

Regional Statement on the Looming Criminalization of LGBTQ Persons in Indonesia

Indonesia's Revised Criminal Code (Revisi Kitab Undang-undang Hukum Pidana) legislating hate against LGBTQ persons.

We, the undersigned civil society organizations working in Southeast Asia, express serious concern over the looming criminalization of lesbian, gay, bisexual, transgender, queer (LGBTQ) and other gender minorities in Indonesia. We call on the government of Indonesia to reconsider the approval of the proposed amendments to the Indonesian Criminal Code that restricts freedom of religion, punishes consensual same-sex relations and opens the door for harassment against LGBTQ persons.

We specifically raise attention to problematic provisions in the proposed criminal law. These include the following:

At present, Indonesia has enacted several local laws that criminalize LGBTQ persons by banning consensual same-sex relations, immoral conduct, sexual relations outside marriage, and indecency. These local laws exist in around 11 provinces including Aceh, Yogyakarta, West Java, North Sumatra, South Sumatra, East Kalimantan, and South Sulawesi. Article 2 recognizes the existence of and reaffirms the enforcement of "living law" (hukum yang hidup dalam masyarakat). While this article does not specifically explain what is construed as "living law". The enforcement of living law is by regulating local law and will be compiled at the national level. These can be used to open the door for every province to enact local laws against LGBTIQ people.

We are also concerned that violence on the basis of sexual orientation and gender identity and expression have been perpetrated in the name of religion. Extremist groups have leveraged on this hate to conduct attacks against LGBTQ persons in many provinces. Articles 304 to 306 criminalize any public acts that may be deemed as contrary to teachings of Indonesia's officially recognized religions (Islam, Catholicism, Protestantism, Buddhism, Hinduism and Confucianism). These provisions provide a shield for proponents of religious doctrines to espouse hate speech and further stigmatize and discriminate LGBTQ persons.

Meanwhile, we recognize the existence of progressive interpretations of religious texts that affirm gender and sexual diversity. These vague provisions, Articles 304 to 306, will be arbitrarily utilized to hinder LGBTQ persons of faith to freely exercise conscience and discernment to interrogate and transform religious teachings. We remind the Indonesian government that protecting the freedom of religion of minority groups is an unshakable obligation under the International Covenant on Civil and Political Rights (ICCPR) which Indonesia is a party to. The General Comment No. 22 of the Human Rights Committee made it clear that restrictions on freedom of belief and religion may not be imposed for discriminatory purposes or applied in a discriminatory manner. Moreover, General Comment No. 34 (On Freedom of Opinion and Expression) of the Human Rights Committee cautioned that legal prohibitions used to prevent or to punish criticism or commentary of religious doctrine and tenets of faith are impermissible.

The right to privacy is a universally recognized freedom protected under the Universal Declaration of Human Rights (UDHR), and the ICCPR. The freedom to decide on one's own consensual adult relationships, including the gender of that person without the interference of the State is a fundamental human right. Article 417 criminalizes consensual sexual acts outside marriage. Meanwhile, Article 419 considers consensual cohabitation between persons who are not legally married as criminal. Article 419, which enables village heads and other concerned persons to file complaints, facilitates arbitrary interference in the right to privacy of persons. In a country that limits marriage to heterosexual couples, these two articles essentially criminalizes LGBTIQ persons. These

two provisions can likewise be used as a tool by any person, including their parents, to harass, demean and instigate violence against LGBTQ couples.

In addition, restricting consensual sexual acts and limiting it within the confines of marriage reinforces gender stereotypes. It is a form of institutional control over the bodies and sexuality of persons, especially women. We remind Indonesia of its obligation under Article 5 the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) to eliminate rather than to reinforce prejudices and other customary practices based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Moreover, Article 421 criminalizes commission of obscene acts done in public. This article applies to relations of persons with the opposite-sex and to same-sex. Articles 427 and 428 prohibits facilitation of or connecting people to commit obscenity, whether such act is done in the performance of one's work, habit or for profit. The law itself does not provide a clear definition of obscenity. However, legislators loosely define this as acts that violate the norms of decency, politeness, or other indecent acts, and are always related to lust or sexuality. This loose and vague definition is problematic because it opens floodgates for discrimination. Without any clear parameters, this article may be used to restrict intimate interpersonal conduct. With strong stigma against LGBTQ groups for advocating for recognition of same-sex relations, these articles are problematic because it may be used to justify surveillance and harassment.

In the proposed amendment, sexual and reproductive health and rights are also under seriously attacked. Article 251 renders abortion illegal and a woman seeking abortion may face imprisonment. This provision does not exempt women who suffered from rape or domestic abuse, or those with life threatening conditions. Article 414 prohibits adults from promoting, offering or showing contraceptives to children. Article 416 limits any promotion or distribution of contraceptives solely for purposes of health education, and to be done only by authorized or competent officials. These provisions are extremely problematic for sexual and reproductive health service providers, and further limits access to information and education on prevention of STIs, including HIV, for LGBTIQ young people and other vulnerable groups.

The right to health, including the right to take free and informed decisions over sexuality, and to access health services, goods and facilities free from discrimination, is articulated in the International Covenant on Economic, Social and Cultural Rights, as well as CEDAW (art 12, general recommendation 24) and CRC. Furthermore CEDAW General Recommendation 35 indicates violations of sexual and reproductive health and rights, such as "criminalisation of abortion, denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking SRH information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment."

Criminal laws are necessary to protect the life and liberty of every person. However, such laws must be consistent with Indonesia's human rights obligations notably the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC) and only then can such laws serve their purposes. If implemented, the current draft of the Criminal Code would severely curtail Indonesia's sustainable development efforts, and prevent the achievement of Agenda 2030 Sustainable Development Goals (SDGs), in particular targets under SDG 3, 5,10 and 16.

We urge the Indonesian government to uphold its human rights commitments enshrined in various international instruments, particularly the ICCPR, ICESCR and CEDAW, as a state party. We also call on

the government to enforce the accepted UPR recommendations to protect the rights of sexual and gender minorities, including LGBTIQ human rights defenders.

We call upon the Government of the Republic of Indonesia, as a beacon of democracy in Southeast Asia, to act accordingly to its Constitution, which is to “protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation’s intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice.”

We strongly urge the Government of the Republic Indonesia who is vying for membership of the United Nation Human Rights Councils 2020-2022 to ensure of the protections and fulfillments of human rights before its candidacy.

Indonesia should take action to protect the rights of the people, including LGBTIQ people by removing problematic provisions on the revision of the Indonesia Criminal Law. Further, we call on the Government of Indonesia to postpone and further review the proposed criminal law and to ensure that international human rights principles and standards are upheld.

List of the Organizations:

1. ASEAN SOGIE Caucus
2. APCOM Foundation
3. Asia Pacific Transgender Network (APTN)
4. SAYONI
5. OII Chinese Campaign for Change
6. Asian Forum for Human Rights and Development (FORUM-ASIA)
7. Asia Pacific Alliance for Sexual and Reproductive Health and Rights (APA)
8. Asia Pacific Alliance
9. ASEAN Youth Forum
10. Youth Voices Count
11. SHINE SOCCSKSARGEN
12. LGBT Mujer
13. Iloilo Pride Team
14. Pelangi Campaign
15. L-INC Foundation
16. Malaysian Atheists and Secular Humanists (MASH)
17. Seksualiti Merdeka
18. Queer Lapis
19. People Like Us Hangout (PLUHO)
20. Justice for Sisters
21. BIKAR ALAM
22. Colors Rainbow
23. Beyond Borders Malaysia

24. PT Foundation
25. People Like Us Support Ourselves (PLUSOS)
26. Transmen Malaysia
27. BENTARAKATA
28. Kings N Queens
29. TRY
30. LGBT Rights Network Myanmar