Criminal Code. This comes after a wave of homophobia engulfed the country in the first months of 2016. See Annexes I and II. At the time of finalizing this report it is not yet clear how the Court will rule. The petitioners argued that homosexuality is 'contagious' and they want Indonesia to have clearer norms and regulations 'stipulating that anyone having casual sex is committing adultery'. They asked the court to change the terms 'adults' and 'minors' in Article 292 to 'people', which would criminalise adult consensual same sex relations. The petitioners also want to annul Article 284 on adultery and Article 285 on rape in an attempt to make any sexual relations between unmarried persons a crime.⁷⁶ If the Constitutional Court agrees, many of the discriminatory regional regulations discussed in this report would suddenly all be in line with the Criminal Code.

In June 2016 President Jokowi announced that his administration had deregulated 3,143 problematic bylaws for 'contradicting higher regulations, promoting intolerance or deterring investment.' The following day the Mathla'ul Anwar Islamic organization called on the government 'not to revoke Sharia inspired bylaws that are in place in many regions across the country' because

such bylaws are 'guardians of people's morality' and are needed 'to prevent the country from sliding into further moral decadence'.⁷⁷ At the time of writing this report we have no details on which bylaws were revoked and whether the hundreds of regional regulations that discriminate against women and also LGBTIQ people are among the bad laws that were deregulated.⁷⁸

President Jokowi's own Nawacita (nine ideals) Program includes a commitment to uphold rule of law, diversity, and the human rights of minority communities. He remained mostly silent while the campaign of homophobia raged. But on October 19, 2016 he finally spoke out against discrimination of minorities, including sexual minorities. Acknowledging that Islam-inspired religious norms mostly oppose homosexuality as a lifestyle, nevertheless, he said, there was no need to criminalise it, and that it is the task of public officials, religious leaders and police to defend LGBTIQ people from discrimination, threats and violence.⁷⁹

75 <https://m.tempo.co/read/new/2016/02/28/173749009/menteri-khoffifah-lgbt-bisa-sembuh>

76 <http://www.thejakartapost.com/news/2016/08/03/gay-sex-may-be-outlawed.html>

77 <http://www.thejakartapost.com/news/2016/06/13/govt-told-not-to-revoke-sharia-inspired-bylaws.html>

78 <http://www.thejakartapost.com/news/2016/06/14/government-asked-to-add-intolerant-bylaws-to-annulment-list.html>

79 http://www.bbc.com/indonesia/indonesia/2016/10/161019_indonesia_wvc_jokowi_lgb

Recommendations

At the District Level

The capacity of legislators to draft their own regulations must be upgraded. They need training in human rights, women's rights and LGBTI rights as well as technical skills. In each district, the relevant regional bylaws/regulations need to be analysed, using a women's rights, LGBTI rights and human rights framework. The bylaws need to be adapted to meet the standards of national and international laws.

At the National Level

- The government of Indonesia must ensure that the national Constitution, laws and policies do not discriminate, are in line with the country's international obligations, and are consistent with each other. Discriminatory provisions of national laws (for example the Anti-Pornography Law), which infringe on basic rights enshrined in the Constitution, must be amended or removed. Lawmakers should not draft legislation that infringes on existing rights enshrined in the Constitution. The Constitutional Court should not allow the Criminal Code to contain regulations that are not in line with the rights enshrined in the Constitution.
- The government of Indonesia must exercise its power to revoke regional bylaws/regulations that infringe upon the human rights of Indonesian citizens, including LGBTIQ people, as enshrined in the Constitution and national laws. Such a revocation would be in line with the national Law on Regional Autonomy and the mandate about hierarchy of laws.
- The government of Indonesia must adopt necessary measures to prevent, reduce and eliminate the conditions and attitudes that cause or perpetuate discrimination against women and LGBTIQ communities. This includes applying the principles of equality and non discrimination in the CEDAW Convention, ICCPR, CRC and all other international human rights treaties that Indonesia is party to. This also includes implementing the Yogyakarta Principles to combat LGBTIQ discrimination.
- Training must be provided to lawmakers at the national level and at the regional level on human rights, including women's rights and rights related to sexual orientation, gender identity and gender expression. Policy makers in the relevant government ministries and departments also must be trained to implement international human rights standards on gender equality and LGBTIQ equality.

- Each government ministry should implement policies of non-discrimination on the basis of gender identity, gender expression and sexual orientation and protect the rights of women and sexual minorities in line with internationally adopted regulations and standards.
- Human rights education including the rights of women and LGBTIQ people must be provided in schools at all levels.
- Ministerial encouragement is needed to encourage research on human rights violations of women and LGBTIQ people, and the impact of these violations.
- Civil society groups must initiate debates on human rights, LGBTIQ rights and women's rights in relation to cultural and religious diversity.
- LGBTIQ groups must seize the opportunity to make presentations on the conditions of Indonesian LGBTIQ people to the newly created position of UN Independent Expert on Sexual Orientation and Gender Identity.
- LGBTIQ groups must actively participate in UN processes (Universal Periodic Review, treaty body reviews) to highlight concerns impacting LGBTIQ communities. Other human rights groups, including women's rights and child rights groups must amplify the voices of LGBTIQ groups in these international spaces—their recommendations to the UN must be comprehensive to improve conditions for all marginalized communities, including LGBTIQ.

At the International Level

- Indonesia has ratified at least six UN human rights treaties. It must accept the Concluding Observations of treaty bodies and take measures to implement Recommendations, including any relating to gender and sexual orientation, i.e., LGBTIQ issues.
- Indonesia must implement the Conclusions and Recommendations of the Report of the UN High Commissioner for Human Rights on discriminatory laws and practices against groups and individuals on grounds of gender and sexual orientation.

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Annex I

National Stakeholders in Indonesia and their Positions on LGBTIQ Groups

This compilation maps the positions of key national stakeholders toward LGBTIQ groups. It includes the content of verbal attacks against the LGBTIQ community by key stakeholders in positions of power and leadership. We use “LGBTIQ” except when quoting or using a direct reference to the acronym “LGBT”.

Government Ministries

Ministry of Internal Affairs

This Ministry is in charge of the many regional regulations that have been implemented since the Law on Regional Autonomy was enacted. In 2014 it issued Law No.23, which stipulates that all policies and regulations should be brought in line with the Constitution and national laws. In 2015, it issued Regulation No. 27/2014 that provides LGBT inclusive guidelines for regional development.

The Ministry needs to ensure proper enforcement of these guidelines and repeal the 389 discriminatory regional regulations that directly and disproportionately affect women and violate the human rights of LGBTIQ communities. The Ministry should resource and facilitate legislative capacity building at the regional level to improve the quality and legal integrity of regional level lawmaking.

The Ministry of Women’s Empowerment and Child Protection (WECP)

In the first years after the fall of President Suharto in 1998, the Ministry of WECP (at that time still the Ministry of Women’s Empowerment) adhered to the rights discourse stipulated in the 1995 Beijing Platform for Action. Since then it has gradually been taken over by conservative fundamentalist-inspired discourse. The concept of gender harmony and guidebooks on the Muslim idea of “happy family” (*keluarga sakinah* in Arabic) reinforce women’s subordination and associate same sex relations with immorality. Instead of upholding CEDAW and the principles of non-discrimination, the Ministry advocates increasingly discriminatory policies. The present Minister considers same-sex activities as abnormal behaviour that does not align with religion and culture, and therefore must be redirected to normal behavior.

In a 16 February 2016 press release (No. 16/Communication KPP-PA/2/2016), the Minister of WECP, Yohana Yembise, states that she prohibits the growth of the LGBT phenomenon especially in circles of children. Minister Yohana considers that the campaign/promotion of LGBT information via LGBT online sites is threatening and must be stopped quickly to protect the future of Indonesian children. Under her leadership, the Ministry and the University of Indonesia Research for Human Development (RECONSTRA) collaborated with 23 religious organisations from six religions to help families identify any children who may be inclined towards LGBT behaviours in order to 'guide them back to the straight path'. The press release also states that LGBT groups must be 'stimulated and guided so that they understand that their behaviour is not in line with the teachings of religion and culture in Indonesia, and to straighten their wrong sexual orientation and behaviour, for Indonesia is a country that is religious, and has a rich culture and ethics'.

Ministry of Social Affairs

The rights of LGBTIQ people are protected by Regulation No. 8/2012 of the Social Affairs Ministry on the protection of minority groups.

Ministry of Information

The Ministry of Information blocks pornographic sites, including LGBT sites, and monitors four groups that are viewed as promoting LGBT issues, namely Arus Pelangi, Suara Kita (LGBT news portal), SGRC UI (sexuality study group at the University of Indonesia) and Melela (an LGBT coming out site). This action follows a meeting held with Parliamentary Commission 1 about the 'promotion of LGBT propaganda'. Regulations proposed include: close online sites that promote LGBT issues and LGBT content for purposes of promoting LGBT propaganda; support the efforts of KPI (Indonesian Broadcasting Commission) to strengthen supervision of broadcasters in order to identify and prohibit programmes with LGBT content and impose strict sanctions on those who violate this prohibition.

Civil Servants

The Coordinating Minister for Politics, Law and Human Rights

At the height of the media campaign the present Minister, Luhut Panjaitan, stated in a February 2016 interview with *Kompas* that LGBT groups are 'also citizens' who have to be protected. However he also said that LGBT groups 'suffer from a mental illness' and have to be healed.

The Minister of Defence

In a February 2016 *Kompas* article, Minister Ryamizard Ryacudu stated that LGBT groups are waging a proxy war, and that homosexuality is worse than waging a nuclear war.

The Minister for the State Apparatus

Minister Judy Chrisnandi told a *Tribun Jabar* reporter that LGBT civil servants would be fired from their jobs as it is not fitting that civil servants are gay.

Independent State Agencies

KPAI (*Komisi Perlindungan Anak Indonesia*) - Indonesian Commission for the Protection of Children

Asrorun Niam Sholeh, the chair of this Commission, is opposed to LGBTIQ people. The KPAI presents itself as protecting children from pedophilia and other forms of sexual violence while failing to differentiate between LGBTIQ people and pedophiles. Instead of protecting LGBTIQ youth from the violence they experience when their sexual orientation and gender identities are revealed or discovered, the Commission contributes to the current climate of hatred and violence.

KPI (*Komisi Penyiaran Indonesia*) - Indonesian Broadcasting Commission

The KPI supervises and issues licenses to broadcasting institutions. The Parliamentary Commission 1 (for foreign affairs and the mass media) supervises the KPI. On 23 February 2016, the KPI issued Circular No. 203/K/KPI/02/2016, stating that TV and radio programs would no longer show men who behave and dress like women. KPI requested that these men no longer appear in any shows (as prime host or as a guest). Men would be banned if they showed the following traits: dress like women; apply make up as women do; have a feminine bodily expression (including but not limited to style of walking, sitting, and hand gestures); speak like women; promote [the idea] that a man can behave in a womanly way; use women's style of greeting for men; and utter terms and expressions that are often used in circles of women.

According to the KPI, these traits do not respect current social norms of politeness and modesty, and broadcasts with such content can 'push children to learn or to accept such incorrect behaviour as something that is customary in daily life'. Women's rights and human rights groups reacted strongly towards this circular, stating that with this regulation the KPI directly violated LGBTIQ people's right to work and the right to a proper income.

Political Parties

PKB (*Partai Kebangkitan Bangsa*) - National Awakening Party

The PKB refuses to recognize the legalisation of same sex marriage, as that is 'cursed in Islam', but stressed in a February 2016 *Okezone* News article that LGBT people are 'also human beings' and must be protected. The PKB is associated with the Muslim mass organisation Nahdlatul Ulama (NU).

PKS (*Partai Keadilan Sejahtera*) - Prosperous Justice Party

According to *Muslim Daily*, the religious hard-liner newspaper, PKS proposes that the government enact similar anti-LGTBI laws as Russia.

PDIP (*Partai Demokrasi Indonesia Perjuangan*) - Indonesian Democratic Party of Struggle

Under the leadership of Megawati Sukarnoputri, the PDIP, which is the largest political party in Indonesia, stated that LGBT people are God's creatures and should not be oppressed. It takes the most progressive position on LGBT people in that it pushes to uphold the human rights of LGBT people.

Politicians

On March 4, 2016, various members of the parliamentary Commission 1 met with Information Minister Rudiantara to discuss LGBT and mass media.

Evita Nursanty (PDIP) advises stricter Internet control and to copy China's Internet censorship regulations. If Facebook openly supports LGBT issues, she warned, "it has to be cleaned up...for that is not in line with our culture".

MP El Nino (Gerindra) thinks that LGBT is frightening. He too advises strict media control: "YouTube, FB, both of them easily present material that is very pro-LGBT. That must be prohibited..."

MP Sukamta (PKS) cites an anthropologist at the University of Indonesia that LGBT people are targeting school children in Jakarta, who have just passed their exams and don't have enough money, to "spread" homosexuality. He feels, "This is a great danger" and, if allowed, "20 years from now the young generation will be even more infected by LGBT".

TB Hasanudin does not want to criminalise LGBT issues, but instead make them 'more human.' He advises that they must 'heal, for ... LGBT is a contagious disease'.

Muslim Organisations

MUI (*Majelis Ulama Indonesia*) - Indonesian Council of Islamic Scholars

Founded in 1975, the MUI has a quasi-legal status and regularly issues *fatwas* (religious edicts), which, though not legally binding, carry political, social and moral weight. The Council is associated with the conservative Muslim political party PKS and with the FPI Muslim extremist group, which is composed of thugs (*preman*) who regularly carry out raids and extort money. The MUI received 'socialisation funds' from the Ministry of Religious Affairs to support the campaign in favour of the Anti-Pornography Bill. In 2005 MUI issued a *fatwa* (No. 12) condemning liberalism, pluralism and secularism. In 2014, it issued *fatwa* (No. 57), condemning homosexuality as immoral and as a sin, and suggested LGBT people be punished by caning or

even by the death penalty. It also proclaimed homosexuality as a disease and advocated the use of rehabilitation centres to cure ‘these perverts’.

MUI strengthened the 2014 Fatwa in 2016 by issuing the following recommendations:

- LGBT activities, including efforts to conduct a campaign, are prohibited in Islam and other religions. LGBT activities are in conflict with the Pancasila (silas 1 and 2), with the Constitution (Article 29-1 and Article 28.j), and with Law No. 1/1974 on Marriage.
- LGBT activities are in conflict with *fatwa* No. 57/2014 on Lesbianism, Gay Men, Sodomy, and Indecency, which declares that LGBT activities are a crime (*jarimah*) and those who practice it can be sentenced. LGBT activities are an illness, which is very dangerous for one’s health, and can become the source of several contagious diseases such as HIV/AIDS

NU (Nahdlatu Ulama)

PBNU, the highest body of Indonesia’s largest Muslim organisation, NU, issued its official point view of LGBT people: ‘LGBT people are a disgrace to human honour’. The PBNU calls upon the government to ensure that foreign funding and interventions are stopped, and advocates for the rehabilitation of LGBT people. Formerly more tolerant of diversity, NU has been shifting to a less tolerant position in the past few years. There is however a group of young Muslim scholars, who insist on a human rights-based interpretation of Islam. They call themselves the Gus Durian group, named after Gus Dur, a former influential chair of the NU and Indonesia’s first elected President (full name Abdurrahman Wahid).

Muhammadiyah

As the more ‘modernist’ Muslim mass organisation, the Muhammadiyah strives for a reformist Islam rather than an acceptance of traditional interpretations. They have not made an official statement yet (at the time of preparing this report), though several leaders have released statements concerning LGBT issues. For instance, Yunahar Ilyas, chair of the PP (Pengurus Pusat, Central Leadership) of Muhammadiyah, stresses that LGBT behaviour is not in line with the Pancasila, the basic ideology of Indonesia, and that LGBT behaviour is prohibited in all religions in Indonesia and the rest of the world. Muhammadiyah rejects foreign funding for LGBT programmes/groups to promote LGBT behaviour, but they do support foreign funding for research to heal ‘this illness’. On the other hand, Din Syamsudin, the former chair of the Muhammadiyah and the current chair of the MUI, stated publicly that LGBT communities must be protected as they are also Indonesian citizens.

Annex II

This timeline records and analyses instances where both state and non-state actors have utilised the media in their campaign of homophobia. We use “LGBTIQ” except when quoting or using a direct reference to the acronym “LGBT”.

A wave of homophobia hit the press in the last months of 2015 and the first months of 2016, only abating towards the end of April. It started as a campaign to ban LGBT organisations from Indonesian campuses, went on to LGBT people being portrayed repeatedly as morally and socially ill, and a general condemnation of LGBT organisations. The campaign demonstrated how deeply conservative morality has penetrated Indonesian politics and social life and, by extension, the media. It is a troubling illustration of the many violations that LGBTIQ rights activists face, including the right to work, privacy, education, information, academic freedom and the freedom of association and speech. The developments in 2016 exposed many prominent political figures as being ignorant (stating that LGBT have a disease that can be cured) and/or homophobic (stating that LGBT groups are against Indonesia’s culture and religion). Even highly educated political leaders joined the chorus. It is unclear how far political motivations played a role.

October 3, 2015 – reported by *The Jakarta Post*

Two women in Aceh were suspected of being lesbians and arrested after hugging in public.

November 13, 2015 – reported by *CNN Indonesia*

Diponegoro University (Undip) in Semarang was the first university to ban discussion of LGBT rights when it canceled a law department discussion on LGBT issues. The rector said that LGBT went against religious teachings and the university would only uphold academic freedom “on the condition that it was conducted responsibly”.

December 3, 2015 – reported by *Tribun Lampung; Hidayatullah.com*

University of Lampung (Unila) students protested against the presence of LGBT people at their university. Their rector used religious arguments to ensure that he would terminate LGBT lecturers and suspend LGBT students to cleanse the university of their presence.

December 12, 2015 – reported by *Hidayatullah.com*

The former rector of the Islamic University Sunan Gunung Djati in Bandung, Professor Deddy Ismatullah, prophesied that Indonesia might be smitten by the same curse that Allah visited on the prophet Luth if the country allowed the presence of LGBT people.

January 24, 2016 – reported by CNN Indonesia; The Jakarta Post; Republika

The rector of the prestigious National University of Indonesia prohibited the presence of the Support Group and Resource Center on Gender and Sexuality Studies (SGRC UI) on campus. The Minister for Research, Technology and Higher Education, M. Nasir, agreed: 'A university campus must guard morality...the presence of an LGBT group on campus harms the morality of the people'. Politician Nasir Djamil from the fundamentalist Muslim party Prosperous Justice Party (PKS) stressed, 'the LGBTI community was a serious threat to the nation' and should not be allowed to hold academic discussions. Speaker of the MPR (People's Consultative Assembly) Zulkifli Hasan and Minister Anies Baswedan of Culture and Education concurred.

A member of Commission III of the national parliament from the PKS faction, Muhammad Nasir Djamil, also feared the 'serious threat' that the LGBT lifestyle posed to the Indonesian people, pointing out that LGBT people had already penetrated the universities. He called upon the Muslim mass organisations to keep providing information to make society aware of the issue. He promised to head the legislative process in the DPR to contain the spread of LGBT issues and all other activities that might destroy the morality of the people, saying 'we all have to fight for this from our different positions in society'.

January 25, 2016 – reported by The Jakarta Post; Republika

The otherwise progressive mayor of Bandung, Ridwan Kamil, said he accepted LGBT people as long as they don't use social media 'like pornography', and 'the LGBT issue was inappropriate and should be kept a private matter'. He promised to take firm action if activists went public with their opinions because it would be a 'violation of ethics and social norms'.

It is in these references to pornography and morality that the link with wider issues of gender discrimination becomes clear. Statements of the Minister Anies Baswedan of Culture and Education, that parents and teachers should be aware of 'deviant behaviours' of teenage children, are similar to the programme to promote the so-called 'keluarga sakinah' (happy family) by the Ministry of Women's Empowerment & Child Protection.

January 30, 2016 – reported by The Jakarta Post

Several prominent religious and political leaders, though guarded in their comments, did eventually speak up against the verbal attacks against LGBT people. The same mayor of Bandung who promised stern action against LGBT social media protesters instructed the violent Muslim extremist group, FPI (Forum Pembela Islam, Muslim Defenders' Front), to take down its anti-LGBT banners in a neighborhood that it had been raiding because of the supposed presence of lesbians and gay men in the area. FPI *preman* (thugs) target women who live together and take their housing arrangements as evidence of 'lesbianism,' although it is common practice for women, regardless of their sexual orientation, to board together.

February 3, 2016 – reported by Republika; Tarbiyah

The media attention is also a sign of the growing visibility of LGBTIQ groups. Forum LGBTIQ Indonesia, a coalition of LGBTIQ groups, accused the daily newspaper, *Republika*, of biased

reporting and hate speech. *Republika* along with other conservative media has fanned the flames of homophobia. National political leaders hope that vitriolic media rhetoric will gain them political capital and they pay little attention to the September 2015 statement of the 12 United Nations agencies to end violence and discrimination against LGBTI people. Most of these UN agencies are active in Indonesia.

February 5, 2016 – reported by *The Jakarta Post*

The National Commission on Human Rights issued a strong statement against the campaign of homophobia, urging public officials to put a stop to negative comments that violate the human rights of and incite violence toward the LGBT community. It also called for law enforcement agencies to curb abuse by ‘community organisations’ or individuals towards LGBTIQ persons.⁸⁰ The Commission referred to the Yogyakarta Principles and the two government regulations that protect the rights of LGBTIQ groups, namely the Social Affairs Ministry Regulation No. 8/2012 on minority groups, and the Home Ministry Regulation No. 27/2014 on guidelines for regional development in 2015 that is inclusive of gays, transsexuals and lesbians. This however did not put an end to the anti-LGBTIQ campaign. Political leaders continued to use hate speech to vilify LGBTIQ communities.

February 6, 2016 – reported by *The Jakarta Post*

The usually pluralist and tolerant PKB (National Awakening Party), associated with ex-president Abdurrahman Wahid, contributed to the anti-LGBT campaign. The party decided that LGBT people as individuals should have their rights protected, but that campaigning for same sex marriage would not be allowed. While reaffirming their stance on pluralism, the party invoked ‘eastern and religious values’ and condoned banning LGBT groups from universities.

Said Siradj, the chairman of the largest Muslim mass organisation, Nahdlatul Ulama (NU), associated with the PKB said: ‘Well, [as humans] everything should be done in a civilized manner; we must not spark hatred...[However] I support the [previous] call of research, technology and higher education minister [Muhammad Nasir] that it [LGBT practices] should not be allowed on campuses because it is not only against religious teachings but also human nature’. Mr. Said later deemed the LGBT phenomenon in the country as ‘quite dangerous’.

February 22, 2016 – reported by *RiauPos.co*

Prominent PKS politician, Hidayat Nur Wahid (former chair of PKS, vice speaker of the MPR), warned that communists and LGBT people threatened the very basis of the State and the Pancasila (foundational principles of Indonesia).

March 4, 2016 - reported by *Republika*

‘LGBT people must be banned just like we banned communism and drug trafficking’, said Hanura Party secretary-general Berliana Kartakusumah in a discussion at the House of Representatives.

⁸⁰ Usually refers to Muslim militia community organizations.

March 10, 2016 – reported by *Republika*

Saleh Partaonan Daulay, well-known leader of the Islamic PAN party, member of the Muhammadiyah and Chair of Commission Komisi VIII of the DPR, proposed that the government should deal sternly with this issue and draft an anti-LGBT law, ‘...not to marginalize them as LGBT people but to protect the ordinary non-LGBT society’.

March 13, 2016 – reported by *Republika*

Minister of Social Affairs Khoffah Indar Parawansa recommended that LGBT people might be ‘cured’ just as drug users are—by putting them in water of around 85 degrees Celsius with spices, as she had witnessed at a Purbalingga rehabilitation centre.

March 14, 2016 – reported by *The Jakarta Post*

Hanura Party secretary-general Kartakusumah pronounced, ‘LGBT is an infectious and dangerous disease [that] endangers the preservation of human life’.

March 15, 2016 – reported by *The Jakarta Post*

The government of Aceh announced that they would cane anybody they decide belongs to the LGBT community.

March 20, 2016 – reported by *Teropongsenayan*

PKS senior politician, Hidayat thanked Allah that most Muslim political parties speak with one voice in supporting a law that ‘strongly prohibits LGBT people’. When he spoke with President Jokowi, he reminded the President that even Russia, a Communist country, had taken steps against LGBT and that Indonesia could do even more. Hidayat said: ‘LGBT people can be classified as waging an asymmetrical war, the kind of war that tries to influence people with the goal of destroying the moral foundation of society...It is a cheap war, thus asymmetric. It is not a physical war...but when the morality of the people is destroyed, the country has no morality any more, no vision to the future, its glorious ideals are destroyed so that the country collapses’.

March 21, 2016 – reported by *The Jakarta Post*

Secretary-general Kartakusumah of the People’s Conscience Party (Hanura) called for criminalisation of the LGBT community to ‘curb their presence in the country’ and to ‘provide for sanctions, rehabilitation and restrictions on LGBT activities’.

After Mid-April 2016

Liberal and progressive media were no longer reporting LGBT hate speech on a regular basis. The conservative, hate-mongering daily newspaper, *Republika* continued to do so however. After the first wave of hostile statements reported in the media slowed down, most politicians and opinion leaders were careful to stress that LGBT people, as Indonesian citizens, were ‘also’ allowed to enjoy the human rights the Constitution guaranteed, while not condoning the activities of LGBT organisations. The anti-LGBT law that is currently being discussed will likely also try to push this questionable distinction.

Apart from sin, deviancy, contagious disease and alleged violations of ethics and traditional culture, the discourse during this anti-LGBT campaign mainly focused on the following themes:

- Human rights defenders were seen as a cover for LGBT groups. Before this campaign, human rights defenders were mostly painted as communist, hence a threat to Indonesia. Now they are described as LGBT friendly, where LGBT are being cast as a threat.
- LGBT organisations were targeted the most for spreading ‘this disease’. The organisations were accused of targeting children and ‘attacking’ campuses and the wider society.
- The dissemination of information about LGBT issues via social media or television was linked to and blamed for the ‘spread of homosexuality’ among children.
- There was a call for LGBT youth to be guided to the ‘straight path’ by any means, otherwise there would be family violence, suicide, low self-esteem and bullying at school.
- Homosexuality was seen as coming from the West—ignoring Indonesia’s own same sex and/or gender variant traditions. While Western funding (such as from UNDP) was targeted, Arab funding and influence on Indonesian society was not mentioned.
- Ultimately this campaign was and continues to be about how the Indonesian nation imagines itself and whether it includes a space for LGBT people and their organisations.

The media ignored appeals to science and protests from human rights and women’s rights organisations, such as APIK and Solidaritas Perempuan (Women’s Solidarity). As a result of this campaign, LGBTIQ people and their families were harassed and developed depression. The only religious school of *waria*, was raided and forced to close down. LGBT organisations have since made themselves less visible by restricting access to their social media or by no longer working from home offices. Some have set up safe houses for LGBTIQ people being stalked or surveilled.

As LGBTIQ issues are portrayed as a threat to security and an attack on morality, the government, in particular the Ministry of Information, has suggested banning websites that contain LGBT-related content. The Ministry wants to include this prohibition in the upcoming national cyber security bill. In response, LGBTIQ rights organisation Arus Pelangi emphasized that the websites of LGBTIQ organisations merely notify LGBT people that they have equal rights as citizens and inform the public about the existence of various sexual orientations, but have not campaigned or persuaded people to become homosexual or transgender.

Further lasting harm from this moral sexual panic may be on the horizon, particularly if anti-LGBTIQ legislation is enacted in the months following this campaign. At the time of finalizing this report the Constitutional Court was mulling anti-LGBT legislation. Meanwhile, President Jokowi has demonstrated weak leadership by not reminding the public that Indonesia is

supposed to be a state in which the rule of law and human rights are upheld. Nearly ten months after the campaign of homophobia began, BBC.com Indonesia quoted Jokowi, acknowledging that religious norms encouraged discrimination on grounds of sexual orientation. He said, there was no need to criminalise homosexuality and that police should defend LGBTIQ people against violence. In waiting so long to criticise the daily vilification of LGBTIQ groups while the campaign of homophobia was raging in the nation's capital he failed to uphold his own Nawacita programme, which includes a clause on upholding human rights for the LGBTIQ community.



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